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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

July 6, 2015 - 9:09 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

DAY 1
Morning Session only

In re: **SITE EVALUATION COMMITTEE:**
DOCKET NO. 2014-05: Petition
for Jurisdiction over a Renewable
Energy Facility by Antrim Wind,
LLC, and Others.

PRESENT:

SITE EVALUATION COMMITTEE:

Chrmn. Martin P. Honigberg (Presiding as Chairman of SEC)	Public Utilities Commission
Dir. Eugene Forbes, Designee	DES-Water Division
Cmsr. Robert R. Scott	Public Utilities Commission
Dir. Elizabeth Muzzey	DCR-Div. of Historical Res.
Cmsr. Jeffrey Rose	Dept. of Resources and Economic Development
Patricia Weathersby	Public Member
Roger Hawk	Public Member

Counsel to the Committee: Michael J. Iacopino, Esq.
(Brennan Lenahan)

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

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APPEARANCES: **Reptg. Antrim Wind, LLC:**
Barry Needleman, Esq. (McLane, Graf...)
Patrick Taylor, Esq. (McLane, Graf...)
Henry Weitzner (Walden Green Energy)
Jack Kenworthy (Antrim Wind Energy)
David Raphael (LandWorks)

Reptg. Counsel for the Public:
Mary Maloney, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office
Jean Vissering

Reptg. the Antrim Board of Selectmen:
Justin Richardson, Esq. (Upton & Hatfield)
Michael Genest, Chairman
John Robertson, Selectman
Gordon Webber, Selectman

Reptg. the Antrim Planning Board:
Christopher Condon, Chairman

Reptg. Audubon Society:
David Howe, Esq.
Carol Foss

**Reptg. Harris Center for Conservation
Education:**
James Newsom

Reptg. the Schaefer family:
Brenda Schaefer, *pro se* (Abutters Group)

Reptg. the Wind Action Group:
Lisa Linowes

Reptg. Lorraine C. Block & Richard Block:
Richard Block, *pro se* (Non-Abutters Group)
Lorraine Carey Block, *pro se* (Non-Abutters...)

 Charles Levesque, *pro se* (Non-Abutters Group)

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APPEARANCES: (C o n t i n u e d)

Dr. Fred Ward, *pro se* (Non-Abutters Group)

Elsa Voelcker, *pro se* (Non-Abutters Group)

Annie Law, *pro se* (Non-Abutters Group)

Robert Cleland, *pro se* (Non-Abutters Group)

Janice Duley Longgood, *pro se* (Abutters Group)

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 DAVID RAPHAEL**

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: We're going to get
3 started. Good morning. This is the Site Evaluation
4 Committee's Subcommittee, which is hearing Docket Number
5 2014-05, a Petition of Antrim Wind Energy asking the SEC
6 to take jurisdiction over a proposed project in Antrim.

7 Before we go any further, we'll have the
8 members of the SEC who are here today or the designees who
9 are here introduce themselves. My name is Martin
10 Honigberg. I'm the Chair of the Public Utilities
11 Commission, by statute, that also makes me the Chair of
12 the Site Evaluation Committee.

13 COMMISSIONER SCOTT: I'm Bob Scott. I'm
14 a Commissioner with the New Hampshire Public Utilities
15 Commission.

16 DIRECTOR MUZZEY: Elizabeth Muzzey,
17 Director of the Division of Historical Resources within
18 the Department of Cultural Resources.

19 MS. WEATHERSBY: Patricia Weathersby,
20 public member.

21 COMMISSIONER ROSE: Good morning. Jeff
22 Rose, Commissioner of the Department of Resources &
23 Economic Development.

24 MR. HAWK: Roger Hawk. I'm a public

1 member.

2 DIRECTOR FORBES: Eugene Forbes, Water
3 Division Director of New Hampshire DES.

4 CHAIRMAN HONIGBERG: And, Director
5 Forbes, you're here as the designee of Commissioner
6 Burack, is that correct?

7 DIRECTOR FORBES: That is correct.

8 CHAIRMAN HONIGBERG: Thank you. Let's
9 take appearances from the Parties and Intervenors who are
10 here today.

11 MR. NEEDLEMAN: Good morning, Mr. Chair.
12 I'm Barry Needleman, from the McLane Law Firm, here on
13 behalf of Antrim Wind Energy.

14 MR. TAYLOR: Patrick Taylor, from the
15 McLane Law Firm, here on behalf of Antrim Wind Energy.

16 MR. RICHARDSON: Good morning, Mr.
17 Chairman, members of the Committee. Justin Richardson,
18 with Upton & Hatfield, here for the Town of Antrim. With
19 me here at the table, I have members of the Board of
20 Selectmen, Gordon Webber, John Robertson, Mike Genest, and
21 Planning Board Chairman Chris Condon.

22 MR. NEEDLEMAN: And, if I can interrupt.
23 I'm sorry, I should have introduced the folks that are
24 sitting here with us. Next to Mr. Taylor is David

1 Raphael, one of our witnesses who you'll meet a little bit
2 later; next to Mr. Raphael is Jack Kenworthy, from Antrim
3 Wind Energy; and also with us is Henry Weitzner from
4 Walden Green Energy.

5 CHAIRMAN HONIGBERG: Who's in the back
6 row?

7 MR. NEWSOM: James Newsom, with the
8 Harris Center for Conservation Education.

9 CHAIRMAN HONIGBERG: Is anybody behind,
10 Mr. Newsom, who's entered an appearance or an intervenor?

11 MR. HENNINGER: Ken Henninger, a
12 Stoddard resident.

13 MS. FISH: I'm Jill Fish, of Stoddard.

14 CHAIRMAN HONIGBERG: I think neither of
15 you is an intervenor in this proceeding, is that correct?
16 You're just here to observe?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Fine. Thank you.
19 Back row back there.

20 MS. SCHAEFER: Brenda Schaefer,
21 representing the Abutters.

22 CHAIRMAN HONIGBERG: Ms. Schaefer, do
23 you need a spot at a table? Are you going to be writing
24 and taking notes?

1 MS. SCHAEFER: Not right off. I'm not
2 really representing any -- I mean, not going to be talking
3 or anything, but --

4 CHAIRMAN HONIGBERG: Okay.

5 MS. SCHAEFER: I can sit here. That's
6 fine.

7 CHAIRMAN HONIGBERG: Fair enough. Other
8 intervenors who are back there?

9 MS. VOELCKER: Elsa Voelcker,
10 Non-Abutter.

11 MR. CLELAND: Robert Cleland,
12 Non-Abutter.

13 MS. LAW: Annie Law, Non-Abutter
14 Intervenor.

15 MS. LINOWES: I'm Lisa Linowes,
16 representing the Wind Action Group.

17 MR. HOWE: David Howe, representing New
18 Hampshire Audubon. And, also with me is Carol Foss, a
19 biologist with New Hampshire Audubon.

20 MR. WARD: I'm Fred Ward. I'm a
21 non-abutter, a Stoddard resident, and a meteorologist.

22 MS. MALONEY: Mary Maloney, from the
23 Attorney General's Office, Counsel for the Public. And,
24 with me is Jean Vissering, who is a visual assessment

1 expert.

2 MS. CAREY BLOCK: Lorraine Carey Block,
3 Non-Abutter.

4 MR. BLOCK: Riched Block, Non-Abutter.

5 MR. LEVESQUE: Charles Levesque,
6 Non-Abutter.

7 CHAIRMAN HONIGBERG: The procedural
8 order in this regarding the interventions granted the
9 interventions of a group of Non-Abutters and directed that
10 one would be speaking for the group. Who will be speaking
11 for the group of Non-Abutters?

12 MR. BLOCK: That will be me.

13 CHAIRMAN HONIGBERG: Thank you, Mr.
14 Block. There was only one Abutting Intervenor, is that
15 correct, and that's Ms. Schaefer?

16 MS. SCHAEFER: I will be here all day.
17 But Jan Longgood will be speaking this afternoon and
18 tomorrow.

19 CHAIRMAN HONIGBERG: And, Ms. Longgood
20 is not here yet, is that right?

21 MS. SCHAEFER: No. She will be here at
22 noon.

23 CHAIRMAN HONIGBERG: All right. So,
24 does -- do any of the parties want to make any kind of

1 opening at this point to outline their positions, before
2 we start taking testimony? And, if you choose to do so,
3 that wouldn't preclude you from making any kind of
4 statement later, but I'm going to ask you to keep it
5 really brief, if you choose to make an opening at this
6 point.

7 MR. NEEDLEMAN: Mr. Chair, we didn't
8 prepare an opening. We didn't think you would receive
9 one. So, we'll pass for now.

10 CHAIRMAN HONIGBERG: Anybody?

11 MR. RICHARDSON: Mr. Chairman, the Town
12 of Antrim submitted a memorandum. And, I assume the
13 Committee members have received that.

14 CHAIRMAN HONIGBERG: I know it came in.
15 I'm sure everybody has it. Ms. Linowes?

16 MS. LINOWES: Mr. Chairman, the Wind
17 Action Group filed a response to the memorandum. I was
18 hoping that that was received.

19 CHAIRMAN HONIGBERG: That one I'm not so
20 sure about, Ms. Linowes. Hang on one second.

21 MS. LINOWES: It was e-mailed Saturday
22 afternoon.

23 CHAIRMAN HONIGBERG: Oh, I'm sure that
24 we don't have it then. Absolutely confident we don't have

1 it. Do you have it with you?

2 MS. LINOWES: I do. I have one copy. I
3 did not bring copies for all the members.

4 CHAIRMAN HONIGBERG: All right. What
5 we'll do then, it's making its way through the system now,
6 I'm sure. What we'll do at a break is we'll get a copy
7 from you and have it distributed to everyone.

8 MS. LINOWES: Okay. Thank you very
9 much.

10 CHAIRMAN HONIGBERG: There was also, I
11 know, an objection to the Town's memorandum of law or a
12 motion to strike the memorandum of law, and the Town
13 objected to that motion. That motion to strike is denied,
14 essentially for the grounds stated by the Town. It is a
15 memorandum of law, it is not testimony, and will not
16 become part of the evidence of this. It's just their
17 legal arguments, like anyone else can make legal
18 arguments, about the standards here.

19 Are there any other preliminary matters?
20 Ms. Maloney.

21 MS. MALONEY: Yes. I just wanted to say
22 that I do intend to file a response memorandum. But,
23 also, it was going to include part of the testimony --
24 anticipated testimony today. So, I'd just ask the

[WITNESS PANEL: Kenworthy~Raphael]

1 Committee's indulgence to allow me to finish it tonight,
2 and I can submit it tomorrow?

3 CHAIRMAN HONIGBERG: I don't think we
4 need to rule on that. I understand your position, what
5 you plan on doing.

6 Any other preliminary matters?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: All right. Seeing
9 none, Mr. Needleman, you want to proceed?

10 MR. NEEDLEMAN: Yes, please. We'd like
11 to ask Mr. Kenworthy and Mr. Raphael to come to the stand.
12 And, I have copies of their testimony. Do you need that
13 or is that already in the record?

14 CHAIRMAN HONIGBERG: That is already in
15 the record. I expect most everyone brought it with them.
16 Does anyone need copies of their prefiled testimony?
17 Director Forbes does.

18 (Atty. Needleman distributing
19 documents.)

20 CHAIRMAN HONIGBERG: All right. Go
21 ahead, Mr. Needleman.

22 MR. NEEDLEMAN: Do you want to give him
23 copies of exhibits?

24 CHAIRMAN HONIGBERG: I'll leave that to

[WITNESS PANEL: Kenworthy~Raphael]

1 you.

2 (Brief off-the-record ensued regarding
3 the marking of exhibits.)

4 (The documents, as described, were
5 herewith marked as **Exhibit AWE 1** and
6 **Exhibit AWE 2**, respectively, for
7 identification.)

8 MR. NEEDLEMAN: All right. So, AWE 1 is
9 Mr. Kenworthy's prefiled testimony. AWE 2 is
10 Mr. Raphael's prefiled testimony.

11 (Whereupon **John (Jack) B. Kenworthy** and
12 **David Raphael** were duly sworn by the
13 Court Reporter.)

14 **JOHN (JACK) B. KENWORTHY, SWORN**

15 **DAVID RAPHAEL, SWORN**

16 **DIRECT EXAMINATION**

17 BY MR. NEEDLEMAN:

18 Q. And, Mr. Kenworthy, if I could start with you. Could
19 you please state your name and business title for the
20 record.

21 A. (Kenworthy) My name is Jack Kenworthy. I'm the CEO of
22 Eolian Renewable Energy and an Executive Officer of
23 Antrim Wind.

24 Q. And, do you have Exhibit 1 in front of you, which is a

[WITNESS PANEL: Kenworthy~Raphael]

1 copy of the prefiled testimony that you submitted in
2 this docket, is that correct?

3 A. (Kenworthy) Yes, I do.

4 Q. And, do you have any factual changes you want to make
5 to that testimony?

6 A. (Kenworthy) No.

7 Q. Do you adopt and swear to that testimony here today?

8 A. (Kenworthy) Yes.

9 Q. Mr. Raphael, could you please state your name for the
10 record.

11 A. (Raphael) My name is David Raphael. I'm sorry. My
12 name is David Raphael.

13 Q. And, where do you work?

14 A. (Raphael) I work at LandWorks, in Middlebury, Vermont.

15 Q. And, do you have in front of you a copy of Antrim
16 Exhibit Number 2, which is your prefiled testimony in
17 this matter, is that correct?

18 A. (Raphael) I do, yes. That's correct.

19 Q. Do you have any factual changes you want to make to
20 that testimony?

21 A. (Raphael) No, I do not.

22 Q. Do you adopt that testimony today and swear to it?

23 A. (Raphael) I do.

24 MR. NEEDLEMAN: Mr. Chair, the witnesses

[WITNESS PANEL: Kenworthy~Raphael]

1 are available for cross-examination.

2 CHAIRMAN HONIGBERG: Mr. Richardson.

3 MR. RICHARDSON: Thank you, Mr.

4 Chairman.

5 **CROSS-EXAMINATION**

6 BY MR. RICHARDSON:

7 Q. Mr. Kenworthy, if I may start with you. I'd like to
8 show you, just so it's part of the record, I only
9 intend to ask one question about it, the Site
10 Evaluation Committee's decision in the 2012 case,
11 2012-01. You're obviously familiar with that.

12 MR. RICHARDSON: And, why don't we mark
13 this as -- would this be "AWE 3"? And, I have copies
14 available here, if any of the parties need one or the
15 Committee does.

16 CHAIRMAN HONIGBERG: I suspect everyone
17 needs one, Mr. Richardson, because none of know what it is
18 you're about to ask him about.

19 MR. RICHARDSON: Okay. No, that's fine.
20 That's fine. It's really one very brief -- this is the
21 Site Evaluation Committee's decision in the last
22 proceeding on the merits.

23 (Atty. Richardson distributing
24 documents.)

[WITNESS PANEL: Kenworthy~Raphael]

1 (The document, as described, was
2 herewith marked as **Exhibit AWE 3** for
3 identification.)

4 CHAIRMAN HONIGBERG: Mr. Richardson, --
5 MR. IACOPINO: Do you have copies for
6 the Committee?

7 (Atty. Richardson distributing
8 documents.)

9 BY MR. RICHARDSON:

10 Q. I'd like to go right to the Conclusion, if we may,
11 Page 70 of 71. And, do you see, under the heading
12 "Conclusion", that first paragraph, where it says "The
13 Subcommittee's decision is not a determination that a
14 wind energy facility should never be constructed in the
15 Town of Antrim or on the Tuttle Hill/Willard Mountain
16 ridgeline. The decision is based solely on the
17 information provided regarding the specific facility
18 presented in this docket. A different facility may be
19 adequately suited to the region." What did that mean
20 to you?

21 A. (Kenworthy) Well, I think, in part, this is -- we
22 interpreted this to mean that a reconfigured facility
23 may be able to satisfy the concerns that were
24 identified in the 2012-01 docket. And that, on a

[WITNESS PANEL: Kenworthy~Raphael]

1 re-application, that we could bring that facility
2 before the Site Evaluating Committee.

3 Q. But this decision, obviously, denied the approval that
4 Antrim Wind had sought, right?

5 A. (Kenworthy) Yes. It did.

6 Q. So. Why not just appeal that determination?

7 A. (Kenworthy) Well, I think there is a lot of uncertainty
8 around an appeal of a decision such as this. And, it
9 seemed that, based on the record in the proceedings in
10 2012 and the comments that we received from the Site
11 Evaluation Committee, that the more appropriate path
12 would be to go forward and make changes to the project
13 and bring a new application before the Committee.

14 Q. In fact, some of the changes you are proposing here
15 were actually proposed in that prior proceeding, right?

16 A. (Kenworthy) Some of the changes that are included in
17 this newly reconfigured project were proposed in our
18 motion for rehearing and our motion to reopen the
19 docket in 2012, which was, yes, which was denied by the
20 Committee.

21 Q. And, were you allowed to present those changes?

22 A. (Kenworthy) Well, they were presented in our written
23 motions, but they -- ultimately, those changes were not
24 considered by the Committee, which denied the motions.

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[WITNESS PANEL: Kenworthy~Raphael]

1 Q. Okay. What was your understanding of why those motions
2 were denied?

3 MS. MALONEY: I'm going to object. I
4 think that the Committee decision speaks for itself. I'm
5 not sure of the relevance of Mr. Kenworthy's
6 understanding?

