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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

September 28, 2016 - 1:02 P.M. **DAY 6**
Public Utilities Commission
21 South Fruit Street, Suite 10 **Afternoon Session**
Concord, New Hampshire **ONLY**

IN RE: SEC DOCKET NO. 2015-02.
ANTRIM WIND ENERGY, LLC;
Application of Antrim Wind
Energy, LLC for a Certificate
of Site and Facility.
(Hearing on the merits)

PRESENT FOR **SITE EVALUATION COMMITTEE:**
SUBCOMMITTEE:

Cmsr. Robert R. Scott	Public Utilities Commission <i>(Presiding as Presiding Officer)</i>
Cmsr. Jeffery Rose	Dept. of Resources & Economic Development
Dr. Richard Boisvert (Designee)	Dept. of Cultural Resources/ Div. of Historical Resources
John S. Clifford (Designee)	Public Utilities Commission
Dir. Eugene Forbes (Designee)	Dept. of Environmental Services/Water Division
Patricia Weathersby	Public Member

Also Present for the SEC:

Michael J. Iacopino, Esq. (Brennan...
Pamela G. Monroe, SEC Administrator
Marissa Schuetz, SEC Program Specialist

COURT REPORTER: Cynthia Foster, LCR No. 014

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P R O C E E D I N G S**(Hearing resumed at 1:02 p.m.)**

1
2
3 PRESIDING OFFICER SCOTT: Okay. Back on
4 the record. Welcome, everybody. Before we
5 start with the next panelist, which, again, will
6 be Mr. Stevenson who's at the table here; and
7 Mr. Will, who I believe is on the phone.
8 Mr. Will, can you hear us?

9 WITNESS WILL: I hear you fine. Thank you.

10 PRESIDING OFFICER SCOTT: Okay. So are
11 there any administrative issues from any members
12 of the Subcommittee?

13 DR. BOISVERT: Yes, Mr. Chairman. I'd like
14 to have established an administrative notice
15 that I'd like to be looking at the photo
16 simulations from the Groton Wind project in
17 Docket 2010-01. Photographs from Groton Wind
18 were used in the visual report, and I'd like to
19 look at what was the projected simulations and
20 just do a comparison.

21 PRESIDING OFFICER SCOTT: So again, to
22 paraphrase, so you'd like us to take
23 administrative notice of those photo simulations
24 or the whole docket?

WITNESS PANEL: WILL AND STEVENSON

1 DR. BOISVERT: Of the photo simulation.

2 PRESIDING OFFICER SCOTT: That would be the
3 Groton Wind?

4 DR. BOISVERT: Groton Wind.

5 PRESIDING OFFICER SCOTT: And, again, as
6 there were pictures of that in the application?

7 DR. BOISVERT: Correct. I believe they are
8 pages 96 and 97. I may be in error.

9 PRESIDING OFFICER SCOTT: Any discussion of
10 that?

11 MR. RICHARDSON: Yes, Mr. Chairman, if I
12 may.

13 PRESIDING OFFICER SCOTT: Mr. Richardson?

14 MR. RICHARDSON: Would it be possible for
15 the Committee to identify that as an exhibit and
16 can put it on the docket list just so -- I've
17 never been in that docket before. I wouldn't
18 know even where to find it, and I would want to
19 make sure I was looking at the same document
20 that the Committee was, if that would be
21 possible.

22 PRESIDING OFFICER SCOTT: That sounds
23 reasonable. I think we can do that.

24 DR. BOISVERT: Right, and it would actually

WITNESS PANEL: WILL AND STEVENSON

1 help me, too.

2 PRESIDING OFFICER SCOTT: Okay, and I see
3 your point, Mr. Richardson. I think that would
4 help the public at large, too, not to have to
5 research something else.

6 MR. RICHARDSON: Thank you.

7 MR. IACOPINO: If you determine to take
8 administrative notice, what we'll do is we'll
9 take those photo simulations and the exhibits
10 that they were in in that case and mark them in
11 this case as Committee Exhibits.

12 PRESIDING OFFICER SCOTT: Any objections?
13 All right. We will do that. Anything else
14 before we swear in the witnesses?

15 MS. LINOWES: Mr. Chairman?

16 PRESIDING OFFICER SCOTT: Yes, ma'am.

17 MS. LINOWES: I just had a question
18 regarding remote witnesses. It was my
19 understanding as a general rule that these
20 witnesses would appear at least through video
21 hookup so that their demeanor and their
22 appearance would be visible to those questioning
23 them. And I understand perhaps when we had the
24 gentleman talking about blasting -- since he had

WITNESS PANEL: WILL AND STEVENSON

1 already been here, we'd already witnessed him in
2 person, it was fine for him to be on phone. But
3 I'm concerned that this witness is on the phone
4 and not at least available through video linkup.
5 It was my expectation that Mr. James, who will
6 be here, will be remotely, will be appearing
7 through video linkup. So I'm just asking what
8 is the requirement. Has that changed?

9 PRESIDING OFFICER SCOTT: Hold on a second.
10 Okay. Maybe, Mr. Iacopino, I'm not aware of
11 that being a requirement per se.

12 MR. IACOPINO: I don't believe that there's
13 any requirement in our rules or in the statute
14 that requires a video hookup. We have had, we
15 have had video in the past, in fact, in the
16 prior Antrim Wind docket, and we have had
17 telephonic testimony as well. The witness can
18 be sworn over the phone. The importance of the
19 oath is that the witness understands that their
20 testimony is under oath. In this case, it's
21 already under oath anyway because he's actually
22 signed it under oath when he signed the
23 testimony, and my view is, Mr. Chairman, is it's
24 up to the Chair if you want to grant the motion

WITNESS PANEL: WILL AND STEVENSON

1 to, which I believe you already may have done
2 today, grant the motion to hear the witness
3 telephonically, and it's a decision that's up to
4 the Chair of the Committee.

5 PRESIDING OFFICER SCOTT: So you're
6 launching an objection or just a question?

7 MS. LINOWES: Perhaps I'm just noting for
8 the record. This appears to be a change from
9 what we had before, and I thought that there was
10 a lot of stress on the ability to see the
11 witness and he or she be able to see us. So if
12 that's not the case, that's fine, and, you know,
13 I'm not going to object, but I guess I'm
14 surprised. Thank you.

15 PRESIDING OFFICER SCOTT: And I will note I
16 have, I am aware, I think there's going to be
17 another request from an Intervenor for that type
18 of witness also if I understood.

19 MR. IACOPINO: It's already been filed.

20 PRESIDING OFFICER SCOTT: So I caution
21 that, too, it can cut both ways, and I think
22 from the Committee's point of view, certainly my
23 point of view, we'll give it the weight it
24 deserves to the extent that body language may be

WITNESS PANEL: WILL AND STEVENSON

1 an issue.

2 MS. LINOWES: Mr. Chairman, if I may ask,
3 if one of the witnesses prefers to be available
4 through video, is that possible? I don't know
5 what Donovan Road has for facilities, but is
6 that something that can be accommodated?

7 PRESIDING OFFICER SCOTT: That's a good
8 technical question. I'm not sure I know.

9 PAMELA MONROE: Not as of the date of the
10 Antrim hearings is my understanding.

11 PRESIDING OFFICER SCOTT: It's not quite
12 set up for that. We'll swear the witnesses,
13 and, Mr. Needleman, they're yours after that.

14 **RICHARD WILL AND RUSS STEVENSON, DULY SWORN**

15 PRESIDING OFFICER SCOTT: Mr. Will, you're
16 going to have to for audio purposes to get you
17 on the transcript and also for everybody to hear
18 you in the audience, we're going to need you to
19 speak loudly.

20 WITNESS WILL: All right. How's this?

21 PRESIDING OFFICER SCOTT: Louder yet,
22 please.

23 WITNESS WILL: I'll holler. How's that?

24 PRESIDING OFFICER SCOTT: We can hear that

WITNESS PANEL: WILL AND STEVENSON

1 Q And where are you employed, and what is your
2 position?

3 A (Will) I'm employed at TRC Environmental
4 Corporation.

5 Q And you briefly describe the purpose of your
6 testimony today?

7 A (Will) My purpose is for describing the
8 precontact --

9 (Court reporter interruption)

10 PRESIDING OFFICER SCOTT: Hold on,
11 Mr. Will. And off the record.

12 (Off-the-record discussion)

13 PRESIDING OFFICER SCOTT: Mr. Will, why
14 don't you say something so we can see how we can
15 hear you.

16 WITNESS WILL: Testing, 1, 2, 3.

17 PRESIDING OFFICER SCOTT: Much better.
18 We'll go back on the record.

19 Q Mr. Stevenson and Mr. Will, you should have
20 electronically in front of you a copy of your
21 Prefiled Testimony.

22 A (Will) I do.

23 A (Stevenson) Yes.

24 Q Do either of you have any changes to your

1 testimony since the time it was filed?

2 A (Stevenson) No.

3 A (Will) No.

4 Q Do you swear to the testimony before you and
5 adopt it for purposes of this proceeding?

6 A (Stevenson) Yes.

7 A (Will) Yes.

8 MS. WALKLEY: They are ready for
9 cross-examination, Mr. Chair.

10 PRESIDING OFFICER SCOTT: Mr. Richardson?

11 MR. RICHARDSON: Thank you. No questions.

12 PRESIDING OFFICER SCOTT: Mr. Enman? Not
13 here. Is anybody here from the Giffin/Pratt
14 Intervenors? Anybody from the Harris Center for
15 Conservation like to speak?

16 MR. NEWSOME: No questions.

17 PRESIDING OFFICER SCOTT: Thank you. Ms.
18 Berwick for the Abutting Landowners?

19 MS. BERWICK: Yes. I just have a few
20 questions.

21 **CROSS-EXAMINATION**

22 BY MS. BERWICK:

23 Q Do either of you find this project to be
24 significantly different from the 2012-01

1 project?

2 A (Will) Not that I'm aware of.

3 A (Stevenson) Not other than the redesign and the
4 loss of one turbine.

5 Q Okay. In your Prefiled Testimony on page 12,
6 line 17, you state, the New Hampshire Department
7 of Historic Resources determined that there
8 would be an adverse effect to the White Birch
9 Point though it did not indicate that such
10 adverse effect would be unreasonable. The
11 USACE, United States Army Corps of Engineers,
12 which is the lead federal agency for the Section
13 106 review, has disagreed with the New Hampshire
14 Department of Historic Resources determination
15 with respect to White Birch Point, and Antrim
16 Wind Energy is engaged in continuing
17 consultation with both agencies to resolve the
18 disagreement and to determine any mitigation
19 measures necessary to satisfy its obligations
20 under Section 106. Are you aware of what the
21 mitigation measures were decided upon?

22 A (Stevenson) Under Section 106, there were no
23 mitigation measures because the Army Corps of
24 Engineers maintained that there was no impact to

WITNESS PANEL: WILL AND STEVENSON

1 the White Birch Point district. However, the
2 project, you know, in good faith and wanting to
3 work with DHR, engaged in discussions with them
4 for ideas of how to come to an agreement over
5 White Birch Point, and the result of that was
6 the MOU, Memorandum of Understanding, that they
7 agreed to.

8 Q So no members of the White Birch Point were
9 involved in these discussions, were they?

10 A (Stevenson) Not that I'm aware of.

11 Q Are you aware of how the 23 residents of White
12 Birch Point feel about this offer of a sign in
13 exchange for the adverse effects of the wind
14 turbines?

15 A (Stevenson) No. I'm not aware. I was not
16 involved in those discussions.

17 Q In their letter to the SEC, it states, "We are
18 offended by the suggestion that Antrim Wind
19 Energy construct a sign indicating our
20 historical significance as mitigation for our
21 loss of serenity and beauty. We are saddened by
22 the lack of empathy for property owners' rights
23 to enjoy the New Hampshire landscape that this
24 suggestion demonstrates."

1 those buildings?

2 A (Stevenson) Not directly, no. I relied on
3 primary, secondary documentation, background
4 research, everything that's stated in the
5 intensive level survey form which I prepared for
6 White Birch Point.

7 Q No direct contact with any of the owners?

8 A (Stevenson) I may have spoken to one of them in
9 passing when I was in the field, but nothing
10 directly reached out.

11 Q Thank you. No further questions.

12 PRESIDING OFFICER SCOTT: Thank you. I
13 don't see Mr. Ward here. No. Okay. Ms.
14 Linowes?

15 MS. LINOWES: Yes, Mr. Chairman. Thank
16 you.

17 **CROSS-EXAMINATION**

18 BY MS. LINOWES:

19 Q I'm going to be referencing several documents,
20 and I want to make sure that the witness has
21 access to them. If I could go down that list.
22 The first one will be the April 19th, 2013,
23 letter that New Hampshire Department of Historic
24 Resources wrote. This would be under docket

WITNESS PANEL: WILL AND STEVENSON

1 2012-01. Would you have a copy of that?

2 A (Stevenson) Yes, I do.

3 Q The second one is the December 8th, 2015, letter
4 that the Army Corps wrote to the Site Evaluation
5 Committee. That would be in this docket,
6 2015-02?

7 A (Stevenson) I do not believe I have a copy of
8 that in front of me.

9 Q The other two letters are also in the docket.
10 These would be the January 4th, 2016, letter,
11 and the July 28th, 2016, letter from New
12 Hampshire Department, both of those from New
13 Hampshire Department of Historic Resources. Do
14 you have those letters?

15 A (Stevenson) I do not have them in front of me.

16 Q Is it possible for those to be made available to
17 the witness?

18 MR. NEEDLEMAN: We're working on it. We're
19 having trouble accessing the website.

20 PAMELA MONROE: What were the dates?

21 PRESIDING OFFICER SCOTT: Why don't we go
22 off the record.

23 (Off-the-record discussion)

24 PRESIDING OFFICER SCOTT: Back on the

WITNESS PANEL: WILL AND STEVENSON

1 record.

2 MS. LINOWES: Thank you.

3 Q The first question I have for you is: Earlier
4 today Mr. Raphael, I don't know if you were here
5 at that point, but he had indicated that he
6 wasn't aware that White Birch Point Historic
7 District was part of the review for what he was
8 doing and didn't learn of it as being a part of
9 it, having impact from the project until he went
10 on a site visit. He didn't state the site
11 visit, but just so as I understand, have you
12 always known about the significance of the White
13 Birch Point Historic District?

14 A (Stevenson) Yes.

15 Q Were you involved in the prior docket?

16 A (Stevenson) Yes.

17 Q Okay. Thank you. Now, if you can go to the
18 December 28th, 2015 -- actually, I was going to
19 talk about the 2013 letter. I'm only going to
20 point out that there is a table of four
21 properties that the Historic District, New
22 Hampshire Historic District, am I saying that
23 right? Division of Historic Resources, sorry,
24 DHR, had identified four properties that

WITNESS PANEL: WILL AND STEVENSON

1 originally had some concerns about, and then it
2 found that there would be no adverse effect. Do
3 you recall that?

4 A (Stevenson) Yes.

5 Q That's cited in that 2013 letter.

6 A (Stevenson) Yes.

7 Q But it continued to have a problem or concerns
8 regarding the impacts on the White Birch Point?

9 A (Stevenson) Yes.

10 Q In that letter there's a paragraph that says the
11 White Birch Point Historic District will be
12 adversely affected by the introduction of
13 elements out of keeping with the historic nature
14 of the resource. Do you see that?

15 A (Stevenson) Yes, I do.

16 Q Photo simulations note that the turbines will be
17 primarily visible along shore banks within the
18 National Registry boundary of the resource. You
19 see that?

20 A (Stevenson) Yes.

21 Q And then the last sentence in that paragraph:
22 The introduction of modern turbines will
23 diminish the integrity of the properties'
24 significant historic features, therefore

WITNESS PANEL: WILL AND STEVENSON

1 constituted an adverse effect.

2 Do you see that?

3 A (Stevenson) Yes.

4 Q Now, if you can go to the Army Corps's letter.
5 This is the one that's December 28, 2015, and
6 I'd like you to go to the second page, first
7 paragraph, and there's a last sentence in that
8 paragraph that reads, White Birch Point has a
9 potential view of wind turbines 2, 3, 4, 5 and
10 part of 6 which are not located within any Corps
11 permit areas. Do you see that?

12 A (Stevenson) Yes.

13 Q So, and rather than reading from the letter, I'm
14 wondering if you could discuss what appears to
15 be a more narrow view of the impacts of
16 turbines. Without putting words in your mouth,
17 what is it that the Army Corps is saying versus
18 the DHR with regard to its concerns in that
19 dispute there?

20 A (Stevenson) In that last sentence you read,
21 White Birch Point has a potential of wind
22 turbines 2, 3, 4, 5, and part of 6 which are not
23 located within the Corps's permit areas. That's
24 exactly where their December agreement is. The

WITNESS PANEL: WILL AND STEVENSON

1 Corps under Section 106 looks at resources
2 within their permit area. Other federal
3 agencies like FHWA look at resources within an
4 area of potential effects.

5 Q What is FHWA?

6 A (Stevenson) Federal Housing and Work
7 Administration, I believe.

8 Q So if I'm to understand you correctly and
9 looking at the letter, they have identified, for
10 instance, an area of wetland impact or dredge
11 and fill that was part of Army Corps's area of
12 concern, and since turbines are not located in
13 there or that doesn't have a view of White Birch
14 Point --

15 A (Stevenson) I'm hesitant to comment on the
16 Corps's permit area because all of my studies, I
17 mean, I prepared all the forms on the resources.
18 We utilized DHR's 3 and 5-mile area of potential
19 effects.

20 Q Okay. So your work was done predominantly with
21 DHR's concerns in mind. Is that what you're
22 saying?

23 A (Stevenson) Correct. We utilized their standard
24 Section 106 APE Guidelines for wind turbine

1 projects.

2 Q All right. So is it appropriate to say that the
3 Army Corps took a more narrow view of its
4 obligations as opposed to DHR's?

5 A (Stevenson) Again, you know, without, I don't
6 know much about the Army Corps's permit area. I
7 didn't use it in my studies. Generally, on
8 projects I've worked on, their permit area is
9 smaller than an APE that I would consider.

10 Q I'm sorry. Can you repeat that again without
11 the acronym? Go ahead.

12 A (Stevenson) Again, I'd be hesitant to make a
13 statement about the Army Corps's permit area
14 since I did not use it in my studies, but on
15 other projects I've worked on, the Corps's
16 permit area is related to wetland and can be
17 larger or smaller than an area of potential
18 effects that a different federal agency may
19 utilize.

20 Q Okay. So if I can, would it be appropriate to
21 say that the Army Corps did not, based on its
22 concerns related to wetlands and other more
23 immediate issues, they did not see the impact of
24 the turbines on White Birch Point as an issue,

1 is that correct?

2 A (Stevenson) Yes. I would think that based on
3 this letter and what they've stated, they did
4 not feel that there would be an impact to White
5 Birch Point.

6 Q Okay. And that was just a point of dispute
7 between DHR and Army Corps?

8 A (Stevenson) Correct, the federal agency, yes.

9 Q Now if we can look at the final letter that was
10 sent, this would be the final decision by DHR.
11 This is the letter dated July 28th, 2016.

12 Bear with me for one moment, Mr. Chairman.

13 Okay. If you could go to the second
14 paragraph there, in this paragraph, I'll just
15 read it, but it says a number of historic
16 properties and districts have been identified
17 within the Antrim Wind project area including
18 the National Register-eligible White Birch Point
19 Historic District on Gregg Lake. Do you see
20 that?

21 A (Stevenson) Yes.

22 Q And the next paragraph explains its
23 significance. It says the district is
24 significant as a grouping of camp buildings

1 united by their pattern of development and
2 settling that represent summer and vacation home
3 tourism in New Hampshire in the early 20th
4 century. Do you see that?

5 A (Stevenson) Yes.

6 Q Now, this next sentence, it says DHR has
7 determined that the nearest turbines to the
8 eligible White Birch Historic District are
9 numbers 7, 8 and 9 approximately 2.5 miles west
10 to northwest rising along the ridgeline.

11 Now, do you know why those turbine numbers
12 differ from the numbers that the Army Corps
13 stated?

14 A (Stevenson) No, I do not.

15 Q Do you know what the DHR uses its reference when
16 it determined those turbines?

17 A (Stevenson) No, I don't know.

18 Q Okay. And now, one of the other points, things
19 I wanted to check with you is the, it was stated
20 earlier that one of the reasons why Mr. Raphael
21 did not consider this as part of his Visual
22 Assessment was because it was private land as
23 opposed to easily accessible to the public, but
24 are you aware that that road, that White Birch

WITNESS PANEL: WILL AND STEVENSON

1 Point Road is actually a Class V,
2 town-maintained, town-owned road?

3 A (Stevenson) I did not know of that specific
4 clarification. When I did my field survey to
5 generate the intensive-level form, I stick to
6 public roads.

7 Q Did you go up that road?

8 A (Stevenson) I did.

9 Q Okay. So you knew that it was a public road?

10 A (Stevenson) I only knew it was a public road
11 because it was on a map, and it did not have a
12 private road/no trespassing sign. That's
13 generally what I use when I'm in the field to
14 determine whether I should, am I driving down
15 someone's driveway or am I going on a street.

16 Q Okay. So you know that a portion of that
17 Historic District is public, accessible to the
18 public?

19 A (Stevenson) I suppose the road. I mean the rest
20 of it is, my understanding, is private property.

21 Q The way, if I understand it correctly, there is
22 the road and then there is land that goes down
23 to the lake and then there are properties up
24 above. Is that correct?

