STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

February 11, 2008 - 9:06 a.m.
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire

In re: SITE EVALUATION COMMITTEE:
Public meeting and public hearing:
Docket No. 2008-01: Joint Application
of Newington Energy, LLC (NEL) and
North American Energy Alliance, LLC
(NAEA) (Co-Applicants) for Approval of
Transfer of Membership Interests in NEL.
Docket No. 2008-02: Promulgation of
Organizational and Procedural Rules.

PRESENT:

Thomas S. Burack, Cmsr.  Dept. of Environmental Services
(Chairman of SEC - Presiding Officer)

Thomas B. Getz, Chrmn.  Public Utilities Commission
(Vice Chairman of SEC)

Graham Morrison, Cmsr.  Public Utilities Commission
Clifton C. Below, Cmsr.  Public Utilities Commission
Harry Stewart, Dir.  DES - Water Division
George Bald, Cmsr.  Dept. of Resources & Econ. Dev.
Allison McLean, Dir.  Division of Parks & Recreation
Amy Ignatius, Dir.  Office of Energy & Planning
Philip Bryce, Dir.  Div. of Forests & Lands (DRED)
Robert Scott, Dir.  Air Resources Div. (DES)
Donald Clark, Dir.  Fish & Game Department
Brook Dupee  Dept. of Health & Human Services
Michael Harrington  Public Utilities Commission

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52
ALSO PRESENT: Michael Iacopino, Esq.  
Counsel for the Committee  
Suzanne G. Amidon, Esq. (N.H. PUC)

APPEARANCES: Reptg. Newington Energy, LLC:
Donald E. Pfundstein, Esq. (Gallagher..)  
Erik Duncan, Esq. (Gallagher..)

Reptg. North American Energy Alliance:
Barry Needleman, Esq. (McLane, Graf...)  
Jarrett Duncan, Esq. (McLane, Graf...)
AGENDA ITEM I
(RE: Docket 2008-01)

Presentation by the Co-Applicants:
Mr. Pfundstein
Mr. Needleman

QUESTIONs/COMMENTS BY MEMBERS OF THE SEC:
Vice Chairman Getz
Mr. Harrington
Dir. Ignatius
Dir. Stewart
Chairman Burack

Chairman Burack presentation of proposed schedule

QUESTIONs/COMMENTS BY MEMBERS OF THE SEC RE: SCHEDULE:
Dir. Ignatius
Vice Chrmn. Getz
Cmr. below

Statements by Atty. Iacopino

{SEC Dockets 2008-01 & 2008-02} (02-11-08)
AGENDA ITEM I (CONTINUED)

VOTE RE: PROPOSED SCHEDULE FOR DOCKET NO. 2008-01

VOTE TO RATIFY RETENTION OF MICHAEL IACOPINO'S LAW FIRM FOR DOCKET 2008-01

VOTE RE: DESIGNATION OF CHRMN. BURACK AS PRESIDING OFFICER re: 2008-01

AGENDA ITEM NO. II (PROMULGATION OF ORGANIZATIONAL & PROCEDURAL RULES)

Statement by Vice Chrmn. Getz

PUBLIC STATEMENTS BY:

Mr. Cunningham

Ms. Geiger

COMMENTS/QUESTIONS BY MEMBERS OF THE SEC:

Cmsr. Below

Mr. Harrington

Dir. Ignatius

Cmsr. Bald

Vice Chrmn. Getz

Chrmn. Burack

Statement by Atty. Amidon

Statement by Atty. Iacopino

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PROCEEDINGS

CHAIRMAN BURACK: Good morning. I'd like to call to order the meeting of the New Hampshire Site Evaluation Committee. My name is Tom Burack. I serve as Commissioner of the State Department of Environmental Services, and in that capacity also serve as Chairman of this Site Evaluation Committee. We are here today for a public meeting of this Committee. And, as many of you already know, this Committee was established by RSA 162-H. The membership of this Committee includes the Commissioners or Directors of a number of state agencies, as well as specified key personnel from various state agencies.

At this point, I would like to introduce the members of the Committee who are present at this meeting. Actually, ask them if they would please introduce themselves.

MR. DUPEE: Brook Dupee, here from the Department of Health & Human Services.

DIR. McLEAN: Allison McLean, Division of Parks & Recreation, Department of Resources & Economic Development.

DIR. BRYCE: Phil Bryce, Director of Forests & Lands, Department of Resources & Economic

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Development.

DIR. STEWART: Harry Stewart, Water Division Director, Department of Environmental Services.