7 CHAIRMAN HONIGBERG: Mr. Richardson.

8 MR. RICHARDSON: The relevance, as I'll
9 have the witness explain when I ask my next question, is
10 that the ruling of the Committee was that a new
11 application would be "reviewed *de novo*". And, I wanted to
12 ask him if that was taken into account in his
13 decision-making not to appeal the prior decision.

14 MS. MALONEY: Well, I disagree that the
15 ruling of the Committee was to "take a new application *de*
16 *novo*". The ruling of the Committee was to deny the
17 Application. You're talking about the SEC decision.

18 CHAIRMAN HONIGBERG: Mr. Richardson, I
19 think you asked him "why didn't he file an appeal?"

20 MR. RICHARDSON: Uh-huh.

21 CHAIRMAN HONIGBERG: He gave you an
22 answer to that question. And, now, I've actually
23 forgotten now the question that you asked, the pending
24 question.

[WITNESS PANEL: Kenworthy~Raphael]

1 MR. RICHARDSON: I believe I've
2 forgotten as well. Where I'm going with this is that the
3 Committee did, in fact, make a ruling that "an application
4 would be subject to review *de novo*". And, I have copies
5 here for the Committee as well.

6 CHAIRMAN HONIGBERG: That sounds like a
7 legal argument. And, I'm not sure how this witness is
8 going to help you with that?

9 MR. RICHARDSON: I wanted to ask him if
10 he relied on that ruling in his decision-making.

11 CHAIRMAN HONIGBERG: You can ask him
12 that.

13 MR. RICHARDSON: Okay.

14 BY MR. RICHARDSON:

15 Q. Mr. Kenworthy, --

16 MR. RICHARDSON: Let's mark this
17 document. I believe we're up to "AWE 4" now. And, this
18 is the Committee's -- it's issued September 10, 2013.
19 It's called "Order on Pending Motions".

20 CHAIRMAN HONIGBERG: Now you need to
21 wait for --

22 MR. RICHARDSON: Actually, I was going
23 to do the handing out here.

24 (Atty. Richardson distributing

[WITNESS PANEL: Kenworthy~Raphael]

1 documents.)

2 (The document, as described, was
3 herewith marked as **Exhibit AWE 4** for
4 identification.)

5 CHAIRMAN HONIGBERG: Mr. Richardson, you
6 may proceed.

7 MR. RICHARDSON: Sure.

8 BY MR. RICHARDSON:

9 Q. Mr. Kenworthy, do you have Page -- let's start with
10 Page 11 of -- it's the last page of the Order on
11 Pending Motions. Do you have that in front of you?

12 A. (Kenworthy) Yes.

13 Q. Okay. And, do you see the top paragraph -- why don't
14 you read that top paragraph from the beginning with
15 "Subcommittee to review" -- or, excuse me, the sentence
16 starts on the previous page, where it says "A
17 distinction must be made between a request".

18 A. (Kenworthy) Excuse me. It says "A distinction must be
19 made between a request which would require the
20 Subcommittee to review new evidence and a request which
21 would materially change the original Application and
22 would require the Subcommittee to conduct an extensive
23 re-review of the entire Application. Although
24 reopening of the record is permissible under the first

[WITNESS PANEL: Kenworthy~Raphael]

1 set of circumstances, it is unacceptable under the
2 second. Here, the Applicant seeks to introduce new
3 evidence which would materially change the original
4 Application" -- sorry, there's no word "new" in there.
5 "Here, the Applicant seeks to introduce evidence which
6 would materially change the original Application and
7 would require extensive *de novo* review as opposed to a
8 full consideration of the issues presented at the
9 hearing."

10 Q. Thank you. Thank you. So, what was your understanding
11 of what would happen after that hearing closed and you
12 didn't appeal?

13 A. (Kenworthy) Well, I think it was our understanding that
14 we would have an opportunity that we would be able to
15 submit those changes as proposed in a new complete
16 application to the Subcommittee, which would then be
17 reviewed *de novo*.

18 Q. And, how was that taken into account in your decision
19 to appeal or not appeal, if at all?

20 A. (Kenworthy) Well, I think --

21 MS. MALONEY: I'm going to object. I'm
22 not sure this is relevant. You know, there is a process
23 for appeal. I mean, and Mr. Kenworthy was represented by
24 counsel. Obviously, whatever motivated him not to appeal

[WITNESS PANEL: Kenworthy~Raphael]

1 the final judgment of this Committee is somewhat
2 irrelevant.

3 CHAIRMAN HONIGBERG: Mr. Richardson, are
4 you inviting the witness to give all of the reasons why
5 they concluded that the orders directed them to do
6 something? Because one of those reasons might include
7 advice they received from counsel. And, I have a sneaking
8 suspicion that there's going to be an objection from the
9 people in front of you if you start asking him for all of
10 the reasons that he did what he did.

11 MR. RICHARDSON: No, no. I'm simply
12 trying to figure out what role the Committee's ruling that
13 the changes proposed in the prior Application would be
14 subject to *de novo* review in a new application was taken
15 into account and whether it was relied on. I'm
16 effectively laying the foundation for this proceeding.
17 And, also, because the Committee made the ruling, I think
18 they're entitled to rely on that ruling. And, that's the
19 judicial estoppel argument in the memorandum that we
20 filed.

21 MS. MALONEY: Again, I want to renew
22 my -- maintain my objection. If he starts talking about
23 his motivation as to why or reasons why he didn't appeal,
24 I am going to ask about advice that he got from counsel,

[WITNESS PANEL: Kenworthy~Raphael]

1 and I think I have a right to. There is a procedure for
2 someone to appeal a final decision of this Committee to
3 the Supreme Court. That did not occur. I can't accept a
4 half answer from him that he's only going to tell what
5 suits him. I get to ask all the questions.

6 CHAIRMAN HONIGBERG: Mr. Needleman, you
7 want to weigh in on this?

8 MR. NEEDLEMAN: Only to the extent that
9 I'm happy to have Mr. Kenworthy answer, as long as the
10 answer doesn't contain advice he received from counsel.
11 To the extent anybody does inquire about that, I would
12 object to that.

13 CHAIRMAN HONIGBERG: And, Ms. Maloney
14 has got a pretty good argument here. If he's asked for
15 the reasons he did something, and one of those reasons is
16 "advice of counsel", are you going to allow him to say "it
17 was advice of counsel", one of the reasons they proceeded?

18 MR. NEEDLEMAN: No, I don't think I can
19 allow him to do that.

20 MR. RICHARDSON: Why don't I simply
21 rephrase.

22 CHAIRMAN HONIGBERG: That sounds like a
23 good idea.

24 BY MR. RICHARDSON:

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. Mr. Kenworthy, how important was this to you, this
2 language concerning "de novo review"?

3 MS. MALONEY: I'm going to object. I
4 mean, Mr. Kenworthy is not an attorney. He was
5 represented by counsel. He certainly had a right to ask
6 his attorney, and I'm sure he did ask his attorney what it
7 meant. So, it's sort of a backdoor way of getting the
8 same -- getting at the same issue.

9 MR. RICHARDSON: We could be here until
10 August at this point. I mean, this is a very simple
11 question. If he answers this question, I'm effectively
12 done with this line of questioning completely.

13 CHAIRMAN HONIGBERG: Ms. Maloney may
14 not, however. Are you sure you want to ask this question?

15 MR. RICHARDSON: Yes. Absolutely.

16 CHAIRMAN HONIGBERG: You can go ahead.

17 WITNESS KENWORTHY: I'm sorry. So,
18 could you repeat the question.

19 CHAIRMAN HONIGBERG: How important was
20 this language at the bottom of Page 10 and the top of Page
21 11 to your decision not to appeal and instead to proceed
22 the way you proceeded?

23 MR. NEEDLEMAN: And, again, I just want
24 to caution my own witness not to provide any information

[WITNESS PANEL: Kenworthy~Raphael]

1 that's subject to attorney/client privilege.

2 CHAIRMAN HONIGBERG: I think the
3 question was "how important was this language?"

4 **BY THE WITNESS:**

5 A. (Kenworthy) I think the language was important to us.
6 I think it provided us with guidance that there was --
7 that the Committee believed that there was a different
8 facility that might be appropriately suited to this
9 site. And, that the changes that we had proposed in
10 our motion for rehearing and reconsideration in 2012
11 were helpful towards those ends, but were significant
12 enough that they would require a *de novo* review. And,
13 in our estimation, that was the appropriate path to go
14 forward. And, in part, that was informed based on the
15 language that we saw in this order.

16 MR. RICHARDSON: Thank you.

17 BY MR. RICHARDSON:

18 Q. So, what did Antrim Wind do in response? What was your
19 plan to move forward with a new application?

20 A. (Kenworthy) Well, I think we did what we have presented
21 in our Petition here. Which is that we made targeted
22 changes to the Project to address issues around
23 concerns related to aesthetics. And, I've set those
24 changes out in the Petition and in my testimony. Would

[WITNESS PANEL: Kenworthy~Raphael]

1 you like me to go through those?

2 Q. Well, let me ask it a different way for you. I'm
3 really looking at, obviously, you were aware that
4 Counsel for the Public's witness, Jean Vissering, had
5 identified specific changes. How did you evaluate
6 those or other changes? What was process that Antrim
7 Wind went through to figure out what to do in response
8 to the Committee's decision?

9 A. (Kenworthy) We certainly evaluated the report and the
10 testimony of Ms. Vissering, as well as the comments
11 that were made by the Committee during the proceedings.
12 And, we made changes to the Project with those in mind.
13 So that, again, is reflected in the changes we
14 presented here in our Petition.

15 Q. Okay. Why not simply make all the changes that Ms.
16 Vissering had recommended?

17 A. (Kenworthy) It was not our view that the Committee had
18 adopted those changes that Ms. Vissering had
19 recommended, or that those were kind of definitive
20 prescriptions for what would be an appropriate facility
21 in this location. So, we did take those into
22 consideration, and make extensive changes that I think
23 addressed substantively all of those categories of
24 concern. But there, you know, in our view, was not a

[WITNESS PANEL: Kenworthy~Raphael]

1 requirement to adopt wholesale each of those
2 recommended changes by Ms. Vissering.

3 Q. And, where are you in the application process now?

4 A. (Kenworthy) We are -- our application is virtually
5 complete. And, we anticipate filing it shortly after
6 the concluding of this proceedings, if the Committee
7 does, in fact, take jurisdiction.

8 Q. And, why not simply do, as some witnesses have
9 suggested, which is to file an application before the
10 Town Planning Board?

11 A. (Kenworthy) Well, I think there are a number of
12 concerns about trying to go down a local route. I
13 think, for one, the Town of Antrim does not have a wind
14 energy ordinance, which is constructed with the
15 intention of being used for the review of a project of
16 this sort. So, the Project would be required to get a
17 number of variances, certainly, a use variance, and
18 potentially also a height variance for the Project.
19 And, then, it would be required to go through site plan
20 review after those variances were received. And, I
21 think each of those is an uncertain and fairly long
22 process that's subject to multiple different levels of
23 appeal.

24 So, I think, for us, given the history

[WITNESS PANEL: Kenworthy~Raphael]

1 that this Project has in front of this Committee, and
2 the -- you know, some significant portions of the
3 Project that are similar to what they were in 2012, it
4 seemed that this is the appropriate venue for the
5 Project to be reviewed.

6 Q. Thank you. I'll turn my attention Mr. Raphael's
7 testimony at this point. Good morning, Mr. Raphael.

8 A. (Raphael) Good morning.

9 Q. In your testimony on Page 3, Line 19, I believe, if you
10 have that in front of you?

11 A. (Raphael) I do.

12 Q. You were asked whether the physical attributes of the
13 newly proposed Antrim Wind Project differ from the
14 proposed docket in 2002-01 [2012-01?] that we just
15 discussed.

16 A. (Raphael) Yes.

17 Q. And, your conclusion was "yes"?

18 A. (Raphael) That's correct.

19 Q. And, then, you were also asked about those changes and
20 their impacts on aesthetics. And, I believe you say,
21 on Page 4, on about Line 1, or just below that, "yes,
22 they have a substantial effect" on aesthetics.

23 MS. MALONEY: I'm going to object. I
24 understand this is a friendly cross, but it just sounds

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[WITNESS PANEL: Kenworthy~Raphael]

1 like a direct examination.

2 CHAIRMAN HONIGBERG: I was kind of
3 wondering what this is setting up. Do you want to give us
4 a preview as to what you really want to ask him?

5 MR. RICHARDSON: Sure. Oh, no.
6 Absolutely. So, his testimony was submitted, obviously,
7 before the Town's memorandum of law. And, he applied a
8 standard of "substantial difference". And, I wanted to
9 ask him how his testimony would or would not change under
10 the standard that we're advocating for, which is whether
11 the changes are "material".

12 CHAIRMAN HONIGBERG: Go ahead. Do you
13 understand the question?

14 WITNESS RAPHAEL: Could you just direct
15 it to me again.

16 MR. RICHARDSON: Sure.

17 BY MR. RICHARDSON:

18 Q. Well, let me start with your testimony. The standard
19 you applied, when I read correctly on Page 4, was
20 whether or not these changes were "substantial"?

21 A. (Raphael) That's correct.

22 Q. And, you concluded they were?

23 A. (Raphael) Yes.

24 Q. And, you've been through or you've heard Ms.

[WITNESS PANEL: Kenworthy~Raphael]

1 Vissering's testimony at the technical session?

2 A. (Raphael) Yes, I did.

3 Q. And, have you heard any evidence in this case that's
4 caused you to change that conclusion?

5 A. (Raphael) No, I have not.

6 Q. Now, I assume you have not read the Town's memorandum
7 of law or have you?

8 A. (Raphael) I have not.

9 Q. Okay. Well, I'll represent to you that the New
10 Hampshire Supreme Court has said that a second
11 application --

12 MS. MALONEY: I'm going to object.

13 CHAIRMAN HONIGBERG: Stop. Stop. Don't
14 ask the question that way. You'd like him to assume a
15 standard, right?

16 MR. RICHARDSON: Yes.

17 CHAIRMAN HONIGBERG: And, then you're
18 going to ask him "would his testimony change if that were
19 the standard", correct?

20 MR. RICHARDSON: Absolutely.

21 CHAIRMAN HONIGBERG: Go ahead. Ask
22 those two questions please.

23 BY MR. RICHARDSON:

24 Q. So, the court has applied a standard of whether this

[WITNESS PANEL: Kenworthy~Raphael]

1 present use would be one that materially differed in
2 nature and degree and -- from the previously applied
3 for and denied application. Do you consider these
4 changes to be "material"?

5 A. (Raphael) Yes, I do.

6 MS. LINOWES: Excuse me. Mr. Chairman,
7 I would object to that, because I believe that Attorney
8 Richardson is misrepresenting the full meaning of the
9 court's finding.

10 CHAIRMAN HONIGBERG: I think we stopped
11 him from telling us what the source of that standard was.
12 He's going to -- you all are going to make arguments about
13 what the standard is. He's going to ask the witness --
14 he's just asked the witness to "assume a standard". If
15 that's not the standard, that's not a particularly helpful
16 answer.

17 MS. LINOWES: He did say "the court
18 had" --

19 CHAIRMAN HONIGBERG: We know. We get
20 what he's doing now.

21 MS. LINOWES: Thank you.

22 BY MR. RICHARDSON:

23 Q. How would you -- let's assume that the standard is
24 "materially" -- "it materially differs in nature and

[WITNESS PANEL: Kenworthy~Raphael]

1 degree". How would you go about evaluating this
2 Project to find out if it meets that standard?

3 A. (Raphael) I would undertake a comprehensive visual
4 assessment.

5 Q. And, is that what you -- that's exactly what you did in
6 your testimony or you describe, right?

7 A. (Raphael) Correct.

8 Q. And, what would be the criteria that you would then
9 apply?

10 A. (Raphael) To assess whether or not there's been a
11 material change?

12 Q. Right. But, in terms of looking specifically at the
13 visual impact assessment, what are the criteria that
14 you would apply to figure out if the change was
15 material or not?

16 A. (Raphael) Well, we, you know, we go through a multistep
17 process that considers the sensitivity of the resource,
18 its cultural significance. And, then, we apply a
19 systematic methodology which determines what the visual
20 effect will be from the Project as proposed. And,
21 follow that up with resources that go through that
22 evaluation and come out the other end with a moderate
23 to high or high sensitivity, we then apply a viewer
24 effect evaluation, to ascertain what, you know, the

[WITNESS PANEL: Kenworthy~Raphael]

1 change in visual effect will be or what the visual
2 effect will be for the Project as proposed.

3 And, then, you know, finally, we take
4 that information and factor in various other
5 considerations to arrive at our determination as to
6 whether the Project -- what its visual effect is.

7 Q. In your opinion, would it be possible to figure out
8 whether or not these changes are material without doing
9 that type of analysis?

10 A. (Raphael) No. You really do need to look at it in
11 detail and in a comprehensive manner. Both, if you
12 will, on paper, in your analysis, using the tools that
13 are available, the comprehensive methodology, as well
14 as extensive fieldwork is necessary as well.

