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**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**August 25, 2015** - 9:04 a.m.  
Public Utilities Commission  
21 South Fruit Street Suite 10  
Concord, New Hampshire

**IN RE: SEC Docket No. 2014-04**  
**SITE EVALUATION COMMITTEE:**  
**Site 100 through Site 300**  
**Rulemaking Proceeding.**  
*(Meeting for members to*  
*discuss the proposed rules and*  
*the public comments thereto.)*

**PRESENT:**

**SITE EVALUATION COMMITTEE:**

Chrmn. Martin P. Honigberg <i>(Presiding as Chairman of SEC)</i>	Public Utilities Commission
Cmsr. Thomas S. Burack <i>(Vice Chairman of the SEC)</i>	Dept. of Env. Services
Cmsr. Robert R. Scott	Public Utilities Commission
Cmsr. Kathryn M. Bailey	Public Utilities Commission
Dir. Elizabeth Muzzey	DCR-Div. of Historical Res.
Cmsr. Jeffrey Rose	Dept. of Resources & Economic Development
Patricia Weathersby	Public Member
Roger Hawk	Public Member

*Also Present:* David K. Wiesner, Esq. (NHPUC)  
Michael J. Iacopino, Esq. (Brennan Lenehan..)

COURT REPORTER: *Steven E. Patnaude, LCR No. 52*

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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: Good morning,  
3 everyone. We're going to resume the discussion of  
4 comments on the Draft Proposed Rules. The goal is to get  
5 that -- get through the entire document this morning. We  
6 are meeting again on Thursday afternoon. At that time,  
7 we'll be reviewing revisions to this document, based on  
8 all of the comments and the discussions that we've had  
9 over however many meetings it's been, four or five  
10 meetings, I think.

11 After that, we'll be -- at that time  
12 we'll be, I hope, adopting a new proposal to publish for a  
13 public hearing in mid-September. As you all know, a  
14 *doodle.com* poll was sent out to try and find a date and  
15 time in mid-September when we could have that, the  
16 required public comment -- well, actually, it may not be  
17 required technically, but the one we have said we should  
18 do, and everyone agrees we should do, in mid-September.  
19 And, you will not be surprised to hear that we have yet to  
20 find a date and time when we can get seven people  
21 together. So, there's still at least one person who needs  
22 to respond, and we'll get information to that person, so  
23 we can get a full set of responses. And, maybe by the end  
24 of the meeting this morning, we'll have a date and time

1 that we can tell everybody about for the public comment  
2 hearing.

3 Beyond that, we'll be -- or, after that,  
4 we will have to get back together to discuss, consider the  
5 comments that have been submitted, and adopt a new  
6 proposal to file with Legislative Services for the  
7 consideration by the Joint Legislative Committee on  
8 Administrative Rules.

9 Mr. Wiesner, did I miss anything in  
10 there?

11 MR. WIESNER: No. That's a good summary  
12 of our process and the abbreviated timing what we have  
13 left to complete it.

14 CHAIRMAN HONIGBERG: All right.  
15 Typically, at the beginning of these meetings, we all  
16 introduce ourselves. But I don't see any new faces here  
17 either at this end of the table or that end. So, we're  
18 not going to do that right now.

19 We're going to pick up where we left  
20 off, which is with, I think, Item Number 19, on Page 36 of  
21 the Comment Summary document.

22 But, before we actually do that, just to  
23 be fair, does anyone up here have anything they want to  
24 say or need to say before we start that? I should have

1 asked that.

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Okay. The answer  
4 is "no".

5 We're going to do something a little bit  
6 different this time as well, I'm going to ask Mr. Wiesner  
7 to focus us, before we go off on some silly direction that  
8 is not needed. So, Mr. Wiesner, would you like to focus  
9 us on this item, which I think is titled "Waiver of  
10 Rules".

11 MR. WIESNER: Yes, Mr. Chairman. Thank  
12 you. This is Item Number 19. This is on Page 36 of the  
13 document that we've been working on for the last few  
14 meetings. It's the "Waiver of Rules" section in the  
15 "Procedural" section of the rules. And, we have a couple  
16 of different comments, which are essentially focused on  
17 the ability of parties to make waivers -- waiver requests,  
18 rather, and the opportunity of other parties to comment on  
19 those waiver requests. The language of the proposed rule  
20 tracks very closely the existing language in the existing  
21 SEC rules, which I believe is very similar to the PUC  
22 rules, and provides broad opportunities for parties to  
23 request waivers of the rules, and for those waiver  
24 requests to be considered by the Committee.

1           And, again, what's shown as black lining  
2           are proposed changes to the proposed rules as they were  
3           adopted in the Initial Proposal back in December and filed  
4           with Legislative Services in January.

5           CHAIRMAN HONIGBERG:  Anyone have any  
6           comments or questions or suggestions on this?  
7           Commissioner Burack.

8           VICE CHAIRMAN BURACK:  If I could, I'd  
9           like to ask a question of Attorney Iacopino, in terms of  
10          what his recollection is of historical experience with  
11          respect to requests for waivers of rules.  How often this  
12          occurs?  How the Committee historically has handled this?  
13          Whether the Committee historically, when there have been  
14          waiver requests, whether we have or have not allowed any  
15          parties, including intervenors, to offer their views on  
16          whether waivers might be issued?  And, is this typically a  
17          decision made by the Chair or is this really a decision of  
18          the Committee or Subcommittee as a whole?

19          MR. IACOPINO:  In my experience,  
20          Commissioner, the present provision for waiver of rules is  
21          very infrequently requested to be used.  And, it's -- when  
22          it has been used, it's been in various circumstances.  
23          Some of which have occurred on a *sua sponte* basis, in  
24          other words, at the -- the Committee determining to waive

1 a rule from the Bench during a hearing. And, has always,  
2 I can't think of a time when a request for a waiver, the  
3 other parties, the other interested parties were not  
4 canvassed for their opinion.

5 Quite frankly, in writing, we rarely  
6 have them. I think I can think of maybe one or two, in  
7 the time that I've represented the Committee, since 1998,  
8 that there's actually been a request for an actual waiver  
9 of a rule. We've had some waivers that have occurred,  
10 like during the course of a hearing, when some evidentiary  
11 issue came up. But it's infrequently -- it's an  
12 infrequently used thing, unlike in some other  
13 administrative law applications, where an exemption or a  
14 waiver is a commonly used way to deal with a small project  
15 or something like that. So, it's infrequent.

16 CHAIRMAN HONIGBERG: Am I correct, that  
17 it's not possible under the rules, as they are written,  
18 without any suggested changes, but the draft that we  
19 published, it's not possible for a waiver to happen in  
20 secret? That the request has to be public, either on the  
21 record, in open hearing, or in writing and sent out to the  
22 service list. And, that any ruling on a waiver request  
23 would also be public. Is that correct?

24 MR. IACOPINO: According -- as to what's

1 written here, yes.

2 MR. WIESNER: And, I think perhaps the  
3 concern, especially in the first comment from New  
4 Hampshire Wind Watch, is, you know, now that we're going  
5 to have rules that are much more specific as to criteria  
6 for siting and limitations on siting, for example,  
7 setbacks or noise limits, I think there's a concern that a  
8 request for a waiver from those types of provisions not be  
9 made orally during a hearing. So, you know, one view is  
10 it's much more appropriate to seek a waiver of a  
11 procedural rule during the course of a hearing, with  
12 respect to some evidentiary issue, as Attorney Iacopino  
13 suggested, but maybe not appropriate to surprise parties  
14 at a hearing with a request for a waiver of a more  
15 substantive provision of the rules.

16 CHAIRMAN HONIGBERG: An appropriate  
17 sentiment, I think, although, really, in all honesty, I  
18 can't imagine any lawyer chairing a hearing even  
19 entertaining an oral request to waive a substantive  
20 requirement of a rule. The response would be "put it in  
21 writing, and everybody has ten days to respond." It's a  
22 motion. It's a request for relief. My inclination is not  
23 to change the rule as it's written.

24 It's standard administrative practice.

1 Lawyers who run administrative hearings know how to  
2 implement that. And, I think it would be a very risky  
3 thing for an administrative tribunal to do something like  
4 that. It would be an invitation to get reversed, and keep  
5 a process that needs to get resolved going for a long,  
6 long time. I just don't see that happening.

7 Does anybody want to change the rule as  
8 proposed by the commenters? Commissioner Burack, you have  
9 your finger on the button.

10 VICE CHAIRMAN BURACK: Yes, I do. Thank  
11 you. Mr. Chairman, I generally agree with your  
12 sentiments, but I also think there -- if nothing else, it  
13 would be helpful to add to this waiver section some  
14 language to the effect that "all parties to the proceeding  
15 will have an opportunity to express their position with  
16 respect to any waiver request". And, I think that in  
17 itself would send a very clear signal that you're going to  
18 really have to put it in writing.

19 CHAIRMAN HONIGBERG: Do you like either  
20 of the formulations that is in the Comment document?  
21 There's two different formulations of that, such a  
22 provision, at the end of the two comments.

23 VICE CHAIRMAN BURACK: I think, on  
24 balance, the one on the right, that "All parties must be

1 notified of the request for waiver and given the  
2 opportunity to comment", is probably sort of the most  
3 balanced of those.

4 CHAIRMAN HONIGBERG: Commissioner Burack  
5 suggests that we make that change on the right side of the  
6 bottom of Page 36, in 202.15. Does anyone agree with  
7 Commissioner Burack on this?

8 I see some nodding heads. I don't see  
9 all nodding heads. Yes, Attorney Weathersby.

10 MS. WEATHERSBY: I would just be  
11 concerned about oral waivers, oral waiver requests. And,  
12 whether you would need to give formal notice, and what  
13 about parties that are not present? So, I like the idea  
14 of giving the parties present at a proceeding an  
15 opportunity to weigh in on the request. But I think the  
16 formal notice requirement would be problematic. I'd be  
17 more in favor of the language written in on the left side,  
18 under (e).

19 VICE CHAIRMAN BURACK: Again, I don't  
20 have strong feelings about this, other than to offer the  
21 view that, if a party is requesting a waiver under  
22 circumstances where all of the parties are not present,  
23 that, I would think consistent with the Chairman's  
24 comments a moment ago, should be a further signal that it

1 isn't something that should be ruled on at that very  
2 moment, and needs to be considered further, with due time,  
3 you know, a fair opportunity, a full and fair opportunity  
4 for all to review and comment.

5 CHAIRMAN HONIGBERG: Well, I would say  
6 that that may not be true. If we're in a duly noticed  
7 hearing, and there is a time when a rule waiver request is  
8 appropriate, if someone's not there, that's really their  
9 problem, not the parties who are there's problem, because  
10 they're parties. And, if it was a duly noticed event, and  
11 they're not there, that's their problem.

12 So, if we're going to need to come back  
13 and meet again to deal with some issue that has arisen in  
14 a hearing, because someone wasn't there, that's not going  
15 to happen. You won't find that in any other  
16 administrative law circumstance or judicial circumstance.  
17 Parties are supposed to be there, they're supposed to be  
18 there to deal with and respond. If someone says "well, I  
19 need time to write a response", that's a different  
20 situation. But, if something arises during a hearing, I  
21 don't have any sympathy for someone who's not there.

22 VICE CHAIRMAN BURACK: And, I wouldn't  
23 disagree with you on that.

24 CHAIRMAN HONIGBERG: Let's bring this

1 one to a resolution. How do people want to proceed? Do  
2 they like the language at the bottom left, the bottom  
3 right or neither?

4 Commissioner Rose, what's your pleasure  
5 on this?

6 COMMISSIONER ROSE: Mr. Chairman, I was  
7 comfortable with the idea of having neither language  
8 added, and just keeping it as is.

9 CHAIRMAN HONIGBERG: Mr. Hawk, do you  
10 have any opinions on this?

11 MR. HAWK: I think the notice of written  
12 attempt to all the parties is important, and then that  
13 gives people time to respond. And, I think they probably  
14 should be at the hearing to respond to and be part of the  
15 discussion.

16 So, I think I agree with what's in the  
17 proposed rules on the left column.

18 CHAIRMAN HONIGBERG: Director Muzzey?

19 DIRECTOR MUZZEY: I would also agree  
20 with the addition on the left-hand side of the column.  
21 Although, I think it could be shortened to just say "other  
22 parties will be granted the opportunity to comment."

23 CHAIRMAN HONIGBERG: Attorney  
24 Weathersby, I think you liked the left side?

1 MS. WEATHERSBY: Correct.

2 CHAIRMAN HONIGBERG: Commissioner?

3 COMMISSIONER BAILEY: I think I prefer  
4 the left side. But maybe we could tie the "other parties  
5 will be granted the opportunity to present their support  
6 to other parties present", if the oral request that we're  
7 talking about in this rule is being made during the  
8 hearing.

9 CHAIRMAN HONIGBERG: I'm not sure I  
10 understood that, I'm sorry.

11 COMMISSIONER BAILEY: Well, I think the  
12 issue I think that we're wrestling with is, first of all,  
13 whether the waiver request is about a substantive rule.  
14 And, if it's about a substantive rule, I think it sounds  
15 like we all agree that everybody should have -- that it  
16 should be in writing. But, if something comes up during a  
17 hearing that needs to be addressed at the hearing in order  
18 to proceed, we should be allowed to grant that or deny  
19 that request, but we should -- I think the rule should  
20 specify that, in those cases, other parties will be  
21 granted an opportunity to present their opinion at the  
22 time, not have to wait, like you said, five days or ten  
23 days to have somebody put it in writing.

24 So, when it occurs at the hearing, if

1 it's not substantive, then everybody should state their  
2 position and the Committee, if they feel it appropriate,  
3 should make a decision.

4 CHAIRMAN HONIGBERG: Okay. Commissioner  
5 Burack?

6 VICE CHAIRMAN BURACK: I could support  
7 the changes that are being suggested by Commissioner  
8 Bailey.

9 CHAIRMAN HONIGBERG: Commissioner Scott?

10 COMMISSIONER SCOTT: My preference is to  
11 give the presiding officer some wiggle room, depending on  
12 what the request is. And, my preference would be to keep  
13 the language without change.

14 CHAIRMAN HONIGBERG: I think there's  
15 three of us who would keep the language without change. I  
16 think there's more who would like to see a change, largely  
17 along the lines of what's on the left column. But I don't  
18 know that we have agreement on what that language would  
19 say.

20 I think Director Muzzey made a  
21 simplification suggestion. Does that capture -- is that  
22 sufficient to capture what Commissioner Bailey and  
23 Commissioner Burack were concerned about?

24 DIRECTOR MUZZEY: Just to clarify, when

1 I suggested that, I was talking about the additional  
2 language under (e).

3 CHAIRMAN HONIGBERG: Uh-huh.

4 DIRECTOR MUZZEY: As opposed to, I don't  
5 believe right now we're discussing the suggested  
6 additional language under (d), are we?

7 CHAIRMAN HONIGBERG: That's correct.  
8 (d) is not part of the discussion.

9 DIRECTOR MUZZEY: Okay. I guess I would  
10 ask that question of Commissioner Bailey and Commissioner  
11 Burack, to see if that would cover their concerns.

12 COMMISSIONER BAILEY: Can you tell me  
13 again what your suggestion was?

14 DIRECTOR MUZZEY: My suggestion was to  
15 add to (e) "other parties will be granted the opportunity  
16 to comment."

17 COMMISSIONER BAILEY: Oh. And, it  
18 doesn't say "comment orally" or not. So, that would be up  
19 to the Chair?

20 DIRECTOR MUZZEY: Yes.

21 COMMISSIONER BAILEY: I could live with  
22 that.

23 VICE CHAIRMAN BURACK: I could accept  
24 that as well.

1                   CHAIRMAN HONIGBERG: All right. And,  
2 so, making no changes to (d), and making that change as  
3 Director Muzzey just outlined to (e), is their consensus  
4 that that's what we should do?

5                   MS. WEATHERSBY: Yes.

6                   CHAIRMAN HONIGBERG: I see nodding  
7 heads. We'll move on.

8                   The next comment is titled "Prefiled  
9 Testimony". Attorney Wiesner.

10                  MR. WIESNER: Yes. This is Site 202.22,  
11 "Prefiled Testimony", filing in an adjudicative  
12 proceeding, for instance, an application under  
13 consideration by the Committee. And, the Various Energy  
14 Companies proposed to delete the specification of the  
15 number of copies of prefiled testimony that would need to  
16 be filed, and also restrict the distribution requirement  
17 for the applicant to just actual parties in the case,  
18 rather than other people listed on the service list, if I  
19 understand their comments correctly. And, I believe the  
20 rationale for this is that, once the case is going, most  
21 parties will be receiving distribution through electronic  
22 means. And, this is an attempt to not burden the  
23 Committee with additional paper filings.

24                  CHAIRMAN HONIGBERG: Comments?

1 Questions? Suggestions? Yes, Commissioner Bailey.

2 COMMISSIONER BAILEY: I have a question  
3 for Attorney Wiesner. Can you tell me what the difference  
4 between this and 301.01, filing requirements are, other  
5 than in 301.01 we're requiring 15 paper copies?

6 MR. WIESNER: Well, that would be for  
7 the initial application, which may or may not include  
8 prefiled testimony, depending on the procedural schedule,  
9 and Attorney Iacopino has more experience with that than I  
10 do. But this would be prefiled testimony that's filed  
11 subsequent to the filing of an application, I believe,  
12 according to a procedural schedule which is set in  
13 consultation with the parties. And, I believe, at that  
14 time, you would have a service list, electronic  
15 distribution being the norm. And, I believe that what the  
16 Various Energy Companies are proposing is that that  
17 electronic distribution and service be the norm, rather  
18 than paper filings with the Committee. And, of course,  
19 that would also -- those filings would also be posted on  
20 the public website.

