

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

Docket No. 2015-06

Joint Application of Northern Pass Transmission, LLC  
and Public Service Company of New Hampshire  
d/b/a Eversource Energy for a Certificate of Site and Facility

**MOTION OF THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE  
FORESTS FOR REHEARING OF THE OCTOBER 6, 2017 AND SUBSEQUENT  
RULINGS FROM THE BENCH LIMITING INTERVENORS' CROSS-EXAMINATION**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, moves to rehear the Presiding Officer’s rulings on the scope of certain intervenors’ and Counsel for the Public’s cross-examination that were issued orally during the hearings, starting with the appearance of the first Track 3<sup>1</sup> witnesses on October 6, 2017. The intervenors subject to these limitations are generally those who oppose the proposed project (“Opposition Intervenors”). In support, the Forest Society states as follows:<sup>2</sup>

**I. PROCEDURAL BACKGROUND**

**a. March 2017: Pre-Hearing**

1. The Applicants first attempted to limit cross-examination by Opposition Intervenors through their March 7, 2017 Motion to Clarify Use of “Friendly” Examination, to which the Forest Society objected.

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<sup>1</sup> Track 3 refers to the portion of the adjudicatory hearing during which witnesses for Counsel for the Public and intervenors testify.

<sup>2</sup> Note that the Forest Society’s October 2, 2017, Motion for Rehearing set forth analysis of its claims that the limits on cross-examination in place at that time violate the Forest Society’s due process rights, including citation to numerous legal sources. Acknowledging that the Motion has been denied, the Forest Society does not restate those arguments or cite the same legal sources in this Motion. However, those arguments and legal sources apply with equal force to the further limits on cross-examination that began to be put upon the Forest Society and other Opposition Intervenors on October 6, 2017, and they are hereby incorporated into this motion as if set forth fully herein.

2. In its Objection, the Forest Society presented specific examples showing that cross-examination among so-called “friendly” parties has been an established part of SEC practice.

3. The Presiding Officer cited RSA 541-A:33, IV and Site 202.11 in his Order on Applicants’ Motion and concluded that “[t]he Presiding Officer cannot, as requested by the Applicant, make a prehearing determination that all friendly cross-examination will impede the prompt and orderly conduct of the proceeding. Such a determination must be made during the course of the proceeding.” Order on Applicant’s Motion to Clarify Use of “Friendly” Examination, at 3-4 (Mar. 31, 2017).

**b. August and September 2017: During Hearing; Applicants’ Case**

4. The Applicants next attempted to limit cross-examination by Opposition Intervenors through their August 16, 2017 motion for an order “requiring an offer of proof at a prehearing conference conducted by the Presiding Officer that gives non-adverse parties a full and fair opportunity to establish that their contemplated examination will neither repeat points already made by the witness in prefiled testimony nor introduce new testimony that the examining party or witness should have offered in writing.” Applicant’s Motion to Determine Extent of “Friendly Cross” at 2 (Aug. 16, 2017).

5. On September 12, 2017, the Presiding Officer denied Applicants’ request for a prehearing conference, but provided as follows:

On or before September 22, 2017, each intervenor shall file a list identifying each witness that the intervenor seeks to cross-examine (excluding the remaining Applicant witnesses). Regarding each witness or witness panel, the list shall include the following information:

1. Whether the examining party believes that its position is adverse to the witness including all reasons; and

2. If the examining party is not adverse to the witness, the examining party must identify the areas of cross-examination and why the cross-examination is necessary to a full and true disclosure of the facts.

Procedural Order at 3-4 (September 12, 2017).

6. On October 2, 2017, the Forest Society moved for rehearing of this Procedural Order. It also filed contemporaneously a Motion for Expedited Disposition of its Motion for Rehearing.

7. The following parties joined the Forest Society's Motion for Rehearing and Motion for Expedited Disposition:

- (a) Municipal Groups 1 South, 2, 3 North and 3 South;
- (b) The Non-Abutting Property Owners Bethlehem to Plymouth Group;
- (c) The Grafton County Commissioners;
- (d) CS-Group I North Pittsburg, Clarksville, Stewartstown;
- (e) Deerfield Abutters;<sup>3</sup>
- (f) NGO Intervenors.

8. The Applicant objected to both Motions on October 11, 2017.

9. Prior to ruling on the Motions, the Presiding Officer, beginning on October 6, 2017, began issuing oral rulings concerning the scope of Opposition Intervenors' and Counsel for the Public's cross-examination rights. These are discussed in the subsequent section.

10. On October 24, 2017, the Presiding Officer issued an Order denying the Forest Society's Motion for Rehearing, stating the "Forest Society overstates the requirements in the Procedural Order and fails to state a good cause for rehearing." Order Denying Motion for Rehearing (September 12, 2017, Procedural Order) at 4 (Oct. 24, 2017).

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<sup>3</sup> The Deerfield Abutters previously submitted a Motion to Reconsider and Modify September 12 Order on Cross-Examination. They subsequently withdrew this motion after all parties agreed to revise the deadline for filing the information required by the Procedural Order and the Presiding Officer orally approved the agreement. *See* Exh. 1 (Transcript, September 21, 2017 (Day 37, Morning Session), at 7).

11. It further explains, “[f]riendly cross-examination is improper when it is used as a means to simply repeat prefiled direct testimony or when it is used to introduce new opinions and/or testimony that should have been included in prefiled direct testimony.” *Id.* at 5.

12. In conclusion, the Order states, “[u]nder the circumstances as they have unfolded, the majority of the parties appear to understand the proper scope of cross-examination necessary to a full and true disclosure of the facts. There is no need at this point to issue a further order requiring the parties to comply with the Procedural Order as it relates to friendly cross-examination.” *Id.* at 6–7.

**c. October and November 2017 Hearings: Counsel for Public & Intervenor Witnesses**

13. Since the beginning of Track 3 on October 6, 2017, the Presiding Officer has issued numerous rulings from the bench that directly or indirectly restrict the scope of Counsel for the Public’s and Opposition Intervenors’ direct and cross-examination rights.

14. On October 6, 2017, for the first time in this proceeding, the Presiding Officer made it known that he expected Counsel for the Public and Opposition Intervenors to conduct supplemental direct examination of their witnesses during the hearing. *See* Exh. 2 (Tr. Oct. 6, 2017 (Day 44 Morning Session), at 113-33). The Presiding Officer also significantly limited the scope of cross-examination by Counsel for the Public and the Opposition Intervenors. This is contrary to the prior conduct of this hearing and to the prior conduct of much of the prior proceedings before the Site Evaluation Committee.

15. With respect to the current limits on cross examination, they are not entirely clear. No written order sets forth the limits. The rulings are not consistent with each other and are not applied consistently across all parties and witnesses. It seems as if parties represented by counsel are subject to the most stringent limits upon their cross-examination.

16. Notwithstanding that the limits are not clear, they may be generally summarized as follows:

- (a) All witnesses for all Opposition Intervenors and Counsel for the Public are similarly aligned or “friendly” (not adverse) to each other;
- (b) Opposition Intervenors and Counsel for the Public may cross examine witnesses for intervenors and Counsel for the Public only as follows:
  - (i) “New” information that could not have been known at the time the witness had the last opportunity to present pre-filed direct testimony; or
  - (ii) An issue “truly” requires clarification.
- (c) Intervenors and Counsel for the Public may not cross examine witnesses for intervenors and Counsel for the Public if:
  - (i) The objective of the question is to elaborate or expand on information contained in the pre-filed direct testimony; or
  - (ii) The subject matter of the question could have been included in the pre-filed direct testimony.

17. In making rulings to adhere to the above-referenced standards, the Presiding Officer has limited questions which he determines seek to elicit general or generic information, and/or that the information should have been included in the witness’s pre-filed direct testimony, and/or that the information is an expansion of the witness’s testimony, all of which have been grounds for sustaining objections based on the information not being “new.”

18. On October 18, 2017, during the Forest Society’s cross-examination of construction-related witnesses for Counsel for the Public, counsel for the Applicants objected to a cross-examination question and the Presiding Officer sustained the objection. The Forest Society, through counsel, then began to make a statement for the record about the Forest

Society's concerns that the limits being put upon cross-examination by intervenors and Counsel for the Public are unlawful. Exh. 3 (Tr. Oct. 23, 2017 (Day 50, Afternoon Session), at 45-57).

19. The Presiding Officer directed the Forest Society to raise its concerns in a motion. This Motion is intended to comply with that directive.

## **II. LEGAL STANDARDS FOR REHEARING**

20. Based on the Administrative Procedures Act, the SEC's Administrative Rules, and the Supreme Court Rules, to preserve the issues raised by the Forest Society during the hearing on October 23, 2017, the Forest Society files this Motion for Rehearing.

21. A motion for rehearing serves a two-fold purpose: first, it permits the reviewing authority to reconsider its decision, and second, it may be a requirement prior to filing an appeal to the New Hampshire Supreme Court. Site 202.29; N.H. Super. Ct. R. 10.

22. Pursuant to RSA 541:3, "any person directly affected" by an order or decision has the right to file a motion for rehearing.

23. The Forest Society and other Opposition Intervenors are directly affected by the Presiding Officer's oral rulings on the limits of what questions may be asked by intervenors and Counsel for the Public on cross-examination of Track 3 witnesses because, as explained in more detail subsequently, these limitations are internally inconsistent, are not supported by law, and fail to provide clear guidance to parties on what are and are not permissible questions on cross-examination, all of which violates the Forest Society's and other Opposition Intervenors' due process rights and prevents the full and true disclosure of the facts.

24. Site 202.29(c) allows such a party to submit a motion for rehearing within 30 days of the decision or order. For purposes of determining this deadline, the Forest Society has assumed the inception on October 6, 2017 of the rulings addressed in this motion triggered the start of the 30 days, and that, therefore, this motion is due by November 6, 2017.

25. A party may apply for a rehearing by “specifying in the motion all grounds for rehearing,” RSA 541:3, and “set[ting] forth fully every ground upon which it is claimed that the decision or order complained of is unlawful and unreasonable.” RSA 541:4.

26. The SEC rule on rehearings further provides that a motion for rehearing shall: “(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered; (2) Describe how each error causes the committee’s order or decision to be unlawful, unjust or unreasonable; (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and (4) Include any argument or memorandum of law the moving party wishes to file.” Site 202.29(d).

### **III. LEGAL ANALYSIS**

27. Since Track 3 began, the Presiding Officer has issued rulings following objections by the Applicants’ counsel or *sua sponte* that have been inconsistently applied are not based on any legal standard found within or supported by the applicable statute and rules, and are unprecedented in other proceedings before the SEC. Because of these inconsistent and erroneous rulings, it is not clear to the Forest Society and other Opposition Intervenors what scope of cross-examination is currently permitted in this proceeding, or how the limits do not violate the Forest Society’s and Opposition Intervenors’ due process rights by preventing the full and true disclosure of the facts.

#### **a. Determination that all Opposition Intervenors and Counsel for the Public are “Friendly” Towards Each Other for Purposes of Cross-Examination**

28. Implied in the cross-examination limits put upon the Opposition Intervenors and Counsel for the Public is that Counsel for the Public and all Opposition Intervenors are friendly towards each other for purposes of cross examination. *See, e.g.*, Exh. 2 at 113-33.

29. It is presumably undisputed that the Counsel for the Public in this matter has a unique role in this case, and, therefore, Counsel for the Public should not be considered “friendly” or “similarly aligned” with the Opposition Intervenors. The Counsel for the Public’s witnesses were asked to independently review reports prepared by experts retained by the Applicants. The Counsel for the Public’s witnesses have prepared reports relative to their review, some of which either agree and disagree with the statements and/or findings made by the experts retained by the Applicants.

30. While this is implied pervasively throughout the written orders and rulings from the bench, the Presiding Officer has explicitly stated this in certain circumstances. *See, e.g.*, Exh. 3 at 138-139 (discussion between Attorney Pappas for Counsel for the Public and the Presiding Officer on whether Counsel for the Public is “friendly” towards other intervenors for purposes of cross-examination).

31. There have, nevertheless, been a number of objections raised by the attorneys for the Applicants to prevent the Opposition Intervenors from asking clarifying questions to the witnesses for Counsel for the Public and, similarly, to prevent Counsel for the Public from asking clarifying questions to the witnesses of the Opposition Intervenors.

32. These limitations have been both explicitly and implicitly required throughout the written orders and rulings from the bench. The basis for these rulings appears to be the Presiding Officer’s determination that Counsel for the Public is “friendly” and a “cohort” with the parties who oppose the project. This is simply untrue, and the limitations on the questions that can be asked by the Opposition Intervenors to Counsel for the Public, and *vice versa*, is unfairly prejudicial. Most significantly, Counsel for the Public was not limited to questions involving “new” information during its cross-examination of the Applicants’ witnesses and/or witnesses of intervenors who support the proposed project. Counsel for the Public should not have such a

limitation imposed on the types of questions it can now ask of the witnesses for the Opposition Intervenors.

**b. The Presiding Officer's Rulings Are Not Supported by The New Hampshire Administrative Procedures Act, the SEC Rules, or the Precedent of this Proceeding and Other Past SEC Proceedings**

33. The New Hampshire Administrative Procedures Act and the SEC rules provide for broad cross-examination and do not support the Presiding Officer's rulings

34. The guiding principle for the scope of cross-examination is set forth in RSA 541-A:33, IV: a "party may conduct cross-examination required for a full and true disclosure of the facts." *See also In re Sprague*, 132 N.H. 250, 258 (1989).

35. The check on this broad scope of cross-examination is that the "presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence." RSA 541-A:33, II.

36. Nowhere in these statutes or in the rules implementing them (Site 202.11(d)(2)) is there any basis for limiting cross-examination in the way that it is currently being limited.

37. Moreover, this is the first time in these proceedings that limitations on the type of questions has been applied. During the cross-examination of the Applicants' witnesses, the intervenors who support the project were not notified that they were limited to questions pertaining to "new" or "truly clarifying" information. The Presiding Officer also did not interrupt the Applicants' witnesses to ensure that their answers were narrowly tailored to only responses to "new" or "truly clarifying" information, but rather, allowed them to provide expansive responses. Based on the manner in which cross-examination of the Applicants' witnesses occurred, the Forest Society and Opposition Intervenors anticipated that they would be provided the same latitude. This has not occurred. It is unfair and prejudicial for the Forest Society and Opposition Intervenors to be subjected to an entirely different set of requirements from those intervenors who support the proposed project.