15 Q. And, why is that? What would you miss, if you didn't
16 do a visual impact analysis of these changes?

17 A. (Raphael) Well, first of all, you would lack a
18 systematic and defensible manner in which to assess the
19 potential impacts. You would miss the opportunity to
20 use analysis techniques that are commonly used and
21 accepted literally around the country or in the world
22 for understanding visual change. And, you would miss,
23 you know, essentially, as I said a moment ago, a
24 systematic, understandable, and I think widely accepted

[WITNESS PANEL: Kenworthy~Raphael]

1 manner in which visual change and visual impacts are
2 assessed for projects of this type.

3 Q. Thank you. I want to show you a comment, I'm not going
4 to mark this as an exhibit, because I think it will
5 come in later. But I want to get your reaction to the
6 testimony of Mr. and Mrs. Block. And, could you read
7 for me the highlighted section from Page 5 of 14 of
8 their testimony, that first sentence?

9 A. (Raphael) Sure. Okay. "What he has failed to note," I
10 think in reference to me, yours truly, "however, is
11 that, regardless of the changes to Turbines Number 9
12 and Number 10, the remainder of the installation will
13 have exactly the same visual impact that the original
14 proposal would have had."

15 Q. Thank you. Let me stop you right there.

16 A. (Raphael) Sure.

17 Q. Is that statement accurate, in your view?

18 A. (Raphael) No.

19 Q. And, why is that?

20 A. (Raphael) Because it won't have exactly the same visual
21 impact. The visual impact has been significantly
22 reduced.

23 Q. Uh-huh. Also, on Page 5, I believe Mr. Block says, if
24 you follow me, "the aesthetic impact of the new

[WITNESS PANEL: Kenworthy~Raphael]

1 configuration will be absolutely identical." Do you
2 see that?

3 A. (Raphael) Yes, I do.

4 Q. What's your thought on that conclusion?

5 A. (Raphael) Again, from the work we've done, both in the
6 office and the field, that is not true, in my
7 estimation. That it is not going to be identical.
8 That there has been a reduction in the visual effects
9 proposed by the Project.

10 Q. Turn to Page 6 of the testimony please. And, also
11 highlighted there for you, I believe you'll see a
12 section where Mr. Block says that "the images have been
13 modified". Do you see that?

14 A. (Raphael) Yes, I do.

15 Q. Could you read that to the Committee please.

16 A. (Raphael) It says "in every instance, the image of each
17 of the nine turbines represented on DR-3(b), the
18 proposed 9-turbine layout has been modified, resulting
19 in less contrast between the turbine and the sky and
20 the appearance that they would be less visible, similar
21 to the effect of haziness."

22 Q. Okay. Let me, before I ask you whether you agree with
23 that statement, did you modify those images?

24 A. (Raphael) No. We prepared simulations and photographs,

[WITNESS PANEL: Kenworthy~Raphael]

1 but we didn't alter any images from what they were
2 originally.

3 Q. And, so, what is -- what's your response to that
4 comment then?

5 A. (Raphael) It's not true. I mean, it's -- the images
6 have not been modified. So, it's not true.

7 Q. Do you have those images in your -- with your testimony
8 in front of you?

9 A. (Raphael) I do not, unless they're -- no, I do not, I
10 believe.

11 Q. Okay. Well, let me, before we leave Mr. Block's
12 testimony then -- they're not attached --

13 A. (Raphael) Oh. Are they attached? Oh.

14 Q. No, to your prefiled testimony. You have your prefiled
15 testimony?

16 A. (Raphael) I'm sorry. Yes, they are. Excuse me.
17 Forgive me.

18 Q. Okay?

19 A. (Raphael) They are here. Yes.

20 Q. So, could you look at the images he refers to and just
21 tell me what those show?

22 A. (Raphael) They show both existing conditions and then
23 proposed conditions with the Project turbines simulated
24 into the photograph.

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. Uh-huh. And, --

2 A. (Raphael) And, when we do the simulations, certainly
3 follow, you know, it is a simulation, so, obviously,
4 we're showing a photograph of something that has not
5 been built. But in no way do we ever alter the
6 photographs to make the Project look less prominent or,
7 you know, have a greater or lesser visual impact, if
8 you will. The photos remain the same. The simulation
9 is what is applied to the photograph. And, that's done
10 through a multistep technique to, you know, accurately
11 as possible represent what the proposed Project and the
12 associated turbines and clearing and road network to
13 serve those turbines will look like once constructed.

14 Q. Now, the last question about Mr. Block's testimony on
15 Page 6, I believe he uses the word "deceitful" in one
16 section. Could you read that please.

17 A. (Raphael) Yes. "The new LandWorks photos are far more
18 deceitful with so much haze and fog effect applied so
19 as to make the turbines almost invisible."

20 Q. Uh-huh. And, what was the exhibit numbers that he's
21 referring to?

22 A. (Raphael) DR-4(b), I believe, and DR-4(c).

23 Q. Uh-huh. Now, I looked at those over the weekend. And,
24 I noticed that DR-4(c), could you turn to that and tell

[WITNESS PANEL: Kenworthy~Raphael]

1 me what that is? Should be the last page of your
2 testimony there.

3 A. (Raphael) Exhibit --

4 Q. Let me do this. Let me show you --

5 A. (Raphael) Okay. Please. Thank you.

6 Q. -- the copy that I have.

7 MR. RICHARDSON: And, why don't we mark
8 this one as an exhibit.

9 (Brief off-the-record discussion ensued
10 regarding the marking of the document.)

11 CHAIRMAN HONIGBERG: On the record now.
12 What is it you want to have marked?

13 MR. RICHARDSON: His testimony has
14 exhibits that say that the "Photo simulations should be
15 viewed in full color and 11" by 17" format." And, that's
16 on DR-4(c). And, it's the last page. It's "Figure A7-B".
17 So, I printed them out in that size, just so that they
18 could be part of the record for anyone who wanted to see
19 them as they were intended to be reviewed.

20 CHAIRMAN HONIGBERG: But that's as it
21 was filed by Antrim Wind, is it not?

22 MR. RICHARDSON: He has an eight and a
23 half by eleven copy there.

24 CHAIRMAN HONIGBERG: Let me ask

[WITNESS PANEL: Kenworthy~Raphael]

1 Mr. Needleman this, or I'm not sure who at the table would
2 know. When the filing that was made in this docket would
3 have the original size, full-size pictures, would it not?
4 I don't have it in front of me, but --

5 MR. NEEDLEMAN: I honestly can't
6 remember whether we filed it as 8 by 11 or 11 by 17.

7 CHAIRMAN HONIGBERG: All right.
8 Let's --

9 MS. MALONEY: We just received the eight
10 and a half by eleven, so --

11 CHAIRMAN HONIGBERG: All right. Then,
12 let's mark the full size, because it appears that people
13 haven't seen it.

14 So, now, you may proceed.

15 MR. RICHARDSON: Sure.

16 CHAIRMAN HONIGBERG: But let's let
17 Mr. Patnaude do his marking and get that completed before
18 you ask any questions.

19 (The set of 11x17
20 photographs/photosimulations, as
21 described, was herewith marked as
22 **Exhibit AWE 5** for identification.)
23 (Brief off-the-record discussion ensued
24 regarding Exhibit AWE 5.)

[WITNESS PANEL: Kenworthy~Raphael]

1 CHAIRMAN HONIGBERG: Ms. Maloney, do you
2 have an objection you want to place on the record?

3 MS. MALONEY: Yes. I guess I object
4 that counsel for the Town didn't provide copies. I mean,
5 if it's so important that he has to mark it as a separate
6 exhibit, and he has to have the Committee see the 11 by 17
7 copies, and none of the other Parties got, including
8 Counsel for the Public, the 11 by 17 copies, then I think
9 he should provide copies to the entire -- all the parties.
10 I mean, if it's that important that he has to draw the
11 distinction and introduce it then make -- you know, then
12 we should have copies of those. He should have provided
13 copies for everybody.

14 CHAIRMAN HONIGBERG: That's a very good
15 point. And, what we're going to do is we're going to take
16 a five minute break, and everybody is going to have a
17 chance to look at the full-size copies. And, then, we'll
18 come back and Mr. Richardson can ask his questions. So,
19 it's five minutes to 10:00. We'll be back here at ten
20 o'clock.

21 (Whereupon a recess was taken at 9:55
22 a.m. and the hearing resumed at 10:03
23 a.m.)

24 CHAIRMAN HONIGBERG: Ms. Maloney, you

[WITNESS PANEL: Kenworthy~Raphael]

1 look like you wanted to say something?

2 MS. MALONEY: Well, yes. I just want to
3 know how much farther we're going to go into the actual
4 details of his Visual Assessment, because Mr. Raphael
5 submitted testimony, which he said addressed the changes
6 to the facility. He did not previously -- and, I believe
7 he previously testified that the visual assessment he
8 conducted was not conducted to address changes, it was
9 just a visual assessment. And, as you'll note, it wasn't
10 submitted as an exhibit in the first instance. If he had
11 done this to address the "substantial change" or "material
12 change", whatever change there is, then it should have
13 been submitted as an exhibit in the first instance. And,
14 I think there's a difference. Because we can get into the
15 weeds here of the actual Visual Assessment, and we will be
16 here longer than two days.

17 But, in terms of the entire -- as I
18 said, his Visual Assessment and his previous testimony was
19 that was done as if it was just a new project. It wasn't
20 done simply to address the changes between the last
21 project and then this project.

22 So, to the extent we get into it right
23 now, and I do want to ask him some questions about the
24 Visual Assessment, but I didn't intend to get into the

[WITNESS PANEL: Kenworthy~Raphael]

1 actual details of it. I can, but, as I said, we'll be
2 here a long time. So, I just -- I'm not sure you
3 understand what --

4 CHAIRMAN HONIGBERG: I don't think
5 Mr. Richardson intends to go much further with this, for
6 some of the reasons you just said.

7 MS. MALONEY: Okay.

8 CHAIRMAN HONIGBERG: My sense is what
9 he's trying to do is have the witness respond to some of
10 the criticisms of his testimony. And, one of the ways
11 he's about to do that is to say that "well, if you look at
12 the full-size picture, it does what I'm -- does what I say
13 it's doing."

14 MS. MALONEY: Right. And, I think he
15 prefaced those questions with questions about "if you're
16 going to address the material change, if that was the
17 standard?" And, I could have objected at that time, and I
18 thought I'd wait till I crossed, because my recollection
19 of his testimony and his prior testimony at the technical
20 session was "visual assessment was done as a visual
21 assessment of the Project. It wasn't done specifically to
22 address the changes."

23 CHAIRMAN HONIGBERG: We can take -- we
24 can take that up as it comes. I don't think that's where

[WITNESS PANEL: Kenworthy~Raphael]

1 he's going.

2 Mr. Richardson, go ahead.

3 MR. RICHARDSON: That's precisely
4 correct.

5 MR. NEEDLEMAN: May I?

6 CHAIRMAN HONIGBERG: Mr. Needleman.

7 MR. NEEDLEMAN: I just want to clarify.
8 For the record, I disagree with that description of the
9 purpose of this assessment. Mr. Raphael specifically
10 testified a short while ago that he believes it was
11 necessary to conduct such an assessment in order to make
12 this evaluation. And, so, his assessment underpins his
13 testimony.

14 CHAIRMAN HONIGBERG: And, to the extent
15 that becomes a significant area of dispute, we can take it
16 up when it becomes a significant area of dispute.

17 Mr. Richardson.

18 MR. RICHARDSON: Thank you.

19 BY MR. RICHARDSON:

20 Q. Mr. Raphael, with the full-size exhibits in front of
21 you, and let's start with 4, DR-4, which are the ones
22 that were described as "deceitful", I want you to just
23 tell me what each of those is. And, explain to me why
24 it is what it shows and why it is or is not deceitful.

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Raphael) Yes. DR-4(a) is an "Existing Condition"
2 photograph, from the summit of Bald Mountain, looking
3 northerly in the direction of the proposed Project.
4 Photograph -- or, Simulation 4(b) takes that same
5 photograph and simulates the proposed Project in that
6 photograph. So, that would be a simulation.
7 Attachment and Exhibit DR-4(c) was not prepared by my
8 office, or yours truly, and is a simulation of the
9 Project as previously proposed with the 10-turbine
10 layout, versus the previous simulation that we did,
11 which is the 9-turbine layout.

12 And, I guess I just would like to take
13 this opportunity to make the point that the Existing
14 Conditions photograph is the existing conditions
15 photograph. We do not alter, change any of these
16 photographs to be deceitful. And, I take exception to
17 that. Because we -- there's no benefit for us to
18 deceive anyone as to what this Project will look like.

19 And, in fact, just for the record, when
20 I founded LandWorks 30 years ago, one of the principles
21 on which we founded the firm and that we've stuck to
22 for 30 years is integrity. You know, I learned a long
23 time ago, when I was a kid, crime doesn't pay. So, I
24 think we all appreciate that. And, therefore, there's

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1 no benefit whatsoever for us to portray the simulation
2 in any way other than as accurately as we can, based on
3 the photos that we took in the field.

4 Now, yes. The photos might be on a
5 cloudy day or a bright, sunny day. We don't plan that
6 ahead. In fact, I think it's important to take
7 photographs and simulations under a variety of
8 conditions, because the visibility of the Project
9 changes under those conditions.

10 Q. What's the role of a photograph --

11 (Court reporter interruption.)

12 MR. RICHARDSON: Could you shift over
13 one, so I can see David? Thank you.

14 BY MR. RICHARDSON:

15 Q. What's the role of the photograph in a visual impact
16 assessment? Is to show exactly what it looks like?
17 Or, how much weight is it given in a visual impacts
18 assessment?

19 A. (Raphael) The original photograph on which a simulation
20 is based needs to be and is exactly as the camera would
21 take it and tries to represent what the eye would see
22 by use of certain lenses. And, then, of course, as we
23 discussed earlier, you know, the 11 by 17 held, you
24 know, a foot and a half from your eyes will give you a

[WITNESS PANEL: Kenworthy~Raphael]

1 sense of what that actually looks like in the field.

2 Q. Right. But what is the purpose of the photo? Is to
3 show exactly what the proposed facility would look like
4 to the eye? Or, what -- does the photograph serve some
5 other purpose?

6 A. (Raphael) No. It serves the purpose of trying to
7 provide a simulation of what the Project will look like
8 to the most accurate level possible.

9 Q. But I guess what I'm trying to get at is is that, if a
10 photo isn't perfect, that doesn't mean, or that the
11 weather conditions could be different on a different
12 day, does that mean that the visual impacts assessment
13 is somehow flawed?

14 A. (Raphael) Not at all. As I mentioned a moment ago, I
15 think it's actually valuable to be able to see a
16 project like this under a variety of conditions. I
17 mean, I think those of us who live in New England,
18 northern New England, know how changeable the weather
19 is. And, know that, from season to season, and morning
20 to afternoon, the Sun is in a different position, the
21 cloud cover is different. You know, we found, for
22 example, that wind energy projects are not visible in
23 some locations in northern New England almost
24 50 percent of the time due to inclement weather, cloud

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1 conditions and the like.

2 So, we try to provide -- we don't select
3 the particular day. And, in fact, we also, I should
4 add, select vantage points that oftentimes represent
5 the "worst case" view. You know, this is a wonderful
6 case in point. Bald Mountain, to get this view, you've
7 got to go down a rock face a little bit of a distance,
8 to a place that you would never really probably sit, in
9 order to capture this view at all. And, in fact, the
10 primary viewing point that this photograph is taken
11 from is set back and the Project is screened from that
12 primary viewpoint. Where one would climb Bald Mountain
13 and want to have lunch or spend some time, you can't
14 see the Project from. So, you have to creep down the
15 rock face to get out and look to your left, to the
16 north, to actually see the Project.

17 Q. And, that's DR-4 that you're referring to?

18 A. (Raphael) Yes, it is.

19 Q. And, what I -- my question is really trying to get at
20 is is that a photograph simulation isn't the only tool
21 that you would employ in a visual impact assessment,
22 correct?

23 A. (Raphael) Oh. Yes, of course.

24 Q. And, what weight do you give the photographs relative

[WITNESS PANEL: Kenworthy~Raphael]

1 to the other tools that you use in a visual impact
2 assessment?

3 A. (Raphael) You know, it is one of many tools that we
4 use. And, it's not the most critical tool. And, in
5 fact, I've always contended that simulations actually
6 skew the sense of visual impact, because you don't --
7 we don't prepare simulations from vantage points where
8 you can't see the project, because there's no
9 simulation to create. So, all these simulations
10 represent points at which you can, you know, visibly
11 see the Project potentially. And, therefore, you know,
12 perhaps maybe gives you a stronger sense of visibility,
13 rather than a lessened sense of visibility.

14 CHAIRMAN HONIGBERG: Mr. Richardson, how
15 much more do you have on the significance of visual impact
16 assessments to the evaluation of the impact of a project?
17 Because that's really not the issue, as Ms. Maloney
18 pointed out to you a few minutes ago.

19 MR. RICHARDSON: You cut me off as I was
20 about to say "my last question for you is this". So, this
21 is my last question.

22 CHAIRMAN HONIGBERG: Promise?

23 MR. RICHARDSON: I promise.

24 BY MR. RICHARDSON:

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. So, what would be the other tools that you used in this
2 assessment that you would consider more important than
3 the photographs?