21 VICE CHAIRMAN BURACK: Mr. Chairman, may  
22 I inquire further here?

23 CHAIRMAN HONIGBERG: Go for it.

24 VICE CHAIRMAN BURACK: Do we have

1 provision in here that specifically lays out just what you  
2 described, in terms of how the Committee will proceed?  
3 Or, do we have a provision that says that there will be an  
4 order issued by the presiding officer, in terms of how  
5 these matters might be handled? It seems to me that these  
6 may be things that could change proceeding by proceeding.  
7 And, it may be helpful also to have sort of the standard  
8 way of doing these things.

9 But, depending on the nature and  
10 circumstances of the proceeding, there may be different  
11 ways that it would most efficient and expeditious and  
12 provide really the greatest level of transparency and  
13 improve communications, to have some flexibility on the  
14 matters that are addressed here.

15 CHAIRMAN HONIGBERG: And, while you're  
16 thinking about that, the cross between 301.01 and 202.22,  
17 202.22, which is the rule we're discussing right now,  
18 actually says that this is "Prefiled testimony that shall  
19 be filed with the application." So, the 301.01 section  
20 doesn't make any preference to "prefiled testimony". It  
21 just says "certain number of paper copies and an  
22 electronic version". This 202.22 just refers to "prefiled  
23 testimony". And, as it was proposed to be changed, the  
24 number was different from what was in the Filing -- the

1 general Filing section.

2 COMMISSIONER BAILEY: Mr. Chairman?

3 CHAIRMAN HONIGBERG: Commissioner  
4 Bailey.

5 COMMISSIONER BAILEY: Has the Committee  
6 already decided that 301.01 should be 15 paper copies?  
7 One thing I like about 301.01 is it says "unless otherwise  
8 directed by the chairperson or the administrator". So, I  
9 think, as long as they're consistent, if we add "unless  
10 otherwise directed by the chairperson", if somebody  
11 doesn't want to file 15 copies, they want to file 10, and  
12 there's a good reason for it, then the chairperson or the  
13 administrator could agree with that.

14 CHAIRMAN HONIGBERG: Attorney Iacopino,  
15 you had something you wanted to say on this?

16 MR. IACOPINO: 301.01(h) does contain  
17 the requirement that "Each application shall include  
18 pre-filed testimony and exhibits." It's on -- just above  
19 301.04. Actually, so, I guess that's 301.03 that I'm  
20 looking at. And, I'm looking at the complete rules that  
21 were initially --

22 CHAIRMAN HONIGBERG: So, now, I think  
23 I'm where the Various Energy Companies were. Why are we  
24 specifying a number in 202.22? I don't see any reason to

1 do that. 301.01 covers that topic, and that sentence just  
2 ended with no end point.

3 MR. IACOPINO: Should probably come up  
4 with one number.

5 CHAIRMAN HONIGBERG: Say that again.

6 MR. IACOPINO: We should probably come  
7 up with one number, instead of having different numbers in  
8 different parts of the rules.

9 CHAIRMAN HONIGBERG: I'm all for that.  
10 But I'm not sure that -- in fact, one of the problems is,  
11 when you have numbers in different places, you run the  
12 risk of having different numbers. Do we need a number in  
13 202.22?

14 VICE CHAIRMAN BURACK: Mr. Chairman, I  
15 guess I have a more fundamental question. And, that is,  
16 if "prefiled testimony" is already referenced in 301.01,  
17 do we need it in 202.22 at all?

18 CHAIRMAN HONIGBERG: Well, we do need it  
19 for someone who's other than the applicant.

20 VICE CHAIRMAN BURACK: Fair enough.

21 Okay. Thank you.

22 CHAIRMAN HONIGBERG: Attorney Wiesner.

23 MR. WIESNER: I was going to say, it's  
24 not specified what number those other parties have to

1 file. And, I think that's because, by that time, as I  
2 said before, you'd have a procedural schedule and you  
3 would have specified what the service list consists of and  
4 how service should be provided.

5 But I would agree that there seem to be  
6 redundancy here, and perhaps inconsistency with the number  
7 of copies, and we certainly should think about cleaning  
8 that up.

9 CHAIRMAN HONIGBERG: Commissioner  
10 Burack.

11 VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
12 very comfortable with the suggestion that Commissioner  
13 Bailey made, that we include some language here that  
14 perhaps does have a specific number in it, and maybe it is  
15 15 or some other number, to make sure that we're  
16 consistent between 202.22 and 301.03.

17 But I think it would be helpful to have  
18 a provision that does allow the chairperson of the  
19 proceeding, the presiding officer, to make a different  
20 determination, if that is appropriate under the  
21 circumstances.

22 CHAIRMAN HONIGBERG: So, a phrase that  
23 says something like "unless directed otherwise by order"  
24 or something like that?

1 VICE CHAIRMAN BURACK: Exactly.

2 COMMISSIONER BAILEY: The language is in  
3 301.01.

4 CHAIRMAN HONIGBERG: So, does it need to  
5 be in 202.22?

6 COMMISSIONER BAILEY: Well, yes, because  
7 this is testimony for other parties, not the petitioner.

8 CHAIRMAN HONIGBERG: That was a  
9 rhetorical question.

10 COMMISSIONER BAILEY: Sorry.

11 CHAIRMAN HONIGBERG: You couldn't see  
12 the look on my face? I think that's the way to go. I  
13 think (a) is not necessary, because it's dealt with in  
14 301.01, because that's the applicant's responsibility.  
15 And, I think, if we add the "unless otherwise directed"  
16 for what is currently (b) and (c), for what everybody else  
17 is supposed to do, we put in a number in there, whatever  
18 number makes sense at this point. And, then, I think the  
19 expectation is that, in virtually every case, there will  
20 be such an order after the first prehearing conference,  
21 and then everyone will know what to do from that point.  
22 And, if it somehow slips through the cracks at the  
23 prehearing conference, there's a provision people can  
24 point to and say "Oh, this is how many copies I need."

1 That work?

2 MR. WIESNER: And, is the idea that the  
3 number of copies would be the number of copies that the  
4 Committee would need, and other agencies, let's say, and  
5 then the service list would receive electronic  
6 distribution?

7 CHAIRMAN HONIGBERG: That works for me.

8 MR. WIESNER: And, again, subject to the  
9 presiding officer changing the number.

10 CHAIRMAN HONIGBERG: Right. Does that  
11 work for everyone? Commissioner Burack.

12 VICE CHAIRMAN BURACK: Yes, it does.  
13 And, I would assume that, if there were a circumstance  
14 where a party was not in a position to be able to receive  
15 things electronically, they could make a special request  
16 to the chairperson under those circumstances and ask for  
17 things like that.

18 CHAIRMAN HONIGBERG: Yes. I'm sure  
19 that's correct.

20 All right. Next item: "202.24", which  
21 is titled "Evidence".

22 MR. WIESNER: And, this is an issue that  
23 we have two diametrically opposed positions. Dr. Ward  
24 would like to see that meteorological data collected with

1 respect to a wind tower proposal be publicly available, so  
2 that it can be analyzed by other parties in a particular  
3 case. And, EDP takes the view that that type of  
4 information is confidential, commercially sensitive, and  
5 should not be made public.

6 CHAIRMAN HONIGBERG: Commissioner Scott.

7 COMMISSIONER SCOTT: Thank you. I would  
8 argue that we add neither of these. I believe, if, for  
9 instance, in this case, EDP Renewables had a submission  
10 they felt was confidential, they would -- they would file  
11 a motion for confidentiality. That's covered under  
12 existing procedures. So, I don't think that is needed to  
13 be additionally added.

14 So, with that type of procedure already  
15 in place, I don't see the need to add either one of these.

16 CHAIRMAN HONIGBERG: Other thoughts?  
17 Comments? I think, Commissioner Scott, your argument may  
18 carry the day.

19 All right. Let's move on. "Public  
20 Statements - 202.25(b)". Mr. Wiesner.

21 MR. WIESNER: And, the comment here is  
22 that a party or commenter, who does not wish to speak in  
23 public, may submit a statement basically read or presented  
24 by another party, or public counsel. And, I'm not sure we

1 need a rule that specifies the role of public counsel.  
2 And, I'm not sure that they would -- that the Attorney  
3 General's Office would be interested in performing that  
4 service.

5 But, otherwise, this rule seems to be  
6 recognizing the ability of one party to ask another to  
7 present its case, or at least its comments, on its behalf.

8 CHAIRMAN HONIGBERG: Commissioner Scott.

9 COMMISSIONER SCOTT: If memory serves,  
10 we, at least in practice, are already doing this. I can  
11 remember cases where, either because a person wasn't here  
12 or just they were combining efforts, where one person has  
13 provided comments for another. I'm not sure why this  
14 extra language would be needed given that. I guess my  
15 question is, maybe to Mr. Wiesner, does the commenter feel  
16 that they're currently precluded from that with the  
17 current rules?

18 MR. WIESNER: I don't know the exact  
19 motivation for this comment, other than to have it  
20 specifically recognized that this can be done. And, I  
21 think it has been the practice in the past for others to  
22 be permitted to present a statement. I recall that that  
23 occurred during the public comment hearing on these rules  
24 back in March.

1 I guess I would not be comfortable with  
2 this if it were testimony, that should be subject to  
3 cross-examination under oath. But I don't believe that  
4 that's the thrust of the comment.

5 VICE CHAIRMAN BURACK: Mr. Chairman.

6 CHAIRMAN HONIGBERG: Commissioner  
7 Burack.

8 VICE CHAIRMAN BURACK: This has been our  
9 practice in the past. And, it has not just been for, I'm  
10 not sure I know exactly what the term means here,  
11 "socially disabled members" of the public, I think, as a  
12 general matter, people who have been chairing these kinds  
13 of public hearings have been very solicitous of allowing  
14 everybody and anybody who wishes to share comments with  
15 the Committee to be able to do so.

16 And, I don't have specific language to  
17 suggest at this moment. But I certainly could be  
18 comfortable with some language that says something to the  
19 effect that "the Committee shall require members of the  
20 public desiring to make oral statements on their own  
21 behalf, or on behalf of others, at a hearing or  
22 conference", so on, to indicate by providing their names.  
23 There would be some wordsmithing that needs to be done  
24 there.

1                   And, there certainly are circumstances  
2 where people just are not available on a particular night  
3 of a hearing, or other reasons.

4                   And, so, I wouldn't, if we're going to  
5 make any provision at all for what is already standard  
6 practice, I wouldn't limit it just to "socially disabled  
7 members".

8                   CHAIRMAN HONIGBERG: Director Muzzey.

9                   DIRECTOR MUZZEY: I would agree with  
10 that as well. There could be any number of reasons why  
11 someone was not able to speak at a public hearing, even if  
12 they may be present. And, so, I was concerned with just  
13 limiting this accommodation to what's referred to as  
14 "socially disabled members". If we're going to speak to  
15 accommodation at all, I felt, to be fair, it should be in  
16 a very general sense, rather than just in one type of  
17 instance.

18                   CHAIRMAN HONIGBERG: Commissioner  
19 Bailey.

20                   COMMISSIONER BAILEY: I agree. But I  
21 think that possibly the reason for this is to let people  
22 know, who might be reading the rules, who are intimidated  
23 about thinking about coming to speak at this, to sort of  
24 let them know that this is possible. Not that -- you

1 know, because they may not know what our common practice  
2 is. So, if we could say something about that.

3 CHAIRMAN HONIGBERG: Well, what about  
4 saying just saying "Individuals who do not wish to speak  
5 in public", or "who are unable to speak in public", one of  
6 those two, "may submit a statement to be read by a person  
7 of their choice"?

8 COMMISSIONER BAILEY: Yes.

9 DIRECTOR MUZZEY: Sure.

10 CHAIRMAN HONIGBERG: And, I agree with  
11 Attorney Wiesner. The reference to "public counsel" is --  
12 there is a thing called "public counsel", and it's a  
13 member of the Attorney General's Office. And, that is not  
14 something I think the public counsel would be expected or  
15 should be expected to do.

16 Everyone good with that? All right.

17 COMMISSIONER SCOTT: If we go with that,  
18 I would go with the "do not wish", not --

19 (Court reporter interruption.)

20 CHAIRMAN HONIGBERG: So, it's  
21 "individuals who do not wish to speak in public", and that  
22 could be for any reason. Because they can't be there or  
23 because they don't want to speak in public. That was  
24 what -- that was what Commissioner Scott was suggesting.

1 All right. Everyone's good.

2 Next item: "Ex Parte Communications".

3 MR. WIESNER: The next comment is in  
4 reference to Site 202.30. And, there's a comment that  
5 "Communications between or among Committee members should  
6 be prohibited."

7 CHAIRMAN HONIGBERG: My initial reaction  
8 to this is that RSA 91-A covers this field pretty  
9 comprehensively.

10 MR. WIESNER: I believe that's correct.  
11 There's a definition of what constitutes a "meeting of a  
12 public body", such as the Committee. And, if a majority  
13 of members are present and are going to discuss a matter  
14 of substance before that committee, that's a public  
15 meeting. It needs to be noticed, minutes need to be kept.  
16 Short of that, communications are not otherwise  
17 restricted.

18 CHAIRMAN HONIGBERG: Is it "majority" or  
19 is it "quorum"?

20 MR. WIESNER: It's a majority, if the  
21 quorum is higher than the majority.

22 CHAIRMAN HONIGBERG: So, even though we  
23 wouldn't have a quorum, because our quorum requirement is  
24 seven, five members of the SEC could not get together or

1 have e-mail communications or any of the other ways that  
2 91-A deals with this situation. Is that right, Attorney  
3 Wiesner?

4 MR. WIESNER: That's my understanding.  
5 But this proposed rule change would prohibit two members  
6 from talking to each other.

7 CHAIRMAN HONIGBERG: For example, the  
8 three PUC Commissioners, whose offices are within 15 feet  
9 of each other?

10 MR. WIESNER: Yes. Yes, Mr. Chairman.

11 CHAIRMAN HONIGBERG: My strong belief is  
12 that we should let 91-A cover this. Does anyone disagree  
13 with that?

14 All right. I don't see anyone want to  
15 take that on.

16 Next item: "Filing Requirements".

17 MR. WIESNER: I think this one is easy.  
18 This was a comment received from Fish & Game that said "We  
19 want a copy, too." And, I think, in the last meeting, we  
20 expanded the list of agencies that would automatically  
21 receive a copy to include Fish & Game, as well as a few  
22 others. And, I have that list somewhere, but not readily  
23 at hand. And, of course, that will affect the number of  
24 copies that we need to receive.

1                   CHAIRMAN HONIGBERG:  Maybe Fish & Game  
2 would like to get legislation introduced to rejoin the  
3 Committee to replace one of the agencies that's here.

4                   COMMISSIONER SCOTT:  Seconded.

5                   (Laughter.)

6                   MR. WIESNER:  Might help the quorum  
7 issues.

8                   CHAIRMAN HONIGBERG:  All right.  I  
9 agree.  I think that was dealt with last time.

10                   Next item:  "Contents of Application".  
11 And, we have a few different subsections to discuss over  
12 the next few pages.

13                   MR. WIESNER:  Yes.  And, I would point  
14 out that on the left you have comments provided by the  
15 Various Energy Companies.  And, we did earlier address the  
16 subject of "site control", but that was "site control" in  
17 terms of real property interests where the proposed  
18 facility would be located.

19                   The first change that we see here, under  
20 (b)(7), is with respect to the proposed facility itself,  
21 and the ownership of that facility at the time that the  
22 application is filed.  So, the rule as proposed says that  
23 the application should specify "whether the applicant is  
24 the owner or lessee of the proposed facility or have some

1 other legal or business relationship to it." The proposal  
2 of the Various Energy Companies is that that should be  
3 "whether the applicant will be the owner or have some  
4 other legal or business relationship to it." And, I  
5 think, in either case, it contemplates that, at the time  
6 when the application is filed, the applicant may not be  
7 the owner of the facility. In addition to perhaps not  
8 being the owner of the underlying real estate where the  
9 facility will be located, but have some legal right to  
10 acquire it, pursuant to option or contract.

11 CHAIRMAN HONIGBERG: Commissioner  
12 Burack.

13 VICE CHAIRMAN BURACK: It seems to me  
14 that the issue here is the assumption that it's either  
15 going to be all of one or all of the other, and it could  
16 well be that you have different -- different circumstances  
17 in different cases, or even within the same matter. And,  
18 it may be that the best way to word this would be  
19 something along the lines of "whether the applicant is or  
20 will be the owner or lessee of the proposed facility or  
21 has or will have some other legal or business  
22 relationship", so that we're covering all circumstances.

23 CHAIRMAN HONIGBERG: I was going to make  
24 the same suggestion. Any other thoughts on that?

1 I see a thumbs-up. Thank you for that  
2 thumbs-up. Any other comments?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: We'll make that  
5 change.

6 MR. WIESNER: And, then, further down,  
7 the Various Energy Companies as well, and EDP does the  
8 same, indicates that "the location of residences,  
9 industrial buildings, and other structures and  
10 improvements, on property adjacent to the proposed  
11 facility location, will be shown on a map."

12 And, then, the Various --

13 CHAIRMAN HONIGBERG: I don't have a  
14 problem with that part. "Shown on a map" seems good.  
15 Everybody agree with that?