38. A review of other transcripts of proceedings also indicates that such limits have not been previously placed on intervenors. By way of example, a review of the Antrim Wind adjudicative hearing transcripts in SEC Docket 2015-02 reveals that Counsel for the Public and the intervenors (both those opposing and supporting the proposed project) were not limited in the scope of the questions that they were allowed to ask during examination of similarly-aligned witnesses. A review of the transcripts shows Counsel for the Public and the intervenors were allowed to use cross-examination to elaborate and expand on the pre-filed direct testimony, and were not limited to questions for the purpose of addressing “new” or “truly clarifying” information.

39. The Forest Society and Opposing Intervenors in this case have always understood that cross-examination of similarly aligned witnesses must not be irrelevant or unduly repetitive. However, the limitation that prevents parties from asking questions to generally expand or elaborate on information in a witness’s pre-filed testimony is a new requirement that has not been previously applied in other adjudicative proceedings. The parties are being unfairly prejudiced by this ruling because they had anticipated being able to address certain issues with intervenors, and made strategic decisions to raise concerns with witnesses for the Counsel for the Public and/or the other intervenors, rather than addressing certain issues during the cross-examination of the Applicants’ witnesses.

**c. Limits on Cross-Examination are Not Applied Consistently**

40. Assuming that the limits on cross examination are lawful, they have not been applied consistently.

41. For example, during the hearing on October 23, 2017, construction witnesses for Counsel for the Public were not allowed to testify about a conversation that occurred between one of the witnesses and a local road agent in September of 2017, although the last opportunity

for the witnesses to submit pre-filed direct testimony was April 17, 2017. Exh. 4 (Tr. Oct. 23, 2017 (Day 50, Morning Session), at 36-42).

42. During the same day, and many other days, the same witnesses were allowed to testify about the Applicants' exception requests to the N.H. Department of Transportation, even though those requests also became available after the witnesses last opportunity to submit pre-filed direct testimony. *See, e.g.*, Exh. 4 at 10; App. Exs. 183 and 183a.<sup>4</sup>

43. This begs the question, if the witnesses were allowed to testify about the exception requests because the exception requests were "new," why were they not also allowed to testify about the conversation with the road agent?

44. As another example, Attorney Whitley cross-examined Mr. Bowes, a witness for the Applicants, about sewage lagoons in Ashland. These questions drew no objection from the Applicants and the Presiding Officer did not *sua sponte* limit the line of questioning. Exh. 5 (Tr. May 3, 2017 (Day 8, Morning Session), at 49-67).

45. Yet, when Attorney Whitley attempted to ask the construction witnesses for Counsel for the Public about the sewage lagoons in Ashland on October 23, 2017, the Applicants' counsel objected and the Presiding Officer sustained the objection on the basis that Attorney Whitley was "attempting to expand the scope in terms of their Prefiled Testimony," despite an uncontroverted representation from Attorney Whitley that this report was not available to him or Counsel for the Public until after the April 2017 deadline. Exh. 4 at 88-91.

46. Similarly, when the Forest Society's counsel cross-examined the Applicants' witnesses about the proposed co-location of the Northern Pass with an underground natural gas pipeline in a narrow stretch of the right-of-way on land owned by the Forest Society, the line of

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<sup>4</sup> Applicants produced these exceptions by uploading them to the ShareFile site on July 27, 2017, and August 31, 2017.

questioning drew no objection from the Applicants and the Presiding Officer did not *sua sponte* limit the cross-examination. Exh. 6 (Tr. Apr. 13, 2017 (Day 1, Afternoon Session), at 120-21); Exh. 7 (Tr. Apr. 17, 2017 (Day 3, Morning Session), at 134-35); Exh. 8 (Tr. May 4, 2017 (Day 9, Morning Session), at 48-53).

47. Yet, when the Forest Society's counsel attempted to ask the construction witnesses for Counsel for the Public about the issue, Applicants' counsel objected and the Presiding Officer sustained the objection, even though the questions involved a co-location study that the Subcommittee requested from Applicant on June 30, 2017,<sup>5</sup> and that the Applicants produced on June 30, 2017, all of which occurred after the last day on which the witnesses could have submitted pre-filed direct testimony. Exh. 3 at 45-46.

48. These are only selected examples of many instances of lines of questioning that were allowed to be asked to Applicants' witnesses that are now not allowed to be asked of witnesses for the Counsel for the Public and witnesses for Opposition Intervenors. If these lines of questioning were not immaterial, not irrelevant, and not unduly repetitious when Applicants' witnesses testified about them during the hearing, why are they now immaterial, irrelevant, or unduly repetitious?

49. As another example, also on October 23, 2017, Attorney Pacik was allowed to ask the construction witnesses for Counsel for the Public about certain Memoranda of Understanding that had been made available to the parties after the deadline for the witnesses' pre-filed direct testimony. Exh. 4 at 112-23

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<sup>5</sup> This request was made in the Presiding Officer's Order Granting Lagaspence Realty's Motion to Compel Production of Co-Location Study (June 30, 2017). The Presiding Officer denied Applicant's Motion for Clarification and/or Rehearing of this Order on October 20, 2017.

50. Yet, Attorney Whitley was not allowed to ask about a Conditions Assessment Report that had also been made available to the parties after the deadline for the witnesses' pre-filed direct testimony. Exh. 4 at 88-91.

51. It seems that both documents and, therefore, both lines of questioning about them were "new" according to the rulings from the bench, but they were treated differently.

**d. Limits on Cross-Examination Unlawfully Shift Burden of Proof**

52. The rulings from the bench result in unlawful burden-shifting, as illustrated by the ruling limiting the Forest Society from asking construction witnesses for the Counsel for the Public about the co-location issue.

53. In the application filed in October of 2015, the Applicants provided no analysis, studies, or reports on the co-location issue. *See* APP. Ex. 1. No evidence was introduced documenting that the applicants had any conversation with the owners of the Portland Natural Gas Pipeline about the co-location and whether the gas pipeline owners had any issues or concerns with the Northern Pass project proposal. *Id.* None of the application maps detailing the project where co-location is proposed identified that there was a gas pipeline already in the ground where the Northern Pass line is proposed along the Coos Loop in Dummer, Stark and Northumberland. *Id.* The only reference to the gas pipeline in the original application is a generic reference to the responsibility of the contractor for Northern Pass to consult with any pipeline owners along the proposed project route prior to construction. *Id.* at APP00050-APP00051.

54. When sustaining the Applicants' objection as noted previously, the Presiding Officer noted that the witnesses knew about the proposed co-location, and if they or Counsel for the Public wanted them to address it in their pre-filed direct testimony that could or should have done so and because they did not, they may not now testify about it. Exh. 3 at 45-46.

55. In effect, this shifts the burden of proof with respect to the required standards, especially the requirement that the Applicant prove that the proposed project will not have an unreasonable adverse effect on public health and safety, away from the Applicants and, in this case, to the Counsel for the Public. Note, though, that this rationale has been articulated by the Presiding Officer in many instances, thus shifting the burden of proof away from the Applicants and to many of the Opposition Intervenors.

56. Such burden-shifting does not comport with RSA 162-H, which contemplates that the Applicant, not others, will provide sufficient information to prove the standards required by RSA 162-H.

57. It is fundamentally unfair to expect a witness for Counsel for the Public or for an Opposition Intervenor to opine in their pre-filed direct testimony on topics about which the Applicant has provided next to no information in its Application.

**e. Limits on Cross-Examination Hinder Orderly Conduct and Full and True Disclosure of the Facts**

58. Generally speaking, the proceedings during Track 3 have been plagued by cross-examiners trying to ask the same types of questions they asked of the Applicants' witnesses, only to be limited in doing so.

59. While there is a wide variety of types of such questions, common questions would seek to understand the witnesses' methodology, information they did or did not consider, the meaning and interpretation of what they wrote in their pre-filed direct testimony, how what they have said relates to the applicable law or prior statements of other witnesses, and more.

60. These are the types of questions that are necessary to fully understand the basis for the pre-filed testimony submitted by the Applicants' witnesses. "[C]ross-examination,

almost by definition, is a review of direct examination in order to determine the veracity, accuracy and depth of knowledge of the witness.” *In re Sprague*, 132 N.H. at 258.

61. The current limits prevent the parties from asking questions to fully understand the bases for the pre-filed testimony submitted by Counsel for the Public and for Opposition Intervenors. In his conduct of his supplemental direct examinations, Counsel for the Public has encountered limitations similar to those placed on the Forest Society and Opposition Intervenors’ cross-examinations. That Counsel for the Public has encountered the same limitations has further prevented parties from eliciting witnesses’ true and full opinions.

62. Instead, what is unfolding in the hearing room is a disjointed presentation of witnesses, punctuated by numerous objections from the Applicants and inconsistent rulings on them, which makes it exceedingly difficult to focus on the fundamental purpose of fully and truly understanding the bases for the pre-filed testimony of all witnesses.

63. The Presiding Officer has stated that the Opposition Intervenors intend to ask cross-examination questions that are unduly repetitious because of similarities in the notices of cross-examination that Opposition Intervenors were required to file, and because of the duration of time intervenors requested for cross-examination. *See In re Sprague*, 132 N.H. at 259 (holding that “the arbitrary time limit placed on cross-examination denied” the party of “a full and true disclosure of the facts”).

64. The Forest Society has no such intention to ask unduly repetitious questions, and the Forest Society doubts whether any other Opposition Intervenor or Counsel for the Public intends to either.

65. The Forest Society worded its notice of cross-examination broadly and reserved much time for cross-examination because it is unknown to the Forest Society what questions other parties will ask. This is probably true for other Opposition Intervenors.

66. The parties have done an admirable job during cross-examination of Applicants' witnesses in not asking unduly repetitious questions. And where parties did so, the Presiding Officer appropriately limited them.

67. Freed from the current unlawful limitations on cross-examination, Counsel for the Public and Opposition Intervenors are very unlikely to ask unduly repetitious questions, and if they do, the Presiding Officer can limit them.

68. Subject to the current limits, cross-examination from Opposition Intervenors and Counsel for the Public is significantly chilled. When confronted with objections, many Opposition Intervenors simply move onto their next question without protest. To be clear, the Forest Society's acquiescence during the hearing to the limits of cross-examination does not amount to acceptance that the limits are lawful or appropriate. This is probably also true of other parties.

69. The rights of the parties in this case should not be any less than the rights of other parties in other cases.

**WHEREFORE**, the Forest Society respectfully requests that the Subcommittee:

- A. Grant this Motion for Rehearing; and
- B. Grant such further relief as it deems appropriate.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF  
NEW HAMPSHIRE FORESTS**

By its Attorneys,  
BCM Environmental & Land Law, PLLC

Date: November 6, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, November 6, 2017, a copy of the foregoing Motion for Rehearing was sent by electronic mail to persons named on the Service List of this docket.



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Amy Manzelli, Esq.

# **EXHIBIT 1**

1 this topic? Yes.

2 MS. BRADBURY: Jo Ann Bradbury. Deerfield  
3 Abutters. So will the Chair rule after the list  
4 is produced at lunch on the dates or are these  
5 dates going to be acceptable?

6 PRESIDING OFFICER HONIGBERG: The dates are  
7 fine.

8 MS. BRADBURY: So if the dates are fine,  
9 the 2nd and the 13th of October, then the  
10 Deerfield Abutters will withdraw their Motion to  
11 Reconsider the Order.

12 PRESIDING OFFICER HONIGBERG: All right.  
13 Thank you. That's on the record and clear.  
14 Anything else with respect to this matter?

15 All right then. I think we're ready to  
16 resume questioning then of Mr. Varney. Ms.  
17 Meyer, are you ready to go?

18 MS. MEYER: Yes, I am.

19 PRESIDING OFFICER HONIGBERG: You may  
20 proceed.

21 MS. MEYER: Thank you.

22 **CROSS-EXAMINATION**

23 **BY MS. MEYER:**

24 Q Good morning, Mr. Varney.

# **EXHIBIT 2**

1           been property valuation analysis with respect  
2           to transmission lines? Not necessarily. But  
3           we read the literature on that. It's not  
4           rocket science.

5    Q.    In your report, you criticized --

6                           CHAIRMAN HONIGBERG:  Mr. Whitley,  
7           this doesn't sound anything like a  
8           cross-examination of these witnesses.  It sounds  
9           like you are asking them about the work that  
10          they've done, the way a direct examination would  
11          go, which repeats what's in their report that  
12          Mr. Pappas has already gotten into evidence.  
13          Their background, their experience, the work  
14          they did, their reliance on the Brattle Group's  
15          work, to the extent they relied on others, they  
16          did their own work in some ways, this sounds  
17          like a repeat of their report.  What are you  
18          planning on doing that is cross-examination that  
19          is new or different that is within the scope of  
20          their testimony, but not repeating their  
21          testimony, that is necessary for this Committee  
22          to hear?

23                           MR. WHITLEY:  I can move on, Mr.  
24          Chair.

1                   CHAIRMAN HONIGBERG: I'm happy to  
2                   hear an offer of proof as to what you think you  
3                   anticipate getting from these witnesses if  
4                   you're allowed to continue, because I haven't  
5                   heard anything that sounds like a  
6                   cross-examination yet that's necessary for the  
7                   Committee.

8                   MR. WHITLEY: I guess, Mr. Chair,  
9                   my questions I think are getting at information  
10                  that was not included in their supplemental or  
11                  prefiled testimonies and goes to their -- what  
12                  kind of experience they have to render an  
13                  opinion on this project.

14                  CHAIRMAN HONIGBERG: Well, I hear  
15                  a lot of things that were in their report. But  
16                  the sponsor of the testimony put in what they  
17                  felt, Counsel for the Public felt was important.  
18                  And if it's not within their testimony, it's too  
19                  late to put it in now. And I think Counsel for  
20                  the Public understands that. But the other  
21                  parties aren't going to be allowed to do that.

22                                So what do you want to do with  
23                                these -- so far what I've heard is you want  
24                                to supplement their testimony with things

1           that's not in the supplemental testimony. I  
2           don't think you're going to be allowed to do  
3           that. What else would you like to do with  
4           these guys?

5                           MR. WHITLEY: I have other  
6           subjects that I can cover.

7                           CHAIRMAN HONIGBERG: And those  
8           would be?

9                           MR. WHITLEY: I'm going to ask  
10          them about the corrected table that they just  
11          introduced.

12                          CHAIRMAN HONIGBERG: Okay.

13                          MR. WHITLEY: And I'm going to  
14          ask them, go into some depth about Mr. Chalmers'  
15          analysis and their opinion, and Mr. Chalmers'  
16          response of their analysis --

17                          CHAIRMAN HONIGBERG: Mr.  
18          Chalmers' response, I don't understand why that  
19          wasn't done by Counsel for the Public in  
20          asking -- let me ask you, Mr. Pappas.