4 MS. MALONEY: I'm going to object.
5 Because, once again, I understand this is friendly cross,
6 but this sounds like a direct examination. I mean,
7 basically, he's asking him to describe his methodology in
8 his Visual Assessment, which was not submitted as part of
9 an exhibit when the testimony was submitted. That none of
10 the Parties received until after the first session of the
11 technical session. And, counsel, up until last week,
12 wasn't even going to introduce it as an exhibit, and told
13 me here this morning he was going to introduce it.

14 MR. NEEDLEMAN: Let me please clarify.

15 CHAIRMAN HONIGBERG: Go ahead,
16 Mr. Needleman.

17 MR. NEEDLEMAN: The visual impact
18 assessment was produced in the end of April, after the
19 first technical session, at the request of opposing
20 parties, including Public Counsel. There was then a
21 second technical session after that, where they would have
22 had a full opportunity to question Mr. Raphael about the
23 VIA, if they chose to, and they declined to do so.

24 And, I never made representations about

[WITNESS PANEL: Kenworthy~Raphael]

1 what I would or would not do with the VIA. I hadn't
2 decided whether I would introduce it or not. And, I do
3 intend to introduce it later.

4 MS. MALONEY: Well, Attorney Needleman
5 is right. He did provide it after the first technical
6 session, and the second technical session was one week
7 away. It was virtually impossible for my expert or for us
8 to review the Visual Assessment, and it would have been a
9 waste of our time. But --

10 CHAIRMAN HONIGBERG: But everyone here
11 agrees that the visual impact assessment itself is not
12 really the subject of this. It's -- you certainly agree
13 with that, don't you, Ms. Maloney?

14 MS. MALONEY: I do.

15 CHAIRMAN HONIGBERG: And, Mr. Needleman,
16 you agree with that, don't you?

17 MR. NEEDLEMAN: On a limited basis, I
18 do. Again, the visual impact assessment, as Mr. Raphael
19 testified to, forms the basis for him to be able to offer
20 the opinions he's offering here today.

21 CHAIRMAN HONIGBERG: Okay.

22 MS. MALONEY: And, I have a nuanced
23 difference. I agree that he did form the basis, he
24 obviously had to. But it wasn't done with the purpose of

[WITNESS PANEL: Kenworthy~Raphael]

1 looking at "substantial change" or "material change". It
2 was a visual assessment.

3 MR. RICHARDSON: This is all just
4 argument at this point on, you know, what weight different
5 factors should be given. And, I think that that's all
6 fine material to go over on cross-examination. I'm just
7 trying to complete my direct, so we can keep going.

8 CHAIRMAN HONIGBERG: Well, I'm not sure
9 that's the best reason to allow you to continue at this
10 point, but I do appreciate the sentiment. I think that
11 you can ask the question that you've asked, and we all
12 understand that others are going to argue about how
13 relevant or irrelevant it is down the line, and others may
14 want to ask similar -- or, questions about similar topics
15 in their questioning of Mr. Raphael.

16 So, if you remember the question, --

17 MR. RICHARDSON: Sure.

18 BY MR. RICHARDSON:

19 Q. Well, no, it was very simple. Because the question was
20 is what other tools that you employed in your analysis
21 and in your testimony to reach your conclusions would
22 be more important than just, you know, considering
23 whether these photographs were deceitful or not
24 deceitful? What were the important factors that

[WITNESS PANEL: Kenworthy~Raphael]

1 influenced you?

2 A. (Raphael) Well, I mean, again, we use a number of tools
3 to come to our conclusions. And, that includes
4 viewshed analyses, we do 3D modeling outside of the
5 simulation process, fieldwork. We research on the Web
6 to understand cultural significance of different
7 resources. You know, all of the above are integral to
8 coming to a conclusion in our assessment.

9 MR. RICHARDSON: I can't break any
10 promises. So, that's all I have. Thank you.

11 CHAIRMAN HONIGBERG: Just as a preview
12 of the -- as a preview of the order of who's going to ask
13 questions next, so you can prepare. We're going to go to
14 Mr. Newsom; then Ms. Linowes; then Mr. Howe; Ms. Schaefer,
15 if you have questions, you're free to ask them after Mr.
16 Howe; Mr. Block; then Ms. Maloney. Then, it will be the
17 members of the Committee. And, then, if Mr. Needleman has
18 any redirect he'll want to ask, that will be his
19 opportunity to do so. So, that's the order we're going to
20 do things with these witnesses.

21 So, Mr. Newsom?

22 MR. NEWSOM: No questions.

23 CHAIRMAN HONIGBERG: That was easy
24 enough. Ms. Linowes?

[WITNESS PANEL: Kenworthy~Raphael]

1 MS. LINOWES: Thank you, Mr. Chairman.

2 BY MS. LINOWES:

3 Q. I wanted to start in response -- ask a question of Mr.
4 Kenworthy. You had stated that the reason you would
5 prefer to go through the SEC process was because, and
6 I'm paraphrasing here, the Planning Board process or at
7 least the Town process would be a long and arduous
8 process. Is that what you said?

9 A. (Kenworthy) Well, I think there was a couple of things.
10 I think the Town does not have an ordinance, so that
11 there's no kind of clearly defined manner in which to
12 go through Town review. And, so, it would require, we
13 believe, two variances and major site plan review,
14 which would lead to many different levels of appeal and
15 delay. So, I think, for those reasons, the Town -- the
16 Town pathway does not appear to be an efficient or even
17 potentially viable pathway.

18 Q. But you do acknowledge that there is a pathway. That,
19 obviously, variances are part of the state law and can
20 be granted, correct?

21 A. (Kenworthy) Variances do exist and can be granted, yes.

22 Q. And, the purpose of a variance is to allow for some
23 form of development that may be outside the limits of
24 what the existing ordinances state?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) Yes, I believe that's correct.

2 Q. And, so -- and people get variances, use variances all
3 the time. Is that true?

4 A. (Kenworthy) I don't know.

5 Q. Okay. Now, in terms of the Planning Board process,
6 which you said it would be a site plan review?

7 A. (Kenworthy) That's correct.

8 Q. Okay. And, are you aware that the State statutes limit
9 the time under which a site plan review can be
10 considered?

11 A. (Kenworthy) I was not aware of that.

12 Q. Okay. If I were to tell you that the maximum amount of
13 time that a planning board had, from the point at which
14 an application was submitted to when it made a decision
15 on it, would be 150 days, would you -- would that
16 surprise you?

17 MR. NEEDLEMAN: I'll object to the
18 question. If there's a citation somewhere that you could
19 refer us to, we would appreciate that.

20 MS. LINOWES: Yes, of course. That
21 would be RSA 76 -- excuse me, RSA 674:4.

22 MR. NEEDLEMAN: Thank you.

23 MR. RICHARDSON: And, could I just
24 clarify for the record? It's actually 676:4. And, that

[WITNESS PANEL: Kenworthy~Raphael]

1 statute is a very long one. And, it allows the applicant
2 to consent to essentially any unlimited review. I'm a
3 member or have been a member of my own planning board on a
4 matter that's before this Committee in Newington, and the
5 review was over -- it was a year. So, applicants can
6 waive the time limits.

7 MS. MALONEY: That's testimony.

8 CHAIRMAN HONIGBERG: Thank you for that
9 testimony. The question for the witness was "would it
10 surprise you if a state -- if there was a provision of
11 state law that said a planning board has a certain amount
12 of time?" How many days was it?

13 MS. LINOWES: That's good. And, he --
14 I'm sorry, Attorney Richardson is correct, it's 676. My
15 apologies.

16 CHAIRMAN HONIGBERG: But how many days
17 does it say?

18 MS. LINOWES: One hundred and fifty
19 (150) days.

20 CHAIRMAN HONIGBERG: So, the question
21 for the witness is, would it surprise you if there was a
22 state statute that said "a planning board has 150 days to
23 review a proposal"?

24 **BY THE WITNESS:**

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) No, it wouldn't surprise me. But I would
2 just add that we have experience in Antrim getting a
3 variance for a temporary meteorological tower that led
4 to litigation that took roughly two years to resolve,
5 on a much simpler, much less complicated, you know,
6 facility. It was a single temporary meteorological
7 tower.

8 So, in this case, I think, while there
9 may be some prescriptive timetables for initial review
10 of different components of the application, there's no
11 similar prescription for how long an appeal route may
12 take through the ZBA, and then up through Superior
13 Court, and potentially Supreme Court. So, I think that
14 process is contrary to what we believe is the intention
15 of the statute, which allows for efficient review of
16 energy facilities.

17 BY MS. LINOWES:

18 Q. Now, Mr. Kenworthy, to that point, if you look at the
19 schedule that you followed for the prior application,
20 you submitted that in January 2012, is that correct?

21 A. (Kenworthy) That's right.

22 Q. And, a decision came down from the Site Evaluation
23 Committee, the final decision following rehearings --
24 request for rehearings was when?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) I believe -- so, I think the deliberations
2 were in February of 2013. And, then, the final order,
3 I can't remember exactly the date, --

4 Q. I'll make it easy --

5 (Court reporter interruption - multiple
6 parties speaking at the same time.)

7 MS. LINOWES: I'm sorry.

8 CHAIRMAN HONIGBERG: I'll make it --
9 started "I'll make it easy for you", those were your first
10 words. Go ahead, Ms. Linowes.

11 BY MS. LINOWES:

12 Q. It was September 10th, 2013, was the date of the order.

13 CHAIRMAN HONIGBERG: Does that sound
14 right to you, Mr. Kenworthy?

15 WITNESS KENWORTHY: Yes. I see it here.
16 Yes. Thank you.

17 BY MS. LINOWES:

18 Q. And, had an appeal been filed on your part, or on any
19 other -- any of the other intervenors, it would have
20 added perhaps another year to that, is that possible?

21 A. (Kenworthy) I suppose that's possible.

22 Q. Okay. So, it is -- the timing, it may not necessarily
23 be shorter going through the SEC process versus the
24 time. Is that really the issue? As opposed to the

[WITNESS PANEL: Kenworthy~Raphael]

1 time going through the Town, is that really the issue?

2 A. (Kenworthy) Well, I think I've stated the issues, which
3 we see as both being the potential for substantial
4 delay in litigation, and potentially those are fatal
5 issues to a project.

6 Q. Okay. And, now, I did want to ask you, since the --
7 or, perhaps during the time when were going through the
8 proceedings here, there was -- you returned to the
9 Planning Board for two different actions, I believe.
10 One having to do with extending the permit or the time
11 on the met tower being erect -- left standing and once
12 on a subdivision, is that correct?

13 A. (Kenworthy) Yes. Those two are correct, yes.

14 Q. And, were those long and arduous processes for you?

15 A. (Kenworthy) No.

16 Q. So, did they happen in a day, in one meeting?

17 A. (Kenworthy) I believe they both did.

18 Q. Okay.

19 A. (Kenworthy) Yes, to the best of my recollection.

20 Q. So, it's not always a difficult process going through
21 the Planning Board?

22 A. (Kenworthy) Well, I think they were very, very
23 different issues. These were requesting an extension,
24 a short-term extension to a temporary meteorological

[WITNESS PANEL: Kenworthy~Raphael]

1 tower that was already installed, after a process that
2 took us two years to get through in the initial review.
3 And, the second one was for a simple subdivision
4 request, which was very straightforward.

5 Q. Okay. But the point is that people are not lining up
6 to sue the Town over everything that has to do with the
7 wind project. You're saying the statement that is in
8 the future, if you were to proceed with a project
9 before this Planning Board in the Town?

10 A. (Kenworthy) I'm not sure, was there a question?

11 Q. Yes. I'm saying, is it -- is that the case? That it's
12 not always a situation where someone is going to run
13 and sue you or the Town over issues before the Planning
14 Board?

15 A. (Kenworthy) Well, I think, in those two cases, there
16 was not litigation brought for either the temporary met
17 tower extension or for the subdivision approval. I
18 think that is true. I think, if you were to ask me
19 whether I would expect there to be litigation resulting
20 from the issuance of either one or more variances or
21 major site plan review, my answer would "yes, I would
22 expect that there would be."

23 MS. LINOWES: Mr. Chairman, I do have an
24 exhibit that I would like to enter into the record?

[WITNESS PANEL: Kenworthy~Raphael]

1 CHAIRMAN HONIGBERG: Go ahead.

2 MS. LINOWES: Thank you.

3 (Ms. Linowes distributing documents.)

4 (The set of 3 photographs was herewith
5 marked as **Exhibit WA 1** for
6 identification.)

7 MR. NEEDLEMAN: Mr. Chair, before we
8 proceed, I would like to object.

9 CHAIRMAN HONIGBERG: Go ahead.

10 MR. NEEDLEMAN: I have several bases.
11 First of all, these photos aren't identified in any way.
12 So, we don't know where they are. Second of all, no
13 context is provided for these photos. So, it's very
14 difficult to assess them. Third, we don't know whether
15 these are actual photographs or simulations. And, fourth,
16 I don't see the relevance of photographs that appear to
17 be from someplace else completely unrelated to this
18 Project.

19 CHAIRMAN HONIGBERG: Well, there's been
20 no questions asked about these, the one exhibit that's
21 been marked for identification. Before it becomes a full
22 exhibit in this record, you'll have an opportunity to make
23 that objection. But she can show the witness pretty much
24 anything she wants and ask him questions about it. It's

[WITNESS PANEL: Kenworthy~Raphael]

1 been marked for identification. So, I'm not even sure
2 that there was anything to object to yet. So, to the
3 extent that there was, we'll overrule it. But I'm not
4 sure that there was.

5 Ms. Linowes, go ahead.

6 MS. LINOWES: Thank you, Mr. Chairman.
7 If I could comment very quickly, I did e-mail --

8 CHAIRMAN HONIGBERG: Don't. You don't
9 need to.

10 MS. LINOWES: Okay.

11 CHAIRMAN HONIGBERG: That's good. Go
12 ahead.

13 MS. LINOWES: Thank you.

14 BY MS. LINOWES:

15 Q. Okay. Now, these are questions, I'm not -- most of
16 them are for Mr. Raphael, but, Mr. Kenworthy, please
17 feel free to answer them, if they're appropriate for
18 you.

19 As I recall, the revisions that were --
20 the Project now has been revised. And, it appears that
21 it, from what you said today, that the revisions are
22 made as a result of comments that you gleaned from the
23 deliberations back in 2013 by the Committee. Is that
24 correct?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) I don't think it was just the comments of
2 the Committee during the deliberations. I think it was
3 what we heard throughout the entire proceeding, in both
4 deliberations and in written orders and in other
5 information that was made available during those
6 proceedings.

7 Q. Okay. So, now, the main changes that were made to the
8 Project layout itself had to do with Turbine 10 being
9 eliminated and Turbine 9 being reduced in height, is
10 that correct?

11 A. (Kenworthy) There were several. So, Turbine 10, yes,
12 was eliminated. All of the infrastructure beyond
13 Turbine 9, leading up to Turbine 10, was eliminated.
14 Turbine 9 was reduced by approximately 45 feet in
15 height. The manufacturer of the turbine was changed,
16 which has resulted in other dimensional changes for all
17 of the turbines, including a slight reduction in height
18 for Turbines 1 through 8, a reduction in the rotor
19 diameter for all nine turbines, and a less massive
20 tower and nacelle for all turbines. So, those are all
21 physical changes that were made to the Project. We've
22 also added a landscape plan.

23 Q. Okay. I just want to talk about the turbine layout,
24 okay?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) Sure.

2 Q. So, Mr. Raphael, your -- was it your recommendation
3 that Turbine Number 9 be reduced in height?

4 A. (Raphael) It was not my recommendation.

5 Q. Okay. So, where did that come from? Where --

6 A. (Raphael) My understanding was that that -- well, I
7 don't know exactly where the turbine height
8 recommendation was made, other than a recommendation by
9 Ms. Vissering that Turbines, I believe, 9 and 10 should
10 be removed as a mitigation measure in the previous
11 docket.

12 Q. So, rather than removing, it was reduced in height, is
13 that correct?

14 A. (No verbal response).

15 Q. Okay. Now, when you look at your Exhibit 18, and it
16 was -- and, I refer back to the images that Attorney
17 Richardson had shown to you, that it appears that
18 Turbine Number 9 is already reasonably close to the
19 horizon, or at least the treeline. How much did you
20 gain by reducing it just 40 feet?

21 A. (Raphael) It depends --

22 Q. In terms of the -- and, particularly with regard to
23 Willard Pond? Sorry. Go ahead.

24 A. (Raphael) Well, in terms of Willard Pond, the reduction

[WITNESS PANEL: Kenworthy~Raphael]

1 of 45 feet and the change in turbine takes the nacelle
2 or the hub of the turbine and, from most vantage points
3 that you could see it from Willard Pond, the nacelle or
4 hub, if you will, is now below the treeline.

5 Q. Okay. And, being below the treeline is important to
6 your visualization assessment -- visual assessment, is
7 that correct?

8 A. (Raphael) I think many visual experts agree that the
9 primary visual quality, when seen from afar, of
10 turbines of this nature tend to be the tower to the
11 hub. And, that the blades or rotors, if you will, are
12 secondary, in terms of visual effect.

13 Q. Okay. And, you make that statement, I believe, on
14 Page -- now I refer to your Visual Assessment, just for
15 purposes of noting it, it's on Page 10 of your Visual
16 Assessment you make that point.