16 VICE CHAIRMAN BURACK: Yes.

17 CHAIRMAN HONIGBERG: All right.

18 MR. WIESNER: And, then, those two  
19 parties, rather than using the word "adjacent", are trying  
20 to be more specific. So, in the case of the Various  
21 Energy Companies, it's a "100-foot" limit on either side  
22 of the site, let's say, as the specification of the area  
23 in which buildings should be noted. And, EDP, rather than  
24 using a specific number of feet or some other measure,

1 refers to "property abutting the site", which could be  
2 more or less than 100 feet.

3 CHAIRMAN HONIGBERG: Commissioner  
4 Burack.

5 VICE CHAIRMAN BURACK: Mr. Chairman, I  
6 just was going back and looking at our definitions. And,  
7 we do not actually have a definition of "abut" or  
8 "abutter" or "abutting" in our rules. I have a vague  
9 recollection that somewhere in state statute, maybe in the  
10 planning or zoning provisions, there's a definition of one  
11 or all of those terms. We may want to look at that. We  
12 may want to do something here.

13 And, I would agree that "adjacency" is  
14 probably not a defined term in statute anywhere. We may  
15 want to do something like both "abutting or within  
16 100 feet", some combination thereof. In other words, "any  
17 property that is abutting it or is otherwise within  
18 100 feet". Because you could otherwise have situations  
19 where you have a very -- what abuts you is something very  
20 narrow, a right-of-way of four to two feet wide, and then,  
21 beyond that, you have houses or buildings or whatever  
22 else. And, if we just restrict ourselves to what abuts  
23 the property, we may not get a full picture of what's  
24 really in the area.

1 CHAIRMAN HONIGBERG: Attorney Iacopino.

2 MR. IACOPINO: I would just point out  
3 that RSA 672, Section 3, which is in the Planning and  
4 Zoning statute, has an extensive definition of what an  
5 "abutter" is for the purposes of planning and zoning board  
6 representations. It's rather lengthy, but it does address  
7 things like crosses a street or a stream, and things that  
8 we often run across. It may benefit the Committee to  
9 maybe adopt or somehow --

10 CHAIRMAN HONIGBERG: Incorporate?

11 MR. IACOPINO: -- incorporate that  
12 particular statute. And, it may make it easier for  
13 everybody, including project proponents and project  
14 opponents, when we have those issues.

15 CHAIRMAN HONIGBERG: That makes eminent  
16 sense to me. Director Muzzey.

17 DIRECTOR MUZZEY: I would also support  
18 the idea of incorporating both "abutting or otherwise  
19 within 100 feet", given the variety of locations this  
20 Committee considers, I think that would be the most  
21 thorough way to approach it.

22 CHAIRMAN HONIGBERG: Any other thoughts?  
23 That seems like a good idea to me. I could go with that.  
24 Attorney Weathersby.

1 MS. WEATHERSBY: Just throwing out for  
2 discussion of whether "100 feet" is the appropriate  
3 distance. I'm not really sure whether it should be a  
4 little bit larger.

5 CHAIRMAN HONIGBERG: There was no number  
6 in here before. And, they have thrown one in there, which  
7 would seem to be, because of the way we're doing it, the  
8 least it can do is increase the number of buildings they  
9 have to show. So, we could put any number in there. But  
10 "100 feet" seems as good as any number right now.

11 All right. We'll go with that?

12 (No verbal response)

13 CHAIRMAN HONIGBERG: Attorney Wiesner.

14 MR. WIESNER: And, then, the New  
15 Hampshire Wind Watch comments are focused on adding  
16 related infrastructure that would be associated with a  
17 particular facility as a subject of information that needs  
18 to be included in the application as well, and also  
19 specification of the "property lines", as well as the  
20 buildings.

21 And, I'll just note that I'm not  
22 convinced that the placement of the words "and other  
23 necessary infrastructure" is optimal in the comment as it  
24 appears. And, if the Committee is inclined to include

1 that as an addition, it may make more sense to put that  
2 language after the word "facility".

3 CHAIRMAN HONIGBERG: Can someone give me  
4 an example of what that might refer to, "and other  
5 necessary infrastructure"?

6 MR. WIESNER: I think, if you think in  
7 terms of a wind project, that might be collectors,  
8 transmission lines, maintenance buildings, that may, for  
9 example, leave the actual site of the wind farm and cross  
10 a right-of-way in order to effect the interconnection with  
11 the utility system.

12 CHAIRMAN HONIGBERG: Commissioner  
13 Burack.

14 VICE CHAIRMAN BURACK: Mr. Chairman, I  
15 would support addition of this language as well, in both  
16 these sections here, subject to the revisions that have  
17 been proposed by Attorney Wiesner.

18 CHAIRMAN HONIGBERG: Anyone else want to  
19 comment? Does everybody -- do people agree with  
20 Commissioner Burack on that one?

21 I see nodding heads. I see one looking  
22 up to the sky for guidance.

23 MS. WEATHERSBY: Actually, I was just  
24 looking for whether or not we have a definition of "energy

1 facility", which might already include the other necessary  
2 infrastructure. And, I just haven't been able to put my  
3 finger on it. Do you know, Attorney Wiesner?

4 MR. IACOPINO: "Energy facility" is  
5 defined in RSA 162-H. I can get it for you.

6 CHAIRMAN HONIGBERG: And, is it broad  
7 enough to include the "necessary infrastructure"?

8 MR. IACOPINO: Let me get there for you,  
9 because I can't remember it off the top of my head.

10 VICE CHAIRMAN BURACK: Well, we also  
11 have a definition in 102.15, which I think is intended to  
12 be the definition in 162-H:2, VII. And, that does say  
13 "including ancillary facilities as may be used or useful  
14 in transporting, storing or otherwise providing for the  
15 raw materials or products of any such industrial  
16 infrastructure".

17 MR. IACOPINO: That's the same as the  
18 statute. "Ancillary facilities" is included in the  
19 statute as well.

20 CHAIRMAN HONIGBERG: It seems then that  
21 the definitions already take care of the "other necessary  
22 infrastructure" suggestion. At least that's my quick read  
23 of it.

24 VICE CHAIRMAN BURACK: Mr. Chairman, I

1 don't mean to argue over small matters here or suggest we  
2 disagree over small matters, but I think there the phrase  
3 "other necessary infrastructure" arguably is broader than  
4 the way "ancillary facilities" is defined here in 162-H:2,  
5 VII. Because "ancillary facilities" here is specifically  
6 limited to what's "used or useful in transporting, storing  
7 or otherwise providing for the raw materials or products".  
8 So, it would --

9 CHAIRMAN HONIGBERG: So, possibly a  
10 maintenance building might not be covered?

11 VICE CHAIRMAN BURACK: Exactly.

12 MR. WIESNER: Or an access road or  
13 something like that, and that may be the thrust of the  
14 comment as we see it.

15 CHAIRMAN HONIGBERG: Commissioner Scott.

16 COMMISSIONER SCOTT: My concern, if we  
17 add this language, I think we're going to need to define  
18 more closely what "necessary infrastructure" means. For  
19 instance, if you're doing a transmission upgrade, and  
20 somewhere down the line that causes, I don't know, a  
21 substation change or something like that, I think we need  
22 to be, at least, if we're going to add this type of  
23 language, some could mean "any impact on the system to the  
24 project needs to be shown". I'm not saying I support

1 that, but I just think we're going to need to be careful  
2 how we define this, because it's going to be read  
3 differently by different people, I think.

4 CHAIRMAN HONIGBERG: Director Muzzey.

5 DIRECTOR MUZZEY: Although, as this is  
6 written under (c), it does seem to be confined to the  
7 site. "Each application shall contain the following  
8 information with respect to the site of the proposed  
9 energy facility, and other necessary infrastructure, and  
10 alternative locations the applicant considers available  
11 for the proposed facility", which is a whole nother  
12 thought. But this does seem to limit it to the site, and  
13 not a substation 60 miles away.

14 CHAIRMAN HONIGBERG: Commissioner  
15 Burack.

16 VICE CHAIRMAN BURACK: Certainly, if  
17 that's the concern, I think it could be, and maybe there's  
18 some further drafting that could be done to clarify that  
19 it's intended just to address the -- maybe it's necessary,  
20 or maybe it's just the related infrastructure on that  
21 site.

22 CHAIRMAN HONIGBERG: Thoughts from  
23 others?

24 MS. WEATHERSBY: It seems like the

1 applicant wanted it to --

2 (Court reporter interruption.)

3 MS. WEATHERSBY: It appears as though  
4 Wind Watch probably did not want to limit it to the site.  
5 I think that they do want to include a substation 60 miles  
6 away that the information has to be provided for. So, I'm  
7 wondering if we want to leave the wording as they have  
8 suggested it.

9 Perhaps we define "other necessary  
10 infrastructure" by changing it to "substations, buildings,  
11 roadways", you know, make a list, and we can discuss what  
12 that would be, of what the towers, what information would  
13 need to be provided for which types of site improvements.

14 CHAIRMAN HONIGBERG: Commissioner  
15 Bailey.

16 COMMISSIONER BAILEY: If the purpose of  
17 the Committee is to decide on a particular site, I'm  
18 not -- I don't understand how a substation 60 miles away  
19 would help us inform our decision on that. Because we're  
20 not -- we're not ruling on a site 60 miles away, are we,  
21 at the same time?

22 MR. IACOPINO: Only if it's new  
23 construction. But, if it's an existing substation that  
24 they have to switch out a board, because there's now a

1 different type of power coming in, something like that,  
2 that traditionally would not be something that the  
3 Committee would even consider.

4 COMMISSIONER BAILEY: Right. And, if  
5 there was new construction at the substation, would the  
6 Committee have to approve that?

7 MR. IACOPINO: That's always been  
8 somewhat of a gray area. It's always been brought to the  
9 Committee's attention, though, as far as I know, from  
10 applicants. And, I can give you an example. In Groton  
11 Wind, there had to be a substation constructed in  
12 Holderness. That did become part of that particular  
13 docket, because there was also a transmission line that  
14 went from the facility to that. That's a stark case.  
15 That's -- it is was clear that this substation was only  
16 being built as a result of the project.

17 There may be other cases that are not  
18 quite as stark in their perception, especially if the  
19 substation is going to be used to step up or step down  
20 power from another source as well. I think that it's rare  
21 that we would see that, that there would be a new  
22 substation being built that wasn't specifically designed  
23 for a project, because I just don't think it happens all  
24 that often. And, I'm not an engineer. So, I can't really

1 envision the circumstances.

2 But I think that, traditionally, to the  
3 extent that an existing substation has had some equipment  
4 changed, because a project 60 miles away or 100 miles away  
5 is now on the grid, that's not something that the  
6 Committee has actually considered.

7 If there was some substantial change or  
8 addition to that substation, then the question is "whether  
9 or not that would fall under the jurisdiction of the  
10 Committee as an energy facility in and of itself?" In  
11 which case, there would be a separate determination made.

12 CHAIRMAN HONIGBERG: Commissioner Scott.

13 COMMISSIONER SCOTT: Attorney Iacopino,  
14 going back to Groton Wind Farm.

15 MR. IACOPINO: Yes.

16 COMMISSIONER SCOTT: Remind me, one of  
17 the issues that resolved itself, not through the  
18 Committee, as I remember, *per se*, was the addition of a  
19 change to the power lines going beyond Groton Wind Farm  
20 and neighboring communities. Can you fresh my memory? I  
21 think we put it -- incorporated it as part of an agreement  
22 with the town, but it wasn't, *per se*, considered part of  
23 the SEC purview, is that correct?

24 MR. IACOPINO: That's correct. Because

1 that was -- those were distribution lines owned by the New  
2 Hampshire Co-op. And, they had -- they upgraded those  
3 distribution lines. They put new poles, which the  
4 argument was were -- had a visual impact at Livermore  
5 Falls. So, that was the issue there. But that was not an  
6 upgrade that was untaken by the applicant. That was an  
7 upgrade that was undertaken by the electric transmission  
8 company. And, I don't think there was ever really a  
9 determination whether that was the result of Groton Wind  
10 or not. I don't think that the Committee ever got to make  
11 that determination, because there was a settlement  
12 agreement that you all approved.

13 COMMISSIONER SCOTT: And, I believe we  
14 had a similar situation for Lempster Wind Farm also?

15 MR. IACOPINO: Lempster was a little bit  
16 different. In Lempster, there was never any decision  
17 made. The Town of Goshen, a neighboring town, complained,  
18 entered late as an intervenor, because the transmission  
19 poles in their town were going to be increased in size by  
20 adding the new cable, from I think they were going from 35  
21 to 55 feet at the time, and they eventually settled that  
22 outside of the Lempster proceeding and withdrew their  
23 opposition.

24 COMMISSIONER SCOTT: And, to follow that

1 chain of thought, I believe adding "and other necessary  
2 infrastructure", if that was in our rules at the time of  
3 Lempster, we would then have had jurisdiction over that  
4 change to those poles also?

5 MR. IACOPINO: I suppose that's how  
6 somebody could interpret that. I think the Town of Goshen  
7 actually took the position that we had jurisdiction over  
8 it even without that language, because we didn't have  
9 language like this at the time. And, ultimately, that  
10 was -- that was never resolved.

11 The whole issue of "downstream  
12 improvements" is something that does periodically come up.  
13 And, I think it's very difficult to identify every single  
14 type of downstream improvement that might occur. With --  
15 I can go back to 1998, with the construction of the AES  
16 facility, that needed a pipeline from the Tennessee Gas  
17 Pipeline to the facility for its gas. And, we actually  
18 had a separate -- two separate proceedings. We had one on  
19 the AES combined-cycle facility itself, and we also had a  
20 separate -- a separate proceeding on the lateral that came  
21 off of the existing Tennessee Gas Pipeline to provide fuel  
22 to the combined-cycle plant.

23 So, I think that, for the Committee,  
24 size is something that makes a difference, with respect to

1 what the downstream effects actually are. And, there are  
2 other ways that they can come to you. In that particular  
3 case, Tennessee Gas had to file an application. Sorry.

4 CHAIRMAN HONIGBERG: I'm about to make  
5 an argument that we shouldn't make this change. If you  
6 pick up the rules, and you look at what we're talking  
7 about, in Subsection (c), this is -- this entire section  
8 is about the location of where you're going to do  
9 something, of where you're going to be putting things. It  
10 doesn't -- no other part of this section discusses what it  
11 is you're going to put there. This is a "Where are you  
12 doing something?" "Where is that property and what's  
13 around it?" That's the entire scope of (c). If we add  
14 this language, we are changing it and making it something  
15 different, and beginning to duplicate later subsections  
16 that ask for "what is it you're going to put on this  
17 property?" So, that's -- that was a realization I came to  
18 while we were talking about "downstream" other things.

19 So, my suggestion right now is that we  
20 not make the addition to the introductory language in (c).  
21 And, that we leave this section about the location of  
22 whatever project it is the applicant is proposing.

23 Commissioner Bailey.

24 COMMISSIONER BAILEY: I agree.

1                   CHAIRMAN HONIGBERG: I see nodding  
2 heads. All right. What about the other suggestion to add  
3 "property lines" to Subsection (3)? Director Muzzey.

4                   DIRECTOR MUZZEY: I think that would  
5 provide clarifying information, and the property lines are  
6 something, in this day and age, that are very readily  
7 available. So, I would agree to add it.

8                   CHAIRMAN HONIGBERG: Others? Does  
9 anyone disagree with that?

10                   (No verbal response)

11                   CHAIRMAN HONIGBERG: I didn't think so.  
12 Attorney Wiesner, before you move on, if you look back on  
13 the left column, in Subsections (4) and (5), Commissioner  
14 Burack has pointed out that the words "adjacent to" appear  
15 in both of those. So, if we're changing that concept to  
16 "abutting", we should change it there. And, we should  
17 take a look throughout the rest of the rules to see if  
18 that phrase is used elsewhere.

19                   MR. WIESNER: Yes. So noted. I will  
20 take that on.

21                   VICE CHAIRMAN BURACK: Mr. Chairman, may  
22 I just ask --

23                   CHAIRMAN HONIGBERG: Commissioner  
24 Burack.

1                   VICE CHAIRMAN BURACK:  Are we -- there's  
2 another proposal by EDP Renewables on the upper right-hand  
3 column, the top of the upper -- of the right-hand column.  
4 Are we finding that to be unnecessary, given these other  
5 changes that we're making?

6                   CHAIRMAN HONIGBERG:  I think we picked  
7 that up.

8                   VICE CHAIRMAN BURACK:  Okay.

9                   CHAIRMAN HONIGBERG:  With the "abutting  
10 or one within 100 feet".  I think you picked that up in  
11 your suggestion, in fact, actually.

12                  VICE CHAIRMAN BURACK:  Okay.  Thank you.

13                  CHAIRMAN HONIGBERG:  Next item is  
14 another "Content of Application", regarding "Generation  
15 Equipment Specifications".

16                  MR. WIESNER:  Yes.  This is a comment  
17 from Wagner Forest Management.  And, unfortunately, I  
18 managed to garble the second sentence here.  So, I will  
19 read it to you as it should read.  This is a section of  
20 the application requirements where the applicant is  
21 supposed to specify the equipment that will be used in  
22 connection with a generation facility.  And, the second  
23 sentence essentially should read:  "The applicant should  
24 only have to provide an illustrative example of the

1 turbines and generators that will be used in the  
2 application. With the understanding that, if a  
3 certificate is granted, alternative equipment could be  
4 substituted, so long as the replacement equipment is  
5 functionally equivalent and has the equal or lesser impact  
6 than had previously been specified."

7 CHAIRMAN HONIGBERG: Commissioner  
8 Bailey. Off the record.

9 (Brief off-the-record comment.)

10 COMMISSIONER BAILEY: I think that  
11 leaves a lot of wiggle room to the applicant to decide  
12 what's lesser. And, I don't support this change, because,  
13 you know, we've already had one case where somebody  
14 thought it wasn't a big deal to move a building. So, I  
15 think we need to have specific details about the equipment  
16 that we're talking about.