21                           I mean, this came up in the  
22          Antrim Wind case. You know, if the Applicant  
23          chose -- I mean, you have a lot of other  
24          intervenors here. But, you know, the

1 Applicant put in a case. Everybody else  
2 responded to it. The Applicant rebutted and  
3 then testified. You know, in Antrim Wind,  
4 Counsel for the Public ran into a problem by  
5 not having their expert witnesses do whatever  
6 rebuttal they wanted to do during their  
7 direct examination, which would have been  
8 allowed. I think Mr. Needleman argued in  
9 Antrim Wind, or his analogue argued in Antrim  
10 Wind, that that was the only time that they  
11 should have done it. And if the Applicant  
12 didn't ask any questions about it, there was  
13 no opportunity to provide that rebuttal.  
14 That's a problem. And we don't want the  
15 other intervenors doing the work that Counsel  
16 for the Public should be doing, or anyone's  
17 witnesses. If a witness wants to respond to  
18 something that was in the Applicant's  
19 rebuttal testimony or something that happened  
20 on the stand or information that's happened,  
21 the time to do it is during their direct  
22 examination, whatever supplemental direct  
23 needs to be done, not through questioning by  
24 intervenors. So, is there a reason why you

1 chose not to do it, Mr. Pappas?

2 MR. PAPPAS: Yes. That was not  
3 my understanding. And I thought it seemed to me  
4 to be more efficient, rather than me do  
5 essentially a direct, that if an intervenor  
6 wanted to delve into an area, they would, and to  
7 the extent they did, I wouldn't do it on  
8 redirect. If there was an area I thought that  
9 needed true redirect, then I would do it. But I  
10 wouldn't go back in and do a direct, because I  
11 thought that this was direct. Direct is  
12 prefiled, and this is cross.

13 CHAIRMAN HONIGBERG: Well, I  
14 mean, I wasn't in the Antrim Wind hearings, but  
15 I'm familiar at some level with what happened.  
16 And that specific issue came up. And if there  
17 were no intervenors here and you chose not to do  
18 a supplemental direct testimony -- it's not a  
19 redirect. It's really a supplemental direct  
20 based on responding to rebuttal testimony put in  
21 by the Applicant and things that happened during  
22 the hearing and information that is new or  
23 information that's changed. The time to do it  
24 is in a supplemental direct before everyone

1 cross-examines.

2 Mr. Needleman, you were in  
3 Antrim Wind; right?

4 MR. NEEDLEMAN: I was, yes.

5 CHAIRMAN HONIGBERG: And have I  
6 recounted that roughly correctly?

7 MR. NEEDLEMAN: I would say  
8 almost perfectly. If I could add one thing?

9 CHAIRMAN HONIGBERG: And that  
10 would be?

11 MR. NEEDLEMAN: This arose when  
12 Counsel for the Public in Antrim Wind tried to  
13 do redirect and introduce new information. I  
14 objected, and the Committee sustained that  
15 objection. There was some discussion at that  
16 point that, if Counsel for the Public wanted to  
17 do that, they should have tried to do it on  
18 initial direct, as you're talking about. I  
19 didn't concede that that would be appropriate.  
20 But that was the extent of the discussion. But  
21 certainly that additional testimony is something  
22 that we would not think would be appropriate  
23 during the course of this proceeding.

24 CHAIRMAN HONIGBERG: Let me make

1           sure I understand what you just said.

2                               So, if Mr. Pappas had wanted  
3           to ask these witnesses to respond to  
4           something Mr. Chalmers said during his  
5           testimony, live testimony that happened here,  
6           you would have objected to that?

7                               MR. NEEDLEMAN: I would have a  
8           concern about that, Mr. Chair. And it's the  
9           same reason I expressed in Antrim Wind, which is  
10          we're the party with the burden of proof. And  
11          there comes a point where somebody has to have  
12          the last word, and I would think that the party  
13          with the burden of proof should have the last  
14          word. And if, after our witnesses have all  
15          testified, we now have other witnesses coming on  
16          and trying to rebut that testimony, I'm not sure  
17          that's fair.

18                              CHAIRMAN HONIGBERG: Well, but is  
19          there any other way to do it? I mean, there's  
20          no other way for the witnesses who have been put  
21          forward by Counsel for the Public and the  
22          intervenors to respond to the changes that your  
23          witnesses identified in their reports or their  
24          testimony or new information that they brought

1 to the table after they testified. Is the  
2 record for the intervenors and Counsel for the  
3 Public fixed as of the moment that they submit  
4 their prefiled testimony?

5 MR. NEEDLEMAN: Well, I guess I  
6 would distinguish between "changes" and  
7 "additional information." But at some point the  
8 record has got to be fixed, I think, yes. I  
9 mean, would we be entitled, if they were to  
10 respond, to recall witnesses to address those  
11 responses? I mean, I would think not. It has  
12 to end at some point.

13 CHAIRMAN HONIGBERG: That is no  
14 doubt true. But if there is information that's  
15 come in since the intervenors filed their  
16 testimony, so they're done. They can't respond.  
17 Is that what -- is your position they can't  
18 respond to new information?

19 MR. NEEDLEMAN: I think it's  
20 situational. If my witnesses, for example,  
21 provided rebuttal testimony to what they said,  
22 and it was nothing new, it was simply them  
23 rebutting what these witnesses said, are they  
24 now entitled to rebut the rebuttal? I think

1           that's different from introducing new  
2           information that was never part of the case.

3                         CHAIRMAN HONIGBERG:  It is  
4           different.  I agree with that.  Those two things  
5           are different.  And I think you could probably  
6           make a distinction along those lines and treat  
7           those two differently.  But it's fairly clear to  
8           me that the time to try and do it is -- and we  
9           have discussion about this specific question.  
10          But the time to try to do it is when the sponsor  
11          of that witness is putting that witness forward  
12          because -- and you would agree with that.

13                        MR. NEEDLEMAN:  I would  
14          absolutely agree with that.

15                        CHAIRMAN HONIGBERG:  Mr. Pappas,  
16          let me come back to you.  And I'll open the  
17          floor to other intervenors on this in a moment.

18                        But why is -- putting aside  
19          the potential disagreement about rebuttal  
20          versus responding to new information, when is  
21          the right time to do this?  How can this  
22          possibly work in any coherent fashion?

23                        Mr. Aslin, you want to address  
24          this?

1                   MR. ASLIN: Yes. Thank you, Mr.  
2                   Chairman. I think the distinction in our minds,  
3                   as Counsel for the Public, is between Counsel  
4                   for the Public attempting to present a direct  
5                   rebuttal to previous rebuttal testimony that was  
6                   submitted, which we have not chosen to do with  
7                   this witness, and appropriate cross-examination  
8                   questions, which we're not directing the  
9                   cross-examination of our witnesses, obviously.  
10                  But if this were a different set of witnesses  
11                  and we were cross-examining them, another  
12                  party's witness, I think it's fair to ask a  
13                  witness if they have an opinion about new  
14                  information that has been brought in by the  
15                  Applicant since the witness's final testimony  
16                  and --

17                  CHAIRMAN HONIGBERG: Who should  
18                  be doing that, though? Shouldn't it be the  
19                  party that sponsors the witness?

20                  MR. ASLIN: It depends. The  
21                  party sponsoring the witness may do that if they  
22                  feel that it's important to directly rebut  
23                  something. But if I have a witness that I'm  
24                  cross-examining and they've addressed an issue

1 that's important to me that wasn't specifically  
2 rebutted by them in their direct exam, I don't  
3 see that that would be inappropriate for me to  
4 ask, just as I'm sure the Committee might want  
5 to ask questions of a witness about how they see  
6 prior testimony in this case.

7 CHAIRMAN HONIGBERG: That seems  
8 like an uncontrolled system, Mr. Aslin. There's  
9 no limit then on any intervenor's or your  
10 ability to expand a witness's testimony beyond  
11 what they filed and beyond what they said on the  
12 stand.

13 Mr. Pappas, you have a -- you  
14 want to add something here?

15 MR. PAPPAS: I do. Two things.  
16 One, I think the control is they have to be  
17 asking about the new things that were presented.  
18 For instance, if there's new analysis in the  
19 Applicant's supplemental testimony, or if there  
20 was new analysis on the witness stand, and there  
21 have been both in many areas, the supplemental  
22 testimony presented new analysis for the first  
23 time came in in April, and a number of witnesses  
24 have presented new things. We just heard last

1 week the construction folks, a lot of new things  
2 that came in. So I think those things are  
3 appropriate to be addressed through  
4 cross-examination.

5 What we -- the second point is  
6 this is not a two-party case. This is a  
7 multi-party case with a lot of people asking  
8 questions. And we thought that the more  
9 efficient way to do it, and maybe we were  
10 wrong, but we thought it would be efficient  
11 to, rather than us spend an hour or two doing  
12 that and then everybody following us, picking  
13 up on those things and doing it as well, we  
14 would allow the intervenors who have  
15 different interests -- the municipalities are  
16 interested in their specific municipalities,  
17 different areas have different interests,  
18 whether environmental groups and so forth --  
19 we thought perhaps the more efficient way was  
20 to allow those parties to delve into the  
21 areas of which they've been doing throughout  
22 the proceeding.

23 CHAIRMAN HONIGBERG: You want to  
24 say something, Mr. Needleman?

1                   MR. NEEDLEMAN: I do. I would  
2 disagree with Mr. Pappas. I don't think there's  
3 anything efficient about that. I think if it's  
4 going to happen, if it's going to happen, and  
5 it's truly going to relate to new information  
6 and not rebuttal information, it should happen  
7 once up front. If every person is going to get  
8 to do that throughout the course of the  
9 proceeding, I think that's terribly inefficient.

10                   CHAIRMAN HONIGBERG: Yeah, I had  
11 the same reaction to one of the things you said,  
12 Mr. Pappas, and that was for everyone else to do  
13 it as well. It seems that if there's a table  
14 that's been put forward, Mr. Whitley asked  
15 questions about that. I'm not sure anybody else  
16 should be asking questions about it. It should  
17 be done one time, and one time only. And now  
18 maybe that's going to require the intervenors to  
19 get together and decide who wants to ask  
20 questions about the new information. But we're  
21 not going to have Mr. Reimers then do a series  
22 of questions about it and then Mr. Baker do a  
23 series of questions about it and then Mr.  
24 Cunningham do a series of questions about it.

1 Now, I think the municipal group working  
2 together has been pretty good about not  
3 duplicating efforts. So I wouldn't have  
4 expected Ms. Pacik or Ms. Fillmore to duplicate  
5 questions. But I could imagine others doing it.  
6 And that's not a criticism, because the system  
7 was -- the situation with the Applicant's  
8 witnesses was different. You are all adverse to  
9 the Applicant's witnesses. And while there was  
10 some level of adversity among the intervenor  
11 group, bury, not bury, certain more subtle  
12 differences in certain other areas, for the most  
13 part, you're all on the same side. You're all  
14 trying to do the same thing. And we're not  
15 going to have multiple people doing the same  
16 thing with each panel of witnesses. That's not  
17 going to happen.

18 MR. PAPPAS: I guess I envisioned  
19 that one person would, for instance, tackle the  
20 real estate, and perhaps one person would tackle  
21 the tourism and along those lines. I didn't  
22 envision that all 25 people after us would plow  
23 the same thing, one after each other. And maybe  
24 I was mistaken in that.

1                   CHAIRMAN HONIGBERG: Well, having  
2 read the cross-examination notices filed by many  
3 of the parties, it's apparent that everybody  
4 intends to ask about everything that each  
5 witness testified about. That's the notices  
6 that the overwhelming majority of the  
7 intervenors filed. If you've had a chance to  
8 look at them, you will see.

9                   I'm going to open the floor to  
10 some others. Ms. Pacik, you look like you  
11 want to say something.

12                   MS. PACIK: I think everyone, at  
13 least from what I've seen in terms of the  
14 intervenors and how they've presented their  
15 cases, have tried to comply with the rule, which  
16 is that questions should not be unduly  
17 repetitive. So I do think, for the most part,  
18 intervenors are trying to focus on one area and  
19 not repeat others. And you've mentioned the  
20 Joint Municipal Groups have been working to try  
21 to avoid that. And I know that other intervenor  
22 groups have also tried to do that. And we had  
23 anticipated doing the same thing with the  
24 witnesses for Counsel for the Public. And I

1 recognize the notices for friendly  
2 cross-examination were repetitive. And I think  
3 that was just to reserve the right to ask  
4 certain questions. But I don't think there was  
5 any intent to be repetitive when it comes to any  
6 of the upcoming witnesses.

7 CHAIRMAN HONIGBERG: Ms. Pacik, I  
8 have some opinions about the work that was done  
9 with respect to those notices, but it's not  
10 really relevant as we sit here right now.

11 The fact that the Deerfield  
12 people want to talk about Deerfield and the  
13 Bridgewater people want to talk about  
14 Bridgewater and the people in Plymouth want  
15 to talk about Plymouth and the people up  
16 further north want to talk about their  
17 particular communities, this testimony is  
18 this testimony, and it's broad and it's  
19 general about the Project. I have a hard  
20 time envisioning useful questions that are  
21 specifically relevant to each of the  
22 geographic areas coming out differently from  
23 these witnesses. So I'm even surprised that  
24 some people claim to have 20 or 30 minutes

1 for these witnesses. But I'm prepared to  
2 listen to people and have them tell me what  
3 it is they want to do. I heard Mr. Whitley  
4 say he wanted to talk about the new exhibit.  
5 I then got into it with Mr. Pappas and others  
6 about why Mr. Pappas didn't do that, and I  
7 understand his answer. And maybe we can  
8 control this cross-examination process by  
9 having one questioner deal with a particular  
10 issue for witnesses who are testifying about  
11 the entire project like these. The answers  
12 aren't going to be any different for the  
13 different geographic areas for these  
14 witnesses. There may be others for whom  
15 their testimony is going to be different, but  
16 that's not this situation here. And the  
17 general proposition here is that the party  
18 putting on the witness is responsible for  
19 getting that witness in a position so that  
20 they can be cross-examined by the people who  
21 are adverse to them. And polishing their  
22 resumes, having them go beyond their direct  
23 examination is not what's contemplated by the  
24 administrative rules generally in this state,

1 the processes of the SEC historically and  
2 currently. So I'm very concerned about how  
3 long this is going to take if people go on  
4 doing what they've been doing in this part of  
5 the case.