17 A. (Raphael) I don't have the Visual Assessment in front
18 of me. I would have to confirm that by looking at it.
19 But I will take your word for it.

20 Q. Okay. And, in there, you say "this map", which was
21 your viewshed map -- excuse me. I'm sorry, let me,
22 next sentence down. "It is agreed by most experts that
23 viewsheds generated from the hub provide a more
24 realistic representation of potential visibility, since

[WITNESS PANEL: Kenworthy~Raphael]

1 the view of the hub and rotor has a greater effect than
2 turbine blades because the turbine blades that rise
3 above the treeline are not typically visible or
4 dominant". Is that correct?

5 A. (Raphael) You're on Page?

6 Q. Page 10.

7 A. (Raphael) Where on Page 10 is that? Forgive me. Where
8 on Page 10 is that?

9 Q. I'm sorry. You explained, you have Exhibit 1, 2, 3,
10 and 4 denoted up in the top part.

11 A. (Raphael) Yes.

12 Q. Okay. And, it would be the middle of the paragraph for
13 Exhibit 4.

14 A. (Raphael) Thank you. Yes, I see that.

15 Q. Now, Mr. Raphael, you said just now that it's when
16 viewed at "distances". What kind of distance are we
17 talking about?

18 A. (Raphael) It varies, definitely, certainly, as I may
19 have mentioned earlier, with atmospheric conditions.
20 Depending on those conditions, it actually can be
21 within several miles. I have noticed that at, you
22 know, a distance of five to six miles, the rotors
23 certainly become much less visible and detectable. But
24 sometimes fairly close, within two miles. If, again,

[WITNESS PANEL: Kenworthy~Raphael]

1 weather conditions are such that, you know, the
2 turbines are front lit, with a white, cloud-filled sky
3 in the background, often it will be hard to detect the
4 rotors.

5 Q. So, Mr. Raphael, if you look at your Exhibit 18, where
6 you're denoting the 9-turbine layout, this would be
7 Sheet 3 of 3. I believe, but I don't know for sure, if
8 you could tell me, Turbine Number 9, is that the one
9 that is 1.62 miles away?

10 A. (Raphael) Yes, I believe so.

11 Q. And, that is the blades, just the blades sticking up?

12 A. (Raphael) Yes, it is.

13 Q. Because the nacelle is down below the treeline, is that
14 why you state in your Visual Assessment that "Willard
15 Pond will have between zero and eight turbines
16 visible", versus "zero and nine"?

17 A. (Raphael) No.

18 Q. Why do you say "zero" -- okay. Then, what turbine is
19 not visible?

20 A. (Raphael) Turbine 10 has been eliminated. So -- and it
21 depends where you are on the pond. So, at different
22 points in the pond, there are no turbines visible.

23 Q. Mr. Raphael, I believe --

24 A. (Raphael) And, at other parts of the pond, there are --

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. I believe your assessment says "zero to eight" versus
2 "zero to nine". Which turbine is not visible,
3 according to your assessment, for Willard Pond?

4 A. (Raphael) I would have to look at my viewshed maps to
5 confirm that. But I believe it probably would be
6 Turbine 9. It's either Turbine 9 or the turbine on the
7 other end of the string. But it must be Turbine 9,
8 because it's been reduced in height.

9 Q. Okay. So, you do not perceive Turbine 9 as visible
10 from Willard Pond then?

11 A. (Raphael) I never said that.

12 Q. Okay. The fact that it's below the treeline may
13 suggest that it's not visible, according to your
14 guideline?

15 A. (Raphael) No, I never said that either. I said that it
16 reduces the visual effect once the nacelle is below the
17 treeline. Certainly, as visual simulations that we've
18 created show, you will be able to see the rotor on
19 Turbine 9 from certain locations on Willard Pond.

20 Q. And, Mr. Kenworthy, what is the length of the blade?

21 A. (Kenworthy) I think we answered this question maybe in
22 response to a technical session request.

23 Q. You did. I could answer it for you.

24 A. (Kenworthy) I think it's 55 meters.

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. Okay. Which is 180 feet?

2 A. (Kenworthy) I don't know.

3 Q. Okay.

4 A. (Kenworthy) It sounds right.

5 Q. Is it 180 feet?

6 A. (No verbal response).

7 Q. Okay. And, so, --

8 A. (Kenworthy) I would just add one note, if I can.

9 Because the initial, I think, change in reducing the
10 height of Turbine 9 was a change that Antrim Wind came
11 up with, that was based, again, on information that we
12 heard in Docket 2012-01. And, in that docket, Ms.
13 Vissering also noted that she was much less concerned
14 about visibility of a blade, because the hub and tower
15 is where the mass of the turbine was. And, so, I
16 think, in our effort to address these concerns, we
17 certainly wanted to address the aesthetic impact of
18 both Turbine 9 and Turbine 10, which we believe we have
19 done, and, obviously, asked David and his firm to
20 evaluate, you know, with the information that we had
21 provided them.

22 Q. Okay. Now -- thank you for that. Mr. Raphael, in -- I
23 just want to go back again and read from your Visual
24 Assessment. It says the -- it says that the "hub and

[WITNESS PANEL: Kenworthy~Raphael]

1 rotor has a greater effect than turbine blades because
2 turbine blades that rise above the treeline are not
3 typically visual" -- "visible or dominant". Is that --
4 that's what you said? I'm sorry, this is again on Page
5 10 of your Visual Assessment.

6 A. (Raphael) Yes. That's from my testimony -- from my
7 report.

8 Q. Now, if you can turn to Page 27 of your Visual
9 Assessment, you have a photograph there from New York?

10 A. (Raphael) Yes.

11 Q. Does your statement apply there?

12 A. (Raphael) In what sense?

13 Q. You state that "the turbine blades that rise above
14 treeline are not typically visible or dominant, and the
15 difference in overall percent of visibility between hub
16 and tip of blade is usually insignificant."

17 A. (Raphael) Yes. This is not a comparable photograph,
18 though, for that, for me to make any comparison in that
19 regard, because there's no treeline here, really. You
20 know, this is a different setting. So, --

21 Q. So, in your Visual Assessment, when you say that "most
22 experts agree", are you only talking about ridgeline
23 wind energy facilities?

24 A. (Raphael) No. As I said earlier, you know, again, the

[WITNESS PANEL: Kenworthy~Raphael]

1 visibility of the rotor, the visibility of the tower,
2 and the nacelle as well, vary greatly from the vantage
3 point that you're looking at it from, the time of day,
4 the weather conditions, even the color of the turbine.

5 Q. And, I do understand that, and I know that you had
6 already stated that. We have a picture from New York
7 State of a wind project. It's not -- there is a
8 treeline there. Granted, it's -- it is a treeline.

9 A. (Raphael) It's a hedgerow. It's a hedgerow. Yes. I
10 mean, we could --

11 Q. So, if we made it --

12 A. (Raphael) We could quibble about wording. I mean, this
13 is just a different image. I mean, if you want me to
14 admit that the rotors are visible, I think I would have
15 to do that, because they're clearly visible.

16 Q. Okay. Thank you. And, I will -- I understand that
17 Attorney Needleman has objected to the photographs, but
18 I would like to show examples of photographs that have
19 been sent to me or I have -- that are readily available
20 on the website, and I could tell you their location.
21 But the first one there, this is --

22 MR. RICHARDSON: Objection. Just to
23 relevance. I'm not sure how this relates to
24 jurisdictional issues.

[WITNESS PANEL: Kenworthy~Raphael]

1 CHAIRMAN HONIGBERG: Neither do I. But
2 I don't know what she's asking yet. So, let's find out
3 what she wants to know, and then we'll find out whether
4 it's objectionable.

5 MS. LINOWES: Thank you.

6 CHAIRMAN HONIGBERG: So, does the
7 witness have the pictures that we're talking about, which
8 were marked as "WA 1"?

9 WITNESS RAPHAEL: Yes, we do.

10 CHAIRMAN HONIGBERG: Okay. Let's ask
11 the question. Let's find out what she wants to know. I'm
12 dying to know myself.

13 MS. LINOWES: Okay.

14 BY MS. LINOWES:

15 Q. I'm actually just simply asking the same question.
16 Does your -- the method you use for only identifying a
17 viewshed impact by looking at the nacelle, and not
18 including the blades, is that -- does that apply in
19 these photographs as well?

20 A. (Raphael) Well, first of all, you've misrepresented how
21 we evaluate. We don't exclude the rotor in our
22 evaluations, or the blades. The statement that you are
23 referring to originally is, again, a statement which
24 basically describes the fact that, under certain

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1 circumstances and certain distances, the rotor in a
2 view becomes negligible or less prominent. And,
3 really, what the eye is drawn to and that we typically
4 see in the landscape is the tower and the nacelle,
5 because of their shape and their form and, you know,
6 their dimensions. But I do include the entire turbine
7 in our evaluation. We do not disregard its effect or
8 its presence in the landscape. The statements that
9 you -- the statement that you're referring to basically
10 is trying to say that, over distance and under certain
11 circumstances, the rotor or blades tend to be
12 diminished in visibility, in comparison to the other
13 elements of the turbine.

14 Q. Okay. Then, let's bring it back to Antrim, and let's
15 talk about the jurisdictional question. I think, if
16 I'm -- well, let me ask you this. In some of the
17 testimony that you put forward, it does sound like
18 Willard Pond was a particular concern. You drew the
19 conclusion that Willard Pond was one of the areas that
20 the Committee was concerned about, is that correct?

21 A. (Raphael) Yes, it is.

22 Q. Okay. And, the elimination of Turbine 10 was intended
23 to specifically address that?

24 A. (Raphael) The elimination of Turbine 10, as well as the

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1 reduction of height in Turbine 9, combined represents,
2 you know, substantial change in terms of the visual
3 effect on Willard Pond.

4 Q. Okay.

5 MR. RICHARDSON: Mr. Chairman, is it an
6 appropriate time to get a ruling on whether WA 1 is in or
7 out? Because I still don't understand the relevance.

8 CHAIRMAN HONIGBERG: No. No, it isn't.
9 No, it is not. It is not a question before us at this
10 point.

11 Go ahead, Ms. Linowes.

12 MS. LINOWES: Thank you, Mr. Chairman.

13 BY MS. LINOWES:

14 Q. Now, what is the -- so, the -- I'm struggling with the
15 fact that that turbine being lowered is making a
16 difference. So, let me ask you this. What is -- what
17 is the RPMs on that turbine?

18 A. (Raphael) I don't know that off the top of my head.

19 Q. Do you know, Mr. Kenworthy?

20 A. (Kenworthy) Again, I'd have to check to be certain.

21 But I believe that these Siemens turbines rotate
22 between 13 and 15 RPMs.

23 Q. Okay. Thank you. So, at 15 RPMs, Turbine Number 9 is
24 going to spin a blade over the horizon every one and a

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1 third second? You could take my word on that.

2 A. (Raphael) That doesn't sound right, but --

3 Q. That's 45 blades a minute.

4 A. (Raphael) Okay.

5 Q. Assuming the wind is blowing.

6 A. (Raphael) Well, I'll have to take your word for it.

7 Q. And, at 13 RPMs, where every one and a half seconds a
8 new blade is going to pass by the horizon, or 39 blades
9 per minute. So, it's going to be moving and it's going
10 to be noticeable. Is that -- how do we deal with that?

11 MR. RICHARDSON: Mr. Chairman, we are so
12 far into the merits of an application that hasn't been
13 filed yet.

14 MS. LINOWES: Mr. Chairman, --

15 CHAIRMAN HONIGBERG: Mr. Richardson, it
16 ill-suits you to make that objection at this moment. She
17 can continue. I'm not sure how much longer she wants to
18 go, but I think -- I think Ms. Linowes realizes that she's
19 not going to go too deep into this, because she realizes
20 that the issue is "differences".

21 MR. RICHARDSON: And, understand, I'm
22 not trying to object to frustrate anyone. I just want to
23 get to what the issues are. And, I can't see how these
24 questions relate to what we're trying to do. That's the

[WITNESS PANEL: Kenworthy~Raphael]

1 only reason for objecting.

2 CHAIRMAN HONIGBERG: Overruled.

3 MS. LINOWES: Mr. Chairman, that is a
4 fair question. If I may, I -- oh.

5 CHAIRMAN HONIGBERG: I've already
6 overruled it.

7 MS. LINOWES: Okay. Thanks.

8 BY MS. LINOWES:

9 Q. All right. So, it will be noticeable, perhaps not from
10 what you're saying, from your Visual Assessment, but
11 it's going to be moving on the horizon?

12 A. (Raphael) Yes, it will be moving.

13 Q. And, when the wind is not blowing and it's standing
14 still, it's a 180 foot structure that potentially is
15 standing straight up?

16 A. (Raphael) Potentially, not always. It depends where
17 the blades end up. You know, usually they stand up,
18 but --

19 Q. Okay. Now, Mr. Raphael, during the technical session,
20 this was in April 23rd, and from the transcript, if
21 anyone has it front of them, it's on Page 67, Lines 8
22 through 17. I had asked you if you agreed with the
23 Committee's conclusion on whether or not the visual
24 impact was unreasonable. Do you remember my asking you

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1 that?

2 A. (Raphael) I vaguely remember.

3 Q. And, if I may, I'd like to read your response. Okay.

4 You had said --

5 MR. NEEDLEMAN: Could, before we do
6 that, could you show it to him, so he understands the
7 context of what you were talking about at the time?

8 MS. LINOWES: Sure. I don't have the
9 transcript --

10 CHAIRMAN HONIGBERG: Ms. Linowes, if you
11 have the transcript with you, why don't you bring it up.
12 You don't have the transcript?

13 MS. LINOWES: I cut-and-pasted out of
14 the transcript.

15 CHAIRMAN HONIGBERG: Let's go off the
16 record. Let's go off the record.

17 (Brief off-the-record discussion
18 ensued.)

19 CHAIRMAN HONIGBERG: All right. The
20 witness now has the transcript of the technical session.
21 And, you want to ask him about a question and answer from
22 that, is that right?

23 MS. LINOWES: That is correct.

24 CHAIRMAN HONIGBERG: Why don't you

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1 proceed.

2 MS. LINOWES: Thank you.

3 BY MS. LINOWES:

4 Q. This would be on Page 67, Lines 8 through 17.

5 A. (Raphael) I see that, yes.

6 Q. Okay. And, so, I had asked you if you agreed with the
7 Committee's conclusion that the visual impacts were
8 unreasonable?

9 A. (Raphael) Well, you know, let me qualify my comments by
10 saying that --

11 Q. But, before you qualify your comments, I'd like to get
12 your comments in the record, if I can.

13 A. (Raphael) Well, I mean, I was not party to the original
14 docket. So, --

15 CHAIRMAN HONIGBERG: Ms. Linowes, I have
16 a suggestion. Why don't you read the question and answer
17 to him and ask him if you read it correctly.

18 MS. LINOWES: Thank you.

19 BY MS. LINOWES:

20 Q. My question that I offered was "Did you agree with
21 their", the Committee's, "conclusions on unreasonable
22 visual impact?" And, your response was: "No.
23 Because, again, I don't feel as though the SEC had the
24 benefit of a comprehensive methodology to review and to

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1 make the right decision with perhaps. They made the
2 decision based on the information that they had. I
3 respect that decision. I would think they might come
4 to a different decision had they had a more
5 comprehensive and detailed analysis and methodology to
6 work with." Is that what you --

7 A. (Raphael) Yes. That reflects the testimony and my
8 response.

9 Q. Is it your testimony that both the 10-turbine and the
10 9-turbine layouts were -- are reasonable?

11 A. (Raphael) Well, again, I want to qualify, you know, I
12 don't want to answer it directly, because I never
13 analyzed the 10-turbine Project completely. But, you
14 know, based on my understanding of the information the
15 Committee had before it, I don't believe the Committee
16 had the benefit of an analysis that, from either party
17 of experts, that used a consistent methodology,
18 provided any basis, you know, with all due respect for
19 Ms. Vissering, for some of her conclusions, they were
20 just conclusions, without any reference to particular
21 analyses or, you know, detailed, step-by-step, you
22 know, method.

23 So, my feeling, I mean, I can't predict
24 what the SEC ultimately would decide. But I certainly

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1 felt that there was not available to the Committee at
2 that time an appropriate visual assessment for which to
3 make a completely informed decision. And, they had to
4 make the decision, as they said, on the record, I
5 believe, based on the information before them.

6 Q. So, if I could ask the question then again. Do you
7 believe, in what you know of the 10-turbine layout,
8 that it would have produced, it would, based on your
9 understanding of the SEC process, it would have
10 produced an unreasonable adverse effect on visual -- on
11 the aesthetics?

12 A. (Raphael) I don't believe it would have, no.

13 Q. You don't? And, you do not believe, apparently, that
14 the 9-turbine layout would produce an unreasonable
15 adverse effect?

16 A. (Raphael) That's correct.

17 Q. Okay. And, so, is it, since both projects, in your
18 understanding, would have resulted in not producing an
19 unreasonable adverse effect, at least your opinion,
20 then are the changes even material?

21 A. (Raphael) Well, clearly, the SEC made the decision,
22 again, as I stated, on the information that was
23 provided to them. There were recommendations about how
24 to potentially mitigate the Project, based on what was

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1 before the SEC, to make it a more acceptable project or
2 a permissible project. I believe those changes, which
3 are material, in my estimation, have been made.