17 CHAIRMAN HONIGBERG: Commissioner  
18 Burack.

19 VICE CHAIRMAN BURACK: Mr. Chairman, I  
20 would also say that I concur fully. There may well be  
21 safety issues that would be identified or associated with  
22 particular types of turbines. And, unless the Committee  
23 has the ability to be able to know the specific turbine  
24 type proposed for use and actually to be used, we would

1 not be able to make those assessments of whether there are  
2 particular safety issues associated with that, the product  
3 that actually would be used.

4 CHAIRMAN HONIGBERG: Does anyone want to  
5 make an argument in favor of the Wagner Forest Management  
6 suggestion?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: Seems like the  
9 answer is "no". Let's move on.

10 The next item has to do with  
11 "Transmission Lines" in the "Contents of Applications".

12 MR. WIESNER: And, here Ms. McPhaul is  
13 proposing that there be much more detailed information  
14 specified for transmission line projects, with respect to  
15 the specific towers that will be used, their location, how  
16 close they are to each other, a map of the entire project  
17 showing buildings in the affected areas, with their  
18 distance from the project, which we may have already  
19 covered in our previous discussion, including the  
20 buildings' purpose.

21 And, then, the third point is, "if  
22 additional lines or voltage is to be added to lines and  
23 towers, that would require a further application made to  
24 the Committee to consider those new parameters."

1 I'm not entirely clear as to how much of  
2 this is typically covered in applications that are  
3 submitted here for transmission projects. And, I might  
4 ask Attorney Iacopino to speak to that. But, clearly,  
5 these comments are looking to add further detail to the  
6 application requirements that are currently required under  
7 the existing rules or the proposed rules as we've filed  
8 them.

9 CHAIRMAN HONIGBERG: Attorney Iacopino.

10 MR. IACOPINO: I think that, as you go  
11 through them, the first one, where the request is that the  
12 application include "the distance and location of each  
13 tower", I think that we pretty much get that from the  
14 applicants in their applications. As well, we also get --  
15 I mean, they do show us where buildings are. And, in  
16 fact, the prior rule that we just went over would include  
17 that, at least to the extent that the buildings are on  
18 abutting properties, that's what the intent of this is.  
19 Clearly, if there are buildings within the site, we do get  
20 that already.

21 The third paragraph seems to be an issue  
22 of whether a new application is necessary to "add lines".  
23 And, this leads to something that a lot of people don't  
24 understand. There are certain, generically I'm using the

1 term, "transmission lines" that do not come under the  
2 jurisdiction of the Committee. And, those are  
3 distribution lines that are used by electric distribution  
4 companies. And, there are sometimes when those poles are  
5 used by electric generating facilities to deliver  
6 electricity, primarily with the wind projects that we've  
7 seen.

8 So, I don't know if this is meant to  
9 require a second decision by the Committee in those cases.  
10 "I'm building a wind power, we're going to transmit the  
11 electricity along distribution lines that are going to be  
12 owned by the local distribution company. Does that mean  
13 that we have to have a separate consideration for that?"  
14 I'm not sure that that's what you want to do, because,  
15 normally, it's considered as part of the application  
16 anyway.

17 CHAIRMAN HONIGBERG: I don't think  
18 that's what this is talking about. I think this is  
19 directed at a hypothetical Northern Pass type of project,  
20 that gets built at one level, and then, five years from  
21 now, they say "oh, we want to double the amount of juice  
22 coming along those lines."

23 MR. IACOPINO: Well, in that case, if  
24 there's an issue of whether something is a substantial

1 change or addition, you would have jurisdiction under the  
2 statute, and may not need it. And, having it in this part  
3 of your regs might actually cause confusion.

4 CHAIRMAN HONIGBERG: Well, it's  
5 important what you said just before that last sentence,  
6 that there's a statute that --

7 MR. IACOPINO: Yes.

8 CHAIRMAN HONIGBERG: -- that defines  
9 what is a substantial addition. We are bound by that  
10 legislative directive, yes?

11 MR. IACOPINO: Before you go too far,  
12 the statute requires the Committee to take jurisdiction if  
13 there's a substantial change or addition. It does not  
14 contain a definition of what a "substantial change or  
15 addition" is, but the Committee does have a body of cases  
16 that it's dealt with that issue over the years.

17 CHAIRMAN HONIGBERG: So, continuing,  
18 Attorney Iacopino.

19 MR. IACOPINO: So, I guess my point is  
20 is that, if there is a change, substantial change or  
21 addition, the Committee is already invoked, your  
22 jurisdiction is already invoked. The applicant has to  
23 come to you with an application. Or, as has happened in  
24 some cases, we've had people petition the Committee to say

1 "we believe this is a substantial change or addition", and  
2 the Committee has then taken action. So, I'm not sure if  
3 putting it in this particular rule is the most effective  
4 way to regulate.

5 And, as for the EMFs, I think we have  
6 another rule that actually addresses that, if I remember  
7 correctly. But I'm not sure.

8 CHAIRMAN HONIGBERG: Attorney Wiesner.

9 MR. WIESNER: I was just going to say,  
10 my understanding of the thrust of this comment is that it  
11 will be a requirement that there be a routine inspection  
12 by an engineer of a transmission line project to ascertain  
13 the EMFs, and ensure that they're within the guidelines  
14 for safety at the time. So, this seems to be almost an  
15 adaptive management, if you will, type of approach that  
16 would require periodic inspections. And, I think, you  
17 know, one view is that, if that's an appropriate condition  
18 for a particular project, it could be included as a  
19 certificate condition, rather than a blanket rule adopted,  
20 to be applicable in all cases.

21 MR. IACOPINO: Especially when you're  
22 talking about the contents of the application. That would  
23 be a condition of ongoing operation of the project.

24 CHAIRMAN HONIGBERG: Well, I'm not going

1 to hold, you know, a private citizen commenter to have put  
2 all of her comments, you know, associated with an idea in  
3 a particular location. And, I think we get the idea. I  
4 think Attorney Wiesner has identified what the idea was or  
5 is. And, I think it is potentially an appropriate  
6 condition of a certificate. Whether that gets put  
7 anywhere into the rules, I would think that the safety  
8 around every facility is something that I think every  
9 certificate has provisions that are part of the  
10 certificate.

11 Commissioner Burack.

12 VICE CHAIRMAN BURACK: Mr. Chairman, if  
13 I recall, at our prior session, we had a discussion of --  
14 I don't recall the exact topic, but of another  
15 circumstance where we identified something that could  
16 appropriately be a condition of a certificate, and we had  
17 discussed whether or not we would try to enumerate in a  
18 rule what all of those different kinds of things might be,  
19 and had concluded that we would not. That's my  
20 recollection.

21 And, I think this is an another example  
22 of that, and probably falls into that same category.

23 CHAIRMAN HONIGBERG: I concur. Does  
24 anyone else want to take this issue on? Director Muzzey.

1                   DIRECTOR MUZZEY: Are you referring to  
2 all four of these thoughts or just the final two, when you  
3 say that?

4                   VICE CHAIRMAN BURACK: I'm really  
5 referring specifically to the final one. I believe, based  
6 on the discussion we've had here, that the -- that the  
7 other two, that is items 2 and 3 in this list, are  
8 effectively already covered either in another rule or  
9 effectively by the statute itself with respect to  
10 "substantial changes or additions".

11                   So, my sense would be that the last  
12 three of these, they're either already covered or there is  
13 an appropriate means to address them, and include this  
14 last one, where appropriate, as a condition of a  
15 certificate, at the discretion of the Committee or  
16 Subcommittee.

17                   I think we may want to come back to the  
18 first one on this list. But I think the other three,  
19 effectively, we don't need to deal with here at this time.

20                   CHAIRMAN HONIGBERG: What do you want to  
21 say about the first one?

22                   VICE CHAIRMAN BURACK: My sense would be  
23 that, if, in fact, the parties are effectively already  
24 providing this kind of information, I think it would

1 actually be appropriate for us to specify that we would be  
2 looking for this level of detail. I think it's not  
3 unreasonable to expect the Committee to be provided with a  
4 map that does show the project, that does show where  
5 towers will be located, what size they would be, and how  
6 far apart they would be from each other. I think that's  
7 the kind of basic information that would helpful to the  
8 Committee and the public to have and to understand.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: I would agree with  
11 that as well. Under Section (g), there is a point where  
12 the applicant is directed to describe in detail the type  
13 of construction. And, I think -- I think this further  
14 clarifies what "describe in detail" means, and would be  
15 helpful for everyone involved.

16 CHAIRMAN HONIGBERG: Commissioner Scott.

17 COMMISSIONER SCOTT: I'm just wondering  
18 if we're being too specific. For instance, this is for a  
19 transmission facility. Do we need to do this now for a  
20 wind facility also, for the height of the towers and  
21 distance between each over? I think we get that anyways,  
22 again. I'm not saying that we shouldn't have that  
23 information, but I'm just wondering "how specific do we  
24 need to be?"

1                   MR. IACOPINO: I think there may already  
2 be a specific rule for the wind facilities that is in the  
3 draft.

4                   COMMISSIONER SCOTT: Okay.

5                   CHAIRMAN HONIGBERG: So, Director  
6 Muzzey, you're suggesting, and I think Commissioner Burack  
7 as well, that perhaps in Subsection (g)(8), you would  
8 supplement the parenthetical with an example of the kind  
9 of detail that one would expect? That's a question.

10                  DIRECTOR MUZZEY: That was my thought.  
11 That's how I interpret "type of construction". I don't  
12 know if Commissioner Burack had a different idea in mind?

13                  VICE CHAIRMAN BURACK: No. That will be  
14 my thought as well. And, again, I don't know to what  
15 extent these are matters with respect to transmission  
16 lines, where the exact location of the towers can be  
17 definitively determined in advance, or whether there is a  
18 certain amount of change that necessarily has to occur in  
19 the field. I wouldn't -- and, I assume that that could be  
20 addressed through the certificate conditions in any event.

21                  But I guess I would just say that there  
22 may not be an expect -- well, I mean, you wouldn't get the  
23 final as-built plans as part of the application in any  
24 event. Maybe that goes without saying.

1                   CHAIRMAN HONIGBERG: Other thoughts on  
2 this? Ms. Weathersby, sorry.

3                   MS. WEATHERSBY: Two thoughts.  
4 Regarding (8), the "type of construction". I think that's  
5 a little broader than just a map showing the entire  
6 project. It can include things, you know, what the  
7 materials are that are being used? Are they metal towers?  
8 So, I would be in favor of "type of construction"  
9 including a map showing all of this, and not substituting.

10                   And, my second thought, with regard to  
11 the map, if we do require it, it might also be helpful to  
12 add setbacks from buildings along the corridor, that could  
13 be helpful to the Committee, I think.

14                   CHAIRMAN HONIGBERG: Well, then, the  
15 place to put it, responding to your first comment, is as  
16 an item between (1) and (2) on this list. Because (1) is  
17 "Location is shown as a U.S. -- sorry -- "Location shown  
18 on U.S. Geological Survey Map", and then (2), you'd be  
19 looking for a different kind of map, that has something,  
20 that would indicate how far apart towers are going to be  
21 and what the heights of those towers are going to be.  
22 That's --

23                   MS. WEATHERSBY: That's fine.

24                   CHAIRMAN HONIGBERG: I'm sorry, and the

1 second thing you said?

2 MS. WEATHERSBY: Was just what  
3 information we're going to have shown on the map. And, if  
4 we have the -- right now, and follow the comment, "map of  
5 the entire project with the height, location of the towers  
6 and the distance between each tower", and I think it also  
7 may be helpful to the Committee to also see setbacks from  
8 buildings on that map.

9 CHAIRMAN HONIGBERG: Well, I think  
10 that's the previous rule we discussed a minute or two ago,  
11 about what buildings are -- about a site. That's a map  
12 that we have them submitting under a rule we talked about  
13 ten minutes ago.

14 Commissioner Burack.

15 VICE CHAIRMAN BURACK: Mr. Chairman, I  
16 guess that raises the question of whether these two maps  
17 can be one in the same map to address all these needs?  
18 And, I would think it would be preferable that we not have  
19 a multitude of maps, when we have a single map that  
20 ideally shows all the information we're looking for in one  
21 place. Maybe that makes it too complicated, too much  
22 information on one map. But, if nothing else, I would  
23 like to think we could at least give the applicant the  
24 opportunity to be able to consolidate.

1                   CHAIRMAN HONIGBERG: Attorney Iacopino,  
2 we have multiple sections already that direct the  
3 submission of maps. Do applicants submit multiple maps,  
4 each showing a different aspect of it? Do they show one  
5 big map? A bunch of submaps? What's been the practice in  
6 the past?

7                   MR. IACOPINO: I think, in the practice  
8 in the past, is the applicant generally takes the rules,  
9 formats their application in accordance with the rules,  
10 and provides a figure or a map as requested in each  
11 section. I think that there would be nothing that would  
12 prohibit an applicant from putting two types of  
13 information on one map and referring to that particular  
14 map.

15                   I'm just, I mean, as I think of the  
16 natural way that we've gotten applications over the years,  
17 they tend to go exactly in the order of the rules. And,  
18 if a map is required, that map is there. But there's  
19 nothing that would prohibit them from using one map and  
20 referring to it for multiple sections of the application.

21                   CHAIRMAN HONIGBERG: All right. Let's  
22 bring this one to a close. What do people want to do with  
23 this? Director Muzzey.

24                   DIRECTOR MUZZEY: From my perspective,

1 the most important thing is that information be placed on  
2 a map. And, again, given the variety of locations and  
3 development patterns of the places that the Committee  
4 considers, I think we can leave it up to the applicant's  
5 discretion to provide legible, informative mapping that  
6 shows all of these things, and leave it to their  
7 discretion as to whether that's one map or six, as it may  
8 be.

9 CHAIRMAN HONIGBERG: I agree with that.  
10 Anybody have any other or different thoughts?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: So, are we -- are  
13 you suggesting that we do put some provision in Subsection  
14 (g) regarding a map showing the transmission, the towers  
15 that will hold these lines, in some way, shape or form?

16 DIRECTOR MUZZEY: Yes, I am.

17 CHAIRMAN HONIGBERG: Okay. Attorney  
18 Wiesner, you got that? I think it's an item between (1)  
19 and (2). It's a new subsection between (1) and (2), or  
20 perhaps an elaboration on Subsection (1).

21 MR. WIESNER: Yes. We'll add that.

22 CHAIRMAN HONIGBERG: Next item, 28:  
23 "Preferred and Alternative Sites - 301.03(h)(2)".

24 MR. WIESNER: These are changes

1 proposed, and I think there's very similar overlap between  
2 the changes proposed by both the Various Energy Companies,  
3 which appears on the left, and EDP, on the right. I would  
4 say, in both cases, it's an attempt to have the rules  
5 language track more closely to the statutory provision.  
6 And, the statutory provision does talk to the preferred --  
7 speak to the "preferred choice and alternatives considered  
8 available for the site and configuration of the facility  
9 and the reasons for the preferred choice." And, that's  
10 162-H:7, V(b).

11 CHAIRMAN HONIGBERG: Looking at them  
12 quickly, my reaction is that the one on the left, from the  
13 Various Energy Companies, is a simpler formulation, but  
14 does the same thing as what's on the right.

15 Commissioner Bailey.

16 COMMISSIONER BAILEY: I agree.

17 CHAIRMAN HONIGBERG: Do people want to  
18 make this change? I see some nodding heads -- I see lots  
19 of nodding heads. All right. We'll do that.

20 Next item: "Municipality Notification".

21 MR. WIESNER: This is comment from EDP  
22 that states that "if the governing body of a particular  
23 municipality has opted to receive only electronic copies  
24 of the application that it would not need to be provided

1 with written notification." I'll just note that the  
2 statute, which is Section 7, V(f) requires "written  
3 notification". And, so, arguably it's not -- wouldn't be  
4 appropriate for the Committee to supersede that and  
5 require or permit electronic copies of the application to  
6 be submitted.

7 CHAIRMAN HONIGBERG: A municipality  
8 could waive that right by providing something to the  
9 applicant that says "I'm willing to waive my right under  
10 the statute you just cited to receive written notice, and  
11 we'll accept electronic notice", could they not?

12 MR. WIESNER: I believe that's correct.

13 CHAIRMAN HONIGBERG: I don't see any  
14 need to make this change. Anybody want to argue for it?

15 Yes, Commissioner Burack.

16 VICE CHAIRMAN BURACK: No, I think  
17 that's fine. I think, certainly, if there were a written  
18 waiver of this right to receive it, it should be fine, and  
19 we're done.

20 CHAIRMAN HONIGBERG: Next item:  
21 "Financial, Technical and Managerial Capability -  
22 301.04(a)".

23 MR. WIESNER: It may just make sense for  
24 folks to read what's written here, or I could read it?

1 CHAIRMAN HONIGBERG: Let's not have it  
2 read out loud. People can read this to themselves.

3 (Short pause for members to review  
4 comments provided.)

5 CHAIRMAN HONIGBERG: Attorney Wiesner, I  
6 see, I mean, and you've identified them as really two  
7 separate comments being made here. The second one in  
8 brackets is really a different topic, having to do with  
9 how a facility actually performs once it's built, is that  
10 right?

11 MR. WIESNER: Yes. That's correct. I  
12 mean, it really doesn't fit neatly here.

13 CHAIRMAN HONIGBERG: All right.

14 MR. WIESNER: But it's from the same  
15 filing parties. So, I included it here.

16 CHAIRMAN HONIGBERG: But, picking up the  
17 first one, and I know that this Section 301.04 is one that  
18 was substantially beefed up in the Draft Proposal,  
19 regarding the financial, technical and managerial  
20 capability of applicants. And, Item (4), Subsection (4),  
21 calls for an explanation of how the applicant's financing  
22 plan compares with the financing plans employed by other  
23 facilities, and how that affects risks of a plan.