6 Ms. Pacik.

7 MS. PACIK: I mean, just to  
8 comment on that, for this particular witness, I  
9 agree that probably geographic differences  
10 aren't going to really be helpful. But still,  
11 the rule that you can't be unduly repetitive I  
12 think we've all kept in mind. So, whether or  
13 not it may relate to a specific area of the  
14 state, I know that we are going to try not to  
15 repeat topical areas in these individuals'  
16 testimony.

17 And in terms of the rules, my  
18 understanding was that it wasn't just for  
19 adverse questions, but if it was information  
20 to clarify a particular topic or something  
21 that was helpful for the true and full  
22 disclosure of facts for the Committee, that  
23 that was an area that we could talk about.

24 And certainly if there's been, for example, a

1 rebuttal report from Ms. Frayer criticizing  
2 Kavet Rockler's original report, we thought  
3 that was something that we could raise during  
4 our examination of those witnesses.

5 CHAIRMAN HONIGBERG: Well, in the  
6 passive voice, yes, someone should be given --  
7 they should be given the opportunity to respond  
8 to what Ms. Frayer said. I agree with that  
9 proposition. Maybe Mr. Needleman doesn't. But  
10 it doesn't seem inappropriate to me to have that  
11 happen. Maybe we're going to get an objection  
12 to that when it happens. It just seems to me  
13 that, for the most part, that should have been  
14 Mr. Pappas doing that. And I guess if up front  
15 we know Mr. Pappas would say I'm not going to do  
16 that, I'm going to have Mr. Whitley do that or  
17 I'm going to have Ms. Pacik do that or have Mr.  
18 Cunningham do that, we'll know it's going to get  
19 done, and it's going to get done once and we  
20 won't have to hear it over and over.

21 Now, circling back to Mr.  
22 Whitley's examination that's been going on,  
23 this has 98 percent so far been things from  
24 the report, from their backgrounds, from

1           their resumes, which isn't advancing his case  
2           in any way that's different from what Counsel  
3           for the Public has put forward. So, whether  
4           those are long scene setters or not, I don't  
5           know. I did hear you say you want to talk  
6           about the new exhibit. Mr. Pappas didn't do  
7           it. I'm going to let you do it. But I think  
8           that we may need to have another conversation  
9           about this. And the intervenors are going to  
10          have to plan out some, quote, unquote,  
11          cross-examination of future witnesses.

12                         MR. WHITLEY: Mr. Chair. Thank  
13           you. I just want to start off and say that I  
14           misunderstood as well kind of the ground rules  
15           for these experts. So I apologize for kind of  
16           going at it like this --

17                         CHAIRMAN HONIGBERG: Don't  
18           apologize, Mr. Whitley. It's apparent to me  
19           that no one really had a clear understanding  
20           among the intervenor groups, Counsel for the  
21           Public. It's apparent that the Applicant didn't  
22           fully -- wasn't fully on the same page as  
23           anybody. And I think Mr. Iacopino and Ms.  
24           Monroe, in the various prehearing conferences,

1 the conference reports, then the response to  
2 someone's motion about friendly cross, were  
3 trying to bring some order to this so that it  
4 will be done efficiently, that people can make  
5 the cases that they need to make and have a  
6 right to make without repeating themselves,  
7 "gilding the lily" unnecessarily, and making  
8 this a longer process than it needs to be for  
9 people to do what they need to do. And it is at  
10 least my view that you don't need to embellish  
11 these witnesses' resumes because their resumes  
12 are their resumes. And Counsel for the Public  
13 put them in. They have qualifications, whatever  
14 they are on paper and whatever they've put in  
15 their testimony. It's there. You can do  
16 substance with them that's relevant to your case  
17 that will help us understand what it is that we  
18 need to know and move on. But you do not need  
19 to apologize.

20 MR. WHITLEY: I appreciate that.  
21 I just wanted to, while we're on this kind of  
22 larger procedural discussion -- you know, I had  
23 a quick side bar with the other municipal  
24 counsel, and I think that, you know, in terms of

# **EXHIBIT 3**

1 A. (Zysk) Yes.

2 Q. Okay. So do you have concerns about the  
3 potential co-location of the proposed project  
4 with the Portland Natural Gas pipeline?

5 MR. NEEDLEMAN: Objection.  
6 Location of the line was well known when they  
7 did their work. To the extent they had  
8 concerns, that could have and should have been  
9 raised.

10 CHAIRMAN HONIGBERG: Ms.  
11 Manzelli.

12 MS. MANZELLI: My understanding  
13 is that the Application did not contain any  
14 information about the Portland Natural Gas  
15 pipeline and that it was only through the  
16 course of this calendar year that this study  
17 was produced and further information was known.

18 CHAIRMAN HONIGBERG: It's well  
19 known where the Portland Natural Gas line is  
20 and that this was going to be co-located.  
21 That's been known from the beginning.

22 MS. MANZELLI: My understanding  
23 is that was not depicted on the original set of  
24 project maps.

1 CHAIRMAN HONIGBERG: It's  
2 sustained.

3 MS. MANZELLI: Mr. Chair, could  
4 you please explain the rationale for why that  
5 is sustained?

6 CHAIRMAN HONIGBERG: Everyone  
7 knows where the Portland Natural Gas  
8 transmission line is. Everybody knows that the  
9 existing corridor is co-located with it and  
10 this is going in the same corridor. That's  
11 been known from the beginning.

12 MS. MANZELLI: And so we're not  
13 allowed -- I'm not allowed to ask the witnesses  
14 questions about it because it is not, quote,  
15 unquote, "new information"?

16 CHAIRMAN HONIGBERG: If they had  
17 opinions about it and concerns about it, they  
18 were free to express them in their prefiled  
19 testimony. I'm not going to expand the scope  
20 of their prefiled testimony.

21 MS. MANZELLI: Are you making a  
22 ruling that the Counsel for the Public's  
23 witnesses, what they may think about the  
24 Portland Natural Gas pipeline co-location is

1 irrelevant or immaterial or unduly repetitious?

2 CHAIRMAN HONIGBERG: I don't  
3 think I'm ruling any of those. I sustained the  
4 objection to your question on the grounds that  
5 if they had opinions about it, they needed to  
6 be expressed in their prefiled testimony. And  
7 as we've gone over numerous times in the  
8 cross-examination of witnesses other than the  
9 Applicant's witnesses, because they are  
10 different in this context, we're not going  
11 beyond the scope of their prefiled testimony.  
12 If there's new information that has come in,  
13 and there's been plenty of new information,  
14 then intervenors are free to ask about that.  
15 And there was another exception, the true  
16 clarification. There was the "I don't  
17 understand something" question when a  
18 legitimate "I don't understand." And there's  
19 been a few of those as well.

20 MS. MANZELLI: Yeah. And let me  
21 just clarify a word that you just said. An  
22 "exception" to what? You just said there was  
23 another exception, and then you stated what  
24 that was. An exception --

1 CHAIRMAN HONIGBERG: We're not  
2 going to play games, Ms. Manzelli.

3 MS. MANZELLI: I'm not --

4 CHAIRMAN HONIGBERG: The  
5 objection's sustained. If you want to have a  
6 conversation with some of the other intervenors  
7 about prior rulings that have happened orally  
8 when others have been questioning, I encourage  
9 you to confer with Mr. Pappas, Mr. Aslin or any  
10 of the other lawyers who have been here.

11 MS. MANZELLI: Mr. Chair, let me  
12 assure you that I have had such conferences,  
13 and I have reviewed the --

14 CHAIRMAN HONIGBERG: Why don't  
15 you ask your next question, Ms. Manzelli.

16 MS. MANZELLI: -- transcripts at  
17 length.

18 I'd like to make an oral  
19 objection to the ruling on the question that  
20 I just tried to ask and to the manner in  
21 which cross-examination has been handled for  
22 Track 3. So, my understanding --

23 CHAIRMAN HONIGBERG: Track 3?

24 MS. MANZELLI: Sorry. My

1 understanding of Track 3 is the Counsel for the  
2 Public's witnesses and the intervenors'  
3 witnesses.

4 CHAIRMAN HONIGBERG: Everybody  
5 but the Applicant.

6 MS. MANZELLI: Yes. Track 1 was  
7 the first part of the Applicant; Track 2, the  
8 second part of the Applicant; Track 3, Counsel  
9 for the Public and Intervenors. That's what I  
10 meant when I said Track 3.

11 CHAIRMAN HONIGBERG: So you want  
12 to take time right now to make a motion of some  
13 sort or a request for reconsideration or --  
14 what exactly are we doing here instead of  
15 asking questions of the witnesses who are in  
16 front of you?

17 MS. MANZELLI: And I am prepared  
18 to ask questions. I don't agree with the  
19 limitations put on the questions I'm attempting  
20 to ask, and so I'd like to make a statement on  
21 the record about the Forest Society's position  
22 on those limitations. And I'd like to make  
23 this on the record so that I don't have to do  
24 it again, so that we can just state our

1 objection and then move on so the rest of the  
2 many witnesses we have for what I refer to as  
3 Track 3, we don't have to keep doing this.

4 CHAIRMAN HONIGBERG: Okay.  
5 Whatcha got?

6 MS. MANZELLI: All right. I  
7 want to first touch on the procedural history  
8 of how I understand this issue has come to the  
9 floor today.

10 On March 7th, 2017, Applicants  
11 made a motion to clarify the use of "friendly  
12 cross-examination." The Forest Society  
13 objected to that. On March 31st, 2017, the  
14 Chair issued an order. It recited the  
15 correct standards, RSA 541-A:33, IV and  
16 Administrative Rule Site 202.11, and it  
17 denied the motion. In particular, it said,  
18 quote, "The Presiding Officer cannot, as  
19 requested by the Applicant, make a prehearing  
20 determination that all friendly  
21 cross-examination will impede the prompt and  
22 orderly conduct of the proceeding. Such a  
23 determination must be made during the course  
24 of the proceeding." That was at Pages 3 and

1 4. So that was March of this year.

2 Next up, more recently in  
3 August, the Applicants filed another motion  
4 to determine the extent of friendly cross.  
5 That requested an order, quote, "requiring an  
6 offer of proof at a prehearing conference..."  
7 I'll skip rest of that. The Forest Society  
8 again objected.

9 The written order came out on  
10 September 12th, and it denied the specific  
11 request. It denied the request for a  
12 prehearing conference; but otherwise, it  
13 granted the motion.

14 CHAIRMAN HONIGBERG: Oh, I would  
15 disagree with that statement.

16 MS. MANZELLI: I have a quote.

17 CHAIRMAN HONIGBERG: Go ahead.

18 MS. MANZELLI: It ordered,  
19 quote, "On or [sic] before September 22, 2017,  
20 each intervenor shall file a list identifying  
21 each witness that the intervenor seeks to  
22 cross-examine (excluding the remaining  
23 Applicant witnesses). Regarding each witness  
24 or witness panel, the list shall include the

1 following information: Whether the examining  
2 party believes that its position is adverse to  
3 the witness, including all reasons; and if the  
4 examining party is not adverse to the witness,  
5 the examining party must identify the areas of  
6 cross-examination and why cross-examination is  
7 necessary to a full and true disclosure of the  
8 facts." And that was part of the order at  
9 Pages 3 and 4.

10 CHAIRMAN HONIGBERG: And where  
11 was the word "granted" in that order?

12 MS. MANZELLI: I don't know if  
13 the word "granted" was in that order. So I am  
14 happy --

15 CHAIRMAN HONIGBERG: Good call.

16 MS. MANZELLI: -- striking that  
17 characterization. But I do think that I have  
18 accurately quoted the order.

19 CHAIRMAN HONIGBERG: And has  
20 anyone been prevented from asking questions of  
21 a witness categorically? You're not adverse  
22 and you haven't adequately identified the  
23 reasons. Answer, no. It has all been done on  
24 a question-by-question basis, as stated in the

1 March 31st Order. So we are proceeding  
2 consistently with that. No one who filed  
3 either good-faith or not good-faith responses  
4 to the Order you were talking about has been  
5 told, no, you may not ask questions because you  
6 didn't adequately identify anything. Because  
7 many people did not take that effort seriously  
8 other than putting a lot of time into  
9 preserving every possible angle, every possible  
10 reason they might ask a witness a question.  
11 But no one was stopped. No order has been  
12 entered orally or otherwise preventing any  
13 intervenor from questioning witnesses.  
14 Specific questions have drawn objections. Many  
15 of those objections have been overruled. Many  
16 objections have been sustained.

17 MS. MANZELLI: Following that  
18 order, the Forest Society moved for rehearing,  
19 many other parties have joined, and that motion  
20 is now pending.

21 The next part of the  
22 procedural history is that on October 6th  
23 there were a series of rulings that you've  
24 just described specific to questions that

1           arose at the first time -- or the first day  
2           that cross-examination of non-Northern Pass  
3           witnesses occurred; and in this case, it was  
4           a witness for the Counsel for the Public.

5                               Over the course of  
6           October 6th, the Chair made several rulings  
7           contained throughout the hundreds of pages of  
8           transcripts that day. And I would submit  
9           that these rulings were not entirely clear  
10          when they were made and have not become clear  
11          over the course of time. There is no written  
12          order, they are not consistent with each  
13          other, and they're not implemented  
14          consistently among all witnesses. In  
15          particular, it seems that the most stringent  
16          approach is with represented intervenors, the  
17          medium stringent is for Counsel for the  
18          Public, and the least stringent is with the  
19          pro se intervenors. Now, we have tried to  
20          understand what these limits are, and the  
21          gist seems to be that all witnesses for all  
22          intervenors, and Counsel for the Public, are  
23          friendly to each other; in other words, they  
24          are non-adverse; and further, this so-called

1 "friendly cross" is not allowed unless, and  
2 there are a couple of exceptions, and that's  
3 why I asked earlier when you were making an  
4 exception, to what were you making an  
5 exception.

6 CHAIRMAN HONIGBERG: Ms.  
7 Manzelli, do you have any further questions for  
8 this panel?

9 MS. MANZELLI: Yes, I do.

10 CHAIRMAN HONIGBERG: Whatever  
11 you need to say further beyond what you've said  
12 you need to put in writing.

13 MS. MANZELLI: Mr. Chair, we are  
14 in the process of writing a motion for  
15 rehearing based on the October 6th rulings from  
16 the Bench. But I would point out that that  
17 motion is not due for 30 days from the time of  
18 those rulings; yet, the proceedings are under  
19 way. I certainly don't want to put the  
20 proceedings on hold.