CMSR. BELOW: Clifton Below, Public Utilities Commissioner.

VICE CHAIRMAN GETZ: Tom Getz, Chair of the Public Utilities Commission and Vice Chair of the Site Evaluation Committee.

CMSR. MORRISON: Graham Morrison, PUC.

MR. HARRINGTON: Michael Harrington, PUC.

DIR. IGNATIUS: Amy Ignatius, from the Office of Energy & Planning.

DIR. SCOTT: Bob Scott, from the Department of Environmental services.

CMSR. BALD: George Bald, with the Department of Resources & Economic Development.

CHAIRMAN BURACK: Great. Thank you, all. To my immediate left is Michael Iacopino, who serves as Counsel to the SEC for the first matter we're going to take up today. But, before we get to that particular item, Mr. Getz, you have a motion you need to take here?

VICE CHAIRMAN GETZ: Yes. Under Chapter RSA 162-H provides that the Public Utilities Commission {SEC Dockets 2008-01 & 2008-02} (02-11-08)
will appoint a Staff engineer for each proceeding. So,
for purposes of the docket 2008-01, in the Newington
Energy petition, I would move that, and this is a vote for
my colleagues on the Public Utilities Commission, I would
move that we appoint Mike Harrington as the Staff engineer
for purposes of the Newington proceeding.

CMSR. MORRISON: I second.

CMSR. BELOW: And, I have a question.

Would that include for rulemaking or have we already done
that for the rulemaking?

VICE CHAIRMAN GETZ: He's already been
appointed for the rulemaking proceeding.

CMSR. BELOW: That's fine. Okay. So,
I'm in favor. I concur.

VICE CHAIRMAN GETZ: Then, just note for
the record that the motion carries, and Mr. Harrington has
yet another responsibility.

CHAIRMAN BURACK: Very good. Thank you.
We do have two items on today's agenda. The first item is
an initial review of the Joint Application of Newington
Energy, LLC, as well as North American Energy Alliance,
LLC, also known as "NAEA", for approval of transfer of
membership interests in Newington Energy, LLC, also known
as "NEL". Going to have a lot of abbreviations here and

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acronyms today.

The second item on today's agenda is part of the rulemaking process and is a public hearing regarding the promulgation of organizational and procedural rules for the Site Evaluation Committee.

At this point, we will proceed with our first agenda item. Again, this is the Joint Application of NEL and NAEA, who are the co-applicants, seek approval from the Site Evaluation Committee to transfer the membership interests in NEL from CED/SCS, Newington LLC, a Delaware Limited Liability Company, also known as "CED/SCS", to NAEA. NEL operates a nominal 525 megawatt combined-cycle, dual fuel merchant electric generation facility situated near the Piscataqua River in Newington, New Hampshire, pursuant to a Certificate of Site and Facility issued in Docket Number 98-01, effective May 25, 1999. The facility consists of two General Electric 7FA combustion turbines, two heat recovery steam generators with supplemental firing, and one steam turbine in combined-cycle configuration. The facility has low NOx burners and selective catalytic reduction for emissions control. The primary fuel is natural gas and the secondary fuel is ultra-low sulfur diesel.

In addition to the site proper, the

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facility includes a water supply pipeline and intake structure in the Piscataqua River, and an electric transmission line interconnecting the facility to the substation at the Public Service of New Hampshire (PSNH) Newington Power Station. A natural gas pipeline runs from the Portland Natural Gas Transmission System and Maritimes Northeast (joint facilities) interconnection point to the site to transport the primary fuel. An oil transfer pipeline, which is owned by Sprague Energy, transmits the alternate diesel oil fuel to the site. One above ground diesel fuel storage tank (AST), with one million gallons of storage capacity, is also located on site.

The proposed transferee, NAEA, is owned by Industry Funds Management, 37.55 percent, and Allco Finance Group Limited, 62.45 percent. Subsequent to the transfer of NEL to NAEA, the Co-Applicants submit that day-to-day responsibility for facility operations will continue to be handled by General Electric. General Electric has operated the facility since the commercial operation date of the facility in November 2002.

At this meeting, the Site Evaluation Committee will review the Joint Application and address the implementation of a procedural schedule in this docket. The participation of the Co-Applicants, potential {SEC Dockets 2008-01 & 2008-02} (02-11-08)
intervenors, and the public is welcome.