WITNESS PANEL: WILL AND STEVENSON

1 A (Stevenson) I believe so, yes.

2 Q Thank you. And now I do, I want to now spend
3 time asking you questions about the MOU that was
4 signed between Antrim Wind and the DHR. My
5 concern, though, and I'll ask you, I don't, I
6 asked Mr. Kenworthy during the lunch break
7 whether or not you would be the appropriate
8 person to ask these questions. Are you familiar
9 with the MOU?

10 A (Stevenson) Vaguely familiar. I was not
11 involved in the drafting or crafting of the MOU.

12 MS. LINOWES: Okay. So then perhaps I can
13 ask the question, Mr. Chairman. I don't know if
14 I should hold these questions until Mr.
15 Kenworthy is on the witness stand talking about
16 Orderly Development or would it be appropriate
17 for Mr. Kenworthy to come on the stand now to
18 ask the questions. I'll leave that to you.

19 PRESIDING OFFICER SCOTT: Have we
20 determined that Mr. Will doesn't know the answer
21 to this also?

22 MR. RICHARDSON: Why doesn't she just ask
23 the question, and the witness can answer or not.

24 PRESIDING OFFICER SCOTT: Well, as far as

WITNESS PANEL: WILL AND STEVENSON

1 putting Mr. Kenworthy up, I think for
2 expediency, I think we'll wait. He hopefully
3 will be on later today if you can put aside.

4 MS. LINOWES: I can ask one of the
5 questions, and we can see how far we're going to
6 get with that.

7 PRESIDING OFFICER SCOTT: Okay.

8 MS. LINOWES: Did we hear from Mr. Will?

9 PRESIDING OFFICER SCOTT: Mr. Will?

10 WITNESS WILL: I did not have a role in
11 constructing the MOU either.

12 PRESIDING OFFICER SCOTT: Thank you.

13 BY MS. LINOWES:

14 Q Okay. So with regard to the MOU, do you know
15 who was involved in negotiating the agreement?

16 A (Stevenson) I know that the project and DHR was
17 involved.

18 Q Was the Army Corps -- sorry.

19 A (Stevenson) I don't know if anyone else was
20 involved.

21 Q You don't know if the Army Corps was involved?

22 A (Stevenson) I don't know. I do not believe they
23 were involved because the Army Corps by 106 said
24 there would be no impact to White Birch Point so

1 there would be no reason for the Army Corps to
2 enter into a MOU with DHR.

3 Q Let me ask you a question before I get into
4 further questions because you've said, I think
5 you indicated that already. If the Army Corps
6 makes a determination that there is no impact
7 but the state agency believes that there is an
8 impact, is the state agency prohibited from
9 proceeding further by making, by continuing to
10 say there is an unreasonable adverse or an
11 adverse effect?

12 A (Stevenson) Well, under Section 106, it's the
13 federal agency's responsibility under the law to
14 determine effects. In that sense, the SHPO,
15 State Historic Preservation Office, acts in a, I
16 guess you could say consultative role. In most
17 instances, the federal agency works with the
18 State Historic Preservation Office to come to an
19 agreement. They don't always come to an
20 agreement. In that case the federal agency
21 makes its determination and the State Historic
22 Preservation Office can choose to elevate that
23 to the Advisory Council on Historic
24 Preservation. However, the Advisory Counsel is

1 also a, they provide review and help and
2 suggestions. They don't have the power to force
3 the federal agency to go one way or the other.

4 Q Okay. That's very helpful. So the federal, is
5 the federal agency delegating to the, at any
6 point delegate responsibility to the agency,
7 state agency, or does it hold all authority with
8 consultation?

9 A (Stevenson) It's the federal agency's
10 responsibility under federal law so if they
11 don't fulfill their responsibility they are on
12 the hook for that. So they typically will, they
13 handle their own statements, they don't delegate
14 typically to other agencies.

15 Q Have you ever been in a situation where you've
16 seen such a, similar kinds of disputes in the
17 past between State and federal on this issue?

18 A (Stevenson) Sure.

19 Q How is it generally resolved or let me rephrase
20 the question because it can go a number of ways.

21 Have you seen a situation where the state
22 simply disagreed and took their own actions
23 statewide to the extent that they could within,
24 under their own rules and regulations?

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1 A (Stevenson) Sure. Yes.

2 Q Can you name an example of that?

3 A (Stevenson) I mean, no projects in New
4 Hampshire. Possibly projects that I've worked
5 on in other states. It would be hard to
6 speculate anything specific, but it does happen,
7 the state and federal agency doesn't always see
8 eye to eye.

9 Q So in this venue here, the Site Evaluation
10 Committee, the Site Evaluation Committee has the
11 authority to determine whether or not a project
12 will have an unreasonable adverse effect on
13 historic sites. In that situation, it is
14 possible, I'm asking, for the Site Evaluation
15 Committee to support a finding of unreasonable
16 adverse on historic sites even if the federal
17 government has said there is not; is that
18 correct?

19 A (Stevenson) I would assume. I'm not familiar
20 with all of the SEC rules but this is its own
21 process so they would make their own decision.

22 Q Okay. Mr. Chairman, all of my other questions
23 pertain to the MOU so I think I'm all set.

24 PRESIDING OFFICER SCOTT: I guess I will

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1 give the Applicant, if you think it would be
2 better to do it now, we could have Mr. Kenworthy
3 come up now.

4 MR. NEEDLEMAN: I would say we have no
5 strong feelings, but unless the Committee wants
6 him to come up, I prefer that we wait and try to
7 keep it all clean, witness by witness.

8 PRESIDING OFFICER SCOTT: That was my
9 feeling. It was more for administrative
10 efficiency, not for -- and do you feel
11 comfortable you can hold your questions until
12 then?

13 MS. LINOWES: Yes, I can, Mr. Chairman.
14 The only concern I have is that I had allotted a
15 certain amount of time with Mr. Kenworthy that
16 wasn't including this.

17 PRESIDING OFFICER SCOTT: Understood.

18 MR. NEEDLEMAN: Can I just say one other
19 thing? I want to make sure we don't have the
20 sort of issue we had with Mr. Cavanagh so I
21 think what Mr. Kenworthy is prepared to speak to
22 is the negotiation of the agreement with DHR
23 which I think he was principally involved with.
24 I think if that wanders then into historic or

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1 archeological resource analysis, that's a
2 different issue.

3 MS. LINOWES: Mr. Chairman, with that said,
4 I do have one more question for the witness
5 because I'm not sure that Mr. Kenworthy will be
6 able to answer it.

7 PRESIDING OFFICER SCOTT: Okay. Go ahead.

8 BY MS. LINOWES:

9 Q You're aware of the stipulations that have been
10 put into the MOU with regard to signage or a
11 website?

12 A (Stevenson) Yes. I'm aware of them.

13 Q And now, if the, currently the property is
14 eligible for the National Register, you're aware
15 of that?

16 A (Stevenson) Yes.

17 Q And there is a concern that if the project is
18 built it would diminish its eligibility for the
19 National Register; are you aware of that?

20 A (Stevenson) I believe that was DHR's position.

21 Q Now, if it turns out that, if the mitigation is
22 taken, stipulations, whatever stuff is taken in
23 the form of mitigation, is in effect the DHR
24 accepting that this property will not be

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1 eligible for the National Register?

2 MS. WALKLEY: Mr. Chairman, I'm going to
3 object. She's asking for a conclusion of law.

4 MS. LINOWES: I'll rephrase the question.

5 PRESIDING OFFICER SCOTT: Okay.

6 Q If the project, you say that if the project is
7 built, DHR's position as far as you understand
8 it is that it would diminish its eligibility
9 under the National Register, is that correct?

10 A (Stevenson) Yes. DHR's position is that it
11 would have an adverse effect to the eligible
12 district.

13 Q So if the project gets built, mitigation is put
14 in place, would you expect the DHR to pursue the
15 National Register for this site or do you think
16 that it will simply be back-burnered?

17 MS. WALKLEY: Mr. Chairman, I'm going to
18 object again. I think that the agreement speaks
19 for itself.

20 MS. LINOWES: Okay. I'm not sure how else,
21 how to phrase it then.

22 PRESIDING OFFICER SCOTT: Okay. So again,
23 so Ms. Linowes, you'll come back to the MOU
24 questions when Mr. Kenworthy is on the stand.

1 MS. LINOWES: Yes.

2 PRESIDING OFFICER SCOTT: Okay. Great.
3 The Audubon Society? Mr. Reimers?

4 MR. REIMERS: No questions. Thank you.

5 PRESIDING OFFICER SCOTT: Counsel for the
6 Public?

7 **CROSS-EXAMINATION**

8 BY MS. MALONEY:

9 Q I think I have questions for Mr. Kenworthy, but
10 I might have, I'll ask you this since this is
11 your field.

12 So in terms of the mitigation, since the
13 DHR was of the opinion this would have an
14 adverse effect on this eligibility, what is your
15 opinion about signage as mitigating the
16 effectiveness?

17 A (Stevenson) Signage is a fairly common
18 mitigation that I see a lot for different
19 projects.

20 Q So that will then elevate, it will elevate its
21 status then or, rather, it will mitigate against
22 the turbines? Industrial wind turbines?

23 A (Stevenson) There's a couple things. This
24 mitigation was a voluntary agreement between DHR

1 and the project. So mitigation under 106 is
2 slightly different. It can be anything that the
3 consulting parties would agree to. So you'd
4 have to ask, you know, DHR what their feeling is
5 on agreeing to the signage.

6 Q I note, and I don't know if you can answer this
7 question. That's the first option, I guess, is
8 the signage, and it indicates if the association
9 is not in favor of the sign, then the second
10 option is a website. But I guess you don't go
11 back to the Association on the website. Do you
12 know anything about that?

13 A (Stevenson) I don't. But typically, mitigation
14 is an effort by all of the parties involved to
15 come to some sort of an agreement. It doesn't
16 have to be a set one or, you know, it can be
17 anything that the parties agree to, I guess, is
18 the best way to put it.

19 Q So when you say all the parties, what about the
20 Association?

21 A (Stevenson) Again, I wasn't involved in the
22 drafting of the MOU so I don't know who was
23 outside of the project and DHR.

24 Q Would they be considered a party of interest?

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1 A (Stevenson) We're not, this is done outside of
2 Section 106 so I don't know of any laws
3 governing what the project has done with DHR.
4 It was an effort of good faith and trying to
5 come to an agreement.

6 Q Between the Applicant and DHR?

7 A (Stevenson) Correct. Because the Army Corps's
8 position was there was no impact.

9 Q Right, and I understand their perspective.

10 In terms of access, there's a water, this
11 is waterfront property, correct.

12 A (Stevenson) Yes.

13 Q And the public has access to that waterfront in
14 front of --

15 A (Stevenson) That's not my understanding. When I
16 was there I saw a sign at the grove, I'm pretty
17 sure, that I remember that said it was not
18 public.

19 Q The water itself?

20 A (Stevenson) Oh, the water? I thought you said
21 the waterfront, I'm sorry. Yes. I'd assume the
22 water itself was public.

23 Q All right. I don't have any other questions.

24 PRESIDING OFFICER SCOTT: Thank you.

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1 Members of the Committee? Mr. Forbes? Ms.
2 Weathersby?

3 BY MS. WEATHERSBY:

4 Q One quick question concerning the mitigation.
5 When there's going to be some mitigation of an
6 adverse effect of a project on the property,
7 does that mitigation typically involve the
8 affected property owner?

9 A (Stevenson) Under Section 106, if this were the
10 case, any consulting parties would be involved
11 in coming up with mitigation options.

12 Q Is the property owner typically a consulting
13 party?

14 A (Stevenson) If they choose to be so, certainly
15 they have that option.

16 Q But is it typical?

17 A (Stevenson) Yes and no. I work on several
18 projects where adjacent property owners decline
19 consulting party status under 106.

20 Q But they were asked and then declined?

21 A (Stevenson) Yes, but that's under Section 106.
22 I think that distinction needs to be made.

23 Q Do you know in this case whether the White Birch
24 Historic District was asked to participate?

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1 A (Stevenson) I do not know. I was not involved
2 in the drafting or the crafting of the MOU.

3 Q Thank you.

4 PRESIDING OFFICER SCOTT: Dr. Boisvert?

5 DR. BOISVERT: Yes.

6 BY DR. BOISVERT:

7 Q Is it your observation that the dispute between
8 the Army Corps of Engineers and the New
9 Hampshire Division of Historical Resources had
10 to do more with the areas that would be
11 considered for discussion as opposed to any
12 adverse effects? In other words, the area of
13 potential effect?

14 A (Stevenson) Yes. I think that's a primary area
15 of dispute between the two.

16 Q So Army Corps of Engineers was not stating that
17 the White Birch Point District was not eligible
18 or significant. They simply said that it did
19 not come under their review?

20 A (Stevenson) I believe. I haven't seen any
21 statements from the Army Corps, but --

22 Q Are you familiar with a document known as
23 Appendix C for the Army Corps of Engineers?

24 A (Stevenson) Not off the top of my head, no.

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1 Q I need to frame this as a question. Would it
2 surprise you to know that the Army Corps of
3 Engineers disagrees significantly with the
4 historic preservation community over what areas
5 would be affected by a project?

6 A (Stevenson) I suppose not.

7 Q Are you familiar with the concept known as "but
8 for" in historic preservation review?

9 A (Stevenson) No.

10 Q If this project had a federal agency that would
11 recognize White Birch Point District as being
12 within the area of potential effect, and if it
13 were determined in consultation that there was
14 an adverse effect, would the concept of using
15 signage or website be viewed as a kind of
16 mitigation that could be acceptable?

17 A (Stevenson) We're talking about under Section
18 106?

19 Q Yes.

20 A (Stevenson) Sure. I think it could be one of
21 several options that could be acceptable. It
22 really comes down to the agencies and the
23 consulting parties, what they can agree on.

24 Q Okay. And in your opinion, regarding the

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1 development of this Memorandum of Understanding,
2 do you think that it would have been appropriate
3 to invite White Birch Point Association to
4 participate in that those negotiations?

5 A (Stevenson) Again, I mean, I was not involved in
6 the crafting of that. I don't know who the
7 parties were that were involved so I can't
8 really comment on that.

9 Q Thank you.

10 PRESIDING OFFICER SCOTT: Commissioner
11 Rose?

12 COMMISSIONER ROSE: No questions.

13 PRESIDING OFFICER SCOTT: Attorney
14 Clifford?

15 MR. CLIFFORD: None.

16 BY PRESIDING OFFICER SCOTT:

17 Q So just to clarify. So the Army, if I
18 understand correctly now, the Army Corps of
19 Engineers and DHR, now that they have the MOU
20 signed, are both satisfied?

21 A (Stevenson) I don't believe the Army Corps was a
22 signatory to the MOU.

23 Q All right. So I'll separate it. So the Army
24 Corps said they have no concerns?

1 A (Stevenson) Correct. There would be no impact.
2 And then the project and DHR are the two that I
3 know of that crafted the MOU.

4 Q Okay. So what would signage do? I know you
5 weren't part of the process for getting the MOU
6 done, but what does signage do to help mitigate,
7 what's the significance that signage brings?

8 A (Stevenson) Again, it's really just whatever the
9 parties can agree on and feel is appropriate.
10 Mitigation, I've seen all sorts of mitigation.
11 It oftentimes doesn't directly relate to the
12 impact, but it could be helping out a local
13 historic society, it could be developing
14 educational programs for camps, it could be
15 signage, websites, things of that nature. It's
16 really trying to bring the parties together to
17 come to some sort of resolution of what they
18 feel is appropriate.

19 Q Well, I had a much more basic question. So
20 signage, I assume, brings attention to the
21 historical significance?

22 A (Stevenson) Sure. Historical significance of
23 that development. You know, could include
24 anything. Historical photographs, information

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1 from my background research and from that I
2 prepared on the property, but yes, just to
3 educate the public about the resource.

4 Q I think all my other questions are answered.
5 Mr. Iacopino?

6 BY MR. IACOPINO:

7 Q Thank you. First of all, you worked with the
8 Division of Historic Resources in New Hampshire
9 prior to preparing your testimony, correct?

10 A (Stevenson) Yes. I worked with them during the
11 file review and development of the methodology,
12 I guess you could say.

13 Q And I guess there's been some discussion here
14 today that there was a finding that there would
15 be an adverse effect by DHR, and I suppose
16 that's that July 28th final letter that Ms.
17 Linowes asked you about. Do they use the word
18 "adverse" in there at all?

19 A (Stevenson) I'd have to continue to read the
20 letter to --

21 Q I think they use language such as it will
22 diminish historical value or something like
23 that.

24 A (Stevenson) It says the DHR further determined

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1 the injection of turbines within the viewshed of
2 the eligible district would diminish his
3 historic setting, feeling and association.

4 Q That language that's used there in your field,
5 is that considered to be an adverse effect?

6 A (Stevenson) I can tell you. It would trigger
7 the criteria of adverse effect in which you
8 would have to assess whether the effect is
9 adverse or not adverse.

10 Q Does it appear to you that the Division of
11 Historic Resources took that step?

12 A (Stevenson) Well, based on their April 19th,
13 2013, letter where they state they feel that
14 there's an adverse effect to White Birch Point.

15 Q So you're going back to the 2013 letter for that
16 finding of adverse?

17 A (Stevenson) Correct. Right.

18 Q Is there anywhere in your review of the DHR's
19 work where they added the additional layer that
20 the adverse effect was unreasonable?

21 A (Stevenson) Not that I'm aware of, no.

22 Q This is going to sound like a very basic
23 question, but where in the Application or in the
24 record can the Committee find actually the

1 boundaries of what the White Birch Historic
2 District is?

3 A (Stevenson) Sure. If you -- I would need help
4 to find the exact docket or exhibit number, but
5 it would be in the intensive-level survey form I
6 prepared for White Birch Point. It defines the
7 boundary. Or excuse me, the effects assessment.
8 I'm sorry.

9 Q We have, I think we have three sets of records.
10 We have Historic Resource Inventory Forms which
11 is 153 pages, Appendix 9 E?

12 A (Stevenson) Right.

13 Q We have 9 D, which is the PAF for Antrim?

14 A (Stevenson) Not there.

15 Q And then we have 9 F which is Determination of
16 Effects forms.

17 A (Stevenson) Yes, that's one of them that would
18 give you the boundary on a map. I'm looking at
19 it right here.

20 Q I want to see if I can raise it up here on my
21 computer. This is in the application. It's
22 Appendix 9 F, and I, at least in the PDF version
23 of this document, it's 46 pages. Is that
24 consistent with what you have in front of you?

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1 A (Stevenson) I have a printout so I'm not sure.
2 Sorry.

3 Q Can you tell us where within that document they
4 would look for the boundaries of this Historic
5 District?

6 A (Stevenson) There should be a set of tables that
7 start with historic property, properties effect
8 the table, results of effect evaluation for
9 White Birch Point Historic District.

10 Q How far into your document is that?

11 A (Stevenson) It is the last page of the White
12 Birch Point section.

13 Q But we don't even know where the White Birch
14 Point section is in there.

15 A (Stevenson) My White Birch Point section is
16 clipped into the end. It's the last section.
17 It's the last property, I should say.

18 Q Okay. So what you're referring to then is the
19 White Birch Point Historic Viewshed Map, which
20 appears to be an aerial photograph?

21 A (Stevenson) Correct.

22 Q Is it just the area that is outlined in red
23 that's part of the Historic District?

24 A (Stevenson) Correct.

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1 Q And for the Committee's -- are you familiar with
2 the area that they call "the beach"?

3 A (Stevenson) Within White Birch Point? Do you
4 mean the Grove? The little beachfront on the
5 northern end?

6 Q Yes. Where there's a "No Trespassing" sign?

7 A (Stevenson) Yes.

8 Q Is that within that red area?

9 A (Stevenson) Yes.

10 Q It is. Okay?

11 A (Stevenson) Um-hum.

12 Q Now, there are the yellow-shaded areas within
13 the district viewshed map. Those yellow-shaded
14 areas indicate that there's project visibility
15 from there is my understanding?

16 A (Stevenson) Correct.

17 Q Is there any document that demonstrates where
18 the actual historic structures are?

19 A (Stevenson) Yes. It might be hard to see, but
20 there are green outlines on the map that show
21 the footprints of all of the buildings.

22 Q I see some green outlines that are outside of
23 the red area?

24 A (Stevenson) Correct. They're footprints of all

1 of the buildings in the area.

2 Q So those ones are not part of the district then.

3 A (Stevenson) Correct.

4 Q So would it be fair for the Committee to
5 conclude from, at least from this aerial map,
6 that there are some of the historic structures
7 in the Historic District that have a view that
8 would have a view and some that would not?

9 A (Stevenson) Correct. It looks like four, maybe
10 five, depending on where the viewsheds are.

11 Q And what's a little bit difficult here is I
12 can't see them. Maybe just because of the size
13 that I have it set. I have it at 66 percent,
14 but is there a roadway in there that runs,
15 public road anyway, in that red outlined area,
16 and whereabouts is it?

17 A (Stevenson) It's tough to make out. There is.
18 It extends from the entrance near where I
19 believe the mail shelter is which is that, I
20 guess, little peninsula of red area at the top.

21 Q Okay.

22 A (Stevenson) And it kind of winds down to the
23 southwest and you can kind of see it barely on
24 the aerial and then it turns back to the east.

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1 Q Is it like a loop?

2 A (Stevenson) No. It's not a loop. You have to
3 turn around.

4 Q All right. So at present, if somebody who
5 doesn't own property within the White Birch
6 Historic District goes in there, is there any
7 way for them to presently know what the
8 historical significance of any of these
9 structures or the property is?