21 CHAIRMAN HONIGBERG: Yes,  
22 actually, you do. But you're not going to make  
23 that request because it would be outrageous.

24 So what is your next question

1 for the witnesses who are in front of you  
2 waiting to be asked another question?

3 MS. MANZELLI: With all due  
4 respect, the Forest Society does not wish to  
5 delay these proceedings.

6 CHAIRMAN HONIGBERG: What is the  
7 next question you have for the witnesses in  
8 front you? If you do not one ask one, I will  
9 assume you have no more.

10 MS. MANZELLI: I just want to  
11 make sure that I'm clear with what's happening  
12 now, is that I am not allowed to state an  
13 objection on the record to a question that I  
14 tried to --

15 CHAIRMAN HONIGBERG: An  
16 objection to what?

17 MS. MANZELLI: To the limitation  
18 that has been placed upon the Forest Society in  
19 undertaking cross-examination of the Counsel  
20 for the Public's witnesses. If I understand  
21 that correctly, I'm ready to move on to my next  
22 questions.

23 CHAIRMAN HONIGBERG: And you are  
24 free to make offers of proof regarding

1 questions to which objections are sustained.  
2 If you choose to take advantage of that, that's  
3 fine. If you have concerns about what you  
4 perceive to be inconsistent rulings, you need  
5 to put that in writing. And whether you think  
6 you have 30 days -- if you have a problem, you  
7 should alert the tribunal in writing when you  
8 can. It's not going to get addressed orally.

9 MS. MANZELLI: Understood.

10 CHAIRMAN HONIGBERG: Do you want  
11 to make an offer of proof on the question, the  
12 objection to which was sustained --

13 MS. MANZELLI: Yes.

14 CHAIRMAN HONIGBERG: -- if they  
15 were allowed to testify.

16 MS. MANZELLI: Yes. I have some  
17 concrete illustrations from today of how I  
18 believe that a different standard is being used  
19 for witnesses that appear to be friendly. But  
20 I'm working through the determination to not  
21 raise that any further right now and make my  
22 offer of proof.

23 So I would like -- I would  
24 have discussed with this panel the fact that

1 at. He certainly can inquire about what they  
2 looked at what and what they didn't look at  
3 and what they investigated and didn't  
4 investigate, but ultimately their charge came  
5 from Counsel for the Public as to what they  
6 should look at and study and analyze on  
7 behalf of Counsel for the Public.

8 CHAIRMAN HONIGBERG: And Mr.  
9 Cunningham, you have asked the witnesses what  
10 it is they looked at. You may not have closed  
11 the loop on everything they looked at or didn't  
12 look at. But if you want to run that down, you  
13 certainly can. But I'm not persuaded that you  
14 should go beyond that at this point.

15 Mr. Pappas.

16 MR. PAPPAS: Let me just make  
17 one final point, that Counsel for the Public is  
18 not aligned with any party. We're an  
19 independent party. So we're not friendly or  
20 unfriendly with any particular party. We have  
21 a statutory role, and I'm reminded that we're  
22 an independent party, not aligned with any of  
23 the parties.

24 CHAIRMAN HONIGBERG: Understood

1 as a legal matter. But the positions you  
2 articulate and your witnesses articulate are  
3 agreeable to the folks who are opposed to this  
4 project.

5 MR. PAPPAS: Well, on some  
6 issues they may be, but on other issues they're  
7 not.

8 CHAIRMAN HONIGBERG: Oh, I  
9 acknowledge that. That is clearly true. There  
10 are areas where I think burial versus  
11 non-burial is one where there are places where  
12 some people say bury the line and others say  
13 don't, and that's an area where the parties are  
14 actually adverse to each other. The  
15 intervenors who are generally opposed to the  
16 Project, there are areas where on specific  
17 issues they are not aligned. This does not  
18 appear to be one of those issues, however.

19 Mr. Cunningham.

20 MR. CUNNINGHAM: I would proceed  
21 to ask them about my Exhibit DNA 64, which is  
22 the letter from Tom Getz that included the  
23 preliminary co-location study, the Applicant's  
24 co-location study, and ask them about that

# **EXHIBIT 4**

1 Q Finally, Mr. Bascom. Do you have in front of  
2 you Counsel for the Public's Exhibit 135 dated  
3 December 30, 2016?

4 A (Bascom) Yes, sir.

5 Q Is that your Prefiled Testimony in this matter?

6 A (Bascom) It is. Yes.

7 Q Do you have any corrections to that testimony?

8 A (Bascom) I do not.

9 Q Do you swear by, adopt and affirm that testimony  
10 today?

11 A (Bowes) Yes.

12 Q Thank you. Gentlemen, I'm going to ask you some  
13 questions about Requests for Exceptions to the  
14 DOT UAM manual that the Applicant has filed in  
15 this matter. I want to start with Counsel for  
16 the Public's Exhibit 548. Do you see Counsel  
17 for the Public Exhibit 548 in front of you?

18 A (Taylor) Yes.

19 Q Okay. Now, this is Exception Request number  
20 178A in the towns of Pittsburg and Clarksville  
21 dealing with HDD pits within the pavement, HDD  
22 alignment passing under the pavement, and a  
23 longitudinal installation within controlled  
24 access right-of-way. And this involves the HDD

1 heaves being caused by the cable system being  
2 warmer than the surrounding soils, it says it's  
3 negligible. Do you see that?

4 A (Bascom) Yes.

5 Q Then if you go down it says the area soil at the  
6 sides of and within a few inches above the cable  
7 duct along the route will be the last to freeze,  
8 in parentheses, (if it freeze as all), close  
9 parentheses, and the first to thaw due to the  
10 heat generated in the cables and the mean earth  
11 temperature below the cables being above  
12 freezing. Did I read that correctly?

13 A (Bascom) Yes.

14 Q Now, Mr. Zysk, did you have the opportunity to  
15 meet with the Road Agent in this town?

16 A (Zysk) We did.

17 Q And did you discuss with the Road Agent issues  
18 with respect to freezing and thawing of these  
19 roads?

20 A (Zysk) Yes.

21 Q And did you also discuss with him the potential  
22 of heat from the buried cables?

23 A (Zysk) Yes.

24 MR. NEEDLEMAN: I'm going to object to

1 questioning on this document. It was provided  
2 in discovery. It's got a discovery number right  
3 on it. So I don't understand why these issues  
4 couldn't have been addressed in their testimony.

5 PRESIDING OFFICER HONIGBERG: Mr. Pappas?

6 MR. PAPPAS: Well, it was addressed in  
7 Mr. Scott's Supplemental Testimony, and I  
8 understood that we're allowed to address issues  
9 that came up in Supplemental Testimony.

10 PRESIDING OFFICER HONIGBERG: Well, I think  
11 you're allowed to address statements that  
12 Mr. Scott may have made in his Supplemental  
13 Testimony that would be new, but what Mr.  
14 Needleman is representing is that this document  
15 was provided long before that, and if they had  
16 an opinion about this document or what it means,  
17 it would have been in their Supplemental  
18 Testimony.

19 MR. PAPPAS: But my question pending is his  
20 discussion with the Road Agent. I finished with  
21 this document. And my last question was did he  
22 have an opportunity to discuss the issue of  
23 freezing and thawing with the Road Agent, and  
24 then I was going to inquire about that so it's

1 no longer on this document.

2 PRESIDING OFFICER HONIGBERG:

3 Mr. Needleman?

4 MR. NEEDLEMAN: It seems to me it's all  
5 pulling from the same material, and I'm still  
6 not clear why the discussions with the Road  
7 Agent wouldn't have happened as part of the  
8 preparation of the Original Testimony.

9 PRESIDING OFFICER HONIGBERG: We don't know  
10 when they happened. I assume that the answer to  
11 the pending question is going to be yes, and  
12 then we'll find out when that happened and we'll  
13 see what makes sense. You may have a new  
14 objection at that point.

15 MR. PAPPAS: I would also note, as I was  
16 just informed, the date of this document is  
17 December of 2016 so although it was produced in  
18 discovery, it was produced shortly before their  
19 Prefiled Direct Testimony so it's not like it  
20 was disclosed months before.

21 PRESIDING OFFICER HONIGBERG: Refresh my  
22 memory. Wasn't there an opportunity for Counsel  
23 for the Public's witnesses to file Supplemental  
24 Testimony?

1 MR. PAPPAS: Yes, and I mentioned that to  
2 Mr. Zysk.

3 PRESIDING OFFICER HONIGBERG: What was the  
4 deadline for that?

5 MR. PAPPAS: That was in April, yes.

6 PRESIDING OFFICER HONIGBERG: So after by  
7 some four months the date of the document you're  
8 talking about, right?

9 MR. PAPPAS: Yes.

10 PRESIDING OFFICER HONIGBERG: Okay. I  
11 think the pending question was about  
12 conversations with the Road Agent.

13 MR. PAPPAS: Thank you.

14 BY MR. PAPPAS:

15 Q Mr. Zysk, what did you learn from your  
16 discussions with the Road Agent?

17 PRESIDING OFFICER HONIGBERG: Wait. When  
18 did those conversations take place?

19 MR. PAPPAS: Thank you.

20 BY MR. PAPPAS:

21 Q When did those conversations take place?

22 A Approximately a month ago.

23 Q Okay. What did you learn from those  
24 conversations?

1 MR. NEEDLEMAN: I'm going to object because  
2 I'd like to understand why those conversations  
3 could not have occurred previously. What new  
4 information that wasn't previously available  
5 precipitated the need for those conversations.

6 PRESIDING OFFICER HONIGBERG: Mr. Pappas?  
7 This seems like an investigation that could have  
8 been going on from any time after the fall of  
9 2015 or when these gentlemen were retained which  
10 I know was some time after that.

11 MR. PAPPAS: Although they could have  
12 discussed this with the Road Agent then, it was  
13 raised in Supplemental Testimony by Mr. Scott.  
14 That's when he talked about the report. And  
15 since this has been an iterative process  
16 throughout, particularly with respect to the  
17 design of the underground, I don't see why there  
18 should be a deadline for this Panel to obtain  
19 information that is relevant to the Committee to  
20 consider.

21 PRESIDING OFFICER HONIGBERG: Don't get the  
22 sense that that area is iterative, however.  
23 This area, we've seen similar pictures of this  
24 area from the beginning. There's a layout

1 that's in the Application, there are pictures  
2 you showed the Applicant's witnesses that's the  
3 same picture that was up a while ago in the very  
4 first round of questioning. There doesn't seem  
5 to be an iteration in this area. Although I  
6 don't claim to remember even close to all the  
7 changes that have been made.

8 MR. PAPPAS: No. I would have to agree  
9 with you. It seems to me that they've always  
10 indicated they would do direct bury in this  
11 area. So that although locations may have  
12 changed, I think the concept of burying it  
13 directly has been --

14 PRESIDING OFFICER HONIGBERG: I'm going to  
15 sustain the objection. If you want to make an  
16 offer of proof as to what your witnesses would  
17 testify if you were allowed to ask, you can  
18 certainly make your record.

19 MR. PAPPAS: Thank you. If the witnesses  
20 were allowed to testify they would recall their  
21 discussion with the Road Agent, they would  
22 testify about the impact currently with freezing  
23 and thawing and the effect on the roads and the  
24 potholes and the heaves it creates, and they

1 would further testify that the introduction of  
2 additional heat from these cables would, in the  
3 Road Agent's opinion and I believe the  
4 witnesses' opinion, cause additional problems  
5 with the road and the freezing and the thawing  
6 and creating of potholes and frost heaves that  
7 would therefore impact the roads and the  
8 travelability of the roads.

9 PRESIDING OFFICER HONIGBERG: All right.  
10 Your record is made. You may continue.

11 MR. PAPPAS: Thank you.

12 BY MR. PAPPAS:

13 Q Gentleman, what's on the screen in front of you  
14 is Counsel for the Public's Exhibit 549 which is  
15 Exception Request number 180 in Stewartstown on  
16 Bear Rock Road. Do you see that?

17 A (Taylor) Yes.

18 Q And this involves HDD number 4. Is that  
19 correct?

20 A (Taylor) Correct.

21 Q So on the screen now is Bates stamped 13981 from  
22 this Exception Request. Do you see that?

23 A (Taylor) Yes.

24 Q If you look on the top picture, it shows the

1 Q Okay. But it sounds like you were within the  
2 existing right-of-way. Is that what your  
3 understanding was?

4 A (Taylor) Yes.

5 A (Zysk) Yes.

6 A (Bascom) Yes.

7 A (Alexander) Yes.

8 Q I have on the screen now this report, and I want  
9 to turn now to, this is page 1 of the report.  
10 You see I've highlighted some sections there.  
11 I'll just give you a second to read those  
12 highlighted portions and let me know once you've  
13 had a chance to do that, please.

14 A (Taylor) Okay.

15 Q So would it be fair to say that this report  
16 seeks to establish a baseline condition  
17 assessment of the facilities?

18 MR. NEEDLEMAN: Objection. This document  
19 was available prior to the time they submitted  
20 their Supplemental Testimony.

21 PRESIDING OFFICER HONIGBERG: Mr. Whitley?

22 MR. WHITLEY: It was not provided to me  
23 until after the April 2017 deadline. It was not  
24 provided to me until a motion was made, and it

1 was provided on the eve of Applicant's  
2 Construction Panel's sitting.

3 PRESIDING OFFICER HONIGBERG: Did they  
4 provide testimony about it in their Prefiled  
5 Testimony?

6 MR. WHITLEY: This Panel right here?

7 PRESIDING OFFICER HONIGBERG: Yes.

8 MR. WHITLEY: I don't believe so, no.

9 PRESIDING OFFICER HONIGBERG: Did they talk  
10 about the Ashland Water and Sewer District area?

11 MR. WHITLEY: I don't believe so, no.

12 PRESIDING OFFICER HONIGBERG: Feels like a  
13 expansion of their testimony, the areas of their  
14 testimony, and it feels like it's, it certainly  
15 appears to be using documents that were  
16 available to them before they filed their  
17 testimony.

18 MR. WHITLEY: I'm not sure it was available  
19 to them. I mean, perhaps it was available to  
20 Counsel for the Public, but that's the first  
21 that I've heard of that. It was not available  
22 to me and to my client until after that April  
23 Prefiled Testimony deadline.

24 PRESIDING OFFICER HONIGBERG: But you're

1 talking to these witnesses about their  
2 testimony. Not what you wish they had written  
3 or might have written had Counsel for the Public  
4 chosen to do that. I mean, I don't know if you  
5 can ask the question. I'm interested in the  
6 argument as to why you should be allowed to  
7 expand the witnesses' testimony like this.