Notice of this meeting was published in the Manchester Union Leader on February 1, 2008, in Fosters Daily Democrat on January 31, 2008, and in the Portsmouth Herald on February 4, 2008. We have received an affidavit of publication from the Co-Applicants, and that affidavit shall become part of the record. We will begin by allowing the Co-Applicants an opportunity to provide the Committee with the background of their Application and explain the relief they are requesting and the reasons why they are requesting such relief. The floor will then be open to questions from the Committee, followed by questions and/or comments from the public and any potential intervenors. The Committee will then proceed to determine a procedural schedule for resolution of the docket.

So, let us start by inviting the Co-Applicants to introduce themselves and to make their presentation. Mr. Pfundstein.

MR. PFUNDSTEIN: Thank you, Mr. Chairman. For the record, my name is Donald Pfundstein. I am a lawyer with Gallagher, Callahan & Gartrell. And, I have the pleasure of working with NEL and the good people at Consolidated Edison. With me today is, to my right,
your left, Michael Madia. Mr. Madia is the Vice President and Chief Operating Officer of Consolidated Edison Development. He also holds those titles with NEL. In that capacity, he was the senior executive responsible for the design, permitting, construction, financing and operation of NEL. Also with me today is a colleague from my office, Mr. Erik Newman, who has been helping me with this application. And, Barry.

MR. NEEDLEMAN: Good morning. I'm Barry Needleman, from the law firm of McLane, Graf, Raulerson & Middleton. And, with me is Howard Kosel, from AllCapital U.S., one of the owners, joint owners of NAEA, the proposed transferee in this case. And, Don will speak first and describe the background of the Application a little bit, and then I'll speak more about the proposed new owners, and at that time I'll provide a little bit more background information. And, joining us is Jarrett Duncan, who's an associate in my office that's been assisting us in this matter.

CHAIRMAN BURACK: If you could wait, hold on just a moment here. Director Clark.

MR. IACOPINO: Yes. Why don't you take that seat.

DIR. CLARK: Thank you.
CMSR. BALD: Mr. Chairman, this is the first time he comes to a meeting and he sits up front with you?

DIR. CLARK: After it took me 15 minutes to find it.

CMSR. BALD: Now I know where the power is.

CHAIRMAN BURACK: Let me introduce Donald Clark, acting Director of Department of Fish & Game, who also serves as a member of the Site Evaluation Committee. Welcome, Mr. Clark.

DIR. CLARK: Thank you.

MR. PFUNDSTEIN: Thank you, Mr. Chairman. First of all, the Co-Applicants would like to thank the Committee for convening so shortly after we filed the Application. We know what it's like to try to get this Committee together sometimes, so we do appreciate that. The reason that we are here is to briefly outline for you the reasons for the transfer of the membership interest in NEL to NAEA.

Now, the notice for the public meeting described that there would be a brief informational presentation from the Co-Applicants. And, I must warn you that, after speaking with your counsel, Mr. Iacopino, we...
decided the best way to proceed was to have that "brief"
presentation to come from counsel. So, we'll try to keep
it informational, but we'll also do our best to keep it
brief as well, so that matter may continue.

We -- The NEL facility, as it was
described by the Chairman, has operated very successfully,
since its original power-up. And, quite frankly, this is
sort of a bittersweet moment for both me and Mr. Madia,
because we're talking about the transfer of it to another
entity.

But, first of all, a little bit about

NEL. NEL is a 100 percent subsidiary of CED/SCS
Newington, LLC. But, in the last two weeks, Con Edison
acquired the minority interest it did not already own in
that entity, and we will make a filing that will update
the Application materials in that regard. And, what that
does is make the transaction easier. It is now wholly
owned by Con Edison affiliates. The membership interest
in NEL are owned by this entity that Con Edison just
acquired the minority interest in as well. That is what
will be transferred, those membership interests will be
transferred to NAEA in the context of this proceeding.

Now, the NEL project or facility in

Newington was fully certificated by this Committee in May

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of 1999. During that process, as the Committee well
knows, all of the environmental reviews were conducted,
all of the environmental permits were obtained. There
were numerous conditions, as many of you remember, that
the plant has operated under. All of the land use issues
were dealt with in the context of that proceeding. All of
the necessary statutory findings with respect to the
capability of NEL to operate the facility, all of those
items have been handled in the context of the
certification of the facility.

Since construction and operation of the
facility, the project has operated consistent with the
conditions that this Committee imposed on its construction
and operation. And, in fact, we are very proud of both
the environmental and the energy record that the facility
has. We think it's important, because we have asked that
this Committee review this Application in an expedited
manner, and that it also grant its approval in an
expedited manner. And, the fact that the project has been
this successful we believe enables you to do that.