10 A (Stevenson) Not unless they've read my inventory
11 form, no.

12 Q Have you published your inventory form anywhere
13 else except in this docket and with DHR?

14 A (Stevenson) No.

15 Q And DHR keeps these things on records for
16 subsequent research, is that right?

17 A (Stevenson) Yes. They're public record.

18 Q When you went, was there documentation already
19 on file at DHR regarding this district?

20 A (Stevenson) No.

21 Q So your work is the first work that identifies
22 and speaks to the district?

23 A (Stevenson) That I'm aware of, yes.

24 Q At least at the DHR.

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1 A (Stevenson) Yes. When I did my file review.
2 Yes.

3 Q I don't have any other questions.

4 PRESIDING OFFICER SCOTT: I did have one
5 more set of questions for you.

6 BY PRESIDING OFFICER SCOTT:

7 Q Obviously, you've been asked a lot about the
8 MOU. The MOU doesn't reference working with the
9 Antrim Historical District. Are you familiar
10 with the Antrim Historical District?

11 A (Stevenson) Does or does not, you said?

12 Q It does?

13 A (Stevenson) I believe I remember that, yes, from
14 my initial file review. I don't believe it was
15 within my project area, but I'd have to double
16 check. It was not one that I identified.

17 Q I'm sorry. I misspoke. It's the Antrim
18 Historical Society. I'm sorry. I probably
19 confused you?

20 A (Stevenson) Yes. I thought you were talking
21 about a resource. Yes. I'm aware of the Antrim
22 Historical Society. I believe I visited the
23 Tuttle Library and spoke to someone there about
24 getting background information and really stuff

1 that was during the project area form phase
2 where you kind of cast a wide net to, you need
3 to develop all the historic context for the area
4 so that you can evaluate resources.

5 Q Would it be fair to say if you're looking at the
6 local community, the local Historic District is
7 the logical place to go to consult with?

8 A (Stevenson) Sure. Yes. I know I reached out to
9 other ones in the vicinity as well.

10 Q Okay. Thank you.

11 MR. IACOPINO: I have one more question,
12 Mr. Chairman, if you don't mind.

13 BY MR. IACOPINO:

14 Q Just prior to that last page, there is the
15 photograph from Saratoga Associates. Were you
16 the person who was responsible for providing
17 that to, I suppose it was provided to DHR with
18 your filing?

19 A (Stevenson) These were given to me to use in my
20 effects assessment. I did not generate these or
21 take these photographs.

22 Q Okay. But you put it in this package and
23 provided it to DHR?

24 A (Stevenson) Correct.

1 Q All right. Do you know where it came from
2 yourself? If you don't, I'm sure Mr. Kenworthy
3 does but --

4 A (Stevenson) Other than it came from Saratoga,
5 no.

6 MR. IACOPINO: Okay. Thank you.

7 PRESIDING OFFICER SCOTT: Attorney Walkley?

8 MS. WALKLEY: Just a few questions.

9 **CROSS-EXAMINATION**

10 BY MS. WALKLEY:

11 Q Attorney Maloney asked you about the water body
12 that is identified in Appendix 9 F, the figure
13 we were just looking at, and asked you whether
14 it was a public water body. Based on that map,
15 is it correct that that's not part of the White
16 Birch Point Historic District?

17 A (Stevenson) Correct. The body of water is not.

18 Q One other question. Was the White Birch Point
19 Association asked to participate in the Section
20 106 review process?

21 A (Stevenson) I do not know. I don't believe I
22 was involved in the consulting parties for the
23 Section 106 review process.

24 Q Okay. Thank you.

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1 A (Stevenson) I mean, I could check my notes and
2 see whether they were a party, but --

3 Q Thanks.

4 A (Stevenson) To avoid any issues later, again, we
5 do have Mr. Will in case if anybody's forgotten.
6 So looks like we're all set then. Okay.

7 With that, so I think Mr. Thurber is next,
8 is that correct?

9 MR. RICHARDSON: Yes. I believe so.

10 PRESIDING OFFICER SCOTT: So the panelists
11 are dismissed. Why don't we go off the record
12 while we've moving the panelists.

13 (Off-the-record discussion)

14 PRESIDING OFFICER SCOTT: Back on the
15 record.

16 **EVERETT THURBER, DULY SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. RICHARDSON:

19 Q Good afternoon, Mr. Thurber. Could you spell
20 your first and last name for the record, please?

21 A T H U R B E R.

22 Q And Everett is your first name?

23 A E V E R E T T.

24 Q And you've prepared testimony in this

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1 proceeding, right?

2 A Yes.

3 Q Do you have that testimony dated May 23rd, 2016,
4 in front of you?

5 A Yes.

6 Q I'll represent to you that's been marked as
7 Antrim Exhibit 1, and is that testimony true and
8 accurate to the best of your knowledge and
9 belief?

10 A I saw one that was exaggerated because it said I
11 went to many communities. I went to many
12 communities where the wind projects were, but I
13 actually only participated in two of the
14 meetings, and one of those was in Groton,
15 Vermont, and one in Grafton, New Hampshire.

16 Q Okay. And with that clarification, is your
17 testimony true and accurate to the best of your
18 knowledge and belief?

19 A Yes, it is.

20 Q And you adopt it as your testimony in this
21 proceeding?

22 A Yes.

23 Q Thank you.

24 A Unless you'd like the update because I've been

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1 asked if I was paid today. I had a bowl of
2 soup. That was my pay for two trips to Concord.

3 MR. RICHARDSON: Let the record show I
4 didn't ask that question, but the answer has
5 been given.

6 PRESIDING OFFICER SCOTT: Does the
7 Applicant have any questions?

8 MS. WALKLEY: No questions.

9 PRESIDING OFFICER SCOTT: Mr. Enman? No.
10 Again, the Giffin/Pratt Intervenors are not
11 here. Anybody from the Harris Center?

12 MR. NEWSOME: No questions.

13 PRESIDING OFFICER SCOTT: Ms. Berwick?

14 BY MS. BERWICK:

15 Q Mr. Thurber, in reference to, this is a question
16 that you answered that Ms. Linowes asked during
17 the technical sessions and so it's Wind Advisory
18 Group Question 10. I don't think you need to
19 see it because I think you'll understand what
20 I'm saying. Would you agree with the basic
21 summary of what happened relating to a citizen
22 complaint, you had a citizen that was
23 complaining regarding excessive noise coming
24 from one of the turbines and your town sent out

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1 an assessor multiple times but each time the
2 turbine was not operating so that the assessor
3 was not able to measure the sound levels, is
4 that correct?

5 A That was the original statement, yes.

6 Q Okay. Thank you. So in the mind of the
7 assessor, it says the visual impact alone,
8 quote, dominates the view from the subject's
9 yard would have a negative impact for property
10 value. Yet you state that these turbines do not
11 affect property value. Are you suggesting that
12 your assessor does not know how to assess house
13 values?

14 A No. I don't believe I would like people to
15 believe that. We believe that that one property
16 had, it was close enough to be obtrusive.

17 Q Okay. Can you explain why Lempster decided
18 against keeping any type of equipment to check
19 for noise complaints? In other words, any type
20 of measuring decibel-type of equipment?

21 A We have one. We have, I found later that we do
22 have a decibel meter. But to use a decimeter
23 properly you'd have to be properly trained to
24 use it because it's not just your decibels.

WITNESS: EVERETT THURBER

1 It's saturation points, how long at what
2 decibels and it goes on and on and on. We
3 didn't feel anybody was qualified to take on
4 that project so we chose not to use that as a
5 constant reference point.

6 And if push come to shove, somewhere along
7 the line we would have probably had somebody
8 trained to do it properly because if you don't
9 do it properly you can get into all kinds of
10 messes, but we have, after that one.

11 I can't say one incident, two incidents
12 where it was, because the second one was the
13 Onnela property that said it was noisy, but that
14 was another, that was because he found if he
15 said it was noisy and it bothered him, he had it
16 actually placed close to his house as a bragging
17 right. This is my feeling. And then when he
18 found that if you could get an abatement on your
19 taxes that he should complain.

20 But those are the only official two noise
21 counts that we've had so it wasn't really
22 economical or feasible to pay somebody a whole
23 bunch of money to get properly trained with a
24 decimeter for one or two landowners.

WITNESS: EVERETT THURBER

1 Q There are multiple reports of noise levels being
2 most intrusive at nighttime related to the
3 temperature inversions. Have you been overnight
4 within a half a mile of any of the turbines? At
5 night?

6 A Yes, I have.

7 Q And you didn't notice any noise? Can I ask what
8 season that was?

9 A I guess it's the building that I stayed in was a
10 superefficient energy house that had been
11 insulated and all of the proper things were done
12 so that it took minimum heat and noise because
13 of the insulation and technology that was in the
14 house, and that was in a house that was about as
15 close as most of the wind, had more, as far as
16 being close to the windmills, it was like three.
17 It's just off from Lempster Mountain Road, and
18 I'd stayed there at night. I sat on the deck
19 many nights because actually it was my
20 daughter's house, and we observed very little
21 noise.

22 Q What would you believe would be the effect on
23 the town of Lempster on their taxes if the wind
24 turbines were to be decommissioned in two years?

WITNESS: EVERETT THURBER

1 A We would probably take a rise of five dollars
2 per thousand on our -- this is just approximate
3 number on our tax rate.

4 Q So could you, would you think that a similar
5 situation would probably happen to Antrim when
6 this wind project, if it was built, was
7 decommissioned? Because it does have a limited
8 life.

9 A It has a 20-year life and we're not doing any
10 long-range projects that would run beyond the 20
11 years in case something like this does happen.
12 I'm saying. I'm not, I'm not an analyst so I
13 can't analyze where we will be in 8 or 10 years
14 with wind projects. I do know that wind
15 projects are becoming more efficient all the
16 time. They're generating more electricity with
17 higher technology, but outside of that, I'm like
18 not really, I can't really tell you where this
19 is going to go. But I just know if they shut
20 the windmills down today in Lempster, or didn't
21 pay any taxes, that we would be, it would be
22 about five dollar a thousand.

23 Q Which would be a significant increase for
24 your --

WITNESS: EVERETT THURBER

1 A Yes, it would. But it would be temporary
2 because we've had some major projects that we're
3 working on because that money actually was,
4 we're trying to use it wisely so the impact
5 wouldn't be that great. So we do have a
6 reasonable rate as far as we consider as far as
7 the tax rate goes. We have towns, we have, the
8 city's in Claremont which is a high, high rate,
9 and a house like I have is \$4000. In Claremont,
10 it would be \$10,000. I have my own sewer mill
11 and water so it's \$10,000 taxes plus water and
12 sewer so it would have an impact on us as far
13 as -- but nowhere near like, would never bring
14 us anywhere near like a Claremont rate or a
15 Newport rate.

16 Q Right. I understand that. I have a son
17 searching for houses in, not in the Claremont
18 area. Could you tell me how tall the height of
19 the Lempster windmills?

20 A I'm not sure. That's all data. I think it was
21 290 feet to the highest point. That's when the
22 blade is straight up. At 12 o'clock.

23 Q Okay. Thank you. I have no further questions.

24 PRESIDING OFFICER SCOTT: Thank you.

WITNESS: EVERETT THURBER

1 Mr. Block?

2 MR. BLOCK: I have no questions. Thank
3 you.

4 PRESIDING OFFICER SCOTT: Okay. Ms. Allen?

5 MS. ALLEN: No questions.

6 PRESIDING OFFICER SCOTT: Okay. Don't see
7 Mr. Ward here. Ms. Linowes?

8 **CROSS-EXAMINATION**

9 BY MS. LINOWES:

10 Q Thank you, Mr. Chairman. I'm going to
11 referencing two documents today. The will be
12 Antrim 1 which is Mr. Thurber's Prefiled
13 Testimony and also W A-10 which are the data
14 requests between Mr. Thurber and WindAction.

15 PRESIDING OFFICER SCOTT: Do you have a
16 copy for him?

17 MS. LINOWES: I'm hoping that he has a
18 copy.

19 MR. RICHARDSON: I've supplied the witness
20 with a copy. Are we marking those as an
21 exhibit? We didn't obviously identify them as
22 such. I don't know if they've been, you said
23 they have a WindAction number?

24 MS. LINOWES: Yes. It was part of the

WITNESS: EVERETT THURBER

1 Prehearing Conference. I also, Mr. Chairman, I
2 have one document that doesn't need to go to
3 everyone, but I would like to put him in front
4 of him if that would be okay.

5 PRESIDING OFFICER SCOTT: Fine. Which
6 exhibit were you referencing of yours for him?

7 MS. LINOWES: WA-10.

8 PRESIDING OFFICER SCOTT: 10. Thank you.

9 BY MS. LINOWES:

10 Q Thank you, Mr. Chairman. Are you all set, Mr.
11 Thurber?

12 A Yes.

13 Q Now, according to your Prefiled Testimony on
14 page 1, this would be the question 1 that you
15 say that you've been a Selectboard member in
16 Lempster for 22 years. Is that correct?

17 A What's that?

18 Q You've been a Selectboard member for 22 years?

19 A Yes but not continuous.

20 Q Has it been five years over 22 years or --

21 A No, it was like from '76 to like to '89 or
22 something like that. I stepped off the Board
23 for a while. A lady moved out of town. I took
24 over her final term, and then I stepped away for

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1 a number of years in 2003 or 4. You know, years
2 are all, they're not that important to me. I
3 started again. So maybe nine years, I believe,
4 this time. Or maybe 12. But like, after the
5 first 15 years, you don't really care anymore.

6 Q So a lot of years though.

7 A You just keep pounding yourself in the head and
8 say why do I keep doing this.

9 Q Okay. So not 22, but more than 15.

10 A More than 15.

11 Q Okay. Thank you. So you're an experienced
12 Selectboard member, obviously?

13 A What's that?

14 Q You're an experienced Selectboard member?

15 A Yes.

16 Q And have you lived in Lempster your entire life?

17 A Not yet.

18 Q But for all the years that you've been on this
19 planet you have lived in Lempster?

20 A Yes.

21 Q Okay. Thank you.

22 A My mother was 92. She was born in 1915 and she
23 spent her life here. My great-great-grandfather
24 came here in 1865.

WITNESS: EVERETT THURBER

1 Q So you know Lempster very well.

2 A Pretty well, yes.

3 Q And you served as an ex-officio member of the
4 Planning Board?

5 A Yes.

6 Q So you've been through the subdivision process?

7 A The Planning Board, yes.

8 Q And as I understand it, Lempster does not have
9 or at least did not have zoning, but it does
10 have subdivision and site plan review, correct?

11 A Site plan review. That was questionable because
12 our site plan review ended up here. We were
13 like the first group of people that were, that
14 they ran through the SEC Commission. I believe
15 the commission was a brand new, it was a brand
16 new entity when we brought that before them.

17 Q So you're saying that no one --

18 A A site review, yes. We reviewed it, but there
19 was very little we could do because there was no
20 zoning, and there was no real, there was no real
21 subdivision. They just took out parcels of land
22 that they showed that they would like to take
23 out of land use so they could install the mills.

24 Q Mr. Thurber, I'm speaking more generically

WITNESS: EVERETT THURBER

1 though that your Planning Board has the
2 regulations in place to subdivide lands
3 independent of any wind project?

4 A Yes.

5 Q And your Planning Board has the regulations in
6 place to conduct a site plan review of a
7 development of a specific site, correct?

8 A Yes.

9 Q And what would be an example of site plan review
10 that you've done?

11 A Well, usually what they, and this is a --

12 Q Just a project that's been built.

13 A The one that we do as a, see, a subdivision for
14 house lots, we make sure that, we oversee it and
15 make sure that the lots are five acres or more
16 which most people do because you end up with
17 sewage disposals. Sight line review so you get
18 out in the road, you have a sight line up and
19 down the road, X number of feet. We check that.
20 We do that --

21 Q It's okay, Mr. Thurber. I understand. I'm
22 asking specifically for site plan review.

23 A And we do that, yes. This is part of it.

24 Q Can you name a development that was -- like a

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1 McDonald's. I know there's no McDonald's in
2 Lempster as far as I know, but something like a
3 McDonald's or some other development in town
4 that was specific to one site, not subdivision,
5 a site, that has gone through your Planning
6 Board. Do you know what I'm talking about?

7 A I guess I'm really muddled on this.

8 Q That's okay. We can pass.

9 MR. RICHARDSON: Mr. Chairman, if it would
10 be helpful, I just note for the record that RSA
11 674:43 requires that a municipality adopt a
12 zoning ordinance as a prerequisite to doing site
13 plan review, and I think the confusion lies in
14 the fact that Lempster hasn't adopted a zoning
15 ordinance is my understanding and so that they
16 couldn't have done site plan review, and I think
17 the confusion was this is a site review process.

18 MS. LINOWES: That's fine. I just wanted
19 to get a sense of experience, and it's not
20 important, and I'll move on, but thank you,
21 Mr. Richardson.

22 Q Okay. Now on question 3 of your Prefiled
23 Testimony on page 1, you state that you've been
24 actively involved with the Lempster wind project

WITNESS: EVERETT THURBER

1 since it was first proposed in 2006.

2 A Yes.

3 Q And you say that you attended meetings. You
4 amended it today, you said not many meetings but
5 meetings in other communities in New England; is
6 that correct?

7 A That's true.

8 Q Now, you said today it was Groton, New
9 Hampshire, and Grafton, New Hampshire. Did you
10 mean Grafton, Vermont?

11 A Grafton, New Hampshire, and Groton, Vermont.
12 The little town just, the west side of Chester,
13 Vermont.

14 Q Okay. I believe you're confusing it. So it's
15 Groton, New Hampshire, and Grafton, Vermont.

16 A Okay. If that's the case it was Grafton,
17 Vermont, and Grafton, New Hampshire. I got
18 them, you know, it's really a mixup because
19 both, all the towns seem to be having windmill
20 projects had the same name. You had Grafton,
21 Vermont; you had Grafton, New Hampshire. You
22 have Groton, Vermont; Groton, New Hampshire.
23 The only one that I really distinguish is a
24 different one is IRA.

WITNESS: EVERETT THURBER

1 MR. IACOPINO: Mr. Thurber, the meeting
2 you're talking about, that dealt with the Wild
3 Meadows Wind Project, the one in Grafton, New
4 Hampshire?

5 A I don't know if it even had a name then. It was
6 just the very start of it and more or less I
7 guess was just thrown out the window.

8 MR. IACOPINO: Was I the main speaker?

9 A I believe so.

10 MR. IACOPINO: Thank you. Ms. Linowes,
11 just to answer your question, there was a
12 community meeting regarding the Wild Meadows
13 Project that was held in Grafton, New Hampshire,
14 where I spoke on behalf of the Site Evaluation
15 Committee to explain the process, and I do
16 remember Mr. Thurber being there.

17 MS. LINOWES: Okay. Thank you.

18 Q I would like to talk to you about the Grafton,
19 Vermont, because I actually was at that meeting
20 when you attended. This would have been
21 February 16, 2013. Does that ring a bell?

22 A Who knows. The dates, I'm not a technical
23 person.

24 Q Now, you attended the meeting with Ingrid

WITNESS: EVERETT THURBER

1 Locker. I believe I'm pronouncing the last name
2 right.

3 A Now her name is Bjork, B J O R K. She went back
4 to her maiden name.

5 PRESIDING OFFICER SCOTT: Mr. Thurber, if
6 you could bring the microphone a lot closer,
7 then we could hear you better.

8 A I'm not used to mics either.

9 Q And now, what is her role?

10 A She's the Administrator's Assistant.

11 Q In the town of Lempster?

12 A Yes. We were too cheap to give her the full
13 name as administrator so we cut her pay in half
14 and --

15 Q Mr. Thurber, I really don't have a lot of times
16 to ask questions so if you can keep those
17 comments to a limit that might, I'd really
18 appreciate it and just answer the questions that
19 would be helpful, thank you. Were you paid to
20 present at the meeting in Grafton, Vermont?

21 A No.

22 Q Was Iberdrola made aware that you were
23 presenting at that meeting?

24 A Don't know.

WITNESS: EVERETT THURBER

1 Q So they may have been but you did not make them
2 aware of it? They may have been aware, but you
3 did not make them aware of it?

4 A Right.

5 Q And are you aware that the project in Grafton,
6 Vermont, is also an Iberdrola project as the
7 Lempster project is?

8 A Yes.

9 Q And did you and Ms. Lockleer (sic) travel
10 together to the Grafton event?

11 A Yes.

12 Q Did you travel with Mr. Onnela?

13 A No.

14 Q So he came independent of you?

15 A What's that?

16 Q He came independent of you?

17 A Yes.

18 Q On page 3 of your Prefiled Testimony, on line
19 31, here you state, as a selectman, I have been,
20 I'm sorry. Make sure I have the right location.
21 I'm sorry. It's Line 24. You state, as far as
22 noise the Lempster wind project has not had a
23 significant adverse effect. And then you say
24 residents do not hear or notice the project at

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1 all under normal circumstances. Do you see
2 that? These would be lines 24 and 25 of your
3 Prefiled Testimony.

4 A What was the question?

5 Q I wanted to make sure you see that reference.
6 Under normal circumstances, resident do not hear
7 or notice the project. Do you see that? On
8 Line 25?

9 A Would you like, what would you like for an
10 answer? Yes or no?

11 Q Do you see that line?

12 A Yes.

13 Q Okay. Thank you. And what is, what do you
14 mean, what do you mean by normal circumstances?

15 A Like a quiet night sitting on the deck.
16 Windmills turning and no significant noise. If
17 you're talking with whoever is outdoors or
18 anything, you don't hear it. If you're walking,
19 you don't hear them.