24 I don't actually see, however, an

1 explanation of the financing plan itself. Now, maybe in  
2 doing (4), you would inevitably have to explain what your  
3 plan is and how it compares to others. But, in large  
4 measure, that's -- it's a description of the financing  
5 that the first comment from these two commenters is really  
6 calling for, is it not? Commissioner Burack.

7 VICE CHAIRMAN BURACK: Mr. Chairman, if  
8 I may. The way I read this is that this is really  
9 intended to be information that gets presented after the  
10 project has been completed, so that people can compare  
11 what was actually spent, versus what they said up front  
12 they were going to spend, and to see how much at the end  
13 of the day was actually paid by tax incentives and  
14 subsidies. That's the way I read this. So, I read this  
15 more as, again, falling into that category we discussed  
16 previously of things that could potentially be conditions  
17 of a certificate, but that you would not be able to  
18 ascertain up front in any event.

19 CHAIRMAN HONIGBERG: Commissioner --  
20 "Commissioner", I'm sorry, Attorney Wiesner, which -- do  
21 you think this comment was forward-looking or  
22 retrospective?

23 MR. WIESNER: It's not entirely clear,  
24 but I believe that the commenter would expect that the

1 applicant would submit some sort of a financing plan.  
2 What the total cost is anticipated to be, what the source  
3 of funds will be, how much has been spent to date, and  
4 what additional -- or, what federal or state subsidies may  
5 be used to support the project.

6 CHAIRMAN HONIGBERG: Before I let --  
7 before I call on you, Commissioner Burack, would it be  
8 inappropriate in 301.04, as we've got it, to include a  
9 subsection that asks the applicant to describe its  
10 financing plan, including how much they expect to be  
11 relying on tax incentives and subsidies and other aid?

12 VICE CHAIRMAN BURACK: Mr. Chairman, if  
13 I may?

14 CHAIRMAN HONIGBERG: Commissioner  
15 Burack.

16 VICE CHAIRMAN BURACK: I think that  
17 would be very appropriate to do, and, in fact, that's very  
18 consistent with what I believe has been the practice of  
19 the Committee historically. Certainly, I can recall, with  
20 respect to the Burgess BioPower facility in Berlin, the  
21 Committee spent significant time looking at the overall  
22 financing plan for that facility, including tax incentives  
23 and every other aspect of it. And, if I recall correctly,  
24 some of that, in fact, occurred in -- had to occur in an

1 executive session or a closed session, because there were  
2 confidential business aspects associated with some of it.

3 But I think it would be appropriate to  
4 ask for that, I think it is what the Committee has done  
5 historically. And, also ask for some comparison of that  
6 approach with how these kinds of projects typically would  
7 be financed would be appropriate to ask for as well.

8 CHAIRMAN HONIGBERG: Well, that  
9 comparison provision is already there.

10 VICE CHAIRMAN BURACK: Right.

11 CHAIRMAN HONIGBERG: We already have  
12 that here.

13 VICE CHAIRMAN BURACK: Understood.

14 CHAIRMAN HONIGBERG: And, so, it would  
15 really be just an addition of "in order to compare, you  
16 have to tell us what your plan is."

17 VICE CHAIRMAN BURACK: Right.

18 CHAIRMAN HONIGBERG: So, maybe they do  
19 that anyway. Attorney Iacopino, you have something?

20 MR. IACOPINO: I would just point out  
21 that 301.04, as presently drafted, contains the  
22 requirement that the financial information include "A  
23 description of the source of funds for the construction  
24 and operation of the proposed facility." That's at

1 Section (a)(3). In order to address Commissioner Burack's  
2 concern, you might put "a description of the source and  
3 amount of funds". I believe that "source of funds" means  
4 financing. If the project's being financed off the books  
5 of the developer or if it's an equity project or -- and if  
6 it has -- if it's relying upon tax incentives or grants,  
7 that would all be "source of funds".

8 CHAIRMAN HONIGBERG: All right. Does  
9 anyone disagree with the concept that we just need to  
10 make -- just make that section clear? All right.  
11 Everyone's nodding their head.

12 Now, then, to the extent that this is a  
13 proposal for something backward-looking, retrospective, is  
14 that, and as I think Commissioner Burack has suggested,  
15 that that be put in the category of potentially  
16 appropriate conditions on the granting of any certificate  
17 or is it something else?

18 I think we're going to leave that one as  
19 a cliffhanger, because we need to take a break for  
20 Attorney Patnaude -- I'm sorry, Mr. Patnaude. I've  
21 promoted both Mr. Wiesner and Mr. Patnaude in the last 15  
22 minutes, which means we need a break. So, we're going to  
23 come back in about ten minutes.

24 (Recess taken at 10:33 a.m. and the

1 meeting resumed at 10:50 a.m.)

2 CHAIRMAN HONIGBERG: All right. Where  
3 were we when we broke, Mr. Wiesner?

4 MR. WIESNER: We're on Item 30, on Page  
5 41, I believe. And, we had discussed this at some length.  
6 I think what we agreed with is we would add a financing  
7 plan specification to the application requirements for  
8 financial, technical and managerial capability. I'm not  
9 sure we reached a final decision on what appears as the  
10 bracketed language for "actual energy production numbers"  
11 from existing and new wind projects collected and  
12 submitted to the Committee for, basically, data keeping,  
13 recordkeeping, and comparison purposes. That's the  
14 bracketed language. It doesn't, as I noted before, it  
15 doesn't fit neatly under the application requirements, but  
16 it was submitted by the same commenters, so, I included it  
17 here.

18 CHAIRMAN HONIGBERG: And, I think the  
19 way we left things was whether to -- was for us to  
20 consider whether it would an appropriate matter to be made  
21 a condition of a certificate potentially.

22 MR. WIESNER: In which case, arguably,  
23 there's no reason to cover it specifically in the rules.  
24 And, I also suspect this is the type of information which

1 the developers would consider to be highly commercially  
2 sensitive and proprietary and would seek confidential  
3 treatment in order to protect.

4 CHAIRMAN HONIGBERG: Which doesn't mean  
5 we can't collect it?

6 MR. WIESNER: That's correct.

7 CHAIRMAN HONIGBERG: Commissioner  
8 Burack.

9 VICE CHAIRMAN BURACK: I think it raises  
10 a lot of much broader questions about data collection  
11 generally that I would suggest would need a lot more  
12 thought and consideration, looking at what are our -- what  
13 are the legal authorities or the appropriateness of SEC  
14 collecting those data, versus PUC collecting them, versus  
15 what data are collected by the Energy Information  
16 Administration at the federal level.

17 I think my suggestion would be that we  
18 not try to address issue here at this time.

19 CHAIRMAN HONIGBERG: Does anybody want  
20 to take that on? I see shaking heads. All right. We'll  
21 move on.

22 "Effects on Aesthetics - 301.05".

23 MR. WIESNER: The proposed comments here  
24 address a couple of issues. One of which we've already

1 considered, I believe. But the first one that appears is  
2 a proposal by the Various Energy Companies to not require  
3 the application to identify "unreasonable adverse effects"  
4 or how they may be mitigated, but rather "potential  
5 adverse effects". And, I think the motivation for that is  
6 not to require the applicant to identify what may be an  
7 "unreasonable effect" -- an "unreasonable adverse effect",  
8 but a "potential adverse effect".

9 CHAIRMAN HONIGBERG: Essentially,  
10 they're always going to say "it's not unreasonable". So,  
11 they would never put anything in that section.

12 MR. WIESNER: And, I think maybe the  
13 view is that it's the Committee's job to determine what's  
14 "unreasonable".

15 CHAIRMAN HONIGBERG: Commissioner  
16 Burack.

17 VICE CHAIRMAN BURACK: Mr. Chairman, in  
18 fact, if you look at RSA 162-H:16, IV, Subset (c), it  
19 specifically reads "The committee has to make a finding in  
20 order to issue a certificate that the site and facility  
21 will not have an unreasonable adverse effect on  
22 aesthetics, historic sites, air and water quality, the  
23 natural environment, and public health and safety.

24 So, I think the question really is, I

1 mean, clearly, we cannot change what our legal standard is  
2 for a final determination here. The question is, whether  
3 we're going to ask the applicant to make a determination  
4 themselves as to what is unreasonable or whether we're  
5 going to ask them to identify, I suppose, a broader set of  
6 potential effects, from which we then, as you're  
7 suggesting, have to determine what's -- whether it is  
8 unreasonable or not? I think that's the question before  
9 us.

10 I'm not sure I have a clear answer. But  
11 we have the same issue under both 301.05 and, as you'll  
12 see below, with 301.06. And, however we deal with it,  
13 we'd have to be consistent on this one.

14 And, I don't know, Attorney Iacopino, if  
15 you can shed any light on historically what we've seen  
16 from the applicants, in terms of whether they have  
17 attempted to define for us what they think is unreasonable  
18 or whether they have just given us a broader list from  
19 which we then try to determine what's unreasonable or not?

20 MR. IACOPINO: I think each application  
21 that comes before the Committee always asserts that, in  
22 each of the categories, that there is no potential -- that  
23 there is no unreasonable adverse effect, given the plan  
24 that's being submitted to the Committee. If they were

1 saying "there is an unreasonable adverse effect", they  
2 would be, in essence, providing you with information to  
3 deny the application at the get-go.

4 So, I think that this does make sense to  
5 make them identify "potential adverse effects". It  
6 broadens what they have to provide. It doesn't limit the  
7 Committee. It puts a requirement on the applicant to  
8 identify something that may have an adverse effect, and  
9 that tees it up for the Committee, so that, at least in  
10 the first instance, you have an idea of what's coming  
11 before you. And, then, as parties join the proceeding,  
12 I'm sure they will point out other adverse effects for you  
13 as well.

14 So that, with respect to the  
15 application, I think that the recommendation that the  
16 words "any unreasonable" in each of those sections, 05,  
17 06, 07, 08, that that term should be removed. Those are  
18 the statutory criteria, "effects on aesthetics, historic  
19 sites, environment, and public health and safety". They  
20 have the same -- the same recommendation from this  
21 participant in the proceedings is in each one of those,  
22 the Various Energy Companies.

23 CHAIRMAN HONIGBERG: I would be in favor  
24 of making the change in the introductory section of

1 301.05. Director Muzzey.

2 DIRECTOR MUZZEY: My question then  
3 becomes, do we also remove "adverse"? And, I'm not sure  
4 where I stand on this. But, because it just says we  
5 argued against having the applicant determine whether  
6 effects are unreasonable, do we also remove the burden of  
7 them determining whether or not they're adverse, and just  
8 ask them to speak to "potential effects" and their efforts  
9 to "avoid, minimize or mitigate them".

10 Of course, if it was a beneficial  
11 effect, there would be no need for "avoiding, minimizing  
12 or mitigating". So, I can see both sides to that issue,  
13 perhaps I shouldn't raise it.

14 CHAIRMAN HONIGBERG: Other thoughts?

15 (No verbal response)

16 CHAIRMAN HONIGBERG: We'll make that  
17 change in the introductory section of 301.05.

18 VICE CHAIRMAN BURACK: So, you're just  
19 striking the word "unreasonable"?

20 CHAIRMAN HONIGBERG: And substituting --

21 VICE CHAIRMAN BURACK: "Potential".

22 CHAIRMAN HONIGBERG: -- "potential".

23 VICE CHAIRMAN BURACK: Okay. Thank you.

24 CHAIRMAN HONIGBERG: Now, with the

1 change that they proposed in Subsection (b)(9)?

2 MR. WIESNER: Yes. They're proposing to  
3 remove "best practical measures". I believe we've already  
4 covered that in a prior meeting, and decided that we would  
5 retain that term as it's defined. And, I believe we  
6 played around the definition of the term.

7 And, then, we have "potential adverse  
8 effects", rather than "visual impacts", although this  
9 appears in the "aesthetics" section, which arguably  
10 broadens the scope. And, then, deletion of the final  
11 language, which is "alternative measures considered but  
12 rejected by the applicant".

13 So, the current rule, as proposed, would  
14 require the applicant to identify that "any alternative  
15 measures that were considered but rejected", and the  
16 Various Energy Companies are proposing to delete that  
17 requirement.

18 CHAIRMAN HONIGBERG: Anyone have any  
19 thoughts or comments on this? Commissioner Scott.

20 COMMISSIONER SCOTT: Well, on the pro  
21 side of deleting that language, I can see cases where, if  
22 the applicant had to put every rejected measure they  
23 considered out there, it would take a lot of our time  
24 unnecessarily. So, if they rejected it out-of-hand

1 because it wasn't practical, I'm not sure readdressing all  
2 those is necessarily in the public interest. So, I just  
3 want to throw that out, is I can see that side of that  
4 equation, in the interest of a expedient process, I'm not  
5 sure if it helps.

6 CHAIRMAN HONIGBERG: Commissioner Rose.

7 COMMISSIONER ROSE: Yes. Thank you. I  
8 was curious as to, just from a -- and perhaps Attorney  
9 Iacopino might be able to provide some context, but is  
10 there, you know, I'm just trying to understand the  
11 rationale behind why the Committee would want to review or  
12 be aware of "alternative measures considered but rejected  
13 by the applicant". And, does that imply that there's a  
14 level of discretion within the Committee how it reviews or  
15 considers those different measures that were taken into  
16 consideration but rejected by the applicant?

17 MR. IACOPINO: I think that the statute,  
18 in its previous form, included a requirement that the  
19 Committee, having considered alternatives, then goes onto  
20 make its findings under RSA 162-H:16, IV. However, that  
21 section has been changed, that particular section has been  
22 changed, that says now "After due consideration of all  
23 relevant information regarding the potential siting or  
24 routes of proposed energy facility, including potential

1 significant impacts and benefits, the site evaluation  
2 committee shall determine if issuance of a certificate  
3 will serve the objectives of this chapter." And, then, it  
4 goes on to go through the criteria: Financial, undue  
5 interference with the region, unreasonable effects on  
6 aesthetics, historic sites, *etcetera*, and, finally, public  
7 interest. So that that language that was sort of a  
8 precursor to the statutory considerations of the Committee  
9 is not in the statute any longer. But I think that where  
10 it comes from in the rules is that -- was that direction  
11 that was given to the Committee by the statute in the  
12 past. So, I think that's where it comes from. I think  
13 that -- I don't know -- I don't recall any substitute  
14 statutory provision that requires alternatives at this  
15 point.

16 CHAIRMAN HONIGBERG: But this specific  
17 subsection really is about mitigation approaches. This is  
18 asking the applicant --

19 MR. IACOPINO: Right.

20 CHAIRMAN HONIGBERG: -- to disclose  
21 "what else did you think about doing to minimize the  
22 impact of the visual impact of Tower Number 9?" "Well, we  
23 thought about removing it, but that made the whole thing  
24 uneconomic. We thought about moving it further down the

1 hill, so it would be less visible, but that would reduce  
2 the amount of wind that would get to it. We thought about  
3 making it shorter, and that's what we decided to do." I  
4 mean, that's an example of how one might approach the  
5 visual impact of a particular wind turbine in one larger  
6 project.

7 I think that's -- that's what's  
8 contemplated by this, but I don't know how it works.  
9 Director Muzzey.

10 DIRECTOR MUZZEY: Do we have any  
11 information as to why the Various Energy Companies wanted  
12 to remove this language? I mean, given what the Chair  
13 just discussed, it would seem to behoove them to talk  
14 about their due diligence and, you know, seeking the best  
15 mitigation measures, and that would be favorable to their  
16 application. Did they give any reason why?

17 MR. WIESNER: I don't have their  
18 comments in front of me. I suspect that these are the  
19 sorts of issues that are often subject to discovery and  
20 litigation, and then they come before the Committee  
21 through testimony and cross-examination. You know, "you,  
22 applicant, claim that these are the best practical  
23 measures. Well, how did you decide that? What else did  
24 you consider? What alternatives were considered and

1 rejected?"

2           Again, Attorney Iacopino can speak more  
3 clearly than I probably can to the history. But it may be  
4 that the motivation for this particular comment is to say  
5 "we understand that this will come out through the  
6 process, but we don't see any great value in including it  
7 in the initial application package."

8           MR. IACOPINO: The other thing that I  
9 would point out is that alternatives are addressed with  
10 respect to Section 7 of the statute, and requires the  
11 applicant to "identify its preferred choice and other  
12 alternatives it considers available for the site and  
13 configuration of each major part". We actually addressed  
14 that a little bit earlier today. But that -- I suppose  
15 that, to answer Commissioner Rose's question, that that  
16 might be a statutory reason for why you would consider  
17 these alternative mitigative -- mitigation proposals.

18           CHAIRMAN HONIGBERG: All right. Do  
19 people -- how do people feel about the proposed  
20 suggestions? Does anyone think that we should remove the  
21 language as suggested by the Various Energy Companies?

22                           (No verbal response)

23           CHAIRMAN HONIGBERG: I don't see any  
24 takers on that one. So, let's move on.

1                   Thirty-two (32) is "Effects on Historic  
2 Sites - 301.06".

3                   MR. WIESNER: I'll just go back, excuse  
4 me, Mr. Chairman, and note that Wagner Forest  
5 Management --

6                   CHAIRMAN HONIGBERG: Oh, I'm sorry.

7                   MR. WIESNER: -- had a comment on,  
8 basically, requiring a "visual impact analysis" from  
9 "polluting facilities", which I take to be, you know,  
10 fossil fuel type projects, with respect to their "emission  
11 stacks and visible plumes emanating from the facilities".  
12 And, I guess this is motivated by a desire to see some  
13 greater detail included regarding assessment of the visual  
14 impacts of facilities that are not wind projects, that are  
15 conventional fossil fuel-fired plants.