4 Q. But, even if those changes had not been made, the
5 Project still, in your opinion, was not producing an
6 unreasonable adverse effect?

7 A. (Raphael) Based on my opinion, yes.

8 MS. LINOWES: All right. Thank you very
9 much. Thank you, Mr. Chairman.

10 CHAIRMAN HONIGBERG: Mr. Howe, do you
11 have any questions?

12 MR. HOWE: Mr. Chairman, I do not.

13 CHAIRMAN HONIGBERG: Ms. Schaefer, do
14 you have any questions you want to ask at this time?

15 MS. SCHAEFER: No.

16 CHAIRMAN HONIGBERG: That was a "no".
17 Mr. Block, do you have questions for these witnesses?

18 MR. BLOCK: Yes, I do. Give me one
19 second please. Okay. Good morning. The first questions
20 really are for Jack.

21 BY MR. BLOCK:

22 Q. Are you aware of any New Hampshire law or regulation
23 that requires a town in New Hampshire to have a
24 development-specific ordinance in place to permit a

[WITNESS PANEL: Kenworthy~Raphael]

1 project from being heard and permitted by land use
2 boards, like say a big box store or a large factory or
3 something?

4 A. (Kenworthy) Just to make sure I'm clear by your
5 question, you're asking if I'm familiar of whether
6 there's a law that requires towns to have a specific
7 ordinance for every single type of development?

8 Q. No. For certain specific large situations, such as a
9 big box store or large factory. Is there some -- and,
10 I guess I'm talking about a development-specific
11 ordinance, something that would be in place in order to
12 permit, for instance, if WalMart wants to come to town,
13 be ready for them when they do. Is that a requirement
14 for towns that you're aware of?

15 A. (Kenworthy) I don't believe so.

16 Q. Okay. Are all major projects that might be proposed to
17 a town that are not permitted, that are not already
18 within a zoning ordinance, aren't they all pretty much
19 required to go through some kind of review, such as
20 major site plans and possibly variances, as a matter of
21 course in the State of New Hampshire?

22 A. (Kenworthy) I mean, I guess I'm not sure how to
23 categorically answer that question. I think,
24 certainly, there are instances in which developments

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1 need to go through major site plan review, and
2 instances where those may also require variances.

3 Q. If a project is not represented automatically as a
4 permitted use, isn't that standard procedure, that they
5 would need to go through site plan reviews and possibly
6 variances?

7 A. (Kenworthy) No. Site plan review is necessary whether
8 it's a permitted use or not. If it is not a permitted
9 use, that is where my understanding is that it would be
10 required to get a use variance --

11 Q. Okay.

12 A. (Kenworthy) -- from the zoning board, before it could
13 come before the planning board for site plan approval.

14 Q. Okay. So, there are certain hoops that would be needed
15 to jump through if a project is proposed that is not
16 already in the zoning, that's correct?

17 A. (Kenworthy) Yes.

18 Q. Okay. Can you explain why you think Antrim Wind should
19 not have to do the same thing, should not have the same
20 requirements imposed upon you as WalMart or some other
21 major company coming to Antrim?

22 A. (Kenworthy) Yes. I actually see it very differently.
23 I think, in fact, what we're proposing is to provide a
24 much greater degree of information and disclosure to

[WITNESS PANEL: Kenworthy~Raphael]

1 this Committee under an application under New Hampshire
2 state statutes, under 162-H, than the Town of Antrim
3 would be able to require of us. The Town does not have
4 a noise ordinance, for example, that would regulate
5 noise related to wind farms. There's no standards for
6 regulating shadow flicker. There's no aesthetic
7 standards in the Town of Antrim to require us to have
8 to file information about aesthetic impacts at all.
9 So, I think it's not a question of us wanting to get
10 away with doing less. I think, in fact, what we're
11 proposing is to submit a great deal more.

12 The problem is in the process. And, I
13 think, in the process of having to go through a local
14 review, which the Planning Board, I think, and the
15 Selectboard both agree is not the appropriate path for
16 this Project, the Site Evaluation Committee here in New
17 Hampshire exists for that explicit purpose, and has
18 seen this case, or significant portions of it, in
19 Docket 2012-01. So, I think, for all of those reasons,
20 we believe this is the appropriate venue for
21 jurisdiction.

22 Q. Okay. It's my understanding that the Site Evaluation
23 Committee is set up in order to take jurisdiction for
24 any project that is 30 megawatts or greater. Is that

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1 correct?

2 A. (Kenworthy) Or at the discretion of the Committee or
3 after being petitioned.

4 Q. Okay. And, if a project is 30 megawatts or greater,
5 then it automatically falls to the SEC for permitting?

6 A. (Kenworthy) Right.

7 Q. If a project is under that, then it is up to the
8 discretion of the SEC. That's correct?

9 A. (Kenworthy) Yes.

10 Q. Okay.

11 A. (Kenworthy) That's my understanding.

12 Q. Is it possible for a project that is under
13 30 megawatts, in your opinion, to be turned down by the
14 SEC anyplace in the state, and therefore has to go --
15 either not happen or go through some kind of local
16 permitting?

17 A. (Kenworthy) Yes. I believe it's happened. I think, if
18 you're asking me "have projects been denied
19 jurisdiction by the Committee?"

20 Q. I'm not saying "have". I'm saying, if the law is set
21 up that under 30 the SEC has discretion, then isn't it
22 possible that an under 30-megawatt project might have
23 to go through some other channel, such as local
24 control?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) Yes.

2 Q. Okay. Let me ask about, just you brought up earlier
3 about the met tower, you were talking about the local
4 issues we had in town, and you described the two years
5 of litigation and things before that got settled.

6 Isn't it true that you installed your met tower long
7 before the court case was established? My memory was
8 -- my memory was that the met tower went up on
9 Thanksgiving weekend, the court case wasn't decided
10 until the following March. So, you did not have to
11 wait -- or, not that "you didn't have to", you did not
12 wait the full two years to do that. You put the tower
13 up at first, and then there was a controversy about
14 that. Is that not correct?

15 A. (Kenworthy) Well, I don't know that there was a
16 controversy about it. We installed our meteorological
17 tower once we got a valid permit, and that permit was
18 then appealed. And, it went back to the Zoning Board,
19 and then it went to Superior Court. I don't remember
20 the exact timeline. But it's true that we weren't
21 waiting to install the tower during the pendency of
22 that appeal. I don't think that there are similar
23 circumstances at all, however. I think --

24 Q. Now, --

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Kenworthy) In the case -- if I could just finish
2 please. In the case of a wind permit -- wind farm
3 permit process, there's certainly really no
4 circumstance under which we would be commencing
5 construction of that wind farm while there were pending
6 appeals at various levels for Town permits.

7 Q. The controversy there was whether or not the permit
8 itself was valid if it was under appeal. And, I think
9 that's --

10 A. (Kenworthy) And it is.

11 Q. -- enough said about that now. Let me go to your
12 prefiled testimony. The top of Page 4, one of the
13 changes you are proposing in your configuration which
14 represents a "substantial difference", according to
15 you, unquote, is a reduction of 38 inches in height for
16 Turbines Number 1 through Number 8. Are you seriously
17 suggesting that a reduction of, in this case, less than
18 two-thirds of 1 percent in height is "substantial"?

19 A. (Kenworthy) No. That statement refers to a number of
20 preceding statements. Which includes the removal of
21 Turbine 10, the significant reduction in height of
22 Turbine 9, and the smaller change in height of Turbines
23 1 through 8. And, so, that final sentence representing
24 that those are "a substantial difference in the

[WITNESS PANEL: Kenworthy~Raphael]

1 configuration of the proposed facility" is picking up
2 all of those changes.

3 Q. All right. And, continuing in your testimony on Page
4 5, Lines 2 to 4, you state that "an updated Shadow
5 Flicker Analysis", which I believe you have provided to
6 parties, is that correct? The updated Shadow Flicker
7 Analysis? I don't think --

8 A. (Kenworthy) I don't think we have.

9 Q. I don't think it's been submitted, but I did see a copy
10 of it. It was submitted by your lawyers.

11 A. (Kenworthy) Maybe it has.

12 CHAIRMAN HONIGBERG: So, what's the
13 question, Mr. Block?

14 BY MR. BLOCK:

15 Q. The question is, you state that the updated Shadow
16 Flicker Analysis will show that "the flicker effect of
17 the facility will be diminished" from that of the
18 original 2012 proposal. Is that correct?

19 A. (Kenworthy) Yes.

20 Q. If I understand this correctly, shadow flicker, by
21 definition, really, is only an issue when it involves
22 inhabited structures, is that correct? In other
23 words, --

24 A. (Kenworthy) Yes. Inside buildings.

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. -- in uninhabited woods, it's not an issue, is that
2 correct?

3 A. (Kenworthy) That is correct.

4 Q. Okay. Since neither Turbine 10, which no longer exists
5 in this plan, nor Turbine 9 were planned near any
6 residences, then it seems to me that the only shadow
7 flicker effects possible that come from Turbines Number
8 1 through Number 8. Does that sound reasonable?

9 A. (Kenworthy) I don't know. I didn't perform the
10 analysis. We had Epsilon perform that analysis. And,
11 so, --

12 Q. Well, is Turbine 9 near any residences, as far as you
13 know?

14 A. (Kenworthy) No residence is closer than half a mile to
15 any turbine. I think, whether Turbine 9 has a
16 residence at approximately half a mile, I'd have to
17 check.

18 Q. I will say that, as I look at the map, I do not see any
19 residences anywheres near Turbine Number 9. So, I'm
20 thinking that Turbines Number 1 through 8 are the ones
21 at issue in the -- in a shadow flicker study. And, I'm
22 not even sure 7 or 8 is, it's the ones at the northern
23 end of the Project that are the most at issue. But the
24 question is --

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1 A. (Kenworthy) I really can't corroborate any of those
2 statements.

3 Q. Okay. The question is, is this "diminished effect of
4 shadow flicker" therefore due to this 38-inch reduction
5 in height of those turbines?

6 A. (Kenworthy) Again, I think there's a number of factors
7 that would have gone into a reduction in shadow flicker
8 effect. One of them is the removal of Turbine 10. So,
9 we have 10 percent fewer turbines. The reduction in
10 height of Turbine 9, the significant reduction of
11 Turbine 9 will also have an effect. The rotor diameter
12 has gone from 116 meters to 113 meters. So, regardless
13 of the height difference between Turbines 1 through 8,
14 you have a 3-meter reduction in rotor diameter, which
15 is going to be taken into account in the Shadow Flicker
16 Analysis. So, I think all those factors will come into
17 play in leading to the reductions.

18 Q. Okay. I can accept the change in blade length, that
19 makes sense. Turbines 9 and Turbines 10 do not factor
20 into the shadow flicker. So, it's just the blade
21 length might make sense. I was wondering, when you say
22 we can expect it "will be diminished", can you quantify
23 how much diminution we can expect?

24 A. (Kenworthy) To the best of my recollection, I think

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1 that the maximum shadow flicker effect that the current
2 report has found at any residence will be ten hours and
3 ten minutes per year. I don't recall what the number
4 was in the 2012 docket.

5 Q. Do you know how that differs from the previous study?

6 A. (Kenworthy) No.

7 Q. Okay. Also, at Page 5 of your testimony, Line 4, you
8 state "Ground clearing and grading amounts will be
9 reduced significantly". Later on, on Page 8, Line 16,
10 you state "the turbine array has been materially
11 altered". So, I'd like you to, if you can, explain,
12 other than eliminating the access road between Turbine
13 9 and what had been Turbine 10, which is an obvious
14 change, how different will the overall ground plan and
15 the road layout be from the original proposal?

16 A. (Kenworthy) I'm sorry, Mr. Block. Can you point me to
17 where on Page 8?

18 Q. Page 8, Line 16. There's a statement that "the turbine
19 array has been materially altered".

20 A. (Kenworthy) Yes.

21 Q. So, other than eliminating the access road between
22 Turbine 9 and what had been 10, which is an obvious
23 change, --

24 A. (Kenworthy) Uh-huh.

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. -- how different will the overall ground plan and road
2 layout for the rest of it be from the original?

3 A. (Kenworthy) The remainder of the road layout and ground
4 plan will be essentially the same.

5 Q. Okay.

6 A. (Kenworthy) And that was obviously by intent, given the
7 limited concerns about those portions of the facility.

8 Q. Okay. That's fine. In your testimony, going back to
9 Page 3, I'll bring this up again, Lines 14 through 16.
10 You are, in this case, referring to the change in
11 Turbine Number 9, "the tower and nacelle of the turbine
12 (the two most significant visual impacts) now sit below
13 the treeline, virtually eliminating the visual presence
14 of the turbine from Willard Pond." Can I assume you
15 don't mean that the trees in that area are over 261
16 feet tall, the height of the nacelle? Can you explain
17 exactly what you did mean by that?

18 A. (Kenworthy) I certainly don't mean that the trees are
19 over 261 feet tall. I think what we're referring to is
20 that, obviously, you're viewing Turbine 9 in this
21 location, from Willard Pond, at a much lower elevation.
22 You're looking up at a ridgeline that is blocking that
23 turbine, including the trees, such that now, from that
24 viewpoint, the nacelle and tower are no longer visible.

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1 And, David could probably answer that
2 more artfully than I just did.

3 Q. All right. I believe, I don't have the exact quote,
4 but I think Mr. Raphael made virtually the same
5 statement in there. And, may I suggest that perhaps it
6 would have been more accurate to say that the nacelle
7 and tower would "appear" below the treeline, or
8 something about the angle of view or so. It's just
9 several times you've talked about it being "below the
10 treeline", and to me that sounds like you're trying to
11 get the wrong message across.

12 A. (Kenworthy) By no means. I think, from viewing the
13 Turbine 9 at Willard Pond, I see your point, it will
14 appear below the treeline. But it will, in fact, be
15 below the treeline from that viewing angle. So, I
16 understand your question.

17 Q. All right. You mentioned the additional 100 acre
18 conservation easement that you propose. I believe it's
19 on Page 16 -- 6, rather, Page 6, Lines 14 to 16.
20 You're stating "Conserving 100 percent of the ridgeline
21 dramatically increases the total value of the overall
22 conservation package by ensuring perpetual protection
23 on the entire ridge and also by providing continuity
24 among all the conserved parcels." Doesn't that

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1 contradict the determination by the SEC in its
2 September 10th Order on Pending Motions, if anybody has
3 that, at the bottom of Page 5, in direct response to
4 your attempt to include this additional easement in
5 your appeal, "The Subcommittee concluded that the
6 offered mitigation plan was not of a sufficient nature
7 or quality to adequately offset the unreasonable
8 adverse impacts of the Project on the aesthetics and
9 viewsheds in the region."

10 A. (Kenworthy) I'm sorry. Can you refer me one more time
11 to where that is coming from in the SEC Order?

12 Q. Page 5, on the September 10th Order on Pending Motions.

13 A. (Kenworthy) And, sorry, where on Page 5?

14 Q. It says "at the bottom". I have it here someplace,
15 but --

16 CHAIRMAN HONIGBERG: Mr. Block, what's
17 the date of the document, the order that you're talking
18 about?

19 MR. BLOCK: I believe it says "September
20 10th Order on Pending Motions".

21 CHAIRMAN HONIGBERG: What year?

22 MR. BLOCK: I'm sorry. That would be
23 2013, I believe.

24 MS. MALONEY: It's the bottom paragraph.

[WITNESS PANEL: Kenworthy~Raphael]

1 WITNESS KENWORTHY: Thank you. I see it
2 now. Thank you.

3 **BY THE WITNESS:**

4 A. (Kenworthy) I do see that. It's not clear to me if
5 what's being referred to here includes the new 100 acre
6 conservation lands or not. My understanding is that
7 the -- that new mitigation was offered as additional
8 material in a motion for rehearing and to reopen the
9 record. Those motions were denied prior to any of the
10 changes that were proposed in those motions being
11 considered by the Committee.

12 BY MR. BLOCK:

13 Q. It is -- I believe you're correct on that. But I do
14 believe that this, and I may have found it here, that
15 this motion -- the Order on Pending Motions, September
16 10th, 2013, was the finding on that appeal. And, that
17 you had indeed submitted that additional 100 acre offer
18 for conservation easement as part of your appeal. And,
19 the reaction of the SEC, of the Committee and the Chair
20 at this point, was that this additional offer was not
21 sufficient to adequately offset, and that was part of
22 the reason that your appeal was denied.

23 A. (Kenworthy) Yes, I don't know. I think the way that we
24 understand this is, and I'd have to read back through

[WITNESS PANEL: Kenworthy~Raphael]

1 this entire Order. And, in other words, I don't see
2 where it's specifically addressed here, maybe it is.
3 Does this specifically address all of the proposed
4 changes that we had made?

5 Q. I believe it mentions them in there. It mentions the
6 offers you made, and said -- it talked about the ones
7 that you did submit at that point. And, again, I have
8 some things highlighted here, but not others.

9 A. (Kenworthy) And, Mr. Block, I would, to have a better
10 sense of the complete document, I'd have to go back and
11 read it again. But I would say that our belief is that
12 the actual proposal that was made in our motions was
13 denied before the merits of the proposal were
14 considered, on account of the fact that they were --
15 the changes were too significant and would require a *de*
16 *novo* review.