20 Q You made a point of saying under normal
21 circumstances. Are there abnormal
22 circumstances?

23 A I guess not. No.

24 Q So you never hear the turbines?

WITNESS: EVERETT THURBER

1 A No.

2 Q Okay. So they're not louder at night? They're
3 not louder in the wintertime, rain, fog events?

4 A No.

5 Q You've never heard the turbines louder one day
6 and quieter the next?

7 A I've heard them some days louder than others.
8 It all depends on the wind direction where you
9 are.

10 Q And how about the weather conditions?

11 A No. I've never --

12 Q You haven't noticed?

13 A No.

14 Q Okay. Now, also on page 3, you state, this is
15 on the second, the next, that same paragraph,
16 last sentence, you say my residence is located
17 around two miles from the project, and it can
18 only faintly be heard on rare occasions. Do you
19 see that?

20 A Yes.

21 Q So you do hear, you can hear the turbines two
22 miles away.

23 A Yes.

24 Q And what does it sound like?

WITNESS: EVERETT THURBER

1 A Just a low, a low --

2 Q A low what?

3 A To me, it's a low, it's like maybe a real low
4 drumbeat. Boom, boom, boom.

5 Q So it has a pulsation to it?

6 A Type thing. Yes.

7 Q And now, is it possible that if you can hear
8 that from two miles away that someone who lives
9 half a mile away that has a line of sight of the
10 turbines may hear it louder?

11 A I have to think this through because it all
12 depends on where you are.

13 Q I understand.

14 A You're saying if it's a half a mile away, and
15 you're at a low point it goes right over your
16 head so you don't hear it. If you're on a flat
17 plane, possibly you could hear it. So the
18 terrain varies so much that you might move 200
19 feet and not hear it.

20 Q And I'm not asking for specific location. I'm
21 saying is it possible that someone who is closer
22 to the turbines, perhaps with a line of sight,
23 could hear it louder than what you hear two
24 miles away?

WITNESS: EVERETT THURBER

1 A Yes.

2 Q Okay. Thank you. In the eight years since the
3 project has been operational, have you ever
4 heard anyone describe the sound as like a jet
5 flying over?

6 A I believe it was one person.

7 Q A resident in town?

8 A Yes.

9 Q Okay. Thank you. But you have not experienced
10 that yourself.

11 A What's that?

12 Q You have not experienced that yourself?

13 A No.

14 Q And now, the presentation in Grafton, Vermont,
15 Ms. Lockleer and you were asked about good
16 neighbor agreements. Do you know what a good
17 neighbor agreement is?

18 A Yes.

19 Q And the answer, the response, I actually put a
20 copy of the Lempster Wind Good Neighbor
21 Agreement in front of you. That's what I handed
22 you.

23 A Yes.

24 Q I'm going to pull it up.

WITNESS: EVERETT THURBER

1 PRESIDING OFFICER SCOTT: Ms. Linowes,
2 maybe for the record you would tell us who Ms.
3 Lockleer is?

4 MS. LINOWES: She's the town administrator.
5 Is that what you said?

6 A Assistant.

7 PRESIDING OFFICER SCOTT: Thank you. I was
8 confused.

9 A Assistant administrator.

10 Q Mr. Thurber, can you explain what a, your
11 understanding of a good neighbor agreement?

12 A No.

13 Q So you don't know what it is?

14 A I know what this is. This is a document that
15 was, if I understood it correctly, was between
16 the landowner and the wind farm. It wasn't, we
17 weren't privy to the information. It was like
18 confidential. I never saw one of these filled
19 out.

20 Q You mean you haven't seen one signed?

21 A Right.

22 Q Okay. Do you see that it does say at the top of
23 the document, Wind Farm Neighbor Agreement?

24 MR. RICHARDSON: Mr. Chairman, I'm going to

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1 object to this line of questioning only because
2 the Committee's rules require that all exhibits
3 be provided or made available to all parties.
4 I've never seen this. The witness is now being
5 asked to read from it, and I can't see what it
6 says. The rules require that it be made
7 available if it's going to be shown to a witness
8 and read into the record.

9 MS. LINOWES: Let me ask one more question
10 and then maybe that might clarify it and if it
11 doesn't, I can move on.

12 PRESIDING OFFICER SCOTT: All right.

13 MR. RICHARDSON: I'm objecting to the
14 reading of the document into the record because
15 the Committee's rules don't allow --

16 MS. LINOWES: I'm not expecting this
17 document to be put into the record officially.
18 I'm simply asking, I wanted to ask a question
19 about it, regarding it, but the first, to
20 validate it, if Mr. Thurber, if I could ask this
21 question.

22 Q Mr. Thurber, have you ever seen this document
23 even if it wasn't executed?

24 A If I've seen it, I just passed over it because

WITNESS: EVERETT THURBER

1 it had no concern. It was between the landowner
2 and the wind farms.

3 Q Okay. Then I will just move on. That's fine.

4 Now, you did say that at that meeting in
5 Grafton you were asked about the good neighbor
6 agreements though, is that correct?

7 A No. I can't say.

8 Q You don't remember?

9 A Don't remember.

10 Q Do you recall that the good neighbor agreements
11 were offered to residents that resided some
12 radius away from the turbines? Does that ring a
13 bell?

14 A No.

15 Q So you don't know anything about good neighbor
16 agreements?

17 A No.

18 Q Okay. Fine. Now, on page 31 of your testimony,
19 I'm sorry. I'm sorry. Line 31.

20 PRESIDING OFFICER SCOTT: Are you still on
21 page 3?

22 MS. LINOWES: Yes. I am. Sorry.

23 Q On Line 31, you state that as Selectman I have
24 been aware of only two instances where residents

WITNESS: EVERETT THURBER

1 complained of noise impacts. You see that?

2 This would be line 31.

3 A Yes.

4 Q And now, those properties were 25 Guilford Road
5 and 107 Bean Mountain Road; is that correct?

6 A Yes.

7 Q And on lines 36 through 38, you say these two
8 instances are minor isolated experiences and
9 show the noise impacts are far less than what
10 would be expected from a state highway project
11 or an industrial facility. Can you explain what
12 that means? The relationship between a highway
13 and industrial facility and the wind project?

14 A No.

15 Q You don't know why you put that into your
16 testimony?

17 A It's not, you asked for yes and no questions.
18 I'm trying to give you yes and no questions.

19 Q I didn't ask for yes and no questions. Can you
20 explain what that sentence means in your
21 testimony?

22 A No, at this point I can't answer that.

23 Q So should it be stricken from your testimony?
24 Did you write it?

WITNESS: EVERETT THURBER

1 A I think in the beginning it said it was written
2 with the help of Justin Richardson, the
3 attorney.

4 Q So these are not your words. You're not sure
5 what they mean?

6 A Not word for word, no.

7 Q Okay. I guess I would raise a motion to have
8 those lines stricken from his testimony,
9 Mr. Chairman.

10 MR. RICHARDSON: We obviously object to
11 this. The witness has adopted these words, and
12 I'm honestly not sure what's ambiguous about it.
13 I think he agrees with his testimony. I know we
14 heard him say he does. I know he's reviewed
15 this so I'm not, I'm not sure there's any basis
16 for striking it.

17 MS. LINOWES: I am now objecting to the
18 fact that Mr. Richardson is giving, putting
19 words into the witness's mouth. I think his
20 statement was clear.

21 PRESIDING OFFICER SCOTT: Again, we've
22 heard Mr. Thurber say at the beginning of this
23 he adopted this testimony. We have heard this
24 exchange, and we'll give his testimony the

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1 weight it deserves.

2 MS. MALONEY: Could I just raise a point
3 that it's difficult for him to answer questions
4 about it.

5 PRESIDING OFFICER SCOTT: I understand.

6 MS. MALONEY: This process seems to be --

7 PRESIDING OFFICER SCOTT: Which is why
8 we'll give it the weight it deserves as far as
9 moving forward.

10 MS. LINOWES: I'll move it along.

11 Q Now, Mr. Thurber, I would like to direct your
12 attention to Exhibit WA-10. This is that other
13 document that you have in front of you. Yes.
14 That would be it. And looking at question WA ET
15 11 or WA-11. Do you see that?

16 A Um-hum.

17 Q Now, this question, WA-11, this is in followup
18 to a question, prior question where you state
19 that 25 Guilford Road had complained of noise at
20 the turbines, and I asked in the question,
21 please state the project sound levels measured
22 at the affected home on Guilford Road at the
23 time of the complaint and whether the
24 measurements were both inside and outside the

WITNESS: EVERETT THURBER

1 home. Do you see that question?

2 A Yes.

3 Q And then in your response was, the abatement
4 requests were not noise complaints submitted to
5 the town. The abatement requests were from
6 individuals seeking to reduce their property tax
7 payments. Can you explain that answer?

8 A The first part of that was that one wasn't a
9 noise complaint. That one was a, the abatement
10 was on the view which I believe is in the
11 statement from our Assessor, and then they also,
12 there again, I'm not sure because those folks I
13 think got in on this wind energy like friendly
14 neighbor.

15 Q I don't know what you're saying.

16 A They might have got in on, I think that same
17 person got in on the friendly neighbor agreement
18 which we weren't privy to because I've heard
19 what they do is they will insulate your house,
20 they put in fancy windows. This is hearsay so I
21 don't know what went on.

22 Q Okay. So let's keep it to just the questions
23 then. So what you're, if I understand you
24 correctly, noise, you're stating that noise was

WITNESS: EVERETT THURBER

1 not the reason for the abatement, but was there
2 a noise complaint at that property?

3 A Yes.

4 Q There was. Okay.

5 A And we came to, there was nothing conclusive
6 with the decimeter so we just disregarded it.

7 Q Okay. So let me go back one question to
8 question number 1-10 so the one just prior to
9 it, and this would be, if you can, there's a
10 question about what process did the town of
11 Lempster follow in determining whether a tax
12 abatement should be granted, and on that next
13 page is the actual document for the tax
14 abatement. Do you see that?

15 A Yes.

16 Q And it does say here that when the Assessor went
17 out to see if there was a problem with noise
18 that the turbine itself was not spinning at a
19 high rate of speed, and, therefore, he could not
20 determine if there was a problem with noise. Do
21 you recall that? You see that in front of you?

22 A Yes.

23 Q So a complaint was made about noise. The
24 Assessor was sent out to validate whether there

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1 was a possibility of an abatement on the taxes,
2 he could not validate the noise problem because
3 the turbines were not spinning enough to make
4 the noise. So he instead granted an abatement
5 on view. Correct?

6 A Right.

7 Q Okay. So you're not denying that there was a
8 noise problem.

9 A They claimed there was a noise problem.

10 Q You don't think it's legitimate?

11 A It was never documented as a noise, excessive
12 noise.

13 Q While I have you then, what happened? When
14 someone files a complaint, does anything written
15 get put into the record?

16 A Yes.

17 Q So was it filed as a written complaint?

18 A It had to be because we wouldn't abate them
19 unless it was in writing.

20 Q Okay. So he filed a complaint about noise.

21 A Right.

22 Q Okay. Thank you. Now, if you would go to, on
23 Exhibit WA-10, this would be related to the same
24 question 1-11, the last few pages and those of

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1 you who are looking at this online or
2 electronically it would be PDF page 22 of 33.

3 And Mr. Thurber, there is a memo here, do
4 you see that Inter-Office Memo?

5 A No. I'm totally lost.

6 Q Do you want me to come show you where I'm
7 looking at? This would be WA-ET-11.

8 PRESIDING OFFICER SCOTT: Why don't we go
9 off the record and you can show him.

10 (Off-the-record discussion)

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

12 PRESIDING OFFICER SCOTT: Back on the
13 record.

14 Q Do you see that memo?

15 A Yes.

16 Q Now, this memo is written to the Board of
17 Selectmen. Were you a member of the Board of
18 Selectmen in January 2010?

19 A Yes, I was.

20 Q Do you know William Ball?

21 A Yes.

22 Q Now, this memo is dated January 12th, 2010, and
23 just to get the timing, so I'm correct on the
24 timing, that abatement recommendation that we

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1 looked at a moment ago, that was June 25th,
2 2010. So six months later. Do you agree with
3 that?

4 A Yes.

5 Q So the complaint about noise occurred much
6 earlier before an abatement was applied?

7 A Yes.

8 Q And you did send someone out, you sent Mr. Ball
9 out, it appears, with the sound meter --

10 A Yes.

11 Q -- that you talked about, and he took readings?

12 A Yes.

13 Q And he has readings that range anywhere from 51
14 decibels or as low as 39 decibels to as high as
15 53, 54 decibels. Do you see that?

16 A Yes.

17 Q And now if you could go to the next page. I
18 want to read the first sentence in the memo. It
19 says the noise I could hear was similar to that
20 of a high-flying jet airliner on a summer
21 evening. Do you see that?

22 A Yes.

23 Q Is this the gentleman who told you that, was
24 that the first time you had ever heard it

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1 characterized as a jet flying over or have you
2 heard it from others?

3 A I've heard it before.

4 Q Okay. Thank you. And then he goes on to say
5 according, he says, I'm not, this is the last
6 paragraph, I'm not exactly sure how to interpret
7 the reading, but they do appear to be within the
8 scale according to the report issued October
9 29th, 2009. Do you know what he's referring to
10 there?

11 A Repeat that, please?

12 Q The last paragraph, it says I am not exactly
13 sure how to interpret the readings, which would
14 be the sound meter, but they do appear to be
15 within the scale according to the report issued
16 October 29th, 2009. Do you know what that is
17 referring to?

18 A No.

19 Q Mr. Thurber, actually I only have a few more
20 questions. Are you aware of the conditions that
21 the Site Evaluation Committee imposed on the
22 Lempster project back in 2007 when it was, 7/8,
23 when it was approved regarding noise?

24 A No.

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1 Q What is the maximum noise level the Lempster
2 wind project is allowed to produce that you know
3 of?

4 A I don't know.

5 Q Do you know what the contract says between
6 Lempster Wind and town of Lempster?

7 A We skimmed that contract in 2006, or -7 or -8
8 and this is 8 years later, no. I have no
9 recollection of any of it.

10 Q Would it surprise you to know that the Site
11 Evaluation Committee imposed a not-to-exceed
12 limit of 45 decibels on the wind project?

13 A No.

14 Q And that 45 decibels is lower than what was
15 recorded at that site?

16 A I guess so.

17 Q Okay. Were there any mitigation efforts put in
18 place at 25 Guilford Road to address the noise
19 problem?

20 A That I don't know because, like I said, I think
21 they ended up with a friendly neighbor wind
22 agreement.

23 Q But you don't know that.

24 A No.

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1 Q You're guessing that.

2 A I don't know.

3 Q But do you recall the technical session that you
4 said that you thought that 25 Guilford Road did
5 go through mitigation involving insulated
6 windows and other kinds of changes?

7 A That was rumor control that somebody in town had
8 got windows and insulation.

9 Q But you don't know which property?

10 A No.

11 Q So it could have been a property other than 25
12 Guilford Road and it could have been a property
13 other than 107 Bean Mountain Road; is that
14 right?

15 A Yes.

16 Q So there may be more homes that are having a
17 problem with noise than you are aware of?

18 A Possible.

19 Q Were you, so that means, okay. Just so I'm
20 clear. You were not involved in any process as
21 a Board of Selectmen member where a property
22 owner received some mitigation due to noise
23 problems?

24 A No.

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1 Q And then just let me -- I'm almost done,
2 Mr. Chairman. Okay.

3 Now, in this case, you say that the sound
4 meter went, you took the sound meter out. You
5 also testified earlier and it seems to be
6 consistent with what Mr. Ball said that you
7 didn't know how to use the meter or how to read
8 it. How many times roughly since 2008 has the
9 meter been used?

10 A Zero. Zero times.

11 Q Well, at least once.

12 A That's the only time I believe it was used is
13 the one time that Officer Ball went out with it
14 and used it.

15 Q So now, okay, and this is a hard question for me
16 to ask, but I think it's important. Obviously,
17 complex issues related to noise and it also
18 impacts the general welfare and the health of
19 the community. When the Site Evaluation
20 Committee decided to recommend or require that a
21 sound meter be given to the Lempster town of
22 Lempster to do a first pass at least to validate
23 if there was a noise complaint, noise issue, was
24 that going too far? Was the town of Lempster

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1 assuming more responsibility than perhaps it was
2 capable of assuming?

3 A Don't know.

4 Q Okay.

5 A I do know that we've had two noise complaints,
6 formal complaints. They've both been, both
7 parties have gotten a reduction in taxes for
8 noise and view, and we haven't had any other
9 noise-related complaints since, that I know of,
10 since 2010.

11 Q Okay. And, Mr. Thurber, do you know Laura
12 Pickney?

13 A Yes.

14 Q She is on the Historic Society with you?

15 A Historical Society, yes. She is.

16 Q And Ms. Pickney, are you aware of the fact that
17 she put windows, insulated windows, into her
18 home because the sound of the turbines was
19 keeping her awake at night?

20 A No.

21 Q So she never told you that?

22 A No. If she did it was in passing. We grew up
23 together. She's three years younger than I am.
24 We were neighbors and we've been friends for too

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1 many years. Sixty years.

2 Q I want to remind you you are under oath. She
3 never told you that she had to put windows into
4 her home because the sound of the turbines were
5 keeping her up at night.

6 A No. I don't recollect her saying that to me.
7 Her attitude always was if you have a problem,
8 deal with it.

9 Q And that's fine. It sounds like she did deal
10 with it, but did she ever tell you?

11 A I do not know.

12 Q And then just a few more questions. You state
13 on page 3, line 7 of your Prefiled Testimony,
14 you were asked the impact of the project on
15 orderly development. This would be page 3, line
16 7, and you say the impact of the Lempster Wind
17 project on the town's early development has been
18 positive. The project has increased tourism and
19 reduced local taxes. You see that?

20 A What line was that?

21 Q Line 7.

22 A Line 7?

23 Q Correct.

24 A I've got a different. My line 7 on that one is

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1 empty.

2 Q Oh, I'm sorry. The answer is line 10 but the
3 question is on line 7 so it's all part of the
4 same question and answer.

5 A On page 3?

6 Q Correct.

7 A We seem to be skipping all over the ranch here.

8 MR. RICHARDSON: Mr. Chairman, can I just
9 point the witness to where it is?

10 PRESIDING OFFICER SCOTT: Please do. Off
11 the record.

12 (Off-the-record discussion)

13 PRESIDING OFFICER SCOTT: Back on the
14 record.

15 Q Do you see that?

16 A Yes.

17 Q So you said that the impact of the Lempster Wind
18 Project on the town's early development has been
19 positive, increased tourism and reduced local
20 taxes. You see that?

21 A Yes.

22 Q Now, when I asked you if, I did ask you in a
23 data request, this would be WA-16. You don't
24 have to look. I'll just read it. WA-16. Has

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1 the town of Lempster undertaken a study to
2 determine how tourism in that town has grown or
3 changed between the periods before the project
4 was constructed and after. You said no.

5 A Right.

6 Q So do you have any data to show that the project
7 had an effect on increasing tourism in the
8 community?

9 A Only visual data and feedback from small
10 businesses. We have very few.

11 Q With regard to small businesses, are there more
12 businesses in town today than there were in
13 2008?

14 A I would say that that's probably stable. About
15 the same.

16 Q And how about the population?

17 A They come and go. In fact, East Lempster store
18 that's been open is now closed again.

19 Q And how about the population itself?

20 A I believe that's --

21 Q Has it changed?

22 A It's been steady at somewhere around 12,032. I
23 mean, 1,232. Too many zeros.

24 Q I was going to say, that was bigger than I

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1 thought. I'm all set, Mr. Chairman. Thank you.

2 PRESIDING OFFICER SCOTT: Thank you.

3 Audubon?

4 MR. REIMERS: No questions.

5 PRESIDING OFFICER SCOTT: Counsel for the
6 Public?

7 MS. MALONEY: No questions.

8 PRESIDING OFFICER SCOTT: Okay. Members of
9 the Committee? Mr. Forbes? Ms. Weathersby?

10 BY MS. WEATHERSBY:

11 Q Mr. Thurber, earlier today we heard some
12 testimony about the raceway. Is there a raceway
13 in Lempster?

14 A A what?

15 Q A racetrack?

16 A Yes.

17 Q Was that racetrack opened after the wind
18 turbines were constructed?

19 A I believe it was there before. Yes, it was.
20 Definitely it was there before.

21 Q Did it reopen or has there been a significant
22 change in that racetrack since the --

23 A Yes, it's reopened. I believe it was last fall.
24 Or in the summer. It's kind of been in full

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1 operation.

2 Q Has that brought a lot more people in the
3 Lempster area?

4 A I'm sorry? I'm a little bit hard of hearing so
5 I half read your lips, and I can't see your
6 lips. You're hiding behind the --

7 Q Has that brought a lot of people to the Lempster
8 area?

9 A They more or less pass through. They bring in
10 their motorcycles on a Saturday morning, and
11 they disappear Saturday afternoon. If they have
12 a meet or a race that lasts two days, they have
13 an on-site area that they use campers.

14 Q So to the best you can tell, has there been any
15 increase in local campgrounds or hotels or that
16 because of the track?

17 A No hotels. No campgrounds. We're pretty, we're
18 out there.

19 Q Okay. As a local official, I know you're often
20 subject to various comments from townspeople
21 about what's going on in town as a perk of the
22 job. What are the general comments that you get
23 from townspeople about the turbines, both good
24 and bad? What's kind of the general sense that

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1 you get from what people say to you?