A little bit about the transaction. In
December, on December 10, 2007, Con Edison announced that
it, through Consolidated Edison Development, CED --

CHAIRMAN BURACK: Please proceed.
MR. PFUNDSTEIN: On December 10th, Con Edison announced that it had entered into purchase and sale agreements to sell their ownership interest in entities owning power-generating properties amounting to approximately 1,706 megawatts. The NEL facility, although a bit of a jewel, if you will, is still only one part of a much larger transaction. NAEA is acquiring the entire 1,706 megawatts, including the NEL facility. NEL is one of 12 sites in four states that are subject to this transaction. So, albeit an important component of the transaction, it is only one portion of it. The transaction and sale, as you would imagine, is subject to federal and state approvals and a number of conditions associated with the closing. The Applicant seeks approval -- or, the Co-Applicants, rather, seek approval of the transfer of the membership interest in NEL of CED/SCS to NAEA. That is what we are here for and that is what the Application was filed for.

I'd like to briefly talk a little bit about the Committee's scope and standard of review, and then turn it over to Mr. Needleman, who will talk about the buyer's capabilities and other matters in which, obviously, the Committee will be very interested. The AES proceeding, where you had the transfer of memberships in

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AES, provides a good road map for this current proceeding. And, in fact, in the AES transfer of membership interest docket, the Committee noted that, "when the project is substantially complete, that many of the siting issues implicated by the original Application are moot." In its order, it further stated that "when a change in ownership is proposed", which is what we have here, "it is important for the Committee to investigate the financial, technical and managerial capability of the proposed new owner." The Committee continued in its order to say "Thus, the Committee's focus in the docket is on the financial, technical and managerial capability of the proposed new owner."

Here you have a very similar circumstance. We're talking about the transfer of the membership interest in NEL to NAEA. In the AES proceeding, you had a transfer of membership interest as well. The focus was on the capabilities of the buyer to operate the facility in compliance with the conditions of the Certificate, and we submit is the same focus and review that the Committee has with this Application.

With that, I would ask Mr. Needleman if he would describe for us the buyer's capabilities and make what other points on behalf of the buyer at this time.

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Thank you, Mr. Chairman.

MR. NEEDLEMAN: Thank you, Don. Good morning, everybody. As Don mentioned a moment ago, we are here today essentially to make this a presentation of counsel. I have with me Mr. Kosel, from AllCapital. He is not one of the witnesses who prefilled testimony for us, but he is here to assist me in and answer questions when I'm done. He is a Senior Director at AllCapital, and a former Vice President of General Operations at KeySpan, where he had responsibility for overseeing I think approximately 6,200 megawatts of capacity, including gas-fired facilities at KeySpan. At the final hearing, you will hear from our two witnesses, Stephen Daniel, who is the CEO of AllCapital, and Richard Rudini, who is the head of the energy practice at AllCapital.

What I would like to do this morning is briefly introduce the buyers, and then to talk about the buyers' managerial, technical and operational capability. And, a moment ago Don equated this proceeding with the AES proceeding, and I think he's correct. It is a very good road map. I would also note that, in some respects, I think the work the Committee may have here in relation to that proceeding is easier for two reasons. First of all, in the AES proceeding, there was a change in the operator
at the plant. In this case, as you'll hear, there is no change in the operator. GE has been and will remain the operator at the facility. And, in addition, in the AES proceeding, when the banks took over, it was unclear at that time who was going to be the ultimate owner of the facility. In this case, it's not unclear. NAEA will be the ultimate owner of the facility. And, in fact, the long-term business strategy of NAEA and its owners is to buy and hold assets like this for an extended period of time.

Let me tell you a little bit about the buyers. And, I think it might be helpful if you look at Exhibit B in the Application, which is an organizational chart of what this will look like when the deal is done. We prepared that chart just to try to simplify some of the many acronyms here and try to make it as clear as we could what this is going to look like. The buyer is NAEA, which is North American Energy Alliance. When the transaction is complete, NAEA will be the 100 percent owner of NEL. And, NEL, as you know, right now is the holder of the Certificate. We do plan, after the transaction is closed, to change the name of "NEL" to "NAEA Newington Energy", which was noted in the Application. That entity will continue to hold the Certificate here.