16                   CHAIRMAN HONIGBERG: I'm sorry. I did  
17 not mean to omit that. I saw it and then just forgot.  
18 How does anyone feel about that proposal? Commissioner  
19 Burack.

20                   VICE CHAIRMAN BURACK: I don't think  
21 it's an unreasonable proposal. I'm not sure that, in a  
22 standard planning or zoning context, whether one would  
23 expect to have an evaluation of what the visual impacts  
24 would be of a smokestack or, you know, whatever else. But

1 I don't think it's unreasonable. I don't think it's  
2 probably terribly burdensome to make that kind of  
3 determination.

4 CHAIRMAN HONIGBERG: Other thoughts or  
5 comments? Director Muzzey.

6 DIRECTOR MUZZEY: I would assume that,  
7 as the rules are now drafted on aesthetics, that  
8 smokestacks would be part of the visual impact assessment.  
9 I think what's new here is the idea of the "visible  
10 plume" --

11 VICE CHAIRMAN BURACK: Yes.

12 DIRECTOR MUZZEY: -- not being covered  
13 as part of a typical facility. And, I don't know enough  
14 about plumes to know whether they're highly variable,  
15 depending on many conditions, and whether that could be  
16 quantified in a visual impact assessment.

17 CHAIRMAN HONIGBERG: Commissioner  
18 Burack.

19 VICE CHAIRMAN BURACK: What little I do  
20 know in this area is that, yes, there would be some  
21 variability, but I think that there could be sort of some  
22 standardization, sort of a standard profile that one might  
23 expect to see from a -- under sort of normal  
24 climatological conditions. And, I think, in the interest

1 of a full understanding of what the impacts -- visual  
2 impacts of the facility would be, it would helpful to have  
3 that.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: Thank you. A side  
6 issue for this, and I'll again point to Attorney Iacopino,  
7 AES/Granite Ridge, it wasn't a smokestack, I think, but we  
8 did have a plume issue/icing issue, is that correct?

9 MR. IACOPINO: There was a plume  
10 analysis. There was testimony about icing -- there was  
11 testimony about icing being caused by increased moisture,  
12 I believe, and also is it's relatively close to the  
13 airport. And, I believe there was a plume analysis of  
14 some sort that was done, is my recollection. I don't  
15 recall if, when we did the exemption for the Merrimack  
16 Station, whether there was any kind of plume analysis  
17 there. Certainly, the height of the new stack, two new  
18 stacks, in that particular instance, was an issue. I  
19 don't recall if there was actually any evidence presented  
20 to the Committee in that case about whether or not the  
21 plume, what its visibility would be, how far, you know,  
22 whether there was a VIA for the plume.

23 But I think that, in AES, we did, in  
24 fact, have -- we didn't have a formal VIA, but I believe

1 we had either prefiled or testimony regarding what could  
2 be expected.

3 COMMISSIONER SCOTT: And, did that  
4 come -- how did that come about? Was that just in the  
5 application or --

6 MR. IACOPINO: I actually think the  
7 issue was first raised by the Londonderry Neighborhood  
8 Association. And, then, there was subsequently, I think  
9 Counsel for the Public actually hired a consultant, who  
10 testified about what could be expected, and ultimately the  
11 Committee granted the certificate, with a "no icing"  
12 condition. They'd have to shut down if it caused ice,  
13 basically.

14 COMMISSIONER SCOTT: Thank you.

15 CHAIRMAN HONIGBERG: So, does anyone  
16 want to put on the requirements for an application, for  
17 the types of facilities that have smokestacks, this type  
18 of requirement in the Application? Commissioner Scott.

19 COMMISSIONER SCOTT: I think I'm okay  
20 with that. I don't think I'd limit it to -- I think I'd  
21 prefer just visible plumes. For instance, if you had a  
22 cooling tower, it's not a smokestack, but you're going to  
23 have the same type of issues, and I think that would be  
24 just as germane to this evaluation.

1                   VICE CHAIRMAN BURACK:  And, I would  
2                   concur with that.

3                   CHAIRMAN HONIGBERG:  So, any  
4                   plume-generating facility would have to analyze the visual  
5                   impacts of the plume?  Is that the concept?  General  
6                   agreement with that?  Nodding of heads?  Yes.  Okay.

7                   Now, "Effects on Historic Sites -  
8                   301.06".

9                   MR. WIESNER:  And, in a previous  
10                  meeting, the Committee provided guidance on many of these  
11                  issues, and Director Muzzey proposed some language, which  
12                  will appear in the Draft Final Proposal as it's submitted  
13                  for the Committee's consideration.  So, I think we're  
14                  probably okay on the changes that are proposed.  Except I  
15                  would note, as Attorney Iacopino did earlier, that  
16                  wherever there's a reference to "unreasonable adverse  
17                  effects" as something that should be covered in the  
18                  application, we might consider changing that to  
19                  "potential" -- "potential adverse effects", rather than  
20                  "unreasonable adverse effects", if we haven't already done  
21                  so.  So, that's a change that perhaps should be  
22                  considered.

23                  And, then, I'll also note, on the right  
24                  side, the New Hampshire Preservation Alliance proposed

1 that the words "and interested parties" be included in the  
2 context of "description of the status of the applicant's  
3 consultations" with relevant resource agencies.

4 And, I don't believe that change was  
5 picked up in the language that Director Muzzey came up  
6 with. So, I wonder if that's something that we should  
7 consider including at this point?

8 CHAIRMAN HONIGBERG: Taking the first  
9 part first, I agree with what you said, and I think the  
10 "unreasonable adverse" should be changed to "potential  
11 adverse". And, I think we should use Director Muzzey's  
12 language from the last time we talked about that.

13 And, with respect to "interested" --  
14 "and interested parties", who would that be? Who are we  
15 talking about?

16 DIRECTOR MUZZEY: I believe what the New  
17 Hampshire Preservation Alliance is referring to is, under  
18 the Section 106 review process, the views of the public  
19 are very much stressed. In fact, the regulations and the  
20 law were updated in the 1990s to emphasize the importance  
21 of the public's opinions. And, similar to an intervenor  
22 process, there is the ability of an individual or a  
23 community or parties to become something called a  
24 "consulting party" to the 106 process, where their views

1 are considered by both the State Preservation Office and  
2 the lead federal agency in their decision-making.

3 So, there is a more formal role for the  
4 public to take under 106. And, that's perhaps why the  
5 alliance is stressing that as something the Site  
6 Evaluation Committee could consider as well.

7 CHAIRMAN HONIGBERG: You did not use the  
8 phrase "interested parties", you used a different phrase.  
9 "Consulting parties", is that what you said?

10 DIRECTOR MUZZEY: Yes.

11 CHAIRMAN HONIGBERG: If that's what they  
12 meant, why wouldn't they have used that phrase? I mean,  
13 is it a term of art that not many people know? Although,  
14 I would think that this organization would know it.

15 DIRECTOR MUZZEY: Perhaps they were  
16 trying to use more common language. I'm not certain.

17 CHAIRMAN HONIGBERG: Thoughts?  
18 Comments? Suggestions?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: Director Muzzey,  
21 would you be supportive of including -- I'm sorry,  
22 Commissioner Bailey, I didn't see.

23 COMMISSIONER BAILEY: I was just going  
24 to ask Director Muzzey, if I understand this correctly,

1 this is the process that your agency undertakes, and this  
2 commenter is asking to make sure that consulting parties,  
3 that are already part of your process are included here,  
4 and do you think that's necessary? Or, am I missing  
5 something?

6 DIRECTOR MUZZEY: It's part of the  
7 Section 106 process, which is a federal law and  
8 regulation. It's not necessarily my Office's process. I  
9 think there is value in that. I personally have  
10 approached this section on, you know, the effects on  
11 aesthetics, historic sites, natural resources, the  
12 environment, looking for a certain consistency between  
13 each of these areas. And, we don't include that language  
14 in all of the other areas as well.

15 On the other hand, I do know it's an  
16 important part of the Section 106 review, and that  
17 information is available. And, it's difficult for me,  
18 because it's far easier to become a consulting party to  
19 the 106 process than to become an intervenor to the Site  
20 Evaluation Committee process, because -- well, we all  
21 understand what the intervenor process is.

22 MS. WEATHERSBY: So, let me ask you,  
23 would it be helpful to the Committee to know the status of  
24 the consultations with the consulting parties?

1                   DIRECTOR MUZZEY: It would provide more  
2 information as to what the public felt about the impacts  
3 to historical sites.

4                   MS. WEATHERSBY: It seems like you may  
5 want to include "consulting" -- "consulting parties" is  
6 that the term?

7                   DIRECTOR MUZZEY: Yes.

8                   MS. WEATHERSBY: And, not have it be as  
9 broad as "interested parties".

10                  CHAIRMAN HONIGBERG: Commissioner  
11 Bailey.

12                  COMMISSIONER BAILEY: But we would be  
13 limiting this phrase to "consulting parties in the Section  
14 106 process", and do we need to say that?

15                  CHAIRMAN HONIGBERG: I think, if we're  
16 going to use the phrase "consulting parties", we would  
17 need to say "as defined in", or something like that.

18                  COMMISSIONER BAILEY: And, does the  
19 federal agency take those comments into consideration when  
20 it does its --

21                  DIRECTOR MUZZEY: Yes, it does.

22                  COMMISSIONER BAILEY: So, by getting  
23 that information, would we be second guessing their  
24 determination? And, do we really need to do that?

1                   DIRECTOR MUZZEY: It would be supplying  
2 the Committee with broader information as to what the  
3 public felt about the project. It wouldn't be second  
4 guessing any of the agency's determinations.

5                   CHAIRMAN HONIGBERG: Director Muzzey,  
6 would you like to see this language added, the "consulting  
7 parties as defined in"?

8                   DIRECTOR MUZZEY: I'm aware of both the  
9 Committee's need to have good information and broad  
10 information, although it does represent an additional task  
11 for the applicant to do. So, I am cognizant of that as  
12 well.

13                   CHAIRMAN HONIGBERG: Let's assume for a  
14 moment that you were required to vote on this question.

15                   (Laughter.)

16                   CHAIRMAN HONIGBERG: Because we're all  
17 trying to, in all honesty, we're trying to defer to you on  
18 this. If you think -- this is really your area more than  
19 anybody else's.

20                   DIRECTOR MUZZEY: Yes. I think the  
21 information is readily available. And, I feel it's more  
22 helpful to have more information. And, so, if applicable,  
23 it would provide the Committee with more information, and  
24 I feel it would be a good idea.

1                   CHAIRMAN HONIGBERG: Does anyone -- does  
2 anyone have the temerity to disagree with Director Muzzey  
3 on that issue?

4                   (No verbal response)

5                   CHAIRMAN HONIGBERG: I didn't think so.  
6 So, we can add a phrase, an appropriate phrase, adding the  
7 "consulting parties" at the end of that section. And "if  
8 applicable" I think modifies the entire rest of the  
9 phrase. So, I think that was captured.

10                  Next item: "Effects on the  
11 Environment", which is "301.07", and it encompasses two  
12 pages of the comments.

13                  MR. WIESNER: The first comment from the  
14 Various Energy Companies is similar to what we've  
15 discussed before, deleting the reference to "unreasonable  
16 adverse effects", and substituting "potential adverse  
17 effects". I guess I'm going to assume that that's a  
18 change we should make here as well?

19                  CHAIRMAN HONIGBERG: Yes. Good  
20 assumption.

21                  MR. WIESNER: And, then, we have a long  
22 comment from Mr. Griffin, I believe, citing a proposal  
23 that was included, I believe, in an early version of  
24 comments submitted by environmental organizations, AMC and

1 others. And, it requires a significantly more detailed  
2 specification of information that should be included  
3 regarding wildlife resources and other environmental and  
4 natural resource effects in the application. And, you  
5 know, there's at least some argument that we've already  
6 covered this ground, although I don't think we've  
7 considered this specific comment. And, rather than  
8 paraphrasing it, I would invite the Committee to read  
9 through it.

10 CHAIRMAN HONIGBERG: Well, before we do  
11 that, why don't you make the argument that, if someone  
12 were to make the argument that "we've already covered  
13 this", how would that argument sound?

14 MR. WIESNER: I believe we may have  
15 already considered this section in terms of previous  
16 comments, and agreed that some language changes should be  
17 made, but not others. But it wasn't in the context of  
18 these specific comments that would increase the scope of  
19 the information that needs to be included with the initial  
20 application.

21 CHAIRMAN HONIGBERG: Okay. So, why  
22 don't people quickly review what the proposed additions  
23 are.

24 (Short pause for members to review

1 comments provided.)

2 CHAIRMAN HONIGBERG: Commissioner  
3 Burack.

4 VICE CHAIRMAN BURACK: Mr. Chairman, I  
5 think, on careful review here, that all of the basic  
6 elements that are in this proposal are, in fact,  
7 incorporated in the language that's in -- now in  
8 301.07(c). And, I think they need to be renumbered as (1)  
9 through (6). Looks like we've got two (1)s there, at  
10 least in the version that I'm looking at.

11 And, really, what we have in (c)(1)  
12 through (6) are descriptions that are asking the parties  
13 to really give us the summaries and give us the specific  
14 information that we need to make our decisions, as opposed  
15 to the way I read this language in this proposal here,  
16 that would really have them giving us more sort of the --  
17 just the rough drafts and the communications of things,  
18 their efforts to try to get this information, as opposed  
19 to the actual information itself and the synthesis and  
20 analysis of that information.

21 So, I think that the way this is worded  
22 now is 301.07 is going to be more helpful to the Committee  
23 than the way it's worded in this proposal.

24 CHAIRMAN HONIGBERG: Anyone have any

1 other thoughts or comments on this? Commissioner Scott.

2 COMMISSIONER SCOTT: The last  
3 recommendation, which is their number (6) the "prepare a  
4 cumulative impacts assessment", I'm interested in that  
5 type of assessment. I guess I am not sure how to pull it  
6 off. If you include proposed facilities, not existing  
7 facilities, and any kind of cumulative impact, but that  
8 brings up a lot of questions of chicken and the egg, I  
9 guess. If you have two proposed facilities, and you're  
10 almost presuming the other one gets built. And, if  
11 there's enough impact, if you will, on one to not be  
12 unreasonable, but both together are unreasonable, which  
13 gets to get built then? I think that needs to be  
14 certainly thought through. But I find the "cumulative  
15 impact" question of import.

16 CHAIRMAN HONIGBERG: Commissioner  
17 Burack.

18 VICE CHAIRMAN BURACK: Mr. Chairman,  
19 thank you. That's a good point that Commissioner Scott  
20 has raised. That that is perhaps the one issue that  
21 really isn't addressed in the current language is the  
22 "cumulative impact" piece. But I thought we had an  
23 earlier discussion within the Committee on "cumulative  
24 impact analysis", if not in this context, then in another

1 context. But I don't recall how we chose to resolve it at  
2 that time.

3 MR. WIESNER: Well, --

4 VICE CHAIRMAN BURACK: And, I --

5 MR. WIESNER: I'm sorry. There was a  
6 question about the definition of "cumulative impacts", and  
7 I believe we've addressed that. And, there was also a  
8 decision, I believe, by the Committee to require  
9 cumulative impacts assessment for all energy facilities,  
10 not just wind facilities. And, that cumulative impacts  
11 would address as well natural resources, in addition to  
12 scenic, recreational, historic, and cultural.

13 CHAIRMAN HONIGBERG: Yes. That's my  
14 memory as well. So, if that -- if we are correct, and I  
15 think we are, we have pretty much dealt with this -- with  
16 that concept through the other changes that we've agreed  
17 on in earlier sessions.

18 VICE CHAIRMAN BURACK: So, you're  
19 suggesting that other language relating to "cumulative  
20 impacts assessment" would include an impact of wildlife or  
21 other aspects addressed here?

22 CHAIRMAN HONIGBERG: I think so.  
23 Because I think it is a broad enough -- I think it was  
24 broad enough in the earlier discussion to include all of

1 adverse -- potential adverse impacts.

2 MR. WIESNER: Yes. I mean, the language  
3 is not exactly the same as what appears here in the  
4 comment. But the concept that the cumulative impact  
5 assessment -- the cumulative impacts, I should say, of the  
6 facility, in conjunction with others on the natural  
7 environment, will be studied and will be identified and  
8 assessed through the initial application.

9 VICE CHAIRMAN BURACK: If I may, Mr.  
10 Chairman, then I guess the only question is whether, by  
11 "natural environment" that would be broad enough to cover  
12 the wildlife and plant species issues that are being  
13 addressed here or not? And, I would just want to ensure  
14 that that terminology was broad enough to cover these  
15 aspects. And, if it is, then I think we've got it  
16 covered.

17 CHAIRMAN HONIGBERG: Attorney Wiesner,  
18 are you currently looking for that?

19 MR. WIESNER: I'm not sure the word  
20 "wildlife" appears, but we can make it appear.

21 CHAIRMAN HONIGBERG: We have that  
22 ability?

23 MR. WIESNER: We do.

24 CHAIRMAN HONIGBERG: Director Muzzey.

1                   DIRECTOR MUZZEY: Just two thoughts on  
2 this. There also seems to be an emphasis on "habitat", in  
3 addition to "wildlife", for the cumulative assessment.  
4 So, whether or not that could be added as well.