2 A I guess it's a love/hate relationship, that some
3 people like them, and some people dislike them.
4 They are, they're quite, they are quite
5 expressive. They'll tell you their feelings,
6 and then there's a few people that go like well,
7 they're here, they're not a big problem, so deal
8 with it. Live with it. And the people that
9 have been there a long time, it's like they have
10 the opinion that if you don't like it, leave.
11 You know. So and that's the attitude, I think,
12 that a lot of the people in Lempster have. And
13 a lot of them I think have moved to Lempster
14 because there's no zoning. There's very few
15 restrictions. In fact, some people get into
16 trouble because they think that we have no
17 zoning or no planning or no zoning so therefore
18 we have no planning. And we found that if you
19 stuck by all the rules and regulations that the
20 State of New Hampshire has, you've got a lot of
21 zoning and a lot more planning than they ever,
22 you know, anticipated, but in actuality, if you
23 compare the two, you brought up the motorsports
24 place. We have more complaints about the

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1 motorsports than we do on the windmills, and I'd
2 say, if you were to put them on a scale, I mean,
3 we don't scale everything, but it would be like
4 3 to 1. There's more complaints about the noise
5 from the motor track which is open two days a
6 week, maybe every other week, sometimes every
7 other weekend, sometimes every weekend. It all
8 depends on what their schedule is, but they,
9 that aggravates them more than the wind farm, a
10 lot more.

11 Q Thank you.

12 PRESIDING OFFICER SCOTT: Dr. Boisvert?
13 Commissioner Rose?

14 BY COMMISSIONER ROSE:

15 Q Thank you for being here today. I was curious
16 and Ms. Linowes covered a couple of the
17 questions that I was going to ask with regards
18 to the comment about increased tourism and
19 benefit to business, but I guess just a question
20 or two. Does the town, you reference that it
21 has a positive impact on the tax rate in the
22 community. Does the town market that lower tax
23 rate from a business recruitment perspective?

24 A No. Really I think we've been using what we

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1 call the extra money on infrastructure.
2 Lempster Mountain Road was in deplorable
3 condition. It was almost impossible to drive up
4 it. In the wintertime it would -- in the summer
5 it was impossible, in the wintertime it got
6 worse. We started the project so it was
7 \$789,000 to refurbish Lempster Mountain Road so
8 now we have a good road that runs pretty much
9 from Route 10 all the way to Hillsboro, and it's
10 been positive, and we figured that the yearly
11 payment that we're making on that road is like
12 equivalent to what the wind farm has contributed
13 to the town. We built, in the last few years we
14 built a brand-new firehouse, and so the impact
15 is a lot less so we've been able to do more and
16 have a slight increase in the tax structure or
17 the tax rate. We've purchased new fire trucks,
18 but, like I say, there again, we've kept it so
19 it's very slow growth on your tax rate.

20 Q And you are, in this particular case with the
21 town of Antrim, they have entered into a payment
22 in lieu of taxes, but that is different than the
23 taxing structure that you have in Lempster.

24 A Yes.

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1 Q And I was just curious as to whether or not you
2 had a sense of whether one was a better taxing
3 scheme, if you will, from a community
4 perspective than the other?

5 A Well, from the community, it was, I think it was
6 done by mistake, and --

7 Q I'm sorry to interrupt. Which community are you
8 referencing?

9 A The town of Lempster.

10 Q Thank you, sir.

11 A We settled for the, we settled for the assessed
12 valuation because we were scared to death
13 because as we ran the numbers we found that it
14 looked like if the PILOT agreement, this is our
15 understanding, if the PILOT agreement gave you X
16 number of dollars and the Department of Revenue
17 Administration says it was worth four times
18 more, that you would end up, you'd end up
19 actually paying more taxes because the
20 assessment was way high, but the PILOT was way
21 down so we weren't recouping anything so you
22 were going way behind.

23 The wind farm at that time had told us that
24 the first round they were going to build, they

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1 were going to build us a complex so we were, of
2 course, that went away, and so it was like a
3 three million dollar project that they more or
4 less said we'll finance that because we're going
5 to get into a PILOT agreement and that fell
6 away, and we crunched the numbers. We had, I'm
7 not the sharpest knife in the drawer, but I have
8 a lot of people that know stuff. I have a
9 friend that's an analytical mathematician, and
10 he run the numbers. We had a math teacher that
11 taught advanced math, and he said no, this isn't
12 working, the PILOT agreement so we'll go the
13 other way.

14 So, actually, the town of Lempster has made
15 out real well with that structure, and the wind
16 farms didn't really understand the tax structure
17 in the State of New Hampshire, and I don't think
18 that we understood the impact so we went with
19 the old system, not the PILOT agreement, and we
20 ended up getting a large amount of money, and of
21 course there again, rumor control says that the
22 wind farm said this will never happen again
23 because in all honesty, for one, we have 12
24 windmills.

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1 I've got to reach in my pocket because I do
2 have one note because it was brought up at the
3 last hearing, and they said this would never
4 happen again, and we can kind of see why after
5 looking at PILOT agreements. Our assessed
6 valuation, our income from taxes on 12 windmills
7 is \$1,022,722 a year, and I know that by the
8 PILOT agreements that I've seen that they are
9 considerably less, but then again, this is the
10 bright side, but then you have to look at the
11 ugly side.

12 Tomorrow we have an appointment with the
13 Iberdrola, but not Iberdrola because they sprung
14 out to another division, but we've started
15 negotiating reevaluation because there seems to
16 be a discrepancy of what they think it's worth
17 and what we think it's worth or our Assessors
18 think its worth. So that's constantly a push
19 and pull going on over this from now until the
20 end of the 20 years.

21 Q Thank you.

22 PRESIDING OFFICER SCOTT: Attorney
23 Clifford?

24 BY MR. CLIFFORD:

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1 Q Good afternoon. My questions were going along
2 that line. You mentioned that you went with the
3 assessed model. So what's the game plan 20
4 years hence when those windmills supposedly come
5 down? I just want to know what the town's
6 process or thinking is going to be because I
7 would expect they're gone.

8 A Yes. Right now we've kind of got to a point
9 where we said okay, we have all of these
10 projects that will be all paid for before the 20
11 year limit, and as it gets closer to the end
12 we'll see if there's, as we pay them if they
13 drop off and the tax rate starts going down.
14 We've always tried to keep a stable, in
15 Lempster, a stable tax rate so we might throw a
16 little project in that like takes up half
17 instead of giving a big rebate one year and then
18 you have to spike it again the next year, we're
19 kind of like sliding back as it comes closer to
20 the end and hopefully they'll meet.

21 Q How many people live in the town of Lempster?

22 A About 1,232 or -4. They, you know, the last
23 census was 1,232.

24 Q So just based on personal observation as a

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1 selectperson, have you seen a swing since those
2 windmills have gone in in terms of --

3 A No.

4 Q Number of, population is pretty much the same as
5 it was eight or nine years ago?

6 A No.

7 Q I don't have any further questions.

8 BY PRESIDING OFFICER SCOTT:

9 Q Thank you. I just want to make sure I
10 understood your comment correctly when you were
11 talking to Commissioner Rose just now about the
12 PILOT or the regular assessment. I think what
13 you said when you started was not going with the
14 PILOT was a mistake. Were you saying it was a
15 mistake for the project or a mistake for the
16 town?

17 A I think it was a mistake for the, well, for the
18 project. They didn't have an alternative at
19 that time. If you didn't do this, we weren't
20 going to, we weren't going to go there.

21 Q Right. Thank you. That's what I thought you
22 meant, but I just wanted to make sure I was
23 clear on it.

24 You talked about complaints, obviously,

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1 with Ms. Linowes. You mentioned two sound
2 complaints. Are you aware of any other
3 complaints? Shadow flicker, ice throws,
4 anything else?

5 A No ice throws that we know of. No complaints
6 about flicker. We had one person that was all
7 excited because he said that he saw a flicker at
8 11-something in the morning and it lasted for X
9 number of minutes because as the sun went by and
10 the mill was stable, it just dissipated. It was
11 just like, just went by real quick, and that was
12 the only thing we heard.

13 Because a lot of people have made the
14 windmill thing a little bit of a game. You
15 know, like games like you ought to see the fool
16 that stopped in the road in the middle of the
17 road to take a picture on a four-road
18 intersection. They just stop and jump out the
19 car and get out and take photos. Or you play up
20 on Lempster, up on the Lempster Long Pond. How
21 many windmills can you see at the same time? So
22 you go out there with your kayak and you paddle
23 around, and say, oh, I think I see four. And
24 how many can you see all together? Five, three.

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1 You know. So it's like more or less become a
2 game.

3 Q So you mentioned also that you had a couple of
4 tax assessment changes. My recollection
5 certainly for the Onnelas, those turbines are
6 very close, are they not?

7 A Yes.

8 Q Like 50 feet, hundred feet, something like that?

9 A I think it's like 300 feet.

10 Q Okay. So that's not --

11 A Of course it had to be 1.1 times the height of
12 the windmill so if it ever fell over it wouldn't
13 land on your house.

14 Q Do you know the other complainant? Do you know,
15 were those close? They weren't that close, were
16 they?

17 A I think they said it was, like, 600 feet.

18 Q Six hundred feet. Thank you. And you kind of
19 just alluded to people stopping in the road and
20 people looking at the windmills. Lempster was
21 the first large-scale wind farm in New
22 Hampshire. Did you get people coming to see
23 just the wind farm? Did you experience people
24 coming to Lempster just to see that?

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1 A For a while they were, like, continuous. They
2 were bringing in busloads of people from other
3 areas that we are going to have wind projects,
4 and they'd bring them, Iberdrola, they'd furnish
5 a bus and they'd bring them in and spend the day
6 and walk about.

7 Q So that was people maybe concerned about their
8 community and the impact would be, but did you
9 have like tourists, people coming to see just
10 the wind farm?

11 A Yes. They had a touchy-feely thing. They would
12 go up there and unload the bus and let them
13 spend three or four hours, take them out to
14 lunch, take them home.

15 Q But beyond that, the buses, did you experience
16 people coming for the wind farm?

17 A Not that I know of. It might be a drop for a
18 Greyhound bus on the way because on Route 10 we
19 actually have a nice turnout that you get to
20 look at the mountain there.

21 Q Is that by where Jolly Farmers used to be?

22 A Yes.

23 Q You talked a little bit about decommissioning in
24 20 years and trying to not be depending on the

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1 money after 20 years. Is the 20 years because
2 the town wants it to be decommissioned in 20
3 years or just because that's the term you
4 understand it could go?

5 A That's the 20-year contract. It's the end of
6 the contract, but that's not saying that they
7 won't use the towers because it appears that it
8 could be rather expensive to take them down
9 because we have a \$20 million bond to
10 decommission them, tear them down.

11 Q So does the town have a position if they decide
12 they want to go longer? Does the town have a
13 position on that?

14 A We haven't yet, no.

15 Q Thank you. I appreciate it. Mr. Iacopino?

16 BY MR. IACOPINO:

17 Q Thank you. Mr. Thurber, I understood that as a
18 result of the Section 106 process there was a
19 kiosk built along Route 10 on the, sort of like
20 a tourist stop?

21 A Jolly Farmers site as he called it, yes.

22 Q Is that kiosk still there?

23 A I don't believe it is. I think they moved it to
24 the top of Lempster Mountain.

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1 Q Are you aware if that kiosk is used by tourists
2 and people in Lempster to understand the project
3 and understand wind energy?

4 A In the beginning, yes, the townsfolks would stop
5 and look at it.

6 Q How's about now?

7 A I believe now, actually, I believe that one is
8 gone, now that you mention it. Like I say,
9 there's one at the beginning of Ridge Road that
10 I know that's there.

11 Q Do you have occasion to see people stopping and
12 reading it? Looking at it?

13 A No.

14 Q I haven't seen it so I don't know.

15 A Not so much at the mountain.

16 Q And I just want to get this straight.

17 Mr. Onnela got an abatement on his property
18 where he has a lease to the wind farm company,
19 correct?

20 A Yes.

21 Q And that abatement is because of the existence
22 of the wind turbine in proximity to his house?

23 A Yes.

24 Q Does your abatement procedures in your town take

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1 into account the money that he earned through
2 leasing that property?

3 A No, they didn't because, no, they didn't. It
4 was also, it was noise and view. They gave him
5 one for both. That's where in the past she
6 wanted to know if we had more than one noise
7 complaint about the jet, and, yes, he was the
8 second person that claimed that it sounded like
9 a jet.

10 Q If I understood the attachments to your
11 testimony correctly, your Assessor said it did
12 not sound like a jet, but it was close. So he
13 gave them the abatement.

14 A Yes.

15 Q Is that correct? Correct understanding?

16 A Of course, then you and I both know and
17 everybody else knows, and it depends on how high
18 the jet is.

19 MS. LINOWES: Excuse me.

20 A If you get one of those warthogs that flies over
21 your house at 1500 feet, it's some different
22 than an airliner flying 40,000 feet over your
23 house.

24 MS. LINOWES: Mr. Chairman, I'm sorry. Mr.

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1 Iacopino, the actual abatement recommendation is
2 in WA-10, question I believe 10.

3 MR. IAOCOPINO: I'm sorry. I referenced it
4 at being attached to his testimony? I'm sorry.

5 MS. LINOWES: I don't think it's in his
6 testimony.

7 MR. IACOPINO: Right. I stand corrected.
8 I understand what you're saying.

9 MS. LINOWES: But it doesn't talk about
10 noise. He did not get an abatement on noise.
11 It has more to do with, I believe, the view tax
12 that he was paying. I think it was related to
13 that.

14 Q Right, but if I understood your testimony
15 correctly, Mr. Thurber, he also complained about
16 the noise, but the Assessor did not give him an
17 abatement based on noise.

18 A I don't know about that part because I'd have to
19 look at the documents.

20 Q Okay. I can do that. Do you know how much
21 on-site camping area the racetrack in Lempster
22 has?

23 A No.

24 Q Thank you.

WITNESS: EVERETT THURBER

1 PRESIDING OFFICER SCOTT: Commissioner
2 Rose?

3 BY COMMISSIONER ROSE:

4 Q Thank you. I did have one additional question.
5 Is it Iberdrola is the owner? Iberdrola. Okay.
6 I'm just curious as to how often does the
7 Selectmen meet with Iberdrola.

8 A They've changed, they've changed the names now
9 so it's a different group.

10 Q Okay. How about, I'll just rephrase it to say
11 how often does the town of Lempster meet with
12 the owners of the wind turbines?

13 A We don't, but we will like tomorrow we're going
14 to have a meeting with them, and that's a group
15 and they're coming in from California.

16 Q Do they have a local point of contact for the
17 Selectmen or the residents in the town if they
18 did have any concerns about any of the issues?

19 A Yes. They do.

20 Q Associated with the project?

21 A Yes.

22 Q And how often does that individual get contacted
23 by the community?

24 A I think it's, they don't call us if they have a

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1 problem. I believe they will call them.

2 Q So that the community has a point of contact
3 that they can communicate with if they do have
4 an issue?

5 A And there's, and if it's like a small complaint,
6 they have full-time staff on site so if you had,
7 if you had a mill that was squeaky and annoying
8 they would, you could complain to them but they
9 seem to be on top of that because they don't
10 want squeaky bearings because that's, so they'll
11 fix them in a hurry.

12 Q Would the Selectmen be aware if a member of the
13 community were to have raised a question to
14 their local point of contact with concern about
15 whether it's noise or flicker or some other
16 measure?

17 A They should, yes. In they come to the Town
18 Office we would know because we have to, you
19 know, give them the direction, what direction to
20 go in.

21 Q But there's a chance that you might not know if
22 they went directly to their local point of
23 contact?

24 A Right.

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1 Q Thank you.

2 BY PRESIDING OFFICER SCOTT:

3 Q And I have another quick question. You
4 mentioned the decibel meter, you didn't have
5 anybody in the town who felt qualified to
6 operate it. Did you talk to the wind people
7 about that?

8 A No.

9 Q I mean, it was their equipment, right, they gave
10 it to you to use?

11 A Right.

12 Q But nobody asked can you show me how to use it
13 or can you send me to school or something like
14 that?

15 A No. And like I say, we only had two complaints
16 and that was in like 2010, -9 or -10, and that
17 was, we haven't had any more complaints so,
18 formal complaints, and I guess in regards to the
19 lady that put her own windows in, I don't
20 believe she ever come to the Town Office and
21 filed a formal complaint that yes, we have a
22 problem.

23 Q Okay.

24 A Without people coming to the Town Office, and

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1 telling you that there's a problem, we don't
2 know about it. You know.

3 Q Understood. Mr. Richardson?

4 MR. RICHARDSON: Thank you. Just a couple
5 of quick questions.

6 **REDIRECT EXAMINATION**

7 BY MR. RICHARDSON:

8 Q While we're on that question, you were asked
9 about Laura Pickney who you said is a friend of
10 yours?

11 A Yes.

12 Q And who may have gotten those wind replacement
13 according to Ms. Linowes. Do you know where
14 she, where Ms. Pickney lives?

15 A Yes.

16 Q How far is it from the wind turbines?

17 A She's just down the road about three quarters of
18 a mile on Route 10.

19 Q Okay.

20 A South. Just beyond the little store.

21 Q And is that an estimate or --

22 A That's an estimate.

23 Q So you saw that Mr. Onnela was 5 to 600 feet
24 from the turbines; is that right?

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1 A No. I believe he was closer like 3 or 400 feet.

2 Q I'm sorry. 3 to 400.

3 A Six hundred was the Guilford one.

4 Q Ms. Underwood. So are you aware that Antrim
5 Wind, the closest residence would be about 2800
6 feet?

7 A No.

8 Q Well, I'll represent to you that that's
9 approximately what the distance is. In your
10 experience, do you see complaints coming from
11 that distance?

12 A I guess it all depends on the location. If it's
13 on the same plane, if it's higher or if it's
14 lower. I do know that, and I've said that I
15 don't know if I said it before, but my daughter
16 lived fairly close to them, you don't measure
17 them but, close, but she was downhill. So I say
18 she was under, she was under the noise. She was
19 far enough away from the windmill so she didn't
20 hear the blades passing by the towers, but she
21 was far enough away so she didn't hear that, but
22 she was in the location that was below it so I
23 feel that the way the radio waves or the waves
24 left the blades it actually went over, right

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1 over top of her house.

2 Q Okay. So I'm confused.

3 A It all depends, to me it all depends on, it's
4 all about location. If you're downwind of, if
5 you're downwind of a windmill it's different
6 than you are if you're upwind.

7 Q Okay, but I understood there have been basically
8 no complaints the town has been made aware of
9 other than Onnela at 3- to 400 feet and then the
10 other one being the Smith and Underwood property
11 on Guilford Road and that's at 5- to 600 feet?

12 A No formal complaints.

13 Q You discussed the impact on the tax rate. Do
14 you have your testimony in front of you which is
15 this document, the one that I marked for you? I
16 want you to look at Exhibit 1.

17 A Is that the one that was \$24 and \$31?

18 Q Yes. Could you turn to that page that's Exhibit
19 1 to your testimony? Yes. And you see at the
20 top where it says Lempster and at the top of the
21 page it says New Hampshire Department of Revenue
22 Administration?

23 A Yes.

24 Q So for 2015, you see where it says total tax

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1 rate, \$23.27?

2 A 23.27?

3 Q Yes.

4 A Yes.

5 Q Below that there's a line for Lempster without
6 wind.

7 A Right.

8 Q And there's an asterisk and footnote there and
9 it says \$31.76 is the tax rate?

10 A Right.

11 Q So does that look like a difference of \$8.49?

12 A If the math is correct. Yes.

13 Q Thank you. Now, you also were asked questions
14 about the pros and cons of PILOT agreements. Do
15 you remember that by Commissioner Rose?

16 A Yes.

17 Q And you gave an explanation of Lempster's
18 decision-making process, but that was prior to a
19 law change, wasn't it?

20 A Yes.

21 Q So if you flip the page on your testimony after
22 the taxes, you see Exhibit 2? And I'll
23 represent to you that was Jim Grenier's
24 legislation that was passed.

WITNESS: EVERETT THURBER

1 A Yes.

2 Q You see where it says Rep. Grenier under
3 sponsors? Is it your understanding that the law
4 has changed and now the DRA is required to use
5 the PILOT value?

6 A Yes.

7 Q So that problem has been taken away. Is that
8 right?

9 A Yes.

10 Q Okay. But Lempster had a PILOT agreement for
11 the last several years. Right? There was an
12 agreement that was negotiated after the last
13 abatement, right?

14 A Yes. I guess you'd call it a form of PILOT
15 agreement. It was a tax stabilization. Instead
16 of fluctuating we went with a flat rate for five
17 years.

18 Q It was an agreement, so it was a five-year
19 agreement and that included mitigating what
20 would have otherwise been a refund the town was
21 required to issue, right?

22 A Right.

23 Q So the meeting that you mentioned that's coming
24 up, is it your understanding that Iberdrola has

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1 now brought the town to court over the
2 evaluation?

3 A Yes. We've been served papers, yes.

4 Q And part of that includes a claim that the
5 facility is worth approximately 60 percent of
6 what it's assessed at, is that right?

7 A From 44,000 to 29, yes.

8 Q Okay. So if, hypothetically, if the owner were
9 to prevail, then Lempster would be forced to
10 issue a refund. Is that your understanding of
11 how the tax abatement process works?

12 A Yes.

13 Q And that would be subject to interest.

14 A Yes.

15 Q And the town of Lempster wouldn't get back the
16 money that it's already paid to the School
17 District and to the County, right?

18 Q And so that's a risk that you would avoid
19 through a PILOT process?

20 A Right.

21 Q Thank you.

22 PRESIDING OFFICER SCOTT: Okay. For the
23 Applicants and Mr. Kenworthy is next, correct?
24 So why don't we take a five-minute break while

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1 we get him in place, and you're dismissed, Mr.
2 Thurber. Thank you.