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The chart provides a simple description of the ownership structure of NAEA. And, as you can see immediately above it, it is 100 percent owned by North American Energy Alliance Holdings, LLC, and, in turn, NAEAH is jointly owned by Allco Finance Limited and Industry Funds Management. I want to note for the record that, in the notice, which the Chairman read at the beginning, it described the ownership interest in the proposed transferee, and those percentages were actually backwards; Industry Funds Management will own 62.45 percent and Allco Finance Group will own 37.55 percent. And, that is described in the Application, and I think also noted on this chart. Allco is a financial services company listed on the Australian Stock Exchange. IFM is an Australian investment company that is owned by a series of not-for-profit pension funds in Australia. Both of these entities have experience investing in energy assets around the world. And, in addition, the U.S. subsidiary of Allco Finance Group, AllCapital U.S, has significant experience constructing and operating energy facilities. And, in Exhibit C to the Application, we have included the resumés of the AllCapital Energy Team, and one member of that team is Mr. Kosel.
Let me turn now to the buyers' financial capabilities. In this transaction, NAEA is being funded by a combination of equity contributions from Allco and IFM and a debt facility from Barclay's Bank. The equity contributions coming from Allco and IFM total $597 million and the debt facility from Barclay's totals $880 million, and that comprises the $1.477 billion total purchase price for all of the assets in this deal. A portion of that purchase price, $736 million, is for the Newington facility. The Barclay's funding is currently being negotiated between these entities, and they are in the process of working out the final loan documents right now.

Following the closing, Barclay's will also make available to NAEA two additional credit mechanisms. The first one will be a Letter of Credit in the amount of approximately $120 million. The purpose of the Letter of Credit -- Letter of Credit is to provide additional financial resources. So, for example, if a counterparty in a contractual transaction, such as a Fuel Purchase Agreement, needs additional financial assurance, then that Letter of Credit will be there to support that type of deal. In addition, there will be a $30 million working capital facility also available through Barclay's. The purpose of that will be to make
additional funds available in the event that, say, a major 

   piece of equipment were to need some type of replacement. 

      Turning now to the buyers' managerial 

   and technical capability, let me briefly summarize that. 

NAEA will have overall responsibility for managing the 
entire portfolio of assets that are being acquired from 
Con Ed in this transaction, including Newington. NAEA 
will be supported by AllCapital's Energy Team, which I 
made reference to earlier. Day-to-day responsibility at 
the Newington facility will remain with General Electric. 
GE has been operating that facility, as you heard, under 
contract since it began commercial operation. And, it is 
the intention of NAEA to continue that arrangement as it 
now exists. NAEA will assume the management of that 
contract and will assume the oversight of that contract, 
and handle it in a manner similar to how it's been handled 
in the past. 

      In addition to what I've described so 

far, NAEA will also acquire from Con Edison a subsidiary 
called "CED Operating Company". CED Operating Company has 
approximately 35 employees working at three of the other 
plants that are being acquired in this transaction. CED 
Operating Company performs operation and maintenance 
services at these plants. And, CED Operating Company 

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staff will be available, as needed, to assist with the
operations at Newington.

And, the one final point I wanted to
make is that NAEA will also be acquiring the CEEMI
facility in West Springfield, Massachusetts as part of
this transaction. The CEEMI facility has a staff of 33
people, and the CEEMI staff, together with the Con Ed --
with the CED Operating Company staff, will be available to
assist the facility. And, in fact, as I understand it,
both the CEEMI staff and the CED staff, together with the
GE staff at Newington, will have regular meetings to talk
about facility operations.

That concludes my initial presentation.
And, so, I think I'll stop there and give the Committee an
opportunity to ask any questions that it might have.
Thank you.

CHAIRMAN BURACK: Go ahead, Mr. Getz,
questions?

VICE CHAIRMAN GETZ: Yes, I just had a
couple of procedural questions, I don't know if this is
for Mr. Pfundstein or Mr. Needleman. You mentioned today,
and in the cover letter and in the Petition, Mr.
Pfundstein, that you were "seeking expedited review".
And, I didn't see anyplace where it defined what that
meant. My understanding is, counsel for the Petitioners and counsel for the Committee have talked about a procedural schedule that would go to hearing in late April. Does that coordinate with your notion of an "expedited" proceeding?

MR. PFUNDSTEIN: Bearing in mind that the parties would like to do it today, the proposed schedule that counsel has presented to you is acceptable to us. We understand the reality of your Committee's process. The only point I would make is that, in the future, if we should learn over the next week or two weeks that there are no other parties interested and there's no need for some of these timelines, we might ask that it be further accelerated at that point. But it's certainly acceptable to us as your counsel has presented it.

VICE CHAIRMAN GETZ: And, one other procedural question. I assume there's -- this overall transaction involves three other states and ten other plants. What's happening generally in Massachusetts, New Jersey, and Maryland? Are those timelines -- how do they comport.