5                   And, there seems to be an emphasis in  
6 these comments, particularly in Items (2) and (3), to  
7 include not only the information received back from the  
8 agencies, but also what information request was made.  
9 And, so that becomes the question of whether there's some  
10 wordsmithing we can do in Section (c), as the rules are  
11 written, to -- if we do want to include both the  
12 "information requests made to" and "the documentation  
13 received back".

14                   CHAIRMAN HONIGBERG: Commissioner  
15 Burack.

16                   VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
17 really not sure that it's necessary for the Committee to  
18 have to have included in the actual record the details of  
19 exactly what information was requested. Maybe Attorney  
20 Iacopino can shed some light on this for us historically.  
21 I mean, I'd like to believe that parties are asking for  
22 all the relevant and pertinent information, and that's  
23 what they're collecting and providing. I just don't know  
24 how much we need to be including the details of that data

1 collection process in the application materials  
2 themselves. Attorney Iacopino, can you shed any light on  
3 this for us, in terms of historical practice, and whether  
4 we have seen issues where parties have basically not  
5 asked -- asked for all the information they should have  
6 asked for?

7 MR. IACOPINO: I have seen it disputed.  
8 But, with respect to this particular rule, it is the  
9 common practice that, for instance, inquiries made to the  
10 New Hampshire Natural Heritage Bureau, there is a course  
11 of correspondence that normally is included with the  
12 application, usually in the appendix and referenced in the  
13 application portion of the section. We've also seen  
14 correspondence with U.S. Fish & Wildlife Service and with  
15 Fish & Game routinely included in applications.

16 So, generally, what we see is the  
17 correspondence from the agency to the applicant. I'm not  
18 sure that we always see that initial correspondence going  
19 to the agency. But, generally, what the Committee has  
20 received in the substance of the correspondence, you get a  
21 pretty good idea of what it is they're talking about, and  
22 what the response from the agency is with respect to the  
23 existence of things like exemplary natural communities and  
24 things like that.

1 CHAIRMAN HONIGBERG: Commissioner  
2 Burack.

3 VICE CHAIRMAN BURACK: Mr. Chairman, in  
4 fact, if we look at the language in 301.07(c)(1), as it  
5 appears now, it does, in fact, call for "communications  
6 with and documents received from" the various agencies,  
7 including "Fish & Game", "Natural Heritage Bureau,"  
8 *etcetera*. So, I would suggest that the issue that has  
9 been raised by Director Muzzey is, in fact, already  
10 addressed in this language.

11 CHAIRMAN HONIGBERG: Are we ready to  
12 move on and address the comment in the upper right of  
13 Page 43?

14 MR. WIESNER: And, if I understand this  
15 comment, this is an attempt to broaden the scope of  
16 assessment of the effects on wildlife and the natural  
17 environment, to look beyond the project site and abutting  
18 property, to the larger region, which is not defined, but  
19 it primarily focused on "wildlife corridors" and, you  
20 know, perhaps migration patterns. I'm not entirely clear  
21 myself whether this is something that is routinely covered  
22 in the studies that are submitted with applications, but I  
23 suspect that it may be. And, then, the question would be  
24 "How much more specific do we need to be in these rules

1 that the scope should extend that far?"

2 CHAIRMAN HONIGBERG: Attorney Iacopino,  
3 is there any brief, relevant history on this?

4 MR. IACOPINO: In my understanding of  
5 the various wildlife studies that -- and environmental  
6 studies that we've received is, in the various  
7 applications over the past, depending upon the nature of  
8 the study, it could involve simply the site itself, or it  
9 could involve abutting lands and a broader region. I  
10 think it depends upon the nature of what you're studying.  
11 If you're studying Golden eagles, you're going to be  
12 looking on-site and off-site. If you're studying water  
13 quality, you're pretty much looking at what's happening on  
14 the site. So, --

15 CHAIRMAN HONIGBERG: So, putting a rule  
16 in place that's broader than what's already here would not  
17 necessarily be useful, because the assessments that are  
18 done are done that are relevant to the particular  
19 application in question?

20 MR. IACOPINO: Yes.

21 CHAIRMAN HONIGBERG: All right. Let's  
22 move on.

23 "Effects on Public Health and Safety -  
24 301.08".

1 MR. WIESNER: The first comment is the  
2 one we've seen before, where "unreasonable adverse  
3 effects" would be revised to read "potential adverse  
4 effects". And, I'm assuming that that's acceptable.

5 The next comment of EDP on "shadow  
6 flicker studies", I believe has already been addressed  
7 through language changes previously approved, with respect  
8 to the types of buildings that would be included in the  
9 flicker study.

10 And, moving down to (a)(3), this is a  
11 comment of Wind Watch, that also wants to include  
12 "overhead infrastructure and underground utility lines",  
13 as opposed to just referring to "overhead utility lines".  
14 In the context of the planned setbacks that would be  
15 described in the initial application.

16 CHAIRMAN HONIGBERG: Commissioner  
17 Burack.

18 VICE CHAIRMAN BURACK: I think, given  
19 that we're seeing more and more infrastructure now being  
20 put underground, I think it would be helpful to have the  
21 basic setbacks for those lines identified, whether they  
22 are aboveground or underground.

23 CHAIRMAN HONIGBERG: Commissioner  
24 Bailey.

1                   COMMISSIONER BAILEY: Does the term  
2 "infrastructure" introduce something other than "overhead  
3 and/or underground utility lines"? Or, are we talking  
4 about "overhead or underground utility lines"?

5                   MR. WIESNER: Not entirely clear in the  
6 commenter's intent. But it maybe that that's intended to  
7 cover, you know, the poles, in addition to the lines, or  
8 perhaps other related infrastructure improvements,  
9 depending on the type of facility -- well, this is for a  
10 wind turbine, excuse me. This is similar to the  
11 discussion we had earlier about "what does  
12 "infrastructure" mean?"

13                   MS. WEATHERSBY: So, this section is  
14 relating to the setbacks, and for safety reasons. And,  
15 so, there's, obviously, a worry about overhead utility  
16 lines, whether a tower may fall on it, knock it out. But  
17 I don't know if that same concern exists if the utility  
18 line is buried. So, if anyone has any thoughts on that, I  
19 would appreciate it. Because if it's -- I would think  
20 that, if a utility line is buried, it's buried to such a  
21 level that, if a tower falls, it may not have any effect  
22 and that may not be needed here.

23                   CHAIRMAN HONIGBERG: Attorney Iacopino.

24                   MR. IACOPINO: There may be concerns

1 about electromagnetic fields and magnetic fields, for  
2 instance, with an underground transmission line. I don't  
3 know so much if it was a pipeline, but, with an  
4 underground transmission line, where the electricity is  
5 flowing, there may be some EMF concerns that would inform  
6 setback decisions.

7 MS. WEATHERSBY: This is the setback  
8 "between each wind turbine and a utility line". I agree  
9 with you.

10 MR. IACOPINO: So that, if there is an  
11 underground carrier line, that each wind turbine generates  
12 electricity and sends the electricity down to an  
13 underground line, that underground line may have some  
14 electromagnetic fields or whatever associated with it.  
15 And, usually, in our experience, they're very small at  
16 that level, but they could. And, so that, I mean, that's  
17 the only reason I would think an underground utility line  
18 has a setback, other than just "stay away from my  
19 property", would be a concern from a safety standpoint.

20 MS. WEATHERSBY: And, I agree the  
21 setback between the utility line and a property, occupied  
22 building, *etcetera*, would be of importance. I don't read  
23 that this way. I read it as just the "setback between the  
24 tower and utility line". Maybe I'm just reading it

1       incorrectly.  So, just a thought.

2                       CHAIRMAN HONIGBERG:  I am where Attorney  
3       Weathersby is.

4                       MR. IACOPINO:  I agree.  But I'm not  
5       sure that what's written is what captures the concerns of  
6       the commenter.  But, I mean -- I mean, there wouldn't  
7       really be a setback issue between a wind turbine and the  
8       utility line that's carrying the electricity from that  
9       wind turbine.  I think, presumably, they're connected.

10                      So, I mean, I read it as being a setback  
11       from the property lines, like the rest of them.  But,  
12       you're right, the way it's worded, it doesn't really make  
13       a lot of sense.

14                      CHAIRMAN HONIGBERG:  Director Muzzey.

15                      DIRECTOR MUZZEY:  To add another  
16       question to the mix, is this concern addressing issues  
17       such as icing and that type of thing, you know,  
18       anticipating a situation where there may be icing off a  
19       wind turbine onto a public road or onto an overhead  
20       utility line that causes a public risk?  And, is that what  
21       we're trying to work with here?

22                      CHAIRMAN HONIGBERG:  That's what I  
23       assumed this was about.  Attorney Iacopino introduced the  
24       electromagnetic field synergies, I guess, that somehow

1 there would be a multiplier effect, but --

2 MR. IACOPINO: No. I was interpreting  
3 this -- I was interpreting what the commenter was trying  
4 to get at, being the setback, that "the application  
5 contain what the setback distances are between an  
6 underground utility line and the property line." I didn't  
7 read it initially as being "between the wind turbine and a  
8 utility line".

9 So, that's why I was commenting about  
10 EMFs, that that would be the only reason to answer  
11 Ms. Weathersby's question about "what would the safety  
12 aspect be of an underground utility line?" So, that was  
13 where my answer came. It's been pointed out to me since  
14 that the setback -- that the distances they're talking  
15 about here is "between a wind turbine and the public road  
16 or" -- "and near the public road and the overhead  
17 infrastructure and underground utility line". So, I don't  
18 know why there would be a setback between a line that's  
19 associated with the project and the wind tower itself, in  
20 fact, they would be connected.

21 So, I stand corrected to the extent that  
22 I raised any EMF considerations about that. I thought  
23 they were talking about the setbacks from the property  
24 line.

1                   CHAIRMAN HONIGBERG: This strikes me as  
2 something we should not be doing. I think this is not a  
3 shy commenter. If she sees in the next draft it's still  
4 there, I suspect she knows how to submit another comment  
5 on the topic. Perhaps we're misunderstanding her in some  
6 way.

7                   Staying within that section, the next  
8 comment from Dr. Ward.

9                   (Short pause for members to review the  
10 comment provided.)

11                  CHAIRMAN HONIGBERG: Does anyone want to  
12 make the case for making this change? I see one head  
13 shaking. Commissioner Bailey.

14                  COMMISSIONER BAILEY: I would like to  
15 make the case that this change is not necessary. I think,  
16 to the extent an intervenor thought that there was a  
17 problem with the applicant's assessment, they would  
18 probably ask a lot of discovery and bring this to our  
19 attention.

20                  So, I think that this kind of detail is  
21 not necessary, because I think it will probably come up  
22 anyway.

23                  CHAIRMAN HONIGBERG: Anyone have any  
24 other or different thoughts on this?

1 (No verbal response)

2 CHAIRMAN HONIGBERG: Seeing none, we'll  
3 move on to the Wagner Forest comment.

4 (Short pause for members to review the  
5 comment provided.)

6 CHAIRMAN HONIGBERG: This seems related  
7 to the earlier comment from the same commenter regarding  
8 the visual impact of plumes, that all facilities should  
9 have to have an analysis done of their visual impacts and  
10 all other impacts, except shadow flicker.

11 Any comments or thoughts on this  
12 proposal or suggestion? Commissioner Burack.

13 VICE CHAIRMAN BURACK: It's just -- this  
14 is just very broad the way it's written, as applying to  
15 essentially all other types of generating facilities.  
16 Some of this may or may not even be applicable to those  
17 types of facilities.

18 I'm just wondering if Attorney Wiesner  
19 can just quickly remind us or point us to where we have  
20 sort of general criteria specified for any type of  
21 facility? I mean, I would read this as applying  
22 particularly to, for example, a new natural gas or coal or  
23 oil or even a wood-burning type of facility. And,  
24 presumably, if there is a smokestack associated with that

1 facility, you know, then we would address these types of  
2 issues.

3 But, if it's -- if it doesn't have a  
4 smokestack on it, I don't know how a lot of this would be  
5 applicable.

6 MR. WIESNER: I mean, there's a section  
7 that covers "all energy facilities", and includes, for  
8 example, "operational sound", "decommissioning plans", and  
9 then there's a catch-all provision at the end, this  
10 appears on Page 12 of the Initial Proposal for the 300  
11 rules.

12 VICE CHAIRMAN BURACK: Can you give us  
13 the section cite?

14 MR. WIESNER: It's 301.08(c)(5),  
15 "description of any additional plans or measures to avoid,  
16 minimize or mitigate public health and safety impacts that  
17 would result from the construction and operation of the  
18 proposed facility." And, I think, read broadly enough,  
19 that would cover setbacks, safety setbacks, let's say,  
20 structure collapse, lightning protection, and FAA  
21 compliance, to the extent that there is, for example, an  
22 emission stack that should be subject to nighttime  
23 lighting to meet FAA requirements. But it's not called  
24 out specifically, which I gather is the scope of the

1 proposal that's made by Wagner.

2 CHAIRMAN HONIGBERG: Attorney Iacopino.

3 MR. IACOPINO: I think the bigger  
4 concern in this is the -- requiring the "same  
5 requirements", at least that's what the Committee might  
6 want to look at. It's very clear that wind energy  
7 facilities propose -- impose some greater public safety  
8 issues, with respect to ice shedding and ice throw, than a  
9 static smokestack that might collapse or a static even  
10 transmission line pole that might collapse. So, I think  
11 that the Committee might want to focus on the term "same  
12 requirements".

13 CHAIRMAN HONIGBERG: I think the statute  
14 imposes requirements on us and gives us a standard that is  
15 being defined, in part, through these rules. I think that  
16 seeking the same level of everything on non-wind  
17 facilities, "as wind facilities, on all other facilities"  
18 is a recipe for disaster.

19 So, I would not be in favor of making a  
20 series of changes to try to implement this proposal. Does  
21 anyone want to take that on?

22 (No verbal response)

23 CHAIRMAN HONIGBERG: Seeing none, we'll  
24 move on.

1                   The last comment, regarding "setback  
2 distance being -- if it's great enough, then sound and  
3 shadow flicker studies should not be required". I think  
4 applicants know how to make arguments like that, if it's  
5 available to them.

6                   Does anyone disagree?

7                   (No verbal response)

8                   CHAIRMAN HONIGBERG: All right. Seeing  
9 none, we'll move on.

10                  "Completeness Review and Acceptance of  
11 Applications for Energy Facilities".

12                  MR. WIESNER: This is a proposal by the  
13 Various Energy Companies to make some language changes to  
14 this section, which I believe are consistent and arguably  
15 more consistent with the statutory language.

16                  CHAIRMAN HONIGBERG: We had some  
17 discussion about this the last time we were together, did  
18 we not?

19                  MR. WIESNER: We did. I'm not sure this  
20 exact section was at issue at the time, but there was a  
21 proposal to define what "permitting or other regulatory  
22 authority" meant, and we decided not to do that.

23                  But this is a specific reference to the  
24 requirements for application review by the agencies that

1 have permitting authority, and their notification to the  
2 Committee that they have sufficient information for their  
3 purposes. So, this is the initial completeness review.  
4 The Committee makes a determination whether an  
5 application, as submitted, is complete. And, the other  
6 permitting agencies, such as DES, would weigh in as well,  
7 within 45 days, pursuant to the rule.

8 CHAIRMAN HONIGBERG: Attorney Iacopino,  
9 you have some experience with dealing with agencies in  
10 this realm. In your view, is the change a good one, a  
11 negative one, or a neutral?

12 MR. IACOPINO: I would add the language  
13 as suggested by the Energy Companies after "state agency"  
14 say "having permitting or other regulatory authority".

15 And, then, also the second change --  
16 (Court reporter interruption.)

17 MR. IACOPINO: -- the second change,  
18 where it says "for its purposes", is also directly from  
19 the statute. So, I would have no objection to adding that  
20 as well.

21 CHAIRMAN HONIGBERG: So, to answer the  
22 question on my terms, you think these are good changes?  
23 These are positive changes?

24 MR. IACOPINO: Yes. I think that,

1 because of the structure of the rule that is set up, I  
2 think one reading it would have to read it in conjunction  
3 with the prior section, which does talk about -- does have  
4 the language in it. But, yes, adding it here in this  
5 particular section would be a good thing.

6 CHAIRMAN HONIGBERG: Does anyone have  
7 any other thoughts or other comments on this?

8 (No verbal response)

9 CHAIRMAN HONIGBERG: Then, we'll make  
10 that change. I'm sorry, Director Muzzey.

11 COMMISSIONER SCOTT: No. As long as  
12 we're making it.

13 CHAIRMAN HONIGBERG: Next section has to  
14 do with the "Timeframe for Application Review" and the  
15 "Temporary Suspension Provision".

16 MR. WIESNER: And, this is a provision  
17 that it tracks, as it appears in the proposed rules,  
18 tracks very closely to the statutory provision, which I've  
19 cited here, 162-H:14, I. And, so, I would -- I would not  
20 recommend that we delete this, as proposed by Nixon  
21 Peabody.

22 VICE CHAIRMAN BURACK: Mr. Chairman, if  
23 I may?

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: The language  
3 that's in our rule is basically an imperative, that is, if  
4 we make a finding, then we -- I'm sorry, the language in  
5 our rule is that, if we -- if the Committee finds  
6 suspension in the public interest, then it shall  
7 temporarily suspend. If you look at the language of  
8 162-H:14, it is more in the permissive sense. That is, it  
9 says that "the Committee may temporarily suspend its  
10 operations and timeframes."

11 So, it may be that we either don't have  
12 this provision in here at all, given that it's already in  
13 statute. Or, if we're going to put a provision on this  
14 issue in the rules, then I think we should track the  
15 language of the statute exactly.