8 MR. WHITLEY: One second, Mr. Chair.

9 I think the argument, Mr. Chair, is that, I  
10 guess it's in terms of an offer of proof  
11 almost --

12 PRESIDING OFFICER HONIGBERG: Don't make an  
13 offer of proof until you lose the argument.

14 MR. WHITLEY: That's good advice.

15 I think the argument, Mr. Chair, is that  
16 it's not clear to me that these witnesses had  
17 this information available to them. I've just  
18 checked with Counsel for the Public. They  
19 weren't clear that they did. It was provided  
20 after the April 2017 deadline for Supplemental  
21 Testimony. And so assuming they didn't have it  
22 until around the same time that I got it, they  
23 could not have offered any opinion on it.

24 PRESIDING OFFICER HONIGBERG: They've

1 testified that they've never seen it before.  
2 I'm going to sustain the objection as you're  
3 attempting to expand the scope in terms of their  
4 Prefiled Testimony.

5 Now, if you want to make an offer of proof  
6 as to what you think they would testify to if  
7 you were allowed to ask them questions, you're  
8 obviously free to do that.

9 MR. WHITLEY: Okay. If allowed to testify,  
10 I would ask them to, whether they agree or not  
11 with some of the methodology that this report  
12 followed, and also some of the conclusions that  
13 were drawn as a result of this methodology. I  
14 think important for the record is that the  
15 report is styled as a baseline condition  
16 assessment, and then at the conclusion of the  
17 report it states that the Project will have no  
18 impact. And my argument will be that if it's a  
19 baseline condition assessment, then it may be a  
20 little premature to conclude that the Project  
21 will have no impact on the facility.

22 PRESIDING OFFICER HONIGBERG: Okay.

23 BY MR. WHITLEY:

24 Q So to follow up, gentlemen, on where you were at

1           addition to noise it talks about laydown areas  
2           and access roads, right?

3           A     (Zysk) Yes.

4           Q     And in your report you talk about the fact that  
5           not all of the laydown areas had yet been shown?

6           A     (Zysk) That's correct.

7           Q     And since the time of that report, have you  
8           learned of any additional laydown areas that are  
9           being proposed?

10          A     (Zysk) I have not.

11          Q     What about access roads? In your report you  
12          indicated that there are some access roads that  
13          may be built and the Applicants had requested to  
14          delegate authority for those access roads to  
15          DOT.

16                 Are you aware of any new access roads that  
17          are being proposed since preparing your report?

18          A     (Zysk) I have not seen anything regarding that.

19          Q     Now, are you aware that the Applicants have  
20          stated during trial and also in some of their  
21          Supplemental Testimony that they hope to address  
22          noise, laydown areas, and impacts to roads in  
23          Memorandum of Understanding with some of the  
24          municipalities?

1 A (Zysk) That's my understanding yes.

2 Q Have you reviewed the MOU that was attached to  
3 Bill Quinlan's Supplemental Testimony which was  
4 attached as Attachment A and his Supplemental  
5 Testimony was marked as Applicant's Exhibit 5?

6 A (Zysk) I may have reviewed it. At the moment, I  
7 can't recall.

8 Q Okay. Now, in requirements of the noise that  
9 we've just talked about, you understand that the  
10 Applicants have proposed in their Application to  
11 have work occur from 7 a.m. to 7 p.m. Monday  
12 through Saturday?

13 A (Zysk) Yes.

14 Q And are you aware that they've asked for any  
15 sort of exception to that time frame?

16 A (Zysk) Not at this point I'm not aware of that.

17 Q Okay. Now, if we turn to the MOU, I just want  
18 to first go through the draft form with you  
19 briefly, and this is the MOU that we just  
20 referenced that was attached to the September  
21 testimony of Bill Quinlan. And if you go to the  
22 Draft MOU to the second page?

23 A (Zysk) Yes.

24 Q I think I said Attachment H. I may have not

1           enunciated correctly. But this is H, not A. If  
2           you go to the second page, it talks about work  
3           hours. And if we blow that up under 2.4 for a  
4           moment, the Draft MOU that's being proposed does  
5           reference at the beginning 7 a.m. to 7 p.m., but  
6           it also has a carve-out where work hours could  
7           be extended to exigent circumstances when  
8           required for system reliability or integrity or  
9           other rules pertaining to the operation of  
10          Project facilities including testing and  
11          equipment outages or to perform critical work  
12          activities for construction and testing  
13          purposes.

14                 Were you aware that they were seeking to  
15          have additional hours other than the 7 a.m. to 7  
16          p.m.?

17          A       (Zysk) I was not aware of that, although this is  
18          not an unusual request.

19          Q       Okay. And in the last sentence here it says  
20          that they also in certain circumstances when  
21          practical they will advise the city that they  
22          may also extend work hours in the duration of  
23          such periods including work on Sundays.

24                 Were you aware of that?

1 A (Zysk) I was not.

2 Q So to the extent that the Applicants are seeking  
3 to rely on MOUs such as this to address noise  
4 issues, does the language in 2.4 address your  
5 concerns or alleviate your concerns about the  
6 potential annoyance of noise from this Project?

7 A (Zysk) This addresses work hours. This doesn't  
8 address anything have to do with limiting noise  
9 from construction vehicles.

10 Q Okay. So the answer to that would be no?

11 A (Zysk) That's correct.

12 Q Now, you also talked about laydown areas and the  
13 fact that only a few had been identified in the  
14 Application. Under Section 2.5 of the Draft  
15 MOU, it talks about equipment and material  
16 staging and storage, and it talks about the fact  
17 that a combination of temporary storage areas,  
18 staging areas, and laydown areas will also be  
19 needed to support construction. And in the last  
20 sentence, it says NPT will coordinate with the  
21 town or city to the extent practical to identify  
22 such sites.

23 Does that provision alleviate your concerns  
24 that as of this date laydown areas have not yet

1           been identified?

2           A     (Zysk) No.

3           Q     There's also a section in this MOU that talks  
4           about lighting. Did your report reference the  
5           use of nighttime work and lighting?

6           A     (Zysk) I do not believe so.

7           Q     Okay. Were you aware that the Applicants were  
8           proposing to have towns and cities agree that  
9           they would be allowed to do work at night under  
10          certain circumstances?

11          A     (Zysk) I know it's been discussed in certain  
12          locations. I don't think it's been specified  
13          specifically in any given spot.

14          Q     Okay. And so to the extent that the  
15          construction may cause annoyance or disruption,  
16          lighting and nighttime work would be included in  
17          that concern that you have, right?

18          A     (Zysk) It would be a disruption, that's for  
19          sure.

20          Q     Okay. On the following page, under 2.9, they  
21          also talk about construction vehicles. We had  
22          just talked about the work time being from 7  
23          a.m. to 7 p.m. on Monday through Saturday, but  
24          the MOU that the Applicants are proposing

1 actually also provide that startup and idling of  
2 trucks and equipment will normally be conducted  
3 between 6 a.m. and 7 p.m. Monday through Friday  
4 and between 6.30 a.m. and 7 p.m. on Saturday and  
5 Sunday.

6 In terms of the startup and idling of  
7 trucks and equipment, what type of noise can  
8 that generate?

9 A (Zysk) There are constantly updated rules and  
10 regulations regarding the noise output of idling  
11 vehicles. I can't give you specific numbers.  
12 But if it's a relatively new vehicle, the noise  
13 level is, again, I'm being relative, but pretty  
14 low. It wouldn't -- you might hear it  
15 immediately on startup kind of like your own  
16 car, but once it goes to idle you probably  
17 wouldn't hear it.

18 Q Would it be normal to try to extend the hours of  
19 work for another hour or half hour to allow for  
20 the idling of trucks and equipment? Is that  
21 normally included in the general work hours?

22 A (Zysk) That's normally included in general work  
23 hours.

24 Q Okay.

1 A (Zysk) In my experience.

2 Q So to the extent that the Applicants are relying  
3 on MOUs with municipalities to address  
4 construction disruptions, does this provision  
5 that would allow idling for extra hours  
6 including Sunday alleviate your concerns about  
7 disruptions?

8 A (Zysk) No.

9 Q And you also talk about concerns of public  
10 roads, and that's addressed in 3.1. In New  
11 Hampshire you understand that a lot of  
12 municipalities have spring load limits, right?

13 A (Zysk) Yes.

14 Q For spring load limits, typically if a  
15 contractor wants to use the road, they need to  
16 get prior approval from the municipality?

17 A (Zysk) That's my understanding, yes.

18 Q And typically, the municipality, are you aware,  
19 will ask for a contractor to go early in the  
20 morning when the ground is still hard before it  
21 softens up in the spring?

22 A (Zysk) Okay.

23 Q Are you aware of that?

24 A (Zysk) That specific provision, I'm not.

1 Q Does it surprise you?

2 A (Zysk) No.

3 Q Okay. And are you aware that most  
4 municipalities also require a bond if necessary?

5 A (Zysk) I was not aware of that.

6 Q Okay. Does that surprise you?

7 A (Zysk) No.

8 Q Now, in terms of the proposal that's being  
9 provided to municipalities for public roads, the  
10 Applicants are asking municipalities to agree  
11 that if in the event that NPT wishes to utilize  
12 city or town roads for the travel of oversize or  
13 overweight vehicles and/or use during posted  
14 weight limit time periods, then NPT shall, and  
15 A, it says identify and notify the city or town  
16 of local public roads to be used within the city  
17 or town to transport equipment and parts for  
18 construction, operation, or maintenance of the  
19 Project facilities.

20 That provision does not require the  
21 Applicants to get prior approval or set times  
22 when they would be allowed to use the public  
23 roads during weight limit periods; is that  
24 right?

1 A (Zysk) That would be my interpretation.

2 Q Okay. And so the concerns that roads might get  
3 damaged, especially in the spring, this does not  
4 alleviate that concern that you raised, does it?

5 A (Zysk) This sentence by itself does not.

6 Q Okay. Well, it does say they will fix it if the  
7 road gets ruined, right?

8 A (Zysk) I believe that's what it says below.

9 Q But you understand the goal of having  
10 construction vehicles perhaps operate in the  
11 early morning before the road becomes warmer,  
12 the ground becomes warmer, is to prevent damage  
13 to the roads in the municipalities, correct?

14 A (Zysk) Correct.

15 Q So this provision would not, at least in the  
16 first instance, potentially prevent that damage  
17 from occurring?

18 A (Zysk) I would agree with that, yes.

19 Q Have you seen any of the MOUs? There's four  
20 that's been uploaded to date marked as Exhibits  
21 206, 207, 208 and 209 by the Applicants. Those  
22 are executed MOUs. Have you had an opportunity  
23 to review any of them?

24 A (Zysk) I'm aware of them. I have not read any

1 of them.

2 Q Okay. And I don't want to go through them in  
3 detail, but we'll just turn, for example, to  
4 Applicant's Exhibit 206 which is the agreement  
5 with Canterbury. I'll represent to you, and why  
6 don't I actually just hand you some of the ones  
7 so you can flip through it. It might be easier  
8 for you to review, and we put tabs at each  
9 exhibit.

10 A (Zysk) Thank you.

11 Q So if you start with the first yellow tab,  
12 that's Applicant's Exhibit 206, which is the  
13 agreement with Canterbury and Northern Pass?

14 A (Zysk) Okay.

15 Q And if you look at Provisions 2.4, 2.5, which is  
16 the one dealing with the equipment, and  
17 materials, staging, if you look at 2.9 which is  
18 the one with the idling and startup of  
19 construction vehicles, and if you look at 3.1  
20 which is public roads, all of that has the same  
21 language that we just looked at in the Draft  
22 MOU. Is that right?

23 A (Zysk) It appears that way, right.

24 Q And if we go to Applicant's Exhibit 207 with

1 Plymouth Village Water and Sewer District, if  
2 you look at those same provisions. And I  
3 think -- I may have not provided that whole --  
4 actually, that one doesn't have any of those  
5 provisions. It's a little bit different because  
6 it deals with the water and sewer district.

7 But if you go to the Applicant's Exhibit  
8 209 which is the one with the City of Franklin.

9 A (Zysk) Okay.

10 Q And again, if you look at 2.4 which is work  
11 hours, 2.5 has the equipment, 2.6 with lighting,  
12 2.9 which is the one dealing with construction  
13 vehicles, and Article 3 which is public roads,  
14 all of that language is similar to the Draft  
15 that we just looked at, correct?

16 A (Zysk) Appears that way, yes.

17 Q And the last one I just want you to briefly look  
18 at is with the Town of Thornton which is  
19 Applicant's Exhibit 208, and, again, this has  
20 all of the same language that we've been looking  
21 at in terms of those provisions.

22 A (Zysk) Okay.

23 Q Is that correct?

24 A (Zysk) Appears that way, yes.

1 Q So to the extent that municipalities are  
2 entering into these MOUs, these MOUs aren't  
3 alleviating the concerns that you raised  
4 relative to the construction disruptions that we  
5 talked about earlier, correct?

6 A (Zysk) Assuming that these Memorandums of  
7 Understanding have been reviewed by their  
8 specific municipalities, I would say they have.  
9 The municipalities are accepting of what's being  
10 put before them. And so apparently they have.

11 Q But for the people who live in those  
12 municipalities that might be subjected to  
13 construction disruptions, those provisions that  
14 we looked at are not going to minimize the  
15 disruptions that we just spoke about, right?

16 A (Zysk) That's correct.

17 Q Okay. So for whatever reason, good or bad, a  
18 municipality agrees to sign this, it doesn't  
19 address the concerns we've talked about, right?

20 A (Zysk) Correct.

21 Q Now, I'd like to talk to you about Best  
22 Management Practices for erosion and  
23 sedimentation control, and that appeared on page  
24 11 of your report which, again, was Counsel for

# **EXHIBIT 5**

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 is 70 feet?

2 A. (Bradstreet) That looks correct.

3 Q. Both those are represented by segment C225,  
4 which is right in the middle of the page here.  
5 And you see that the Project line, similar to  
6 the last segment, appears to be about 85 feet  
7 from the right-of-way boundary?

8 A. (Bradstreet) Correct.

9 Q. Other than what you just described, Mr. Bowes,  
10 is there any other specific noise mitigation  
11 that is planned for this portion of the line?

12 A. (Bowes) There is not.

13 Q. But, again, it would be some of the same  
14 activities going on here that you previously  
15 described, correct?