MR. PFUNDSTEIN: Generally speaking, I think we have viewed this proceeding as to be one of the longest processes, and that's why we have asked that it be
expedited as much as possible. For instance, I think the antitrust clearance has already been received. I don't know specifically about the other approvals. But, based upon the conference calls that I have attended, in terms of how the process is going, this one seems to have the longest tail.

VICE CHAIRMAN GETZ: Well, this does seem to be, if I'm reading this correctly, it's half the price and a third of the megawatts involved in the entire transaction. Is that an accurate characterization?

MR. PFUNDSTEIN: Yes.

CHAIRMAN BURACK: Are there other questions from members of the Committee for counsel for the parties? Mr. Harrington.

MR. HARRINGTON: Yes, just a little bit more on this, go back to your Appendix B chart, I'm just trying to follow this a little bit better here. You say that there's a "contract with General Electric". Is that an extension of the existing one or are you signing a brand-new one with new terms and conditions?

MR. KOSEL: It will be a continuation of the existing contract.

MR. HARRINGTON: So, they actually perform the day-to-day operation of the plant. And, they
report to -- they're going to report to which block?

MR. NEEDLEMAN: When the deal is closed, assuming all of the approvals are secured, Con Ed will report to NAEA.

MR. PFUNDSTEIN: No, GE.

MR. NEEDLEMAN: I'm sorry, GE will report to NAEA.

MR. HARRINGTON: Okay. And, those are people that will make the management decisions on actually running the plant, as far as, you know, budget approval, personnel, etcetera, etcetera, operating stuff?

MR. KOSEL: Right. The day-to-day operation will be done by General Electric, and the oversight will come from the NAEA organization. And, in the NAEA organization, the Asset Managers will reside and provide the overall management of the facility. But the day-to-day operation will continue to be done by General Electric.

MR. HARRINGTON: And, who will arrange for the purchase fuel contracts that will be done?

MR. KOSEL: We are in the process of negotiating a tolling arrangement with a major provider.

MR. HARRINGTON: I'm sorry, I'm not familiar with that term, "tolling"?

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MR. KOSEL: "Tolling" is where the provider will supply the fuel, and essentially Newington will convert it to electricity. So, they will provide the fuel -- We're in the final stages of negotiating a tolling agreement with an energy provider, major energy provider. A "tolling arrangement" is a arrangement by which the provider will supply the fuel. Newington will convert it to electricity. And, then, the electricity will be marketed by the same provider. So, essentially, we just convert it into energy, and they will provide the fuel and sell the energy.

MR. HARRINGTON: And that contract is negotiated through which box again?

MR. KOSEL: NAEA.

MR. HARRINGTON: NAEA. Thank you.

CHAIRMAN BURACK: Are there other questions from the members of the Committee? Ms. Ignatius.

DIR. IGNATIUS: Thank you. The Application and the testimony don't describe some of the details that we've just heard about, and I understand this is something still developing. I guess, if there's a deadline for submission of later details to get into the record, that would be helpful, so that there's not a

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constantly moving target, and recognizing that not
everything is resolved. It would be, I think, prudent to
have a date for submission of things like the fuel
contract you were just describing, the two Letters of
Credit from Barclay's that I don't think are in the
testimony or in the Application, I didn't see them, if
they are, but Mr. Needleman just described, and how those
will be used. I think there's preference to other, a
discussion with some personnel on whether or not they will
be retained, and, as of the time of the filing at least,
hadn't yet been resolved. And, so, as this tightens up,
maybe there could be a submission to the file for, whether
it's in the form of testimony or submission of the
documents themselves, I would find helpful.

Another question I had is whether or
not, when you have all of the pieces in order, do you
anticipate a reduction in force at the plant, the same, or
an expansion of the numbers of people at the plant?

MR. KOSEL: At this time, we would
consider that the existing facility will be operated and
maintained with the same complement that exists today.

DIR. IGNATIUS: And, I guess, if that's
the case, any further detail on, when you say that "staff
will be available at these other plants" and "other teams

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within the larger organization", what does that really
mean? I mean, "available as needed" for what? For what
sorts of things would you turn to them? How would you
have any -- do you have any guarantees that they will
actually be available? I mean, they've got, I assume,
other jobs to do all of the time as well. So, if there's
any detail worked out on what that means to say "they're
available as needed", I think that would be helpful.