3 (Recess taken)

4 PRESIDING OFFICER SCOTT: Back on the
5 record now.

6 MR. RICHARDSON: I apologize, Mr. Chairman.
7 I indicated I was done and I had forgotten I
8 wanted to ask a question about the question
9 Mr. Thurber had indicated he was unable to
10 answer. I thought that was important for the
11 Committee to get on the record.

12 PRESIDING OFFICER SCOTT: Okay. Go ahead.

13 **REDIRECT EXAMINATION CONTINUED**

14 BY MR. RICHARDSON:

15 Q Mr. Thurber, do you have your testimony in front
16 of you there?

17 A Yes.

18 Q And you recall the testimony that Ms. Linowes
19 asked you, and I believe you said you were
20 unable to answer that question?

21 MS. LINOWES: I'm going to object to this
22 line of questions. I had gone through a series
23 of questions. I was told I couldn't get an
24 answer because the witness could not answer it.

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1 There was a series of questions that were going
2 to follow. I'm not comfortable with now just
3 introducing the answer without all of that. So
4 I would object to the question being asked.

5 PRESIDING OFFICER SCOTT: Well, he didn't
6 ask the question yet so let's let him ask the
7 question and see if you have an objection.

8 MS. LINOWES: Okay.

9 Q Mr. Thurber, could you explain why you were
10 unable to answer that question?

11 A Well, at one point earlier she wanted --

12 MS. LINOWES: What is the question that
13 he's answering, please?

14 PRESIDING OFFICER SCOTT: You want to
15 restate the question?

16 MR. RICHARDSON: Sure.

17 Q Mr. Thurber, Ms. Linowes asked you a question
18 about the sentence that's at the end of your
19 testimony, and you said these two instances are
20 minor isolated experiences and show that noise
21 impacts are far less than what would be expected
22 from a state highway project or an industrial
23 facility.

24 MS. LINOWES: And my objection stands,

WITNESS: EVERETT THURBER

1 Mr. Chairman.

2 PRESIDING OFFICER SCOTT: Finish the
3 question.

4 Q I believe you indicated you were unable to
5 answer her question.

6 A Yes.

7 Q Why was that?

8 A Well, I guess it was two reasons. One of them
9 was she wanted, she reprimanded me and told me
10 she wanted simple yes or no answers, and then as
11 it went on, and I'm really not good under
12 pressure. I never have been. And I seized up.
13 When I looked at that page, at that particular
14 group of words, they just all went blank. Now
15 sitting back and looking at them, to explain it,
16 far less than would be expected from a state
17 highway project. Well, so how, a project, it
18 wasn't really a project. We're talking about
19 being out next to a road and having trucks go
20 by. That kind of a scenario. Or industrial
21 facility. And it just kind of went blank on me,
22 and as I had a couple of minutes here or three
23 minutes or five minutes to kind of gather my
24 thoughts, and we're also talking about sawmills

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1 which we have on Route 10 which are noisy. We
2 have gravel pits on Route 10 which are noisy.
3 And all over the town of Lempster we have
4 loggers that are chipping chips from 6 o'clock
5 in the morning until 4 or 5 o'clock at night and
6 the windmills are far less noisier than any one
7 of those things. And that's kind of like where
8 this question came from. And then it just kind
9 of like, you know --

10 Q Thank you. That's all.

11 MS. LINOWES: Mr. Chairman, could I ask my
12 followup questions?

13 PRESIDING OFFICER SCOTT: Sure. Go ahead.

14 MS. LINOWES: I'll just ask a couple. I
15 won't go through the entire since I --

16 **RECROSS-EXAMINATION**

17 BY MS. LINOWES:

18 Q Mr. Thurber, do those conditions that you
19 described, a chipper, a gravel pit, do they
20 operate at 2 o'clock in the morning?

21 A No, but they could. We had at one point --

22 Q But do they operate at 2 o'clock in the morning?

23 A We had -- yes, they could.

24 Q Under all conditions? Every day as a wind plant

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1 would?

2 A This is where we get into the yes or no. Onnela
3 had a sawmill in Lempster that he ran 24 hours a
4 day.

5 Q When was that?

6 A I don't know just what year it was.

7 Q Twenty years ago?

8 A It was quite disturbing to the neighbors.

9 Q As a Selectman --

10 A Okay, say 20 years ago.

11 PRESIDING OFFICER SCOTT: One at a time,
12 please.

13 Q As a Selectboard member, though, you have
14 control over whether or not noise is going to be
15 made 24/7 other than for an operating wind
16 project?

17 A I wasn't on the Board of the Selectman when that
18 was taking place.

19 Q I understand, but it is a control that the Board
20 of Selectmen has?

21 MR. RICHARDSON: Objection. I'm not sure
22 what control there is. I mean, they don't have
23 a zoning ordinance. I don't think there's any
24 evidence, there's no evidence in the record they

WITNESS: EVERETT THURBER

1 have a noise --

2 MS. LINOWES: Still have police powers?

3 (Court Reporter interruption)

4 MR. RICHARDSON: -- there's no evidence in
5 the record they have a noise ordinance. I'm not
6 aware of them having one. So I'm not sure
7 why --

8 MS. LINOWES: Well, a Board of Selectmen
9 does have police powers. Anyway. And again,
10 I'll state my objection. I'll let this go, but
11 the point is that there were a series of
12 questions and to come back now at this point is
13 not appropriate. Thank you, Mr. Chairman.

14 PRESIDING OFFICER SCOTT: Well, I just
15 allowed you back in so, Ms. Maloney, did you
16 have something? I thought I saw your hand go
17 up. I'm sorry.

18 MS. MALONEY: No.

19 PRESIDING OFFICER SCOTT: Maybe you were
20 swatting flies or something. Do you need any
21 redirect? You're all set?

22 MR. RICHARDSON: No, I'm fine. Thank you.
23 I appreciate it.

24 PRESIDING OFFICER SCOTT: We're now done

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1 with this panelist. Thank you, Mr. Thurber.
2 While we're bringing up Mr. Kenworthy, while we
3 were off the record we were just discussing
4 amongst the Committee, potentially we're looking
5 at trying to squeeze in a morning session on
6 October 19th so that would be Wednesday, October
7 19th. We're not finalized on that yet.

8 PAMELA MONROE: I'll need to check if I
9 have a conflict with my other --

10 PRESIDING OFFICER SCOTT: But I was
11 curious. Is anybody going to jump out a window
12 if we schedule that or any major issues here?

13 MS. MALONEY: The only thing I could say is
14 I need to check with Ms. Connelly because I
15 think that would be near her time. I'm not
16 sure. I think she may be the last witness so I
17 do have to check with her.

18 PRESIDING OFFICER SCOTT: And, again, we're
19 not scheduling that right now. We're just
20 entertaining that. Thank you. Off the record
21 while Mr. Kenworthy gets settled in.

22 (Off-the-record)

23 PRESIDING OFFICER SCOTT: Ms. Allen?

24 MS. ALLEN: I don't know if this is the

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1 appropriate time to ask. I'm getting a nod. I
2 have a couple questions for Mr. Kenworthy, but
3 they relate to testimony that I can't get at
4 right now. It's on a disk and not available and
5 it would be better asked by my co-Intervenor
6 Charlie Levesque who will be here first thing
7 tomorrow morning and will be here all day
8 tomorrow. If I could ask to step out of the
9 line of questioning if we get that far down, it
10 would be very helpful and if we could just go on
11 the record then tomorrow?

12 PRESIDING OFFICER SCOTT: Any objections?
13 My guess is we won't be 100 percent done with
14 this witness by five o'clock which is almost an
15 hour from now? Any objections?

16 MR. NEEDLEMAN: I think you're probably
17 right, but no, we certainly don't have an
18 objection.

19 PRESIDING OFFICER SCOTT: We also have an
20 issue perhaps while we're talking scheduling
21 moving forward with Ms. Foss if I understand
22 correctly?

23 MR. REIMERS: Right. Ms. Foss is not
24 available on October 18th and 20th.

WITNESS: EVERETT THURBER

1 PRESIDING OFFICER SCOTT: And not the 19th
2 either, I assume?

3 MR. REIMERS: No. It's a continuous work
4 trip.

5 PRESIDING OFFICER SCOTT: So I'm not quite
6 sure where we'll be on the third. Obviously, in
7 the morning on the third we'll have, I'm not
8 sure how long it will last. We have some kind
9 of period of public comment. So your desire
10 would be to then come out of order and have that
11 panel?

12 MR. REIMERS: Yes, and I believe I've
13 gotten the approval of everybody on this side.

14 PRESIDING OFFICER SCOTT: Okay. Does the
15 Applicant have any concerns with that?

16 MR. NEEDLEMAN: No, I don't think so.

17 PRESIDING OFFICER SCOTT: That would mean
18 on the, so that would be the, that's quite a big
19 panel. I guess it will be good we'll be over at
20 the other facility. Bit more room for panels.
21 So that would be on the 3rd, most likely in the
22 afternoon for that panel. Says three hours. It
23 looks like it should work if people keep to what
24 they advertised for their questions.

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1 MR. REIMERS: I would assume so. That's in
2 the hands of everybody.

3 PRESIDING OFFICER SCOTT: So we will try
4 that. Mr. Iacopino?

5 MR. IACOPINO: I was asked earlier today by
6 one of Intervenors about the public comment
7 session, and I guess I'll ask the question. Is
8 it your intention just when folks come that want
9 to speak come in and they sign in and you're
10 just going to take the comments in order that
11 they've signed in?

12 PRESIDING OFFICER SCOTT: That's my
13 intention. Yes.

14 MR. IACOPINO: Okay.

15 PRESIDING OFFICER SCOTT: Again, depending
16 on how many people we get, I may try to limit
17 people. I'd rather not frankly spend the whole
18 day. We've already had a public comment session
19 during our public sessions at the community, but
20 the rules do talk about envisioning during the
21 adjudicative process allowing comments. That's
22 why I'm doing this.

23 MR. REIMERS: On Monday for the Audubon
24 panel, I would ask that people direct their

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1 questions first toward Mike Buscher who is
2 coming in from Vermont. I'd like to have him
3 only have to come one day, and then for Carol
4 Foss who will be gone. So to the extent that
5 parties have questions for individual panelists,
6 I would appreciate it if we could focus on them
7 first.

8 PRESIDING OFFICER SCOTT: Ideally, we'll
9 get through the whole panel that day.

10 MR. REIMERS: Agreed.

11 PRESIDING OFFICER SCOTT: All right. Do we
12 need to swear Mr. Kenworthy in again?

13 MR. NEEDLEMAN: I don't think so. I think
14 that he's already sworn to and adopted all of
15 the testimony that's going to be the subject of
16 additional questioning.

17 PRESIDING OFFICER SCOTT: Okay. So what's
18 left for you to do, Mr. Needleman?

19 MR. NEEDLEMAN: For me? I'll leave if you
20 don't mind.

21 PRESIDING OFFICER SCOTT: Sounds like
22 you're up next, Mr. Richardson.

23 **CROSS-EXAMINATION**

24 BY MR. RICHARDSON:

WITNESS: JACK KENWORTHY

1 Q Thank you. Mr. Kenworthy, do you have your
2 Supplemental Testimony and exhibits with you?

3 A Yes, I do.

4 Q Okay. I want to ask you, I believe you had the
5 Town Board of Selectmen's survey as an exhibit
6 to that testimony. Can you pull that up?

7 A Yes. I think that was attached. JK-11. The
8 2011 straw poll?

9 Q Yes. Thank you, yes. And let me know when you
10 have that?

11 A I have it.

12 Q So it being election season, it occurred to me
13 after all of this was submitted that the way the
14 results are shown there is not the way that the
15 results would be counted if this were in a town
16 election or a town meeting, and I'll represent
17 to you in the case of Laconia Water Company
18 versus city of Laconia, which is at 99 NH 409,
19 the Supreme Court has said that silence on the
20 part of the members not voting cannot be counted
21 against the express voice of another party
22 voting, and if you see there, you see how the
23 results are reported with 337 votes in favor of
24 the project, right?

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1 A Yes, I see that.

2 Q And that's 63.2 percent. 102 against being 19.1
3 percent. And then it says 94 undecided for 12.1
4 percent. So the way the results are shown, the
5 undecided voters were counted, and so what I
6 wanted to ask you was, if this were at town
7 meeting or in a town election and those votes
8 were not counted, is it your understanding the
9 result would be approximately 76.8 percent in
10 favor?

11 A Yes. That's consistent with my understanding.

12 Q And 23.2 percent would be the 102 votes against?

13 A Yes. I haven't done the specific math myself,
14 but that sounds consistent with my
15 understanding.

16 Q Subject to check.

17 A Yes.

18 Q So how does that compare with the results of the
19 surveys that Antrim Wind has done?

20 A I think it sounds like it's reasonably
21 consistent.

22 Q Okay. Is that on page 6 of your Supplemental
23 Testimony? I believe you indicate that Antrim
24 Wind Survey from 2011 was 77 percent.

WITNESS: JACK KENWORTHY

1 A Sorry. I'm just looking for the place in my
2 Supplemental Testimony. You said page 6?

3 Q Page 6, I believe.

4 PRESIDING OFFICER SCOTT: Mr. Richardson,
5 I'm showing the PILOT agreement on page 6.

6 MR. FORBES: I think it's PDF 6, page 7
7 now.

8 MR. RICHARDSON: My apologies, yes.

9 Q So on page, excuse me, of your testimony in the
10 PDF.

11 MR. FORBES: Sorry. It's page 6 on the
12 PDF, page 5 in the testimony.

13 A I see it now, it's numbered page 5 of my
14 testimony, I think starting on line 3 where it
15 identifies the independent survey conducted in
16 2011 by American Research Group on behalf of
17 Antrim Wind which had 618 Respondents, there
18 were 77 percent that responded in favor.

19 Q And I believe Antrim Wind Survey did the same
20 thing. There was about 13 percent of the
21 Respondents were undecided.

22 A That's right.

23 Q And if you were to put this in the context of a
24 town meeting vote, that would mean you would

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1 have 85.5 percent in support of the project and
2 14.9 percent opposed?

3 A Subject to check on the math, that sounds right.

4 Q So that's less than 15 percent.

5 A The 14.9 percent opposed, yes.

6 Q Now, what is it about wind projects that if
7 those survey results are accurate made so many
8 people come out so strongly against a project as
9 we see in this room?

10 A Well, I think in general, when there are
11 development projects that are proposed in
12 communities that may have some opposition, we
13 tend to see that the opposition is more engaged
14 in the process and tends to come out in greater
15 numbers than those that are in favor.

16 Q Do you get the sense that fear of the unknown or
17 fear of what the project might be makes it out
18 to be worse in people's mind than these projects
19 actually are when they're built?

20 A You know, I don't necessarily want to speculate
21 about all the reasons that people might have for
22 their concerns. I think as a general matter, I
23 think that there is apprehension about things
24 that people don't yet necessarily have a direct

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1 experience with that can play a part.

2 Q Okay. So are you concerned that Antrim Wind is
3 going to have adverse impacts due to sound and
4 other impacts I guess is my question for you.

5 A I'm going to answer this in two ways. I think,
6 one, of course, we are concerned about the types
7 of impacts we will have. Because of that
8 concern, and I think the careful approach that
9 we've taken to site and design, no, I do not
10 believe that this project if and when it is
11 constructed will lead to any type of
12 unreasonable impacts on the public.

13 Q Well, and you heard Mr. Thurber talk about the
14 experience in Lempster, and other than the two
15 abatements that were identified in his testimony
16 for the homes that were built 300 and 600 feet
17 from the project, and potentially one other, it
18 seems like there have not, there are not
19 widespread impacts for noise or sound levels.

20 A Yeah, I mean, I think with respect to Lempster,
21 it's a telling story that you have a project
22 that's been operating for as long as it has with
23 as few complaints as it is, and, you know, it
24 has homes that are much closer, very much

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1 closer, several multiples closer than Antrim
2 Wind will have, and we also are going to be held
3 to a much more stringent standard for sound and
4 flicker.

5 Q And I asked Mr. Thurber if he understood, and he
6 didn't know, that the closest nonparticipating
7 landowner's home in Antrim is 2800 feet. Do you
8 know what the exact number is?

9 A I don't know the exact number. I know that it
10 is greater than a half a mile, and 28 sounds
11 right, but I would have to check.

12 Q Okay. Do you know the sound levels that the
13 Lempster project is designed to?

14 A I believe that the standard for the Lempster
15 project that it's required to meet at the
16 outside of residences is 45 decibels at night.

17 Q Okay. And what's Antrim's standard that you've
18 committed to?

19 A 40.

20 Q In fact, Mr. O'Neal has said that not only do
21 you meet that standard but the modeling is
22 conservative and the project should be better
23 than the modeling; is that correct?

24 A Yes. The modeling, if I'm not mistaken, I think

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1 Mr. O'Neal's testimony showed that the closest
2 nonparticipating landowner would have, I think
3 it's a 38.1 sound level, and I think he also
4 testified that a 3 dBA decrease is roughly half
5 as much sound power as you have 3 dBA above.

6 Q Are there other aspects of the Antrim Wind
7 Project that are, from the purpose, from the
8 standpoint of sound, are better designed or
9 other advantages that your project has over
10 what's been constructed in Lempster?

11 A I mean, other than the fact that we, you know,
12 our expectation is that we won't exceed 38
13 decibels at the outside of any house and we'll
14 be subject to a more stringent SEC criteria that
15 requires us to perform four seasons of
16 postconstruction compliance monitoring, I mean,
17 I think those are the factors that really
18 differentiate Antrim from Lempster.

19 Q Do you know, I mean, there must have been
20 improvements in the technology within the
21 turbines themselves with their design and their
22 construction that have improved on sound levels?

23 A Sure. I think there's continuing kind of
24 evolutionary change in the turbines and blade

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1 technology that helps keep them quieter.

2 There's also continued evolution in the types of
3 control mechanisms that allow for the turbines
4 to be adapted if there ever is a problem with
5 sound for some reason, which we certainly don't
6 expect here.

7 Q And that was, are you referring to the testimony
8 from the gentleman from Siemens that there's a
9 noise mitigation package that could be
10 installed?

11 A Yes. It's not even something that needs to be
12 installed. The turbines themselves come with
13 different operating modes. We have scheduled
14 turbines for the purposes of our sound
15 evaluation and their normal operating mode which
16 is that 106 decibels plus the 1.5K value. We
17 can operate any one of those turbines or all of
18 those turbines at a minus 1, minus 2, minus 3,
19 minus 4 or minus 5 decibel mode if it were to
20 become necessary due to a problem in
21 demonstrating compliance during postconstruction
22 testing.

23 Q Okay. Thank you.

24 A Thank you.

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1 PRESIDING OFFICER SCOTT: Mr. Enman? Has
2 he come in? Still nobody from the Giffin/Pratt
3 Intervenors?

4 SPEAKER: I haven't seen anybody come in.

5 PRESIDING OFFICER SCOTT: The Harris
6 Center. Any comments?

7 MR. NEWSOME: No questions.

8 PRESIDING OFFICER SCOTT: My understanding
9 is, Ms. Berwick, you'd rather have Mr. Block go
10 ahead of you. So Mr. Block?

11 MR. BLOCK: Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. BLOCK:

14 Q Mr. Kenworthy, one followup question from last
15 week. Last week you talked about the ADLS, the
16 radar controlled lighting system to be
17 installed. Are there any penalties in place to
18 guarantee that Antrim Wind will install an ADLS
19 within the time frame outlined in your agreement
20 with the Appalachian Mountain Club?

21 A Any penalties from whom?

22 Q From anyone.

23 A No. I mean, the agreement is, I think speaks
24 for itself. It's an agreement that requires us

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1 pending the timing of any approval to install it
2 consistent or commensurate with the rest of our
3 construction process or within one year if the
4 approval comes later. Our expectation is that
5 that becomes a certificate or a condition of our
6 certificate and any enforcement action would be
7 through the Committee if it were ever necessary.

8 Q Okay. The Antrim Wind Application under the
9 section of property values states that, quote,
10 studies show that the project will not have an
11 adverse impact on residential property values,
12 unquote. Do you recall that?

13 A I don't specifically recall it, but it sounds
14 right.

15 Q It's on page 121 in the Section J2B, but that's
16 a quote from there?

17 A Okay.

18 Q My question is how confident are you that
19 property values around the project site will not
20 be adversely affected?

21 A Highly confident.

22 Q Pardon me?

23 A Highly confident.

24 Q Highly. Okay. Is it possible that the value of

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1 some properties in close proximity or with views
2 of the turbines might be negatively affected?

3 A You know, I am not an expert in property
4 valuations or in these types of studies. I
5 think that Mr. Magnusson testified to these
6 issues the other day. I suppose it's certainly
7 possible. I think anything is possible. I
8 think it's really unlikely based on the evidence
9 that we have evaluated and the research that has
10 been done by Mr. Magnusson.

11 Q If any property values are negatively affected,
12 who do you believe should bear the burden of
13 value loss?

14 A Negatively affected by what?

15 Q By the installation of this facility.

16 A Well, I think there's a lot of things, because I
17 believe I understand where you're going with
18 this, which is to ask us about property value
19 guarantees, and I think my answer to your
20 current question is probably similar to what my
21 answer to what I anticipate your next question
22 is, which is that I think it's very difficult,
23 and Mr. Magnusson said the same thing, to
24 administer any type of a property value

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1 guarantee program because there are so many
2 unrelated variables that impact the value of a
3 property, and so being able to have a program
4 that was, you know, just practically able to be
5 administered to us seems impossible. So I think
6 what we are required to do is to evaluate what
7 has happened in other instances like this, both
8 in New Hampshire and across New England and
9 across the United States and present that
10 evidence here before the Committee to kind of
11 assist in the evaluation of the project's
12 effects on orderly development of the region.