17 Q. Well, this may be an issue for later discussion. But I
18 know that you had a letter agreement between the Town
19 and the Applicant, and that's mentioned in here. And,
20 there were -- so, and specifically the letter agreement
21 for the \$40,000 donation to the Town of Antrim is
22 mentioned, and this is on the top of Page 8, and
23 specifically includes saying "The letter agreement
24 itself is not sufficient cause for rehearing or

[WITNESS PANEL: Kenworthy~Raphael]

1 consideration." So, I do believe all of these factors
2 were part of the deliberation for whether or not your
3 motion for rehearing was granted.

4 MR. NEEDLEMAN: Mr. Chair, I would just
5 object at this point. The document can speak for itself,
6 and these are legal conclusions that the Committee can
7 draw on its own.

8 MR. BLOCK: That's fine. I'll move on.
9 That's okay.

10 BY MR. BLOCK:

11 Q. Getting ahead of myself here. We mentioned the \$40,000
12 gift just now. The \$40,000 gift to the Town of Antrim
13 for mitigation of the visual effects on Gregg Lake was
14 part of that petition for rehearing. I'm correct on
15 that, right?

16 A. (Kenworthy) Yes, it was.

17 Q. Okay. How was that figure determined? Was that your
18 offer or was that a selectmen's request?

19 A. (Kenworthy) That was Antrim Wind's offer.

20 Q. Can you recall how you came up with that figure?

21 A. (Kenworthy) I don't specifically recall. I could --
22 you know, my belief is that what we were trying to
23 accomplish with that figure was to provide a sum that
24 would be sufficient to accomplish the purposes, which

[WITNESS PANEL: Kenworthy~Raphael]

1 were to enhance the recreational and aesthetic
2 experience in the vicinity of the Gregg Lake Beach
3 area. And that, you know, a figure of \$40,000 would
4 enable, you know, substantial enough work to be done to
5 accomplish those ends.

6 Q. Okay. I do remember at one point, I believe that you
7 suggested that one of the things that money might be
8 used for was an educational kiosk. And, my question
9 would be, how would you envision that that would
10 mitigate the visual impact on Gregg Lake?

11 A. (Kenworthy) I don't recall that I specifically
12 suggested that.

13 Q. Okay.

14 A. (Kenworthy) I'm not saying that I didn't. I don't
15 specifically recall. I think there's been a lot of
16 different discussions. At the end of the day, I think
17 that agreement made clear that the ultimate use of the
18 funds are really at the Town's sole discretion.

19 Q. Yes, I believe it was. Jack, at this point I've known
20 you for over six years now. In your testimony, Page 1,
21 Line 22, right kind of at the beginning of your
22 testimony, you described yourself as having "extensive
23 project development experience". I looked at Eolian's
24 website. And, you described your company there as

[WITNESS PANEL: Kenworthy~Raphael]

1 currently developing 150 megawatts in four wind
2 projects in New Hampshire, Vermont, and Maine. But,
3 when you click "Projects", only three projects are
4 listed, however; Antrim Wind, Peaked Wind Power, in
5 Orland, Maine, and Waldo Community Wind, in Frankfort,
6 which together total at the most 56 megawatts. Can you
7 explain that discrepancy?

8 A. (Kenworthy) Sure. The website is not up-to-date.
9 That's the explanation. But we are developing a
10 project in Pennsylvania that is an initial phase of 70
11 megawatts and an additional second phase of 70
12 megawatts.

13 Q. Okay. According to a November 5th, 2014 article in the
14 Bangor Daily News, Frankfort had had a highly
15 restrictive wind ordinance in place since 2011, which
16 was upheld in a 362 to 224 vote this past November,
17 which the article says "effectively canceled any
18 prospects for your project there." Is that or any of
19 your projects operational?

20 A. Waldo Community Wind is no longer being pursued. As
21 you state, there are regulations that are prohibitive
22 there. So, we're no longer pursuing that project.

23 And, to answer your other question, no,
24 all of our projects are in development.

[WITNESS PANEL: Kenworthy~Raphael]

1 Q. So, since you established Eolian Renewables in 2009,
2 have you installed and operated any wind turbines
3 anywhere?

4 A. (Kenworthy) No, we have not.

5 Q. Okay. Let me go on to some questions directed towards
6 Mr. Raphael. And, actually, the first question or two
7 I might direct to both of you, if I can find my notepad
8 here. Here it is. I was thinking about this in terms
9 of some discussions that were going on before earlier.
10 I'm a professor of visual communication. I'm very
11 aware of marketing. You're -- Mr. Raphael, you're a
12 visual studies expert. Jack, you're a marketing
13 person, I'm sure a lot of what you have to do involves
14 that. Okay? If I or someone wanted to put something
15 up to get people's attention, somehow, to make people
16 notice my message, wouldn't large size, movement,
17 flashing lights, and noise all work together to draw
18 attention to that?

19 A. (Kenworthy) I guess I don't -- the hypothetical
20 question, I don't have a context for it. I suppose.

21 Q. Okay. Then, I guess the question is, won't these same
22 factors cause most any wind installation to be very,
23 very noticeable?

24 MR. RICHARDSON: Objection. There's no

[WITNESS PANEL: Kenworthy~Raphael]

1 foundation. It's speculation. There's nothing in the
2 testimony to date that establishes a premise for that
3 question.

4 MR. BLOCK: My -- if I can address that?

5 CHAIRMAN HONIGBERG: Go ahead, Mr.
6 Block.

7 MR. BLOCK: Yes. My background is
8 visual studies, and I have an advanced degree in that.
9 The premise, it seems here, of Mr. Raphael's testimony is
10 to point out how little this Project will be seen from a
11 10-mile radius or from the entire area. And, in fact,
12 everything you're working on in your Visual Assessment is
13 leading to that point. To the point where eventually you
14 say, "basically, you can almost not see this from
15 anyplace." And, what I'm trying to establish is "how can
16 one not see large, spinning, flashing, noise-making
17 objects?"

18 MR. RICHARDSON: I have no objection to
19 that question.

20 CHAIRMAN HONIGBERG: Yes, that's a
21 different question. And, I think there's not likely to be
22 an objection to it. I think the other thing you want to
23 do, when it comes time to make your own affirmative
24 presentation, I know you've submitted testimony, --

[WITNESS PANEL: Kenworthy~Raphael]

1 MR. BLOCK: Yes.

2 CHAIRMAN HONIGBERG: -- is explain your
3 background and explain your perception of how that would
4 work.

5 So, the question you want to ask the
6 witnesses right now is the one you just outlined?

7 MR. BLOCK: Sure. Okay. No, I can --

8 CHAIRMAN HONIGBERG: No, I think there's
9 a legitimate question there.

10 MR. BLOCK: Okay.

11 CHAIRMAN HONIGBERG: I think it's really
12 Mr. Raphael. Do you understand the question?

13 WITNESS RAPHAEL: Yes, I do.

14 CHAIRMAN HONIGBERG: Go ahead.

15 **BY THE WITNESS:**

16 A. (Raphael) Well, first of all, let's qualify that
17 notion. Because you said "noisy", for example, and you
18 said "flashing lights" also. Flashing lights are at
19 night. You know, people aren't often out at night. I
20 mean, the usage at night for certain locations is
21 greatly lessened for the average user on a lake or
22 hiking, you know, you're not hiking at night, things of
23 that nature. So, it's not as if lights are flashing
24 all the time.

[WITNESS PANEL: Kenworthy~Raphael]

1 Secondly, noise. From most locations
2 where people might see this Project, noise I don't
3 think has been established as a factor or as a
4 substantial factor as a potential impact. So, that's,
5 again, a relative statement. It all depends on your
6 location and your activity and the time of day.

7 But, finally, you know, you're asking to
8 compare apples and oranges. Of course, if you're
9 trying to grab people's attention on a highway or, you
10 know, on Times Square, you know, you're going to use
11 flashing lights and loud noises and all kinds of
12 visual aids. But that's not comparable to a wind
13 energy project, which is generating energy, and not
14 purposely designed to attract attention or to, you
15 know, have a deleterious impact on individuals or
16 users. So, I don't really feel the comparison is an
17 appropriate one.

18 BY MR. BLOCK:

19 Q. All right. I'll leave it at that for now.

20 A. (Raphael) Okay.

21 Q. Let me start with, Mr. Raphael, your prefiled
22 testimony, at Page 2, Lines 15-16, when asked "What is
23 the purpose of your testimony?", your response is "The
24 purpose of my testimony is to explain the differences

[WITNESS PANEL: Kenworthy~Raphael]

1 in visual impacts between the prior Antrim Wind Project
2 and the current proposal." Am I correct?

3 A. (Raphael) Yes, you are.

4 Q. To that end, isn't, and I believe you said this
5 earlier, isn't the purpose of your Visual Assessment,
6 in order to give you the tools or whatever information
7 you need to have, in order to, with any kind of
8 authority, state what kind of differences there are?

9 A. (Raphael) Not directly, no. The Visual Assessment is
10 to assess the nature of this Project that is now the
11 subject of our discussion, and the changes thereof. It
12 is then a useful tool, once, you know, we have finished
13 and conducted that assessment, to then compare the
14 differences between the previous Project as proposed.

15 Q. Well, your purpose is you wanted to explain the
16 differences in the visual impacts between the prior and
17 the current. If you had not done anything in that
18 Visual Assessment, do you think you would have enough
19 information at your fingertips to be able to explain
20 those differences?

21 A. (Raphael) No.

22 Q. Okay. So, I guess what we're saying is that the visual
23 impact -- the Visual Assessment is important to help
24 you make your case?

[WITNESS PANEL: Kenworthy~Raphael]

1 A. (Raphael) Certainly.

2 Q. Okay. Since the original certificate application was
3 denied, have there been any significant changes in the
4 viewshed area of the Project, such as new parks or
5 scenic resources established or the loss of any major
6 resources?

7 A. (Raphael) I'm not aware of those changes. We simply
8 set out to identify all the potential scenic and
9 cultural resources within the 10-mile radius viewshed,
10 in order to understand eventually what the visual
11 effect from this proposed Project would be.

12 Q. If there had been major differences, would that account
13 for differences in Saratoga Associates' Visual
14 Assessment and your Visual Assessment?

15 A. (Raphael) I'm not certain what you're asking. Do you
16 mean if there were new resources developed? New --

17 Q. Correct.

18 A. (Raphael) I mean, there could be, but I can't speculate
19 as to "if".

20 Q. And, I guess this is a speculative question also. If,
21 essentially, the resources in the viewshed then are
22 similar to the resources in the viewshed now, then any
23 changes in your assessment would have to necessarily be
24 caused by changes in the Project. Does that sound

[WITNESS PANEL: Kenworthy~Raphael]

1 correct?

2 A. (Raphael) Again, I'm not sure -- I'm not sure what
3 you're asking me, forgive me. Again, are you saying,
4 if there was a new resource that was developed, like a
5 park or something?

6 Q. No. I'm saying -- what I'm saying is, if the resources
7 essentially are unchanged, --

8 A. (Raphael) Uh-huh.

9 Q. -- from then to now, yet your report shows a different
10 impact?

11 A. (Raphael) Correct.

12 Q. Then, would it have to come from the changes made in
13 the turbine -- proposed turbine project?

14 A. (Raphael) Not necessarily. Not entirely. I mean, I
15 think, again, as I stated a little bit earlier, one of
16 the reasons my report and our analysis shows a
17 different impact is because we approach this, you know,
18 we've been at this for over a year, and we did an
19 incredibly comprehensive survey of all the resources.
20 I mean, we counted and reviewed 290 resources within
21 the 10-mile radius. And, you know, there are certain
22 things that don't change, whether you have, you know,
23 ten turbines or nine turbines, that I may have come,
24 and certainly as was asked me earlier, to a different

[WITNESS PANEL: Kenworthy~Raphael]

1 decision, based on our assessment and our understanding
2 of the specific nature of the visual effect to that
3 resource. So, it's not just about the changes in the
4 Project, which are significant, and which definitely
5 creates a different impact -- or, lack of impact or
6 changes the visual effect, reduces it, on particularly
7 sensitive resources like Willard Pond. But I think,
8 through our analysis and fieldwork, we were able to
9 establish some, you know, facts and visual analyses
10 that just weren't done in the first go-around, to
11 really have a sense of what that effect would be if the
12 Project was built.

13 Q. So, it's fair to say that a different assessment
14 methodology might result in different results?

15 A. (Raphael) No. Actually, I think that this assessment
16 methodology that we've developed, number one, has been
17 said, and I don't want to belabor the point, is, you
18 know, pretty extensive, pretty comprehensive. It is
19 based on accepted and used methodologies to assess
20 scenic resources and visual impacts or effects to those
21 resources. And, I think, almost unequivocally, that
22 the methodology that we've now developed, and this is
23 after 20 years -- over 20 years of assessing wind
24 energy projects, is intelligible, understandable,

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[WITNESS PANEL: Kenworthy~Raphael]

1 straightforward. It's such that someone who is a, you
2 know, an unaffected, you know, objective reviewer could
3 use and most likely come up to the same conclusions
4 that we came to.

5 Q. All right. Let me ask you about some of your rating
6 criteria for visual effect. I understand your desire
7 to find a quantification system for assessing visual
8 attributes. I have an advanced degree in visual
9 studies, but I also started college as a math and
10 engineering major. So, I understand that numbers make
11 things easier.

12 On Page 17 of your assessment, you
13 outlined you're methodology for determining a rating,
14 the threshold of number of turbines visible. You
15 probably recall that?

16 A. (Raphael) Yes.

17 Q. Is that method based on any proven scientific
18 practice?

19 A. (Raphael) Well, I guess how you would define
20 "scientific". You know, through experiment and
21 results, I think we did quote a known expert, who is a
22 colleague of ours and mine, who has reviewed numerous
23 wind applications in Maine. And, through his sort of
24 systematic and continuous analyses, he was of the

[WITNESS PANEL: Kenworthy~Raphael]

1 opinion that the rating breakdown that we provide, you
2 know, has some basis in that precedent and his
3 analyses. Yes. I mean, I think that it's a
4 combination. You know, wind, visual assessment is
5 certainly, just like landscape architecture in itself,
6 is an integration of art and science to some extent.
7 But, having said that, this process, as I mentioned a
8 moment ago, is really developed from established, you
9 know, criteria that have already been used in other
10 projects in various forms and fashions.

11 Q. I understand that you describe the system, by taking
12 the average -- where you take the average size of all
13 wind power projects in the state and break that number
14 into thirds. I understand how that worked in Maine,
15 over, as you described, many, many wind projects. But
16 do you believe it's good science when averaging to use,
17 as in the case of New Hampshire, a database that has
18 only three samples?

19 A. (Raphael) You know, I guess this was not meant to hold
20 up to, you know, specific scientific methods. But I
21 think it's based on logic and practice and precedent,
22 not just on these three examples, but on projects that
23 I've been involved with, you know, in Vermont and
24 Maine, Massachusetts. And, this threshold that we're

[WITNESS PANEL: Kenworthy~Raphael]

1 using passes muster, when applied to some of those
2 projects, certainly.

3 Q. I'm concerned with how it applies to the Project at
4 hand here. Using this method you derived a scale where
5 visibility of one to seven hubs, this is based on the
6 average of the number of turbines in the state,
7 visibility of one to seven hubs is considered "low";
8 eight to fifteen "moderate"; and only sixteen or more
9 is "high". If sixteen or more is high, how can that be
10 relevant to a 9-turbine project under consideration
11 here?

12 A. (Raphael) Because it indicates a threshold that this
13 one doesn't meet.

14 Q. Because, in other words, you're saying that there is no
15 situation or no place, any place in and around this
16 Project where the visual impact would be classified as
17 "high" by a reasonable person looking at this Project?

18 A. (Raphael) Not at all. I mean, you're taking one
19 criterion of six that we use to assess visual effect.
20 So, you have to understand that we're using a number of
21 tools precisely because of your concern perhaps for
22 voracity or comprehensiveness in order to assess the
23 various characteristics that wind energy projects have
24 in the landscape. So, this is one of many criteria

[WITNESS PANEL: Kenworthy~Raphael]

1 that are used, as you see in our methodology, to, you
2 know, come to a conclusion. And, this does not lead
3 us, by the way, I just want to correct one statement
4 you made, this does not lead us to the conclusion we
5 want. It leads us to the conclusion we get. And
6 that's a very important distinction.

7 CHAIRMAN HONIGBERG: Mr. Block, --

8 **BY THE WITNESS:**

9 A. (Raphael) Because I think you inferred that our -- I
10 mean, just maybe I was wrong, and forgive me for this,
11 but you inferred that the methodology was designed to
12 lead us to a conclusion that this would not be
13 unreasonable. And, that is just not right. It's
14 not --

15 BY MR. BLOCK:

16 Q. No. If I'm inferring anything, it's that the
17 methodology may not be appropriate for this Project.
18 That's all I'm saying. For instance, I can continue
19 on, you're talking about a number of different factors
20 that are all considered and all averaged together to
21 get, by the end, a situation where things are
22 considered either "low", "medium" or "high" impact.
23 Yet, your scaling system in every other situation is
24 such that the high grade, the high level can only be

[WITNESS PANEL: Kenworthy~Raphael]

1 achieved if every factor up to that point is granted a
2 "high". If one of them is "moderate", then it's
3 automatically down.