16 A. (Bowes) Actually, all of the same activities,  
17 yes.

18 Q. Yes. Okay. I want to change gears now for a  
19 second and talk about the engineering study  
20 that was conducted at the Ashland Water & Sewer  
21 Department facility. That, I believe, had a  
22 draft date of March 29, 2017. Is anyone on the  
23 panel familiar at all with that?

24 A. (Bowes) Yes, I am.

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 Q. Okay. Anyone else, other than Mr. Bowes?

2 A. (Bradstreet) I think we all are.

3 Q. Okay.

4 A. (Johnson) Move it this way.

5 Q. Okay. And, when you gentlemen said that you're  
6 familiar, is it just a rough familiarity or  
7 have you actually reviewed the report?

8 A. (Bowes) I have reviewed the report.

9 A. (Johnson) I have as well.

10 A. (Bradstreet) Yes.

11 Q. Same to you, okay. Okay. And did any of you  
12 have a role in providing input to Nobis  
13 Engineering in the preparation of that report?

14 A. (Bradstreet) I did not.

15 A. (Bowes) I reviewed an earlier draft of the  
16 report.

17 A. (Johnson) I reviewed an earlier draft of the  
18 report.

19 Q. Okay. And did either of you give comments to  
20 Nobis Engineering after reviewing that initial  
21 draft?

22 A. (Bowes) Yes, I did.

23 A. (Johnson) Yes, I did.

24 Q. Okay. And what were the nature of those

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1           comments?

2   A.       (Bowes) To draw to a conclusion at the end,  
3           which they have done, I guess they have come up  
4           with six or seven conclusions. They had done  
5           the analysis, but hadn't -- ultimately, we need  
6           to have a conclusion for the impacts of the  
7           Project.

8   Q.       And I'm going to pull it up shortly, Mr. Bowes.  
9           So, we will discuss it in a little more detail.

10   A.       (Johnson) My comments were more editorial in  
11           nature.

12   Q.       Okay. So, what I've pulled up on the screen is  
13           that report. Does that look accurate to you?  
14           That's the one that you most recently reviewed?

15   A.       (Bowes) Yes. It does look like the same  
16           report.

17   Q.       And do you see on the bottom there, it's the  
18           March 29, 2017?

19   A.       (Bowes) Yes. That's the report I have.

20   Q.       Is this the most recent version of that report?

21   A.       (Bowes) Yes, it is.

22   Q.       Okay.

23                           MS. DORE: Could you tell us what  
24           exhibit number it is?

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 MR. WHITLEY: This is going to be  
2 "Joint Municipality 195" [sic - Jt. Muni 201].  
3 This was just recently disclosed to us, which  
4 is why you don't have it as of yet.

5 BY MR. WHITLEY:

6 Q. Okay. I want to turn to the limitations that  
7 the report has indicated. And this is Page 27  
8 of that report. Well, I take that back. It's  
9 Page 27 of the PDF. You gentlemen see that on  
10 the screen there?

11 A. (Johnson) Yes.

12 Q. One of the limitations that struck me was  
13 Number 2. So, I'll give you a chance to just  
14 read that real quick. And it basically says  
15 that the soil profile that's described is  
16 "generalized", "intended to convey trends in  
17 subsurface conditions", "the boundaries between  
18 particular strata are approximate", but that  
19 "actual soil transitions are probably more  
20 erratic". Is that accurate?

21 A. (Bowes) Yes.

22 Q. And -- I'll withdraw that. Let's go down now  
23 to Number 5. Give you a second to just read  
24 that. So, in Number 5, Nobis is recommending

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 additional work at this property. That  
2 correct?

3 A. (Bowes) Yes, they are.

4 Q. Have they been engaged to do that work as of  
5 yet?

6 A. (Bowes) Not at this time. Once the final  
7 report is done, then the Project will certainly  
8 evaluate that.

9 Q. But, as you sit here today, they have not been  
10 retained to do anything further, other than  
11 provide a final version of this report?

12 A. (Bowes) That is correct.

13 Q. Okay. I want to pull up right now a figure  
14 that was provided as part of this report. And  
15 it is Figure 2 to the report, and it's on Page  
16 25 of the PDF. And I'll blow it up, because I  
17 know it's small.

18 So, the Project in this area, and by "this  
19 area" I mean in the area of the four lagoons  
20 you see there, is going to consist of three new  
21 structures within the right-of-way. And that  
22 would be DC-110 [DC-1110?], 111 [1111?], and  
23 112 [1112?], and then, further to the south,  
24 DC-113 [DC-1113?]. Do you see all those?

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 A. (Bowes) Yes.

2 Q. And DC-10 -- DC-1110, 1111, and 1112 are  
3 adjacent to the lagoons, and DC-1113 is farther  
4 from the lagoons, but closer to the settling  
5 tanks, which are those two round circles just  
6 above the red dotted line. Correct?

7 A. (Bowes) Yes.

8 Q. And I believe the report itself states that  
9 DC-1112 is the closest of those structures to  
10 any of the lagoons. And the report states that  
11 it's 75 feet from the Water & Sewer Department  
12 fencing, and about 110 feet to the edge of  
13 Lagoon 2. That accurate?

14 A. (Bowes) It sounds about right, yes. Subject to  
15 check.

16 Q. And, Mr. Johnson, are you doing that checking  
17 right now?

18 A. (Witness Johnson nodding in the affirmative).

19 A. (Bowes) Looks accurate, yes.

20 Q. Okay. Okay. Can I -- it strikes me as odd  
21 that, when I ask questions or when other people  
22 ask questions about dimensions, details of  
23 clearing, those sorts of things, that the panel  
24 is not referring to the plans that all of us

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 have at our disposal, but is referring to some  
2 other source of information that we don't have  
3 access to and that the Committee won't have  
4 access to. And I just wonder if -- if the  
5 Committee is to evaluate the evidence,  
6 shouldn't they have the most accurate  
7 information to do that?

8 A. (Bowes) So, knowing that the previous  
9 questioner we offered to bring this up, we  
10 didn't make that offer for you. We certainly  
11 can project what we're looking at.

12 Q. But I don't mean "projecting it". I mean  
13 allowing the parties and the Committee the  
14 ability to manipulate it as they may need to  
15 do. And that has not been offered to my  
16 knowledge?

17 A. (Bowes) That is correct.

18 MR. NEEDLEMAN: Well, I'll note that,  
19 for the record, it's the same information  
20 everybody has, it's just in the GIS format, so  
21 that you can access it and measure it. But you  
22 all have the information.

23 MR. WHITLEY: Well, I -- I don't want  
24 to argue. Okay.

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 BY MR. WHITLEY:

2 Q. So, the description here in the engineering  
3 report describes that the structures that are  
4 going to be in the right-of-way here are all  
5 lattice towers. They're going to have a base  
6 of roughly 30 by 30. And they're going to be  
7 anchored to four foundations at the corners,  
8 roughly 3 to 5 feet in diameter each. Is that  
9 accurate?

10 A. (Bradstreet) Yes. That's true.

11 Q. But the exact type of foundation is currently  
12 not known. And, as I understand, the Project  
13 could do either a concrete grilled [drilled?]  
14 shafts or a grillage foundation. Is that  
15 accurate?

16 A. (Bradstreet) So, for lattice towers right now,  
17 the Project is considering the option for  
18 either a drilled shaft, like you said, which is  
19 a drilled concrete shaft foundation, or a  
20 grillage, which is buried steel, basically.

21 Q. Okay. But both of those foundation types  
22 involve some sort of digging in the subsoil and  
23 laying an adequate foundation for the towers?

24 A. (Bradstreet) In general, any foundation

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 requires digging.

2 Q. True. Is there one of those methods that  
3 requires drilling further into the subsurface?

4 A. (Bradstreet) So, drilled shafts would typically  
5 be deeper than a grillage.

6 Q. How much deeper?

7 A. (Bradstreet) It depends.

8 Q. Just roughly, can you say?

9 A. (Bradstreet) It could be the same, it could be  
10 10 feet, it could be 20 feet. It depends.

11 Q. And does that depend on the site-specific  
12 conditions that the Project may encounter?

13 A. (Bradstreet) That's exactly what it depends on.

14 Q. The report goes on to describe whether or not  
15 the lagoons are lined, and, if so, what they  
16 are lined with. Is that correct?

17 A. (Bowes) That is correct.

18 Q. And there's a bit of a -- I don't want to say  
19 confusion, but there's a bit of a inconsistency  
20 between the various historical documents that  
21 were attached to the report and that were the  
22 basis for some of the report, correct?

23 A. (Bowes) Yes. The original design documents  
24 indicated it was a clay liner. The

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 investigation found that it is not a clay  
2 liner.

3 Q. Well, Mr. Bowes, I thought the original designs  
4 indicated asphalt?

5 A. (Bowes) Oh. I'm sorry. You're correct.

6 Q. Yes. The original drawings, from 1967, I  
7 believe, indicated asphalt lined the lagoons.  
8 Subsequent documents from New Hampshire DES and  
9 another engineering firm that worked with the  
10 Department to get a Groundwater Discharge  
11 Permit, described the lining as "unlined".

12 I'll represent to you that the Water &  
13 Sewer Department believes that they're, in  
14 fact, lined with clay. But that question,  
15 about what is, in fact, the lining, was not  
16 determined by this report, correct?

17 A. (Bowes) That is correct.

18 Q. So, I just mentioned that the Water & Sewer  
19 Department needed to get a Groundwater  
20 Discharge Permit, and they had to do that  
21 through DES. And, as part of that Discharge  
22 Permit process, the Department installed sentry  
23 wells to monitor and evaluate potential impacts  
24 to groundwater and surface water from the

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 lagoons. Do you agree with that?

2 A. (Bowes) That is correct. The lagoons lose  
3 approximately 50,000 gallons a day to  
4 groundwater.

5 Q. True. But I want to stay on the sentry wells  
6 for just one second, Mr. Bowes.

7 A. (Bowes) The wells are there to monitor that  
8 leakage out of the lagoons.

9 Q. I know. But we're going to come back to that.  
10 So, just hold on one second please.

11 So, if you're looking at Figure 2, those  
12 sentry wells are indicated by the light blue  
13 "MW", and then the little hatch mark -- there's  
14 probably an engineering term for that little  
15 circle with the -- what is that?

16 A. (Bowes) I think it's a monitoring well.

17 Q. Yes. But, I mean, there's a name for the  
18 circle with the -- never mind. Anyway, so,  
19 Monitoring Well 14, Monitoring Well 15, 16, 17,  
20 if you look above the lagoons in the picture,  
21 you see two more, 13 and 18. And I'll  
22 represent to you there's an additional  
23 monitoring well that's further to the top of  
24 the picture where the town waste or landfill is

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 located. Is that accurate?

2 A. (Bowes) I will accept there's another one. I'm  
3 not sure I saw the one you said was off the  
4 page?

5 Q. Oh, no. Well, yes. It's here [indicating].  
6 It's right there.

7 A. (Bowes) Okay.

8 Q. Very top, "MW-12". And, as you mention,  
9 Mr. Bowes, there is -- one of the historical  
10 documents, there's a memo from DES in 2005.  
11 And it suggests that the lagoons lose roughly  
12 50,000 gallons per day via infiltration to the  
13 groundwater, correct?

14 A. (Bowes) Yes. I see a 1997 study that indicates  
15 that.

16 Q. Yes. There may be more than one. But, yes.  
17 But the number is correct?

18 A. (Bowes) That's the estimate, I believe. You  
19 know, more than a decade ago, or two decades  
20 ago, if it was '97.

21 Q. So, do you think that number is no longer  
22 accurate then?

23 A. (Bowes) I think it could be higher, yes.

24 Q. And what do you base that on?

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 A. (Bowes) Just that, if there were liners placed  
2 within the lagoons, and they have deteriorated,  
3 I would just assume that they would have  
4 extensive deterioration since 1997.

5 Q. Okay. But you don't have any data that you're  
6 using to make that assumption?

7 A. (Bowes) I do not.

8 Q. Okay.

9 A. (Bowes) The report did not detail that data.

10 Q. Okay. Thank you. So, Nobis did some testing  
11 in and around the lagoons. And they did some  
12 boring holes, and they fitted several of those  
13 boring holes with monitoring wells. And, if  
14 you look at Figure 2 again, the borings and  
15 monitoring wells that Nobis installed are the  
16 black circle wells, and they have numbers, if  
17 you look to the right of the lagoon, it's  
18 "B-1", and then "Monitoring Well 1", and then  
19 lower, "B-5 (Monitoring 3)". Go to the other  
20 side of the lagoons, on the left-hand side, and  
21 starting from the bottom, "B-7 (Monitoring Well  
22 4)", "B-2 (Monitoring Well 2)", and then "B-10  
23 (Monitoring Well 6)". And then the last one at  
24 the top there is "B-8 (Monitoring Well 5)". Do

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1           you see all those?

2   A.       (Bowes) Yes, I do.

3   Q.       And you'll see below the lagoons, there's a  
4           couple of borings where they don't have the  
5           monitoring well designation next to them. And  
6           those are in light green. And those are looks  
7           like all centered just below Lagoon 4. And  
8           those are "B-3", "B-9", "B-4", and "B-6".  
9           Correct?

10   A.       (Bowes) Yes.

11   Q.       And the report mentions that they had wanted to  
12           put monitoring wells at those locations as  
13           well, but couldn't, because they ran into some  
14           subsurface interference and couldn't drill down  
15           deep enough. Is that correct?

16   A.       (Bowes) Subject to check, I would agree with  
17           that. I don't recall that specifically.

18   Q.       And the purpose -- one of the purposes of the  
19           monitoring wells was to get a sense of the  
20           groundwater flow from the lagoon area and just  
21           see where it went. Is that a fair statement?

22   A.       (Bowes) Yes.

23   Q.       And one of the conclusions they came to is that  
24           the groundwater flow roughly goes towards the

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 Pemigewasset River. The way this is oriented  
2 it's tough to tell, but that's a southwesterly  
3 direction towards the river. Is that accurate?

4 A. (Bowes) Yes. I believe that's what they  
5 concluded.

6 Q. The same testing, as well as some historical  
7 data that the Department had, they tested for  
8 certain contaminants at these well locations.  
9 Correct?

10 A. (Bowes) Yes.

11 Q. And they found elevated levels of chloride and  
12 nitrate in some of the locations. Wouldn't you  
13 agree?

14 A. (Bowes) Yes.

15 Q. And that, looking at the data that was at their  
16 disposal, it indicated an upward trend in those  
17 contaminant amounts. Is that also correct?

18 A. (Bowes) That is correct.

19 Q. So, after performing this study, Nobis  
20 concluded that there was going to be no adverse  
21 effect on the performance of the lagoons. Is  
22 that correct?