13 Q So the bottom, I guess, let me just get an
14 answer from you, is if you are indeed confident
15 that no property values will be adversely
16 affected, would you agree to participate in a
17 property value guarantee in order to assure
18 nearby neighbors and alleviate their worry and
19 risk?

20 A I understand the worry and the risk. Again, as
21 I've said, I think it is, our position is that
22 it's highly unlikely that that concern will come
23 to pass, and I think because of the reasons
24 you've stated we think that a property value

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1 guarantee program is really pretty much
2 unprecedented and impossible to implement.

3 Q All right. Antrim Wind has gone to great
4 lengths to identify homes in the vicinity which
5 might experience a greater than permitted amount
6 of shadow flicker. Is that correct?

7 A Sure. I think we've performed a shadow flicker
8 evaluation study in accordance with the rules.

9 Q And are you also committed to controlling
10 turbines which would cast shadow flicker beyond
11 that which is permitted, is that correct?

12 A That's right.

13 Q Has Antrim Wind made a similar commitment to
14 assuring that homes in the vicinity will not
15 receive any more turbine noise than is
16 permitted?

17 A I think we have said that we are highly
18 confident in the sound studies that we've done.
19 We believe that the turbines are going to
20 operate less than the nighttime maximum limit
21 for the SEC. It is in the rules that any wind
22 facility must meet those requirements, and we
23 have to test to ensure that we meet those
24 requirements. So my position is it doesn't

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1 require any further assurance from us. It's a
2 requirement of the rules.

3 Q Okay. Has this, this commitment has extended to
4 all the homes you have identified, is that
5 correct? In other words, you have identified
6 residences in the area and you've charted out
7 that, so that is in place at this point, am I
8 correct in assuming that?

9 A I'm sorry. Mr. Block. I don't quite understand
10 your question. If you could rephrase it.

11 Q I believe your sound study listed a bunch of
12 homes and indicated how much sound levels would
13 be at those homes. Is that correct?

14 A Yes. It did do that.

15 Q Okay. So the question on that is since this
16 project, if permitted, would probably be
17 operating for two or more decades, is it
18 possible in that time that some residents might
19 move out and others move in their place? Is
20 that possible?

21 A That a home would sell to a new owner? Sure.

22 Q Exactly.

23 A Absolutely.

24 Q Will your commitment to control shadow flicker

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1 and noise carry forward and be extended to any
2 new owners for the entire life of the project?

3 A I don't think who owns the property has anything
4 to do with whether or not the regulations apply
5 there.

6 Q Okay. Is it also possible that new houses could
7 be erected in that time?

8 A It's possible.

9 Q Will your commitment likewise be extended to
10 future homeowners within the shadow flicker and
11 turbine noise zones?

12 A I don't quite know what you mean by shadow
13 flicker and turbine noise zones, and it's not
14 our interpretation of the rules that we would be
15 required to accommodate new homes that aren't
16 there now. I just think it's impossible for us
17 to try and predict what may or may not happen at
18 some point down the future and what it would
19 mean for us to try and comply with that.

20 Q Well, who should be responsible to inform future
21 buyers or builders of nearby homes or land of
22 potential shadow flicker or sound impacts if
23 they were close enough to receive either of
24 those?

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1 A Well, I mean, the project itself is obviously
2 public. It will have been built. There will be
3 information about it in its operations and who
4 to contact in the Town of Antrim. This whole
5 docket is obviously public as well. So I would
6 presume that a buyer who is contemplating
7 construction of a structure in very close
8 proximity to operating wind turbines would be
9 aware of the project.

10 Q So you, I assume, will be monitoring the effect
11 of shadow flicker and sound on all the homes
12 you've identified over the life of the project,
13 is that correct?

14 A No. That's not correct. We will, I think what
15 we've stated is that for the purposes of shadow
16 flicker, we will produce a report annually that
17 documents the amount of shadow flicker at the
18 locations that we've identified that could
19 experience more than 8 hours per year. With
20 respect to sound, what we have indicated is that
21 we will, that we believe that our
22 preconstruction modeling clearly demonstrates
23 that we'll be able to meet the standard, and we
24 will perform the tests that are required in the

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1 SEC rules for the four seasons starting within
2 roughly three months, I believe, after
3 commercial operation begins.

4 Q Will any future residences be included in any of
5 these future studies and monitoring?

6 A I'm not sure I'm understanding your question
7 with precision. I think I maybe answered both
8 pieces of it. With respect to sound, the
9 studies occur in the first year after
10 operations. And so if it is, yeah, that's when
11 they occur. With respect to flicker, as I think
12 I've just said, what we have today is identified
13 24 structures that may exceed 8 hours, and we'll
14 produce an Annual Report for each of those
15 structures that will be available to the town
16 and to the Committee, and, again, it's not our
17 understanding that the rules would require us to
18 apply that to somebody else who elects to build
19 a home in an area that we haven't evaluated
20 whether there would be potentially some
21 increased flicker at that location.

22 Q Okay. Thank you. Can you define for me what
23 you believe orderly development is?

24 A I think in the context of these proceedings,

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1 there are a number of things that are evaluated
2 with respect to orderly development. It may
3 relate to things like economic development. It
4 may relate to things like -- and that obviously
5 includes the economic impact assessment that we
6 performed and the property value study that
7 we've performed. I think it also refers to
8 things like what the host community's positions
9 are with respect to a project. What regional
10 development organizations like the Southwest
11 Regional Planning Commission are, what positions
12 they may have taken on a project. So I think
13 the orderly development component is a fairly
14 broad category that looks at a number of
15 different issues to determine whether if this
16 project was constructed it would be, you know,
17 it would disrupt in some kind of a significant
18 way the orderly development of the region.

19 Q So is it the intent of Antrim Wind to assure
20 that your project would not result in any undue
21 interference in the orderly development of
22 Antrim?

23 A I don't know what that means.

24 Q You've stated that you believe that the project

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1 will, if approved, will not affect, I don't
2 remember your exact words, will not affect the
3 orderly development or will not be a problem
4 with the orderly development of Antrim. I just
5 want to confirm that.

6 A Yes. I think our testimony is absolutely that,
7 I don't have the language in the rule in front
8 of me, that the project won't have, won't
9 disrupt the orderly development of the region or
10 have an unreasonable adverse effect on orderly
11 development. Certainly that is our position,
12 yes.

13 Q Does the zoning ordinance in your opinion have a
14 place in the orderly development of a town?

15 A In the orderly development of a town? Sure.

16 Q Okay. Do you know who approves the zoning
17 ordinance?

18 A The town.

19 Q Define the town. Is it the Selectboard, is
20 it --

21 A No. I believe that zoning ordinances are
22 adopted by town meeting.

23 Q Okay. So, in other words, the voters of the
24 town.

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1 A Correct.

2 Q So would following the guidelines in the zoning
3 ordinance constitute orderly development?

4 A In what context?

5 Q In any context? In the development of a town.
6 Would following the guidelines that are laid out
7 in the zoning ordinance constitute what you
8 believe is orderly development of a town?

9 A I really, I don't necessarily understand the
10 question. A zoning ordinance is going to set
11 forth certain rules and regulations. As you
12 know in this circumstance, the SEC has asserted
13 jurisdiction over this project which supersedes
14 the town zoning ordinance. The SEC will give
15 consideration to the views of the planning and
16 governing bodies in the host communities. I
17 think that's what we are here to discuss. I
18 think whether or not some type of development
19 that was consistent with the ordinance would
20 constitute orderly development I just think
21 they're apples and oranges. One of them is kind
22 of a SEC concept and one is a local town zoning
23 concept.

24 Q My question just was simply would following the

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1 guidelines in the zoning ordinance constitute
2 orderly development?

3 A I don't know how to answer your question because
4 I really don't know what it means.

5 Q Okay. If as you claim this project is in
6 concert with the orderly development of the
7 region, can you explain why every action taken
8 by Antrim Wind since you first came to the
9 Planning Board on April 2nd, 2009, has been an
10 attempt to override or change Antrim zoning?

11 A I disagree with your characterization entirely.
12 I think Antrim on its own, the Planning Board,
13 has attempted to change its own zoning on
14 numerous occasions. Antrim Wind has not spent
15 the last 7 years attempting to change Antrim
16 zoning. The town has also twice petitioned the
17 Site Evaluation Committee including the Planning
18 Board in this instance to assert its
19 jurisdiction over the project because the town
20 didn't have the regulations or the resources in
21 order to be able to conduct its own review.

22 Q Do you know if a Board of Selectmen can change a
23 zoning ordinance?

24 A I believe I've answered the question. I think

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1 zoning ordinances are changed by town voters.

2 Q Are you familiar with Antrim zoning ordinance?

3 A I'm somewhat familiar with it.

4 Q Are you familiar with the specifics of the Rural
5 Conservation District in that ordinance where
6 most of the project would be located?

7 A I'm familiar with some of the specifics.

8 Q Okay. You've stated a number of times that you
9 believe that the conservation easements as
10 proposed as part of your project will protect
11 the Rural Conservation District from
12 overdevelopment; is that true?

13 A Certainly.

14 Q In your Supplemental Prefiled Testimony on page
15 15, lines 4 through 7, you state, quote, without
16 the Antrim Wind Project, the land will not be
17 conserved. Under current zoning regulations in
18 the Rural Conservation and highway business
19 districts in Antrim, these private lands could
20 be developed by right in numerous ways including
21 three-acre subdivisions, unquote. Do you recall
22 that?

23 A Sorry. Is it numbered page 15?

24 Q That was numbered page 15 and this is under your

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1 Supplemental Prefiled Testimony, App. 24.

2 A Okay. I see it.

3 Q I was looking at lines number 4 through 7.

4 A Yes, I see that.

5 Q Okay. Is this the kind of overdevelopment you
6 had in mind?

7 A I didn't have anything in particular in mind. I
8 think there's kind of two corollary statements,
9 and one of them is that I think this is just on
10 its face true. These are lands that are in a
11 district that allows for many, many types of
12 development, and with the exception of some very
13 minor exceptions, all of those document rights
14 are extinguished inside the conservation
15 easements that Antrim Wind has negotiated with
16 the landowners and the Harris Center.

17 Q Does that Rural Conservation District zoning
18 permit residential development?

19 A Yes, it does.

20 Q Does the Rural Conservation District zoning
21 permit major industrial development?

22 A What do you mean by major industrial
23 development?

24 Q Something on the scale of, say, an industrial

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1 wind turbine facility?

2 A Well, you know, typically, and I ask the
3 question because when you go through principal
4 permitted uses you typically don't see something
5 like major industrial development listed as a
6 principal permitted use. So if you're asking me
7 if large scale wind projects like Antrim Wind is
8 a principal permitted use in the Rural
9 Conservation District, no, it is not. However,
10 it's not required to be in order for this
11 project to be consistent with the orderly
12 development of the region, and I would also
13 point out that the Town of Antrim has signed an
14 agreement with Antrim Wind that specifies that
15 ten turbines in these locations, including the
16 former turbine 10, up to 500 feet tall can be
17 located in this district.

18 Q I'd like to suggest that the Town of Antrim did
19 not sign that, but some of the Selectmen did.

20 A Its elected representatives.

21 Q Okay. Again, can you tell us who wrote and
22 approved the Antrim zoning ordinance?

23 A No, I cannot.

24 Q The general answer is the people of Antrim.

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1 A No. They didn't write it.

2 Q The voters. Some people in Antrim did write the
3 zoning ordinance as it exists. Would you --

4 A Well, I think they're two different components.
5 Writing the ordinance is the job of the Planning
6 Board, and enacting ordinances is the job of,
7 whether it's on a ballot vote or, honestly, I
8 don't know if it's all ballot votes or some are
9 ballot votes and some are town meeting floor
10 votes, I'm not sure.

11 Q They are ballot votes. The question is, if the
12 people in Antrim in ballot voting approved
13 residential development in the Rural
14 Conservation District but did not allow major
15 industrial uses such as industrial wind
16 facilities, what makes you think that a massive
17 industrial wind installation would be preferred
18 by the people of Antrim over allowed residential
19 development?

20 A Well, there's several things. I think, one, as
21 I mentioned, the town has signed an agreement
22 with us that specifically allows for ten
23 turbines up to 500 feet tall in these locations
24 in the Rural Conservation District, and that was

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1 signed by the Board of Selectmen. The Board of
2 Selectmen are elected by the Town of Antrim.
3 They're reelected by the Town of Antrim. So I
4 think that's one thing. I've also, and a number
5 of people have put this testimony into the
6 record in a variety of different contexts, but I
7 think it's very clear in 2011 one of these votes
8 that occurred on an ordinance, there was a very
9 specific question with respect to large-scale
10 wind energy facilities. If the ordinance had
11 been adopted, should they be approved everywhere
12 except for the Rural Conservation District. I
13 think it was a very clear question for Antrim
14 voters. If you want to allow this in the town,
15 should you then prohibit it from this district,
16 and it was overwhelmingly rejected by Antrim
17 voters.

18 Q Wasn't that same vote overwhelmingly stated that
19 the voters in Antrim did not want an industrial
20 wind project in town?

21 A No.

22 Q All right. Are you aware that, in fact, the
23 kind of major industrial development that Antrim
24 Wind is proposing is not permitted at the

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1 present time anywhere in the town of Antrim
2 according to the zoning ordinance which has been
3 in place since 1974, and that, in fact, even
4 after three recent attempts to change that, this
5 industrial wind project is still not permitted
6 in any zone in Antrim?

7 A As I've said I think in response perhaps to
8 Mr. Levesque's testimony, we recognize that if
9 this project was going to try and go forward
10 under local zoning, which it is not, that it
11 would be required to get a variance in order to
12 go forward.

13 Q All right. Let me move on to something else.
14 Let me, regarding the Memo of Understanding
15 between New Hampshire DHR and Antrim Wind which
16 we were looking at earlier, which individuals
17 negotiated that Memo of Understanding?

18 A Primarily, it occurred between myself and Nadine
19 Peterson.

20 Q Okay.

21 A But, obviously, on DHR's side I think it was
22 going back to Director Muzzey and on our side we
23 had conversations and I don't know who else on
24 their team was also reviewing it. And on our

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1 side we obviously discussed it among our team as
2 well as we reviewed various iterations.

3 Q Okay. So you were involved in determining and
4 suggesting the mitigation actions, is that
5 correct?

6 A No. That's not correct. That request and those
7 suggestion were by DHR.

8 Q Okay. Merriam Webster defines "mitigate" as,
9 quote, to make less severe or painful, unquote.
10 So page 1 of that MOU states, quote, execution
11 of this MOU resolves the project's effects,
12 unquote, and there are two possibilities. One
13 was an interpretive sign and the alternative is
14 a website page; does that sound familiar?

15 A The two potential components of mitigation?

16 Q Yes.

17 A Yes. That's correct.

18 Q Can you explain specifically how you would see a
19 sign or a webpage would make the view of the
20 turbines, quote, less severe or painful,
21 unquote?

22 A I don't know what Webster's definition has
23 anything to do with this context. I think this
24 is part of a long process, and we have engaged

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1 in the Section 106 process as is required by
2 law. We have completed the Section 106 process
3 to the satisfaction of the Army Corps who is the
4 lead federal agency as you heard Mr. Stevenson
5 testify to earlier. And then we wanted to
6 continue to work with the Division of Historical
7 Resources to address their concerns. We were
8 approached about doing so, and the
9 recommendation made to us was that we undertake
10 some form of mitigation like this. We were
11 willing to accommodate that request, and so we
12 have.

13 Q All right. Last section here. Has Antrim Wind
14 as an entity constructed any turbine facilities
15 as of yet?

16 A No. Antrim Wind is an entity that was created
17 specifically for this project.

18 Q Okay. So this would be your first project as
19 Antrim Wind; is that correct?

20 A Antrim Wind was created explicitly for this
21 project.

22 Q The FAA ADLS lighting. Is that new technology?

23 A It's not new technology. No. It's been around
24 for quite some time on a variety of different

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1 types of structures. Tall transmission towers,
2 primarily tall transmission towers. It's recent
3 that it has been in use and commercially
4 available for wind turbines. It has been in
5 testing for some three or four years, at least,
6 with the FAA and NREL and a number of other
7 agencies and some private industry folks as
8 well, but the ultimate guidance on what we
9 require in order to be able to know the
10 specifications to meet was not issued by the FAA
11 until December 2015.

12 Q The shadow flicker monitoring technology, is
13 that new technology?

14 A No. It's not.

15 Q Is it new technology for the Siemens turbines?
16 I thought I've heard that it's basically new and
17 being put in for the first time.

18 A It's a good question. It's worth explaining, I
19 think. So shadow control technology is commonly
20 used across Europe. I think pretty much every
21 manufacturer that is offering turbines in Europe
22 has implemented that, some type of a module. It
23 turns out that Siemens, for the European
24 installations they use a vendor called

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1 Northtech, and Northtech, for various patent
2 reasons, they're not able to use that specific
3 vendor technology here in the United States. So
4 we have adopted one, and it's consistent with
5 the same principles that other technologies
6 operate on. You know, other manufacturers
7 including Vestas that we saw, I think, in one of
8 the letters that Ms. Linowes put into the record
9 which has a very successful track record of
10 deployment in Michigan and operates very
11 effectively, and we certainly expect this to
12 operate the same way.

13 Q So final question is, with all this sort of
14 newness, is there anything you can say to the
15 residents of Antrim to assure us that we're not
16 guinea pigs in a massive experiment?

17 A Sure. I think, again, I take exception to the
18 characterization of either the ADLS necessarily
19 or the shadow control system as being new. I
20 think for one, we have worked very hard to
21 address concerns that we've heard from people in
22 Antrim. As I've stated before, this project
23 will meet the strictest sound requirements of
24 any wind project in the state. They will meet

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1 the strictest shadow flicker requirements of any
2 project in the state. It has made commitments
3 for decommissioning that go beyond, well beyond
4 any other project in the state and beyond what
5 the SEC rules require, and I think if all of
6 those components plus the other kind of
7 community benefit elements that we've built into
8 the package, our belief is this project is going
9 to be a great asset for the Town of Antrim, and,
10 obviously, we'll be held accountable.

11 Q All right. Thank you. No more questions from
12 me. Thank you.

13 A Thank you.

14 PRESIDING OFFICER SCOTT: Ms. Berwick?

15 **CROSS-EXAMINATION**

16 BY MS. BERWICK:

17 Q Mr. Kenworthy, in 2014, did Antrim Wind submit
18 to the Antrim Planning Board a proposed ballot
19 petition through a citizen petition?

20 A No. Not exactly.

21 Q Did you not write a ballot proposal and give it
22 to a citizen to bring to the, then got the 50
23 signatures to bring to a Planning Board. Was it
24 not created by Antrim Wind?

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1 A So let me, I think I can answer your question,
2 and I'm happy to.

3 Q I just asked for a yes or no.

4 A Well, no.

5 Q You said during this testimony that you did.
6 You said of course we did.

7 A I would like to answer your question, but if you
8 just want a yes or no, your answer to your last
9 question is no, but if you'd allow me, I can
10 answer your question, I think, in the way that
11 it is accurate.

12 Q Go ahead.

13 A Since 2009 we've had a lot of conversations with
14 a lot of people throughout Antrim. We know a
15 lot of Antrim residents. We remain in contact
16 with Antrim residents, a lot of supporters.

17 Q Could you just get to the point, please. Did
18 you --

19 A No, no, no. Excuse me. I'd like to be able to
20 answer --

21 Q I'm not asking you to have a chance to give a
22 whole platform of your Antrim Wind and to state
23 things as facts again and again and again which
24 are just your opinion. I'm asking you, did you

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1 write, your company write part of what was
2 submitted to a citizen to bring to the Planning
3 Board to have it voted on by a ballot election?

4 A And the answer is no.

5 PRESIDING OFFICER SCOTT: Ms. Berwick, I'd
6 like you to let him answer the question.

7 MS. BERWICK: Okay.

8 A So as a result of those relationships and
9 conversations that have been ongoing for many
10 years inside the Town of Antrim with people that
11 would like to see the wind project move forward,
12 there were discussions between Antrim Wind and a
13 group of Antrim residents about essentially
14 adapting what had already been negotiated and
15 agreed, this Town of Antrim agreement that was
16 executed by Antrim Selectmen and Antrim Wind in
17 2012 and which contains many provisions that you
18 would typically expect to find in an ordinance,
19 things with respect to setbacks, noise, with
20 respect to construction period requirements,
21 road use, all of these things, to take those
22 requirements and adapt them into the form of an
23 ordinance, and we did do that. We took that
24 agreement that was negotiated and agreed, and we

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1 had that converted to the language and structure
2 of an ordinance. Antrim residents then
3 petitioned that warrant article which was
4 ultimately presented to the Selectboard for
5 inclusion on the warrant in March 2014.

6 Q Okay. So basically what was voted on in 2014 by
7 the citizens of Antrim was a petition that you
8 very much were involved in writing.

9 A Unquestionably, we were involved with it, and I
10 think as I've said, you know, the basics, the
11 regulations themselves that were in that
12 petitioned ordinance were the same as the
13 regulations that are in this 2012 agreement with
14 the town.

15 Q Was that petition put to a ballot vote?

16 A Yes, it was.

17 Q And what were the results of that vote? Did it
18 pass?

19 A No. It was defeated.

20 Q To model Mr. Richardson, could you tell me what
21 the percentage of that was?

22 A No, I couldn't offhand.

23 Q Okay. So it was defeated in 2014 which is
24 really the last time that there was any type of,

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1 there was any input from the public because
2 you're talking about a straw poll that was done
3 back in when?