I also had a question on whether there
have been any issues with the Town of Newington, any state
regulatory bodies, any federal authorities, during the
operation of the plant? I understand it's been well run
and there have been no findings of any problems. But are
there any -- are there any issues that have risen to the
level of actually actions taken against it that we should
know about and consider? And, either today, or in this
supplemental time would be helpful to have details on that
if there is anything that we should be evaluating. Maybe
right now, if you know --

MR. MADIA: I'm not aware of anything.

The asset management and oversight on the General Electric
day-to-day operations has resided since inception with my
group. We've been a good corporate citizen and funded
charity events in the area, supported the construction of
-- supported the funding of the Industrial Corridor Road, which is now called "Shattuck Way" in Newington. So, the project has been, again, a good corporate citizen and a good neighbor in the community. We have not had any violations or penalties or any kind. The facility has an excellent environmental track record. So, I will go back, but I do not know of any issue with any government agency, regulatory body, or the Town.

DIR. IGNATIUS: Thank you.

MR. PFUNDSTEIN: I could simply add to that, that I spoke with Tom Morgan, who is the Town Planner in Newington. He was the individual that was involved with the initial certification of the project, to essentially see how that was going. And, obviously, he's not here, but I will represent to you that he told me that he's actually enjoyed very much having Con Ed in the Newington facility.

DIR. IGNATIUS: Thank you.

CHAIRMAN BURACK: Mr. Stewart.

DIR. STEWART: In terms of the -- as we get into the hearing process, I think it would probably be useful to have a summary of some form of the environmental compliance history of the facility itself. And, I, you know, off the top of my head, there's an NPDES permit and {SEC Dockets 2008-01 & 2008-02} (02-11-08)
an air permit at least. And, it would be useful to know and put on the record the history, which presumably is pretty good. And, also, the acquiring company, it would be good to have some articulation of the environmental compliance history of the Company that's acquiring the facility also.

CHAIRMAN BURACK: If I may, I think what Mr. Stewart is suggesting is very helpful. When we're talking about the environmental history of the acquiring company, I think we, obviously, need to be looking to Allco Finance Group and Industry Funds Management or whatever companies they have owned and managed over time, so we know what their track record is in owning other facilities. I think it would also be helpful if you could provide to us, for this particular facility in Newington, a list of all of the permits and approvals currently held by the facility, including confirmation that, for any of them, if there are requirements to notify the permitting entity of a change in control of the company, that we've identified what those notices are and that, in fact, they been given or you have a schedule on which you were giving them, and just confirm that there isn't some additional permitting approvals that need to occur in order to allow this transfer of ownership to occur. Mr. Pfundstein.

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MR. PFUNDSTEIN: Mr. Chairman, we can file that complete package shortly.

CHAIRMAN BURACK: That will be very helpful. Are there other? Mr. Harrington.

MR. HARRINGTON: Yes, just a quick follow-up. When do you anticipate signing the contract with GE for the operation and will you be submitting a copy of that to the Committee?

MR. KOSEL: At closing.

MR. MADIA: The contract is held by NEL. So, the Co-Applicant is acquiring the --

(Multiple parties speaking at the same time.)

MR. HARRINGTON: Go ahead. Excuse me.

MR. MADIA: The contract itself with General Electric is held by NEL. So, we would envision that the contract stays with that entity. There would be no changes. And, the O&M contract has been filed with the Application.

CHAIRMAN BURACK: Other questions?

(No verbal response)

CHAIRMAN BURACK: If I may then, and I will portray that I have not yet had a chance to read the entire purchase and sale agreement, but I think it would...
also be helpful for the Committee to understand, if it's not already set out in here, and if it is, if you could point out to us where it is set out, an understanding of how the sales price for this facility or the cost that's being allocated to this facility is, in fact, allocated either to the value of the real estate or to whatever other -- whatever other aspects of the values associated with the facility -- with the overall facility and site are being set out. I trust you understand what I mean, what I'm speaking to?

MR. NEEDLEMAN: We do, and that detail isn't in there and we'll provide it.

CHAIRMAN BURACK: Great. Thank you.

Other questions?

(No verbal response)

CHAIRMAN BURACK: Okay. What I'd like to do now then is to see if there are any questions or comments from the public or potential intervenors in this proceeding?

(No verbal response)

CHAIRMAN BURACK: Any members of the public or potential intervenors who would like to comment at this time?

(No verbal response)
CHAIRMAN BURACK: Okay. Very good.