16 CHAIRMAN HONIGBERG: My inclination,  
17 when we have situations like this, is that, when there's a  
18 statute on point, we not have a rule that repeats sort of.  
19 In particular, if it doesn't track the language of the  
20 statute, the rule is problematic. But, if the topic is  
21 completely covered by a statute, we don't need the rule.

22 MR. WIESNER: And, it reads the way it  
23 does because of the preference of, essentially, the Office  
24 of Legislative Services for language which does not

1 contain the word "may". And, appears to, I can't believe  
2 I'm saying this on the record, so, "shall/if" is the  
3 better formulation rather than "may". But here "shall/if"  
4 is "you shall, if you find that it's in the public  
5 interest", which is arguably the same as what appears in  
6 the statute.

7 But I'm sympathetic to the view that, if  
8 it appears in the statute, we don't really need it in the  
9 rule anyways.

10 CHAIRMAN HONIGBERG: We have the other  
11 sections of the rule, and the Nixon Peabody comment  
12 doesn't touch on those. So, I mean, if the rest of the  
13 rule is still fine, we can take out that "suspension" and  
14 just rely on the statute, if we need -- if we find that  
15 suspension would be in the public interest, correct?

16 MR. WIESNER: You would have the  
17 authority under the statute, whether or not it's repeated  
18 in some way in the rules.

19 CHAIRMAN HONIGBERG: All right. Shall  
20 we take it out on the grounds that it's not needed,  
21 because it's completely covered by a relevant statute?

22 All right. I see nodding heads. Thank  
23 you, Commissioner Rose.

24 Next comment.

1 MR. WIESNER: This is an interesting  
2 comment from the AMC and other -- well, I think it's just  
3 from the AMC, actually. Part of it seems to echo the  
4 conversation we had in a couple of meetings ago, where we  
5 described the formulation for the criteria for findings  
6 regarding "unreasonable adverse effects". And, I think we  
7 decided to go with consideration of factors, rather than  
8 specific findings on the record, "yes" or "no". And, so,  
9 perhaps the initial formulation that appears in the  
10 introductory language in Subparagraph (a) is not something  
11 that we would consider, the Committee would consider,  
12 consistent with that prior determination.

13 But, then, we get into the substance of  
14 what is to be considered, and this appears on Page 47,  
15 where we have language that says "In making its finding,  
16 the committee shall consider:", these are considerations  
17 that I don't believe are covered in the existing language,  
18 and might be deemed appropriate by the Committee for  
19 inclusion in this section, in order to provide greater  
20 specificity as to what should be considered in making the  
21 determination.

22 (Short pause for members to review  
23 comments provided.)

24 CHAIRMAN HONIGBERG: Does anyone have

1 any thoughts or comments on this? Director Muzzey.

2 DIRECTOR MUZZEY: I'm searching through  
3 a third document as well, because we also heard from this  
4 same commenter on July 23rd in regard to this section.  
5 Where they recognize our ongoing rulemaking efforts, and  
6 have made some changes to their original, what I believe  
7 are there earlier comments. In looking at Page 4 in that  
8 July 23rd document, it seems they're now concurring with  
9 Items (1) through (8), except for Item (6).

10 So. I'm wondering if we should be  
11 looking at those updated comments, as opposed to their  
12 earlier comments?

13 So, my question for Attorney Wiesner is,  
14 in our chart, on Page 46, do you know whether, at Pages 46  
15 and 47, are those the AMC's comments from earlier or --

16 MR. WIESNER: Yes. Yes. Those are the  
17 AMC comments from earlier. We have not, through this  
18 process, been specifically addressing comments that were  
19 filed after the submission deadline back in March.

20 CHAIRMAN HONIGBERG: And, I think --

21 MR. WIESNER: Although, we do have this  
22 letter, and it does speak to that section.

23 CHAIRMAN HONIGBERG: And, I think the  
24 AMC's letter, another way to characterize what they said,

1 is we -- they acknowledge that we have -- that we disagree  
2 with them about how to apply the word "criteria".

3 DIRECTOR MUZZEY: Yes.

4 CHAIRMAN HONIGBERG: And, in light of  
5 that acknowledgement, they made a new series of  
6 suggestions related to this section.

7 Attorney Wiesner, can you summarize the  
8 gist of the new version of the AMC's comment?

9 MR. WIESNER: It appears that they are  
10 proposing a change only to one section, as Director Muzzey  
11 noted. And, it would appear to heighten the standard  
12 which must be met in order for a facility to be found not  
13 to have an unreasonable adverse effect on aesthetics, and  
14 by virtue of broadening the standard that would apply.

15 I might suggest that one way to approach  
16 this is similar to I think what we decided with respect to  
17 a Wind Watch comment earlier, which is to assume that we  
18 are dealing with a sophisticated party that is likely to  
19 comment on the Draft Final Proposal, and the Committee  
20 might decide that it makes sense to wait for that  
21 additional comment to be submitted.

22 CHAIRMAN HONIGBERG: Director Muzzey.

23 DIRECTOR MUZZEY: I would support  
24 maintaining our criteria in Section 301.14(a) as they're

1 currently written. And, again, depending on our further  
2 public comment to clarify whether any of these need to be  
3 altered in any way.

4 CHAIRMAN HONIGBERG: Anyone have any  
5 different or other thoughts on that?

6 (No verbal response)

7 CHAIRMAN HONIGBERG: Seeing none.  
8 Attorney Wiesner, I'm going to suggest, in the two  
9 instances we've just flagged, with Wind Watch and with  
10 AMC, that you reach out to the individuals, so that  
11 they're aware of that decision, because I know neither of  
12 them is here right now.

13 Oh, is AMC here?

14 COMMISSIONER SCOTT: Right there.

15 CHAIRMAN HONIGBERG: Oh. I can't even  
16 see you back there.

17 DR. KIMBALL: I'm hiding.

18 CHAIRMAN HONIGBERG: So, you don't need  
19 to reach out to AMC. They're on it.

20 MR. WIESNER: I will contact Wind Watch.

21 CHAIRMAN HONIGBERG: Thank you.

22 "Criteria for Findings of Unreasonable  
23 Adverse Effects (Historic Sites)".

24 MR. WIESNER: If we can just jump back

1 again, Mr. Chairman. There are a couple of other  
2 comments. These are from Ms. Martin, I believe.

3 CHAIRMAN HONIGBERG: Oh, I'm sorry. I  
4 did not mean to skip over those.

5 MR. WIESNER: Right. And, here, there's  
6 a proposal that it be noted that, with respect to  
7 aesthetics for a transmission line, "regardless of whether  
8 it's a route already occupied by a line or not", the  
9 determination will be made regarding unreasonable adverse  
10 effects. I'm not sure that's a change which needs to be  
11 made.

12 CHAIRMAN HONIGBERG: Commissioner  
13 Burack.

14 VICE CHAIRMAN BURACK: And, Attorney  
15 Wiesner, you're saying that not -- it "doesn't need to be  
16 made", because, clearly, we would, in fact, require that  
17 kind of analysis for any transmission line, whether over a  
18 new route or on an existing route, if they were modifying  
19 it? Is that your analysis?

20 MR. WIESNER: The scope of the visual  
21 impact assessment may depend on whether you're using an  
22 existing corridor or not. But I don't believe the  
23 criteria for decision would change as a result. Would be  
24 different as a result of using an existing corridor,

1       rather than -- in other words, the requirement to find  
2       there's no unreasonable adverse effect would not change.  
3       The study that informs that decision would be looking at a  
4       smaller scope of area.

5                       CHAIRMAN HONIGBERG: Well, --

6                       MR. WIESNER: But there's not a proposal  
7       to change that.

8                       CHAIRMAN HONIGBERG: But it would also  
9       be a situation where you take -- you take the situation as  
10      it exists, and you compare it to what it would be if the  
11      facility were built. So, it's just a different  
12      application of the same question. "Is there an  
13      unreasonable adverse effect by putting a new 100-foot  
14      tower somewhere, versus putting 100-foot tower where a  
15      30-foot tower currently exists? You have to answer the  
16      question "is there an unreasonable adverse effect?", but  
17      you just have to start from a different baseline.

18                      MR. WIESNER: Yes. I mean, if the  
19      intent of this comment is to say "even though there's a  
20      70-foot tower already there, you need to pretend it's not  
21      there, and analyze the 90-foot tower as if it were being  
22      built in a brand-new corridor, with nothing already  
23      there", then I'm not sure that that's something that the  
24      Committee would take on.

1                   But, if it's -- if the intent is to say  
2 "the standard" --

3                   CHAIRMAN HONIGBERG: I don't think it  
4 means that. I don't think that's what that could possibly  
5 mean.

6                   MR. WIESNER: In which case, I come back  
7 to, it's probably not required to include this.

8                   CHAIRMAN HONIGBERG: Commissioner Scott.

9                   COMMISSIONER SCOTT: I'm not in favor of  
10 either of the changes. And, regarding the route of  
11 transmission that's already there, I would direct anybody  
12 so interested back to our comments on "cumulative  
13 impacts", and we already agreed that we'd be looking at  
14 how these things interact together anyway. So, I think  
15 we're clearly already there. I don't think this is  
16 necessary language.

17                   CHAIRMAN HONIGBERG: Does anyone want to  
18 make an argument that any of this language should be  
19 included?

20                   (No verbal response)

21                   CHAIRMAN HONIGBERG: It would appear  
22 not.

23                   Now, we can move on, I believe, to the  
24 "Criteria for Findings of Unreasonable Adverse Effect on

1 Historic Sites".

2 MR. WIESNER: And, I believe we changed  
3 this provision again, as we discussed earlier, based on  
4 the comments that were received from the Preservation  
5 Alliance and the National Trust, and Director Muzzey's  
6 proposed language.

7 I would point out that I think what  
8 appears here as Paragraph (5), as proposed by the Various  
9 Energy Companies, may not be a concept that is fully  
10 captured by the language that was previously approved, and  
11 we may want to consider it here.

12 And, on the other hand, this is a  
13 reference to whether the certificate, as issued, should  
14 include a condition requiring continuing consultation  
15 under the 106 process. And, I believe that is fairly  
16 common to include such a condition in certificates issued  
17 by the Committee.

18 So, one question would be, is this the  
19 appropriate place for that to be included, if it even  
20 needs to be included?

21 CHAIRMAN HONIGBERG: Thoughts or  
22 comments on this section? Director Muzzey.

23 DIRECTOR MUZZEY: I would suggest that  
24 we look at this language as we have with -- in a

1 consistent way with other suggestions as to what should be  
2 included in the certificate as a condition. And, that  
3 it's not necessary here, in light of our previous  
4 discussions.

5 CHAIRMAN HONIGBERG: Does anyone have  
6 any other or different thoughts regarding this?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: It would appear  
9 not.

10 MR. WIESNER: And, on the right-hand  
11 side, we have an AMC comment, which essentially, and,  
12 again, this goes back to their March comments, basically  
13 the formulation of how the criteria should read. And,  
14 again, I would suggest that we've already adopted a  
15 formulation more consistent with the Initial Proposal,  
16 which is factors, rather than findings based on the  
17 record.

18 And, the final comment that appears  
19 below is the Preservation Alliance's comment regarding  
20 "interested parties", and I think we've already addressed  
21 that and decided we would go with "consulting parties".

22 CHAIRMAN HONIGBERG: "As defined".

23 MR. WIESNER: "As defined".

24 CHAIRMAN HONIGBERG: All right. Is

1 there any other thought or comment on that page?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Seeing none.

4 "Additional Criteria Relative to Wind  
5 Energy Systems - 301.16".

6 MR. WIESNER: On the left-hand side,  
7 this is again a comment of the Preservation Alliance.  
8 That change has already been made.

9 And, so, it looks like we're down to the  
10 final comment, which is Dr. Ward's comment, regarding the  
11 effects of cumulative impacts of wind development, and  
12 potential effects, both aesthetic and in terms of their  
13 affect on the electric grid and ISO dispatch.

14 CHAIRMAN HONIGBERG: I think we've  
15 talked about "ISO dispatch" in the past. I mean, I think  
16 we have to be comfortable that the engineers who run the  
17 Grid know how to do this. And, are not going to allow a  
18 wind turbine in New Hampshire to blow up the Northeast  
19 Power Grid. But I think we need to assume that. If we  
20 don't, we have many other problems to deal with.

21 (Short pause for members to review the  
22 comment provided.)

23 CHAIRMAN HONIGBERG: Anybody have any  
24 thoughts or comments on the other aspects of Dr. Ward's

1 suggestion?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Does anybody think  
4 we should add any of this language? Director Muzzey.

5 DIRECTOR MUZZEY: We have talked a great  
6 deal about "cumulative impacts" and how we may be handling  
7 them in the rules. I find it difficult to comment on this  
8 very specific language without our redrafted rules in  
9 front of us that address this.

10 So, my recommendation at this point  
11 would be for us to see how that's redrafted in our rules,  
12 and then we may be able to comment better on it.

13 CHAIRMAN HONIGBERG: Other thoughts?  
14 Commissioner Bailey.

15 COMMISSIONER BAILEY: Or, perhaps  
16 Dr. Ward could comment again on the redrafted rules, if  
17 that -- this issue hasn't been addressed sufficiently in  
18 his opinion.

19 CHAIRMAN HONIGBERG: I have a high  
20 degree of confidence that Dr. Ward will be commenting on  
21 the next version of the rules.

22 DIRECTOR MUZZEY: I agree. Thank you.

23 CHAIRMAN HONIGBERG: Commissioner  
24 Burack.

1                   VICE CHAIRMAN BURACK: Just a question.  
2     At a prior session, the issue of a definition of  
3     "fragmentation" came up. And, I don't know whether  
4     Attorney Rose -- or, Commissioner Rose has had any chance  
5     to look at that issue at all or not?

6                   COMMISSIONER ROSE: Yes. I have had the  
7     opportunity to consult with our Natural Heritage Bureau,  
8     as well as some other interested parties, including the  
9     New Hampshire Fish & Wildlife Service. And, I'll be  
10    forwarding that onto Attorney Wiesner momentarily.

11                   And, if you'd like, I'd be happy to read  
12    what they came up with. But I think it's probably  
13    something that most people would be comfortable with, or  
14    at least Natural Heritage Bureau and Fish & Game are both  
15    comfortable with that addition.

16                   VICE CHAIRMAN BURACK: Great. Thank  
17    you.

18                   CHAIRMAN HONIGBERG: All right. So,  
19    here's what's going to happen. Two days from now, we're  
20    going to be back together again. I don't exactly remember  
21    the time. Is it 1:00 on Thursday?

22                   MR. WIESNER: I believe it's noon.

23                   CHAIRMAN HONIGBERG: Is it noon? Okay.  
24    And, we're going to be going over a revised draft that the

1 intention of which is to have incorporated the changes  
2 that we have been making as we have been going along.

3 The goal will be to adopt a revised  
4 version of the rules on Thursday. We may do what we did  
5 back in December, I think it was, which is to say, we're  
6 going to adopt a particular provision with a modification  
7 that Attorney Wiesner is going to make to it, based on the  
8 discussion that takes place. So, we have some little  
9 flexibility, as long as we appropriately authorize a  
10 change, that change can be made.

11 We're going to file that revised draft  
12 with Legislative Services, and we're going to schedule a  
13 public comment hearing on it. Based on the responses to  
14 our *doodle.com* poll, it looks like the only time we can do  
15 that is going to be Tuesday, September 15th, in the  
16 morning, starting at 9:00. So, if you haven't already  
17 blocked out that time, please do so.

18 After that, we will -- there will be a  
19 period of time for written comments to be submitted. It  
20 will be a relatively short period of time, following the  
21 public hearing, but there will be an opportunity for the  
22 public to submit written comments. We will then need to  
23 have another meeting. And, we will be sending out another  
24 *doodle.com* poll to get that meeting scheduled, in late

1 September, where we will need to adopt whatever revisions  
2 we need to make, so that they can be filed with the  
3 Administrative Rules people, to get onto their agenda for  
4 the middle of October.

5 How did I do, Attorney Wiesner?

6 MR. WIESNER: That sounds perfectly  
7 reasonable, and is consistent with, I think, the  
8 abbreviated schedule that we need to follow.

9 CHAIRMAN HONIGBERG: Does anyone have  
10 any questions or comments at this time?

11 MR. IACOPINO: Did you say "noon" on the  
12 15th?

13 CHAIRMAN HONIGBERG: I don't know what I  
14 said.

15 COMMISSIONER SCOTT: 9:00 a.m.

16 VICE CHAIRMAN BURACK: 9:00 a.m.

17 CHAIRMAN HONIGBERG: 9:00 a.m., yes. On  
18 the 15th, I said "in the morning", starting at 9:00.

19 All right. Thank you all for how  
20 carefully you went through all of this. This was a long  
21 slog, and it took many months. I know we had a lot of  
22 people who were very interested in this. They will  
23 continue to be interested in this, and I'm sure we will be  
24 hearing from them.

1                   We will do our best to make it  
2 consistent -- make the new version consistent with what  
3 the -- with the decisions that have been made. And, to  
4 the extent that they're not, we will fix it as best we  
5 can.

6                   Commissioner Scott moves we adjourn;  
7 Commissioner Burack seconds. Any further discussion?

8                   CHAIRMAN HONIGBERG: Seeing none. All  
9 in favor, say "aye"?

10                   (Multiple members indicating "aye".)

11                   CHAIRMAN HONIGBERG: Any opposed?

12                   (No verbal response).

13                   **(Whereupon the meeting was adjourned at**  
14 **12:15 p.m., and the meeting to reconvene**  
15 **on August 27, 2015, commencing at**  
16 **12:00 p.m.)**

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