23 A. (Bowes) From the installation of the new  
24 structures, that's correct.

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 Q. Right. And I take it that the panel agrees  
2 with that assessment?

3 A. (Bowes) I would say I'll wait for the final  
4 report. But, in general, I would say I tend to  
5 agree with that analysis.

6 Q. What is your hesitation?

7 A. (Bowes) Just that it's not a final report at  
8 this point.

9 Q. Do you anticipate anything changing from this  
10 version to the final report?

11 A. (Bowes) Not that I'm aware of, no.

12 Q. Okay. So, out of an abundance of caution,  
13 you're just reserving judgment until you see  
14 the final report?

15 A. (Bowes) Exactly.

16 Q. The report's conclusions, though, are a little  
17 tenuous, because we don't know what lining is  
18 really underneath all these lagoons, do we?

19 A. (Bowes) So, that's the -- you know, the  
20 recommendation or Finding (b) in the report,  
21 which would be to do some further analysis to  
22 determine, first, if it's lined or not, and the  
23 condition of the lining. I think that was more  
24 for the operation of the wastewater plant than

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1           it was a determination whether the Northern  
2           Pass Transmission line would impact it.

3   Q.    But Nobis is currently not tasked with doing  
4           any further work?

5   A.    (Bowes) We had the discussion further or  
6           previously around that issue.  It's probably  
7           not Northern Pass's job to assess the condition  
8           of the wastewater treatment facility.  So,  
9           although they made those recommendations, they  
10          may be better applied to the Town, rather than  
11          to Northern Pass.

12   Q.    Well, the Town is not proposing to run a new  
13          transmission structure, though, right next to  
14          the wastewater treatment facility, is it?

15   A.    (Bowes) No, and I didn't mean to imply that.  
16          Just that it seems like they have a failing  
17          system, this report has identified that.  And  
18          it's maybe something maybe they should consider  
19          repair or replacement of.

20   Q.    Correct me if I'm wrong, but I don't recall  
21          seeing in the report any sort of an evaluation  
22          of impacts on the property within the corridor.  
23          Actually, let me restate that.  I don't recall  
24          seeing in the report impacts of construction

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1 activities to the subsurface area that is below  
2 the Project corridor.

3 A. (Bowes) Other than the foundations, I think  
4 you're correct.

5 Q. Okay. So, the focus of the report was really  
6 on the lagoons themselves and the other assets  
7 of the Water & Sewer Department?

8 A. (Bowes) And the installation of the line  
9 adjacent to that.

10 Q. And does the report have any evaluation of the  
11 characteristics of the soil immediately below  
12 the lagoons?

13 A. (Bowes) I'm not familiar with what the soil  
14 sampling results showed.

15 Q. Okay. And are you aware of whether there is  
16 any similar evaluation of soil characteristics  
17 in the corridor area?

18 A. (Bowes) At this point, I do not believe there  
19 are. We will be doing soil sampling for those  
20 foundation locations, again, to determine the  
21 type of foundation needed.

22 Q. But you haven't done that to date though?

23 A. (Bowes) No. I don't believe we've done that.

24 Q. Okay. When do you anticipate doing that, do

{SEC 2015-06} [Day 8/Morning Session ONLY] {05-03-17}

[Bowes~Bradstreet~Farrington~Johnson~Kayser~Scott]

1           you know? Is that the contractor?

2   A.       (Johnson) Yes. It would probably be  
3           spring/summer of next year.

4   Q.       Okay. Isn't it true that this report doesn't  
5           really address how work within the Project  
6           corridor could impact the Town's monitoring  
7           wells that are in light blue there?

8   A.       (Bowes) So, the final recommendation of the  
9           report talks about those wells. And it clearly  
10          says that we need to be very careful working  
11          around them, to ensure that they are still  
12          functional, because that's a requirement for, I  
13          believe, the permit with New Hampshire DES.

14   Q.       Pulling up now the Ashland Alteration of  
15          Terrain package, which I will orient, one  
16          second. And, for the record, I'm going to go  
17          to the Ashland AOT Sheet 240.

18                           CHAIRMAN HONIGBERG: Off the record.

19   *[Brief off-the-record discussion*  
20   *ensued.]*

21   BY MR. WHITLEY:

22   Q.       Does the panel see that the AOT maps indicate  
23          the construction pads for those four tower  
24          structures that were also displayed in the

# **EXHIBIT 6**

1 Q. That's correct.

2 A. -- is in the same corridor, just so we're  
3 clear.

4 Q. Except for the 40 miles up north?

5 A. Eight of which is underground, and 24 of which  
6 is in a working forest, yes.

7 Q. For approximately 10 miles in the towns of  
8 Dummer, Stark and North UMBERLAND, the Northern  
9 Pass proposes to co-locate its new overhead  
10 facility in a 150-foot-wide right-of-way  
11 already hosting the existing Coos Loop  
12 distribution line and a 24-inch buried natural  
13 gas pipeline owned by Portland Natural Gas; is  
14 that right?

15 A. Yes.

16 Q. Can you explain why none of the project maps  
17 submitted with the Application for the towns of  
18 Dummer, Stark and North UMBERLAND depict the  
19 gas pipeline, while they do depict the current  
20 Coos Loop transmission line?

21 A. No.

22 Q. Can you describe --

23 A. We typically don't depict subsurface  
24 infrastructure. But I can't speak specifically

1           about the drawing you're referring to. It's  
2           the use of the right-of-way above ground that  
3           we're evaluating.

4    Q.    Can you describe the communications that  
5           Northern Pass has had with the owner of the  
6           Portland Natural Gas pipeline concerning the  
7           co-location?

8    A.    No, but I know we are going to comply with all  
9           industry standards for separation of electric  
10          and gas facilities.

11   Q.    So there hasn't been communications?

12   A.    I didn't say that. I'm not familiar with them.  
13          There may well have been. But we are aware of  
14          the separation requirements, so we're going to  
15          comply with them.

16   Q.    So, from that answer, would I be correct in  
17          assuming that there is no written agreements in  
18          place between Northern Pass and Portland  
19          Natural Gas at this time?

20   A.    I'm not aware of any. But, again, we're aware  
21          of the requirements and we'll comply with them.

22   Q.    If you're not aware of them, is there a witness  
23          following you who would be?

24   A.    Mr. Bowes may be aware of. So I would defer

# **EXHIBIT 7**

{WITNESS PANEL: Bowes and Ausere}

1 A (Bowes) I do not.

2 Q I just want to ask you a few questions about the  
3 Portland Natural Gas Pipeline. Can you describe  
4 the communication, if any, that the Applicants  
5 have had with the owner of the Portland Natural  
6 Gas Pipeline concerning the collocation of the  
7 Northern Pass facility within the shared  
8 right-of-way?

9 A At the highest level I can, yes, and we can get,  
10 obviously, much more detail at the construction  
11 panel. At the highest level, we've been in  
12 contact and talks with the pipeline company, and  
13 we're in the process of doing an interference  
14 study which I think is complete at this point to  
15 ensure that there would be no adverse impact  
16 from either the AC or the DC transmission line  
17 to the pipeline structures.

18 Q Are there currently any written agreements to  
19 between the Applicants and Portland Natural Gas  
20 regarding collocation?

21 A (Bowes) I believe the only written agreements  
22 that I'm aware of are between the gas pipeline  
23 and Public Service New Hampshire for the  
24 original installation of the pipeline. I don't

{WITNESS PANEL: Bowes and Ausere}

1 believe there are any additional or new  
2 agreement in place with Northern Pass.

3 Q Thank you both very much.

4 PRESIDING OFFICER HONIGBERG: Next on the  
5 list would be Attorney Birchard. Do you have  
6 questions?

7 MS. BIRCHARD: Yes.

8 PRESIDING OFFICER HONIGBERG: How long do  
9 you think you have?

10 MS. BIRCHARD: 15 minutes.

11 PRESIDING OFFICER HONIGBERG: Why don't we  
12 do that.

13 **CROSS-EXAMINATION**

14 **BY MS. BIRCHARD:**

15 Q If it please the Committee, I will remain  
16 seated. We did have a number of questions on  
17 the subject of decommissioning for Mr. Ausere  
18 that have already been asked by Counsel for the  
19 Public so our remaining questions will be  
20 directed to Mr. Bowes.

21 Mr. Bowes, this pertains to your  
22 Supplemental Testimony, and is a follow-on to  
23 your earlier discussion with Attorney Whitley.

24 In response to a question from Mr. Whitley

# **EXHIBIT 8**

1 Q If any of those, let's take the 55-foot-tall  
2 tower. If a 55-foot-tall tower were to collapse  
3 in an ice storm, for example, the tower's fall  
4 zone would be within the right-of-way which is  
5 150 feet; is that right?

6 A (Johnson) I'll defer to Mr. Bradstreet on these  
7 questions.

8 A (Bradstreet) So I think your question was under  
9 an extreme ice event, if a structure were to  
10 collapse, which is a very rare occurrence, it  
11 would fall within the 150 foot right-of-way?

12 Q Correct.

13 A (Bradstreet) So I think the answer to that is  
14 most likely, yes.

15 Q What would be the scenario where it wouldn't be  
16 most likely? If it were carried away?

17 A (Bradstreet) Carried away by what?

18 Q I'm asking you. You said most likely it would  
19 fall within the 150 foot right-of-way. Is there  
20 a scenario where a 55-foot-tower could fall  
21 within that right-of-way and not land within the  
22 right-of-way?

23 A (Bradstreet) I'm not aware of one under an  
24 extreme ice event.

1                   PRESIDING OFFICER HONIGBERG: Mr.  
2                   Bradstreet, I think he's asking a fairly simple  
3                   question. You said most likely it will fall  
4                   within the right-of-way or under most  
5                   circumstances. Under what circumstances would  
6                   it not fall in the right-of-way?

7                   A           (Bradstreet) In the condition he asked me about,  
8                   I'm not aware of any. Maybe I should be more  
9                   clear and not general in my response.

10                  PRESIDING OFFICER HONIGBERG: Yes. If you  
11                  feel you need to hedge, the next question is  
12                  going to be, okay, why did you just hedge that  
13                  answer. If you think the answer is no, say  
14                  that. If you think the answer is yes, say that.  
15                  If you're not sure, say that.

16                  A           (Bradstreet) For an ice storm, I don't think  
17                  there is ever a case. Under, say, a tornado of  
18                  some kind, maybe.

19                  Q           Okay.

20                  A           (Bradstreet) Sorry, Chairman.

21                  PRESIDING OFFICER HONIGBERG: It just  
22                  shortens the process for you, too.

23                  BY MR. REIMERS:

24                  Q           So in the most likely event, barring a tornado

1 or something like that, you wouldn't expect the  
2 tower to fall off of the right-of-way on to  
3 property owned by the Forest Society that is not  
4 encumbered by the right-of-way?

5 A (Bradstreet) That's correct.

6 Q Under the proposed configuration, the relocated  
7 115 kV line would be on towers ranging in height  
8 from 83.5 to 77 feet in height, and they would  
9 be 25 feet from the right-of-way?

10 A (Bradstreet) I can't remember. It's 25 or 30.

11 Q All right. No matter. We're talking about  
12 details like that.

13 A (Bradstreet) Yes.

14 Q So even if it were 30 feet, in the event of a  
15 tower collapse, that tower could potentially  
16 fall off of the right-of-way, a portion of it  
17 could fall off the right-of-way.

18 A (Bradstreet) I would say in general, in the  
19 event there is a tower failure or a structure  
20 failure, the conductors that are attached to  
21 that structure and attached to all the other  
22 remaining structures provide longitudinal  
23 support such that if the structure itself in  
24 that specific location did fail, which, again,

1 is a very rare instance, those conductors would  
2 keep it within the right-of-way.

3 A (Bowes) Also the type of event you're talking  
4 about in a severe ice storm would cause  
5 extensive tree damage in this area as well. So  
6 the most likely scenario would be trees falling  
7 on to the right-of-way, taking the conductors  
8 down and then pulling structures in the same  
9 direction as the conductors, but there would be  
10 probably widespread damage to the Kauffmann  
11 Forest in an ice storm like that.

12 Q I think what I've heard in prior testimony is  
13 that there are mechanisms like on a monopole  
14 that if it's going to collapse, it's going to  
15 collapse in a particular direction. Did I hear  
16 that correctly?

17 A (Bradstreet) I think that's sort of what I just  
18 explained as far as the conductors holding it  
19 together or in the right-of-way since they are  
20 all connected in line.

21 Q I took that to mean that the conductors are  
22 actually going to hold it up somehow rather than  
23 keep it within the right-of-way?

24 A (Bradstreet) Well, they can hold it up, but they

1           also will train it from going, I guess, either  
2           way from the conductors that are in line with  
3           the rest of the line.

4       Q     Now --

5       A     (Bowes) The way they would hold it up, again, if  
6           it's an AC line, there would be three conductors  
7           on either side of the structure. So there's  
8           tensions and stresses would be shared between  
9           those conductors. That's why you'd get some  
10          benefit of having the conductors. For the DC  
11          portion, of course there's only two conductors  
12          per structures on either side.

13       Q     In the event that a tower or a portion of a  
14           tower falls, and it hit the ground, is it  
15           possible that any part of that tower or  
16           component could pierce the ground at all? Stick  
17           into the ground?

18       A     (Bradstreet) I guess I'm not aware of a specific  
19           instance where that has happened. I don't know  
20           the answer to your question, I guess. I guess  
21           I'll point out that these aren't necessarily  
22           pointy objects, but --

23       Q     They're made of metal, aren't they?

24       A     (Bradstreet) They're made of metal.

1 Q And in the Kauffmann Forest you're aware that  
2 there's a buried natural gas pipeline?

3 A (Bradstreet) Yes, sir.

4 Q Is it possible that in the event of a tower  
5 failure that the natural gas pipeline could be  
6 compromised?

7 A (Bradstreet) I do not believe there is.

8 Q It's not possible?

9 A (Bradstreet) I just answered your question. I  
10 do not believe there is.

11 Q Switching gears a little bit, I wanted to get  
12 more information about potential changes to the  
13 project because of a data request response that  
14 the Applicants made that I don't quite  
15 understand. The Forest Society asked the  
16 following question to the Construction Panel  
17 following their Technical Session. And this is  
18 SPNHF 167.

19 At the Technical Session on February 21st,  
20 2017, witnesses stated to the effect that  
21 revisions were being made to the various sets of  
22 underground engineering plans. Now, with  
23 respect to those revisions, are the revisions  
24 contemplated to show any project structure