4 This is close to -- I'm a college
5 professor. If I were to set up a curved scaling on my
6 grading system for a course, where the only way a
7 student could get an A is getting 100s in every exam,
8 getting perfect A's on every paper, and never missing a
9 single class. I don't think that is necessarily the
10 fairest thing.

11 Your system is set up so that you would
12 have to achieve perfect high scores in everything in
13 order to get the high rating at the end, because
14 there's no range for high.

15 A. (Raphael) No. That's not true. You know, we came to
16 several high or high conclusions that then were
17 overruled, if you will, or taken into consideration
18 with other factors that didn't advance that particular
19 resource farther in the methodology process. But you
20 don't have to have a perfect high score for -- I mean,
21 you could have --

22 CHAIRMAN HONIGBERG: Mr. Raphael, let me
23 stop you just for a minute.

24 WITNESS RAPHAEL: Okay. I'm sorry.

[WITNESS PANEL: Kenworthy~Raphael]

1 CHAIRMAN HONIGBERG: You guys are having
2 a very interesting philosophical discussion about a
3 document that we actually don't have. So, and since the
4 issue is "how does A differ from B?", the merits of the
5 methodology are not necessarily going to help us very
6 much, I don't think. So, are you --

7 MR. BLOCK: I can move to some more
8 generalities, yes.

9 CHAIRMAN HONIGBERG: I don't want you to
10 necessarily move to generalities. I want you to move to
11 specific topics that will help us make our decision here.

12 MR. BLOCK: Right.

13 BY MR. BLOCK:

14 Q. Here's a more general question. At any point in your
15 study, did you address how the visibility of the
16 Project will differ during the large portion of the
17 year when leaves are gone, given the preponderance of
18 deciduous trees in our area, which is fairly high,
19 compared to some other areas that are more evergreens?

20 A. (Raphael) Absolutely. For example, I spent a day
21 visiting several resources near to the Project site in
22 mid-winter. So, the question is "yes", we did
23 consider --

24 Q. Is that outlined? I didn't see it outlined anyplace in

[WITNESS PANEL: Kenworthy~Raphael]

1 the report. Is it discussed in there anyplace?

2 A. (Raphael) I think, if you looked in the report, their
3 might be a picture in there, a winter shot of Willard
4 Pond, but maybe it didn't make it into the report.

5 Q. Well, I haven't -- I didn't see it mentioned. And,
6 that's why I'm asking. On the transcript of the tech
7 session from April 23rd, and if you want to look along
8 it's on Page 46. And, I'm looking at Lines 20 to 24.
9 You state there, and I quote "One way in which you
10 eliminate a resource from having any sensitivity" --
11 this is going back, Page 46, Lines 20 to 24. "One way
12 in which you eliminate a resource from having any
13 sensitivity is "is there visibility of the Project from
14 that resource?" And, if there is no visibility, then
15 automatically it is, you know, eliminated from any
16 further evaluation and review." The question is, how
17 confident are you of the infallibility of your
18 methodology in determining whether or not there will be
19 visibility?

20 A. (Raphael) I am pretty confident, because we use a
21 number of tools, including field checks, as I said, 3D
22 analysis, viewshed analyses. I think we have as much
23 certainty as we could expect. And, in fact, my --

24 (Court reporter interruption.)

1 **CONTINUED BY THE WITNESS:**

2 A. (Raphael) My experience has shown that we often
3 overstate visibility, rather than understate it.

4 BY MR. BLOCK:

5 Q. Would you be surprised if I were to say that I could
6 identify a number of locations in the viewshed area
7 where I know that the visibility is very different from
8 what you've stated?

9 A. (Raphael) I can't comment on that, because I don't know
10 what you're talking about.

11 Q. Okay. Individual assessment, you start with an
12 inventory of scenic resources, which you separate into
13 national, state, and local levels?

14 A. (Raphael) Correct.

15 Q. On it, you list the North Branch River. The North
16 Branch River --

17 MR. NEEDLEMAN: What page are we on?

18 BY MR. BLOCK:

19 Q. -- as a state resource, which is identified under the
20 New Hampshire Rivers Management Protection Program. I
21 don't know exactly what page that starts on. But it
22 was your general inventory, when you started with 290,
23 I believe it was. So, you list the North Branch River,
24 which is right adjacent to the property.

[WITNESS PANEL: Kenworthy~Raphael]

1 Okay. I have an exhibit we'd like to
2 submit here. I want to know, were you aware --

3 CHAIRMAN HONIGBERG: Wait. Wait.

4 MR. BLOCK: Okay, I will wait.

5 CHAIRMAN HONIGBERG: Just, if we're
6 going to do an exhibit, --

7 MR. BLOCK: I will wait.

8 CHAIRMAN HONIGBERG: -- then we're going
9 to do the exhibit.

10 (Brief off-the-record discussion
11 ensued.)

12 (The document, as described, was
13 herewith marked as **Exhibit NAI 1** for
14 identification.)

15 CHAIRMAN HONIGBERG: And, we're back on
16 the record. Mr. Richardson.

17 MR. RICHARDSON: Thank you. I'm just
18 concerned that we're veering back into the merits of the
19 VIA, and not into the specific issues before the
20 Committee, which is "is this Project different?" and "is
21 it entitled to jurisdiction?"

22 CHAIRMAN HONIGBERG: I am concerned
23 about the same thing. Mr. Block, you may proceed.

24 MR. BLOCK: Okay.

[WITNESS PANEL: Kenworthy~Raphael]

1 BY MR. BLOCK:

2 Q. I just stand on the fact that Mr. Raphael said the
3 purpose of his testimony "is to explain the
4 differences". And, I think we've already established
5 that the VI -- the VA in this case is his tool for
6 doing that. But, in the scenic resources, it seems you
7 rate national things, probably rightly so, above state,
8 and state above local?

9 A. (Raphael) No, not necessarily. I think there's
10 actually language in the report that says a local
11 resource can have a very high sensitivity.

12 Q. Oh, good. Okay. I just wanted to know if you were
13 aware that the North Branch River, besides being on the
14 State's Rivers Management Protection Program, is also
15 one of the few rivers in the state listed in the
16 National Park Service's Nationwide Rivers Inventory as
17 having outstanding remarkable values. And, the exhibit
18 I just submitted is an excerpt from that, their
19 inventory web page, which lists the North Branch River
20 there.

21 A. (Raphael) I see that.

22 Q. I thought this was interesting. And, gives that river
23 even more value perhaps then?

24 A. (Raphael) Well, again, you know, you have to weigh

[WITNESS PANEL: Kenworthy~Raphael]

1 what's its value for. So, if, as stated here, you
2 know, the value appears to be the arch bridge that's
3 near to it, that's -- I think I know where that arch
4 bridge is. But, you know, so that has a historic
5 value. It certainly talks about its recreational
6 value. It also speaks to the ecological communities.
7 None of those may or may not have any effect on a
8 visual impact. So, they may not change the nature of a
9 visual impact. You know, if you're kayaking a river,
10 and you can't see the Project, then it doesn't matter
11 how valuable that water is for kayaking or how
12 important it is for ecological communities, which all
13 well and good, but it doesn't necessarily bear on
14 visual impact.

15 Q. All right. I will go on. Page 10 of your Visual
16 Assessment, I think we've already discussed this, I
17 think Lisa brought it up. You state your opinion the
18 view of the turbine hub has a greater effect than the
19 views of blades. And, the quote is "since turbine
20 blades that rise above treeline are not typically
21 visible or dominant". Is there anyplace in your Visual
22 Assessment where you discuss the effect of the spinning
23 blades, of the movement on viewers' awareness of them?

24 A. (Raphael) I don't know if there is. I'd have to

[WITNESS PANEL: Kenworthy~Raphael]

1 review. I can't point to a place specifically. You
2 know, we've got a 120-page document here.

3 Q. Okay.

4 A. So, I'd have to review that.

5 Q. When you discuss your methodology and assessing of how
6 many areas are potentially affected by this, you state
7 that -- there's a statement on Page 9, about two-thirds
8 of the way down the page, where you state "the output
9 is further reduced by eliminating areas that are
10 forested because it assumed visibility is not probable
11 from these areas". On Page 10, your methodology also
12 assumes, on Number 3, on the list on Page 10, says
13 "Adding a standardized height of 40 feet to the three
14 classes identified as forest", doesn't this just simply
15 and effectively remove a major portion of the
16 landscape, so you no longer need to give it further
17 consideration as to visual impact? If you just
18 summarily dismiss all forested areas?

19 A. (Raphael) No, not necessarily. Because, again, our
20 analysis isn't just based on the viewshed analysis.
21 Yes, a viewshed analysis is one step. But, regardless
22 of visibility, if we feel there's a potential for
23 visibility, then we will go and review the site. So,
24 that could be within a wooded area that may or may not

[WITNESS PANEL: Kenworthy~Raphael]

1 appear as, you know, potential visibility within the
2 map. So, if there are places where we have some reason
3 to believe, you know, that there might be some
4 visibility, and, again, this is, you know, I'd be the
5 first to admit this is as good as the data that we use
6 to put in it. And, you can't assess the visibility of
7 a project for every hectare or acre of, you know, land
8 within, you know, you can't go to every spot and say
9 "oh, you know, I can see it through a little hole in,
10 you know, or window in the tree canopy." We're really
11 looking for the resources to base the analysis on, and
12 then checking the visibility and the potential, you
13 know, visual effect on those, those resources.

14 Q. Using that reasoning, can you explain why the entire
15 Tuttle Hill/Willard Mountain ridge top is classified on
16 your visual -- viewshed map as having a visibility of
17 "zero turbines"? In other words, if I were standing on
18 the road between turbines, your map says I can't see
19 them.

20 A. (Raphael) Well, I think, you know, again, as I just
21 said, we would make adjustments for certain locations.
22 I think no one would argue that, if you're standing on
23 the road, you're going to see the turbines -- I mean
24 the access road, but that's not necessarily the concern

[WITNESS PANEL: Kenworthy~Raphael]

1 or the focus for the analysis. Having said that, once
2 you step into the wooded area just beyond that road,
3 and currently, right now, without those roads, there
4 probably is no visibility outside of the canopy of
5 trees.

6 CHAIRMAN HONIGBERG: Mr. Block, --

7 MR. BLOCK: Yes. I'm winding down, if
8 that's okay?

9 CHAIRMAN HONIGBERG: It would be
10 wonderful.

11 MR. BLOCK: I apologize. This is sort
12 of my one chance. But I will try to be to the point. I
13 have just a couple of important things.

14 BY MR. BLOCK:

15 Q. On Page 121 of your assessment, which is getting down
16 to the conclusion, you refer to Willard Pond as "an
17 artificial impoundment", and later on you describe it
18 as "a pleasant, man-made pond". Why do you classify
19 this pond as "man-made"?

20 A. (Raphael) Because there's a dam at one end.

21 MR. BLOCK: Okay. I'd like to submit an
22 exhibit here right now, and then whatever the next number
23 would be in this.

24 CHAIRMAN HONIGBERG: It will be "NAI 2".

[WITNESS PANEL: Kenworthy~Raphael]

1 MR. BLOCK: "NAI 2" is okay for us.

2 (Mr. Block distributing documents.)

3 (The document, as described, was
4 herewith marked as **Exhibit NAI 2** for
5 identification.)

6 CHAIRMAN HONIGBERG: Mr. Block, you may
7 proceed.

8 MR. BLOCK: Ready? Okay. What I've
9 just submitted is an excerpt from a document called the
10 "New Hampshire Official List of Public Waters". This one
11 is revised as of January 17th, 2014. And, on it, it's an
12 inventory of virtually every public water in the state.
13 And, the backside shows Willard Pond to being classified
14 as a status of "RD". And, the other side is the
15 "Definitions". "RD" is "(Raised by Damming) - RD is a
16 water body that started out as a natural lake and a dam
17 was constructed at the outlet. Because these water bodies
18 were naturally occurring and over 10 acres to begin
19 with" --

20 CHAIRMAN HONIGBERG: Slow down. Slow
21 down.

22 MR. BLOCK: I'm sorry.

23 CHAIRMAN HONIGBERG: It doesn't happen
24 unless Mr. Patnaude gets it.

[WITNESS PANEL: Kenworthy~Raphael]

1 MR. BLOCK: "Because these water bodies
2 were naturally occurring and over 10 acres to begin with,
3 all RDs on the OLPW are held in the public trust under RSA
4 271:20. Although it is most often the case that the
5 installation of a dam raises the water level of an
6 impoundment, RDs are not necessarily raised." The bottom
7 line is that -- what I'm saying is that Willard Pond is a
8 natural lake, according to the State of New Hampshire, and
9 they probably got the information from a geologist. I
10 just want to get that into the record. And, --

11 WITNESS RAPHAEL: Am I able to respond
12 to that?

13 MR. BLOCK: You can respond.

14 CHAIRMAN HONIGBERG: Go ahead,
15 Mr. Raphael.

16 WITNESS RAPHAEL: It was a natural lake.
17 It's now been altered by human intervention. And, you
18 don't know what size it was before, maybe you do, --

19 CHAIRMAN HONIGBERG: And, let's not --
20 we don't need to argue about this.

21 WITNESS RAPHAEL: Yes.

22 CHAIRMAN HONIGBERG: I understand the
23 point, I understand -- I think we understand the point
24 being made, and I think we understand the response.

[WITNESS PANEL: Kenworthy~Raphael]

1 MR. BLOCK: I'm going to skip over some
2 questions here, you'll be happy to hear.

3 BY MR. BLOCK:

4 Q. Is it true that, generally, you consider a trail at a
5 state park to have more scenic value than one on
6 privately conserved land, based on the things I heard
7 you say in your -- at the tech session?

8 A. (Raphael) Not necessarily.

9 MR. RICHARDSON: Same objection,
10 Mr. Chairman.

11 CHAIRMAN HONIGBERG: Wait, Mr. Block.
12 I'm sorry. Mr. Richardson, the question has been
13 answered, you know?

14 MR. RICHARDSON: I know. And, I'm
15 just -- I'm objecting to the direction we're going in,
16 because we're just right on the merits of the Project, and
17 not on whether the Projects are different.

18 CHAIRMAN HONIGBERG: Mr. Block, are you,
19 at the risk of regretting what I'm about to ask, is there
20 a one-minute or two-minute summary you can give us of what
21 the point is you want to make with Mr. Raphael about his
22 assessment?

23 MR. BLOCK: Let me make -- pose one
24 question as a closing question on this, and this is still

1 related to Willard Pond.

2 BY MR. BLOCK:

3 Q. In your Visual Assessment, on Page 61, you have a chart
4 of -- you've narrowed down the resource at that point,
5 and you list literature resources on that page, and
6 whether they mention those scenic resources. And,
7 there's a question that I have is just one of the books
8 you list is "Quiet Water New Hampshire & Vermont", and
9 that, I believe, is a book published by the Appalachian
10 Mountain Club. And, I just want to know, do you
11 remember reading that book's description of Willard
12 Pond as "simply breathtaking"?

13 A. (Raphael) I don't recollect that. I know there was an
14 entry. But I would take your word for it.

15 MR. BLOCK: Okay. Thank you. I will
16 quit with that.

17 CHAIRMAN HONIGBERG: Ms. Maloney, how
18 long do you think you have to go?

19 MS. MALONEY: A while.

20 (Brief off-the-record discussion
21 ensued.)

22 CHAIRMAN HONIGBERG: All right. We're
23 going to come back at one o'clock. But, when we say "one
24 o'clock", we really mean "one o'clock". Mr. Needleman

[WITNESS PANEL: Kenworthy~Raphael]

1 will verify for everyone that, generally, when we take a
2 break, we come back at the time we say we're going to come
3 back.

4 MR. NEEDLEMAN: I love the Committee's
5 punctuality. Can I ask a quick question? So, when Mary
6 and the Committee are done with the questioning of this --

7 CHAIRMAN HONIGBERG: You're off the
8 record right now, right?

9 MR. PATNAUDE: No.

10 CHAIRMAN HONIGBERG: Okay. You can be
11 on, go ahead. Go ahead.

12 MR. NEEDLEMAN: I was just going to ask,
13 when these witnesses are finally done, who comes next?

14 CHAIRMAN HONIGBERG: Oh. I think the
15 Town's witnesses will come next.

16 MR. NEEDLEMAN: Okay. And then Ms.
17 Vissering?

18 CHAIRMAN HONIGBERG: I'm sorry, who?

19 MR. NEEDLEMAN: And then Ms. Vissering?

20 CHAIRMAN HONIGBERG: Yes. I think
21 that's right.

22 MR. NEEDLEMAN: Okay. Thank you.

23 CHAIRMAN HONIGBERG: That makes sense.
24 All right. So, we'll break. We'll see you all back here

1 at one clock.

2 (Whereupon a lunch recess was taken at
3 11:50 a.m. The hearing continues under
4 separate cover within the transcript
5 designated as "**Day 1 Afternoon Session**
6 **Only**".)

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C E R T I F I C A T E

I, Steven. E. Patnaude, a Licensed Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Steven E. Patnaude, LCR
Licensed Court Reporter
N.H. LCR No. 52
(RSA 310-A:173)