Seeing none, I think we should turn now to a deliberation on our procedural schedule. As a consequence of the requests that have been made by various members of the Committee here for additional information to be submitted, I think it would be constructive if we could include in the proposed timeline that we have, and maybe I will just read this into the record, and I apologize, but there's no other way to do this than for me to read this. And, then, let's talk about a way that we could perhaps build in a deadline prior to -- at least prior to probably either the Petitions for Intervention being due or at least certainly before a prehearing conference for submittals.

All right. We will go ahead and put into the record for this hearing as an exhibit the proposed timeline, which I believe has been circulated to all of the members of the Committee, as well as the Co-Applicants and their counsel and members of the public. And, Mr. Iacopino will make additional copies available here to any who do not yet have one. So, we are looking at a schedule, obviously, commencing with our Initial Public Notice and Order issued January 29th, and today's public meeting here on February 11th. And, proceeding to a deadline for publication of February 22nd; Petitions for

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Intervention due March 7th; objections by March 12th; prehearing conference with the Committee's Counsel on the 13th of March; issuance of a Notice of Procedural Schedule and Final Hearing on March 19; deadline for publication of that schedule and Notice of a Final Hearing on the Merits on the 28th of March; discovery completion deadline, April 11; deadline for Intervenors to file pre-filed testimony by the 18th of April; Applicants -- Co-Applicants to file their supplemental pre-filed testimony by the 22nd of April; and final hearing and deliberative session on the 28th of April.

And, I think what we need to talk about doing is inserting in here probably, and counsel and Co-Applicants, we, obviously, seek your input on this, ideally, by the end of February, submittal of the additional information that we've described here in today's discussion. Is that -- Is the end of February reasonable? And, is it possible that some of the material might be submitted sooner? Obviously, the sooner the information is submitted, the more helpful it is to the Committee and to potential intervenors as well, so that everybody has a better understanding of what the issues are.

MR. PFUNDSTEIN: Certainly NEL can meet
that deadline, I think, easily.

MR. NEEDLEMAN: And, Howard and I were
just talking, and I think we can as well. So, if we want
to just say February 29th, I think that would work.

CHAIRMAN BURACK: Okay. Very good. Is
that acceptable, members of the Committee? Okay. So, we
will set February 29 as a deadline for submittal of the
additional information requested at today’s public hearing
-- I should say at today’s -- yes, today’s hearing.

Anything else? Ms. Ignatius?

DIR. IGNATIUS: Mr. Chairman, are we
required by the statute to have a public hearing in
Newington, in the county? I mean, the statute, I just
looked at 162-H:6, IV, says "Within 30 days after
acceptance of the Application, the Committee shall hold at
least one public hearing in each county in which the
proposed facility is to be located." There's no -- I
wondered if there was some out for if it's only a transfer
of ownership or something, you don't need to. I think
it's more designed for the new construction type thing,
but it doesn't really say that.

MR. IACOPINO: I think --

CHAIRMAN BURACK: Mr. Iacopino.

MR. IACOPINO: I think this portion of
the statute that Ms. Ignatius refers to is when there is
an application filed. We had public informational
meetings in Rockingham County back at the time when NEL
first proposed their Application. I don't believe that it
is necessary. Of course, if the Committee wishes to have
their meetings there, they certainly can. We can get that
arranged. But I don't think it's necessary. I don't
believe that we did that when we had the AES transfers.
All of the hearings were held right here in Concord.

CHAIRMAN BURACK: Mr. Gets.
VICE CHAIRMAN GETZ: So, I guess, Mike,
what you're saying is the difference between an
Application for Certificate in the first instance, and
perhaps this really should have been called a "Petition
for Transfer of a Certificate", rather than an
"Application"?

MR. IACOPINO: Well, they call it an
"Application for Transfer", but it's not an "Application
for a Certificate", and that is the portion of the
statute, which is referenced by Ms. Ignatius, is for an
Application for Certificate. There's already been a
certificate issued in this particular case, and what we're
determining is whether or not to transfer -- the ownership
of the membership interests in that certificate can be

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transferred.

CHAIRMAN BURACK: Ms. Ignatius, are you --

DIR. IGNATIUS: No, that's fine. I think that distinction, I guess, makes sense. And, I think you're right, we didn't do it with AES.

MR. IACOPINO: Remember, at the time of the Initial Application, there's a whole lot more going into the pot, a whole lot of environmental issues, planning issues, you know, local issues, and that's why I believe the Legislature has us make sure that we have a hearing in each county where the facility is going to exist, when there's an Application for the original certificate.

CHAIRMAN BURACK: Thank you. Other questions and comments on this matter? Mr. Harrington.