4 A Well, there have been many straw polls that have
5 been done, but, look, let me --

6 Q But the last thing was the 2014 vote.

7 A No.

8 Q Which was defeated.

9 A Well, if you're asking about the last vote on an
10 ordinance, that is the most recent ordinance
11 vote, yes.

12 Q There's been a survey done after that?

13 A No. There hasn't been a survey done.

14 Q Okay. Thank you.

15 A I can tell you that at the public information
16 sessions where this project has come before the
17 SEC --

18 Q No, I'm talking about a ballot vote where you
19 have people there actually write on a ballot.
20 You go in, curtain's pulled and you put your
21 opinion.

22 A Well, if --

23 PRESIDING OFFICER SCOTT: One at a time,
24 please.

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1 Q So the closest house, I'm sorry. This is
2 changing the subject right now. The closest
3 house is about half a mile from the turbine.
4 What is the closest nonparticipating property
5 from the turbines?

6 A I'll have to go back and check my testimony.
7 It's all contained right in my Supplemental
8 Testimony. Okay. Page 28 starting line 6 of my
9 Supplemental Testimony identifies turbine number
10 4 being located 589 feet from the nearest
11 nonparticipating property line which is
12 approximately 1.2 times the maximum tip height.

13 Q For us and other residents who have an expected
14 amount of flicker from eight hours to over 12
15 hours, the plan is to adjust this to no more
16 than 8 hours with a brand-new, never before
17 created or used, never tested program. Is that
18 correct?

19 A No. As I've stated before, Siemens has a great
20 deal of experience in using shadow control
21 technology on turbine installations in Europe,
22 and Siemens will be applying that towards an
23 adaptation of that technology to be employed
24 here in the United States, and it's very, it's

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1 actually fairly straightforward technology. And
2 once again, we will be required to demonstrate
3 that we have complied with the shadow flicker
4 requirement.

5 Q The Siemens representative here said that they
6 were creating this program. You testified that
7 they use a different company's program overseas.
8 So they are creating a brand-new program for
9 them, aren't they?

10 A They are adapting the technology for use in
11 their turbines here in the United States.

12 Q It's a brand-new, never-tested-by-them program,
13 correct?

14 A I think I've answered the question.

15 Q No, I think you tried not to answer the
16 question. It was not stated -- hold on just a
17 second. It was not stated, but it certainly
18 came across in your testimony as if there were a
19 program that Siemens already had developed and
20 tested over years. Why was it not revealed in
21 any of your Application or Supplemental
22 Testimonies that the Siemens program was being
23 created specifically for this project?

24 A I'm sorry. Can you point me to the place in my

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1 testimony that you're referring to?

2 Q I'm talking to everything that you have said
3 when you've been up there testifying. You have
4 many times talked about how the flicker control
5 will be controlled by a Siemens flicker shadow
6 control program. It's been stated so
7 emphatically that no one, none of us thought
8 that it had not been created yet. It was a
9 question from one of the Committee members that
10 brought this to light. Why was it not stated in
11 any of your testimony or any place else that
12 this program that Siemens is creating had not
13 already been developed but that it was being
14 created for this program?

15 A I certainly haven't testified one way or the
16 other. I think what we have indicated is that
17 we will implement this technology, whether it's
18 provided by Siemens or another third party, and
19 Siemens is going to provide this technology to
20 us as we have indicated, and it is a technology
21 that has been employed many times around the
22 world on many different types of turbines
23 including Siemens turbines. So I acknowledge
24 and I understand your question that you're

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1 concerned about whether or not it is going to be
2 effective, and I want to reassure you that we
3 have worked very hard with Siemens to require
4 that this technology will be implemented on the
5 turbines that we purchased from them for this
6 project, and they're contractually obligated to
7 meet that obligation with us.

8 Q It still is a --

9 A It's an adaptation.

10 Q It still is a brand-new, never-before-developed
11 program from Siemens, correct?

12 PRESIDING OFFICER SCOTT: Ms. Berwick. If
13 you've going to interrupt him the
14 transcriptionist can't get both.

15 MS. BERWICK: I'm sorry.

16 A I understand that's your description of it.
17 That's not how I'm describing it.

18 Q Would the fact that this was a brand-new,
19 never-before, just-being-developed program,
20 would it have been revealed had you supplied Ms.
21 Linowes the Siemens contract as you agreed to
22 during the technical sessions? Would that have
23 been on the contract?

24 A Would what have been on the contract?

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1 Q Creation of a shadow flicker control program.

2 A Siemens' obligation to provide shadow flicker
3 control that will operate in the manner that we
4 have represented that it will operate is a
5 requirement that will be contained in the final
6 TSA. Yes. It is in there.

7 Q So it would have been revealed had you given Ms.
8 Linowes the contract that she requested during
9 the technical sessions.

10 MR. NEEDLEMAN: Mr. Chair, I'm just going
11 to object to the extent that the contract was
12 only required to be provided when it was final.
13 We've gone over this issue, and there is no
14 final contract.

15 PRESIDING OFFICER SCOTT: Understood.

16 A Again, I think the --

17 Q Are you going to supply -- well, it doesn't
18 matter.

19 A The contract between Antrim Wind and Siemens
20 Energy with respect to shadow flicker technology
21 is very similar to the contract as with respect
22 to things like sound. They are required to
23 provide us with turbines that will have the
24 capability to shut down if shadow flicker at any

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1 of the 24 locations that we identify has the
2 potential to exceed 8 hours per year, and they
3 will be required to be able to produce reports
4 that document that compliance the same way that
5 they're required to not exceed a maximum sound
6 power level, and those are both contractual
7 requirements that will ultimately be in the
8 final signed agreement that we have with
9 Siemens.

10 Q And this program that will adjust the time was
11 created because your project did not comply
12 without it, with the SEC rules regarding flicker
13 at residential dwellings and yards; is that
14 correct?

15 A What I would say is that yes, the use of shadow
16 flicker control is required for us to comply
17 with the eight-hour-per-year regulation which is
18 a brand-new regulation.

19 Q Has this program been created yet?

20 A Yes, I believe it has.

21 Q We all laughed at the statement, "It's a
22 Siemens, it will work." Are you aware of any
23 Siemens wind tower failures?

24 A I am not aware.

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1 Q I have some evidence to --

2 PRESIDING OFFICER SCOTT: Let's go off the
3 record while she's passing out the records.

4 (Off-the-record discussion)

5 (Exhibits AB 37 and AB 38 marked as exhibits)

6 PRESIDING OFFICER SCOTT: Back on the
7 record.

8 Q The two papers I just passed out are talking
9 about issues that happened when the Siemens
10 turbines. The first one has to do with blades
11 that broke off, and I believe the first one that
12 broke off was the MidAmerican Energy at the
13 Eclipse Wind Farm in Iowa. The second blade
14 that broke off was at the Ocotillo Wind Farm in
15 California, and as a result of that they
16 shutdown all of that type of turbine, but there
17 was almost six months in between; and the second
18 paper is about insurance company blaming the one
19 of the turbine failures, and I think it's a
20 different one at the Cedar Bay Electrical
21 Generation Facility outside of Houston, and
22 they're blaming that turbine failure on Siemens.

23 So it does seem that despite the laughter
24 of "It's a Siemens, it will work," there can be

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1 issues with Siemens.

2 PRESIDING OFFICER SCOTT: Mrs. Berwick, do
3 you want these marked as exhibits?

4 MS. BERWICK: Sure. That would be fine. I
5 don't know how to do that. I'm sorry. Yes,
6 that would be wonderful. Do I need to come up
7 with a number?

8 PRESIDING OFFICER SCOTT: We'll figure out
9 a number for you.

10 MS. BERWICK: I didn't even know I could do
11 this until everybody else did. But I try.

12 A I'm sorry. Did you ask a question?

13 Q So it does seem like Siemens can have problems,
14 doesn't it?

15 A Sure. I think it's certainly true that there
16 can be problems with any type of machine, and I
17 think Mr. Marcucci, when he was here, probably
18 could have gone into more detail about these two
19 or however many specific events. I don't have
20 any personal knowledge of them. But I can say
21 that, as we both he and I have testified to,
22 these events are rare, and I think, I don't know
23 much more about these two specific incidents.

24 Q I maybe would have had some questions had I

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1 known that this was a brand-new, never-developed
2 program, but I didn't know that until the
3 Committee members asked their questions.

4 A You certainly knew we were using Siemens
5 turbines which is what this is about.

6 Q Yes. Yes. But I did not know that we had a
7 brand-new program that they were developing.

8 What is the estimated lifespan of this
9 project?

10 A Our expectation is the project will operate for
11 25 years-ish. It's likely it could go a couple
12 years longer, and it's also possible that it
13 could be repowered at some point, at some point
14 around that 25-year mark. The outside date for
15 us to operate the project given a combination of
16 the lease agreements and the conservation
17 agreements is 50 years from the date of the
18 first lease which if I recall correctly was
19 December 2009. So we're talking about December
20 2059 could be the outside date.

21 Q I'll write it on my calendar. SEC rules
22 301-14(f)(2)(b) states with respect to shadow
23 flicker, the shadow flicker created by the
24 Applicant's energy facility during operations

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1 shall not occur more than eight hours per year
2 at or within any residence, learning space, work
3 space, health care center, outdoor or indoor
4 public gathering area or other occupied
5 building.

6 Where in this statement does it make a
7 special allowance for the homes of participating
8 homeowners?

9 A Nowhere in that statement.

10 Q Twenty-five to 40 years is a significant chunk
11 of time. Is it not quite possible that
12 ownership of these homes could transfer to
13 others during that time?

14 A All of the agreements that we have with
15 participating landowners are recorded documents.
16 They're in the Registry of Deeds. Any buyer of
17 any participating landowner's property will be
18 well aware of any encumbrances and benefits that
19 accrue to them as a result of this project.

20 Q Are not the SEC rules made to protect all of the
21 public?

22 A I'm sorry. I don't understand the question.

23 Q Aren't the SEC rules made to protect all of the
24 public?

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1 A Sure.

2 Q Including those that will come after us.

3 Twenty-five to 40 years is a long time. These
4 houses may change hands and people may not be
5 exactly aware of what shadow flicker is because
6 it doesn't occur every single day. Does it?
7 They may not be aware of how much it will affect
8 their lives.

9 A I don't --

10 Q Or even the noise because unless you sleep in
11 the house, you're not aware of how much noise
12 there will be at night. Isn't it the job of the
13 SEC to protect the public now and in the future?

14 A Certainly I would agree that that is a part of
15 what the Committee's job is. I think in terms
16 of participating landowners and rights of future
17 buyers, I mean, this isn't a unique issue to
18 wind energy projects. I think any time there is
19 any type of development that causes some type of
20 an encumbrance upon a property that is part of a
21 recorded deed, this is the way real estate
22 works. When you're buying a property, you do
23 deed research, you look at what instruments
24 there may be there that impact that property,

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1 and it is the buyer's obligation to understand
2 what those are.

3 Q What is the plan for handling citizens'
4 complaints?

5 A Well, I think we have identified in our
6 agreement with the town of Antrim the obligation
7 for Antrim Wind to identify a person who's
8 available 24/7, the contact information for that
9 person, name, email, phone number and address
10 that's available to receive those complaints,
11 and we have an obligation to respond to those
12 complaints in a timely manner. So I think it
13 really, it depends on what, you know, what the
14 complaint is that you're talking about.

15 Q Those words timely manner, obligation to
16 respond, that could be construed to be anywhere
17 from within a day to within six months to within
18 a year. It all depends on who's doing the
19 interpretation. Are there any specific
20 guidelines for, you have a complaint, I call, I
21 say I can't stand it. This noise is driving me
22 absolutely nuts. I know it's over, way over the
23 limit, you've got to come check this and change
24 your turbines. How long will it take before you

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1 respond to my complaint and where is that in
2 writing so that there is something that I can
3 say this is what you're required to do. Not
4 timely manner.

5 A Right. Well, I think the agreement that we have
6 with the town of Antrim is, let me pull it up to
7 make sure I have the language correct.

8 Q Okay.

9 A Okay. So it's discussed in Section 5 with the
10 agreement with the Town of Antrim.

11 Q What does it say? Because I know what it says.

12 A What it says is that during the construction and
13 operation of the wind farm and continuing
14 through completion of decommissioning of the
15 wind farm, the owner shall identify an
16 individual including phone number, email address
17 and mailing address posted in the town hall who
18 will be available for the public to contact with
19 inquiries and complaints. The owner shall make
20 reasonable efforts to respond to and address the
21 public's inquiries and complaints. This process
22 shall not preclude the town from acting on a
23 complaint. So I think that's the obligation
24 right there is to make reasonable efforts to

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1 respond to the complaints --

2 Q There's actually, that says almost nothing to me
3 as a homeowner, that you will make an action to.
4 They inquire, well, yeah, we're going to. We're
5 going to get in touch with them next week.
6 We'll do it in two weeks. We'll do it in a
7 month. Shadow flicker, you know right well it's
8 going to happen during this time. If you just
9 ignore it long enough, it will go away. Won't
10 it?

11 PRESIDING OFFICER SCOTT: So you're going
12 to ask a question, right?

13 Q I'm sorry. I'm sorry. So there is nothing
14 specific in that plan of a timeline. Yes, it's
15 specific about taking my name and number,
16 address, but is there a specific thing other
17 than reasonable, and I don't even think I heard
18 that in that agreement.

19 A Yes, the word reasonable is in the language that
20 I just read to you. Beyond that, there's no
21 further specificity.

22 Q All right. Who would work to resolve the
23 complaint?

24 A Well, it depends on what the complaint is. I

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1 mean, Antrim Wind will have site personnel who
2 are identified who are on the site working
3 during normal business hours. The expectation
4 is that those site personnel will be able to
5 respond to most issues, I would imagine most
6 inquiries or complaints. If it happens to be a
7 complaint that relates to something like sound,
8 it's likely going to involve Antrim Wind's
9 personnel coordinating with the Siemens techs
10 that are also operating at the site. We'll need
11 to understand more about what particular
12 conditions were that gave rise to the complaint
13 to see whether there's any action we need to
14 take to correct it, but first and foremost,
15 Antrim Wind will respond to the complaints and
16 the point people for Antrim Wind will be those
17 two site people that are onsite during business
18 hours.

19 Q Will they have the capacity to set up sound
20 equipment? And if the decibels were high, would
21 they have the capacity to turn down or turn the
22 turbines off? Capacity and the authority.

23 A So sound requirements are, again, governed by
24 SEC rules, and we have to meet them, and so part

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1 of the way we demonstrate that or the way we
2 demonstrate that is that once we go into
3 operation, we have to conduct tests within the
4 first three months and then every six thereafter
5 so we're capturing different seasonalities,
6 different weather conditions, different
7 operations for our turbines. It needs to be
8 during winter, during summer, during fall,
9 during spring, during day, during night in order
10 to establish that we meet the requirements of
11 the rule.

12 It's a very expensive process to do. So
13 there is no ongoing process to continually
14 monitoring noise standards like there isn't
15 really for any industry. However, if there's a
16 complaint, and it isn't resolvable, obviously,
17 the SEC has jurisdiction to enforce that
18 requirement and that could require further
19 testing if we were directed to do so. We
20 certainly don't expect it to be the case.

21 Q To read a quote from the article that I
22 submitted in my Supplemental Prefiled Testimony,
23 Adverse Health Effects of Industrial Wind
24 Turbines, It was my Abutter 8.

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1 During the past few years there have been
2 case reports of adverse effects. A 2006
3 Academie Nationale de Medicine -- however you
4 say it in France -- working group report notes
5 that noise is the most frequent complaint. The
6 noise is described as piercing, preoccupying and
7 continually surprising as it is irregular in
8 intensity. The noise includes grating and
9 incongruous sounds that distract the attention
10 or disrupt rest. The spontaneous recurrence of
11 these noises disturbs the sleep, suddenly
12 awaking the subject when the wind rises and
13 preventing the subject from going back to sleep.

14 My question is, how are we that are closest
15 to the turbine to protect our health and for how
16 long would we need to live in these conditions
17 before resolutions could be expected?

18 A And Ms. Berwick, I understand your concern. I
19 guess, I'm not a public health expert, but I
20 will say this. As we heard from Mr. Thurber
21 earlier today, the Lempster Wind project has
22 been operating for seven, eight years now, and
23 there's been two noise complaints and none since
24 2010, and that project is held to a noise

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1 standard that is more than twice as much sound
2 pressure as we will be held to in Antrim. 45
3 versus 40 dBA. So I think in response I would
4 just say that -- and those homes in Lempster
5 were between 5, call between 3 and 600 feet. I
6 believe your home is about 3800 feet from the
7 closest turbine.

8 Q And my property is at 970 feet.

9 A Sure, but you're not sleeping on the edge of
10 your property.

11 Q But I am going out to the edge of my property.

12 A And you should continue to do so. That's
13 perfectly fine. But I guess my point is that I
14 just, we certainly, we understand your concern.
15 We've done the work to evaluate these impacts,
16 and we are, we well exceed the SEC rule
17 requirement on sound, and so we certainly don't
18 expect any of these types of issues to arise.

19 Q So you expect me as a homeowner to be, to be
20 calmed by the fact that a person that was
21 obviously quite deaf was assuring us that the
22 windmills don't make such sound, but he did hear
23 them two miles out and it sounded like a drum, a
24 low drum.

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1 A I think Mr. Thurber's testimony was not, he did
2 talk about his own experiences, but he also
3 talked about what complaints had occurred in the
4 town of Lempster since that turbine project has
5 been operating, and, look, I think experience
6 does count for a lot, right? We've had three
7 wind projects and now four that are operating in
8 New Hampshire and an extremely low number of
9 complaints under rules that were far less
10 stringent than Antrim Wind will be held to, and
11 I think that is good cause for taking some
12 comfort.

13 Q Can individual citizens monitor sound levels,
14 and if it is done, will it be accepted?

15 A Individual citizens, I presume, could do what
16 they wish. You know, whether or not, you know,
17 these things obviously need to be performed in
18 accordance with standards. The rules themselves
19 specify those standards, and so I think there's
20 a certain amount of qualifications that need to
21 be in place and also specific types of equipment
22 they would need to be able to use, but they
23 could do that. Whether or not they would be
24 enforceable, I don't know. I don't know the

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1 answer to that.

2 Q How often will you report to the town of Antrim
3 per their agreement with you on the number of,
4 how often will you report complaints to the Town
5 of Antrim? It appears it's only annually; is
6 that correct?

7 A Well, there is a couple of different types of
8 reports in Section 6 of the agreement with the
9 town of Antrim. Incident reports are to be
10 provided to the Chairman of the Board of
11 Selectmen or its designee as soon as practicable
12 but not later than 30 days after an incident,
13 and that would include any incidents or
14 accidents that would require any report to the
15 EPA, to New Hampshire DES, OSHA or any other
16 federal or state government agency that would
17 require that notice and report to the town. And
18 then there are kind of periodic reports that are
19 required to be submitted on an annual basis to
20 the town that include a summary of a series of
21 different items that are listed, including if
22 there's any construction activities, including
23 the schedule for completion, the details on any
24 calls that may have been made for emergency

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1 police or fire assistance, the location of all
2 onsite fire suppression equipment, identity of
3 hazardous materials including volumes and
4 locations, and then a summary of complaints
5 received from town residents and the current
6 status or resolution of those complaints or
7 issues. So that is what's required to be
8 submitted on an annual basis to the town. It is
9 not --

10 Q Before computer dies, I want to ask you the
11 questions I can see here.

12 A Okay.

13 Q Since all these guidelines only deal with the
14 flicker and the noise at our residence, and I'm
15 talking about the SEC guidelines, they deal with
16 them at our residence and our immediate yard, is
17 this not depriving us from the enjoyment of our
18 property and also the use of our property? For
19 instance, most of our property is much closer to
20 the project than our house right up to 900
21 something feet, and we have three children, we
22 have 38 acres, we really wouldn't be able to
23 subdivide and have them put a house on that
24 property. It would be much greater flicker and

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1 much greater noise. Isn't this depriving us of
2 the right of the use of our property?

3 A No. I don't believe it is. I mean, I think,
4 look, this is, for one thing, I think uses of
5 properties around wind facilities can continue
6 to go on very much as they are today. Whether
7 it's used for residences as some areas at a
8 greater distance to our project are or it's
9 timber activities or it's hunting or recreation,
10 all of those types of activities can continue
11 really unencumbered by the project. You know,
12 the Committee has gone through a rulemaking
13 process, and it was a long process. It took a
14 lot of years. There was a tremendous amount of
15 input and out of that process came the rules
16 that we are required to meet, and in the case of
17 this project in Antrim we have gone a long way
18 and considerably exceed the requirements of
19 those rules.

20 Q Okay. I guess I would disagree with your facts
21 because you didn't say anything about building
22 homes. You said like timber and that type of
23 stuff, but I want to go on.

24 PRESIDING OFFICER SCOTT: Mrs. Berwick, how

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1 much more do you have by the way?

2 Q Oh, it's getting really close, isn't it. I do
3 have a little bit more.

4 PRESIDING OFFICER SCOTT: Well, how much
5 more? I mean we could break now or if you think
6 you can conclude fairly quick, I'm not trying to
7 close you down. I'm just trying to get a
8 feel --

9 MS. BERWICK: I would love it if we broke
10 down because I have two minutes left on my
11 computer.

12 PRESIDING OFFICER SCOTT: So sounds like a
13 good time?

14 MS. BERWICK: I have about five, ten
15 minutes at the most.

16 PRESIDING OFFICER SCOTT: With that, and
17 just to save your computer power, we will
18 adjourn and come back at 9 o'clock tomorrow.

19 MS. BERWICK: Thank you.

20 (Hearing recessed at 5:09 p.m.)

21

22

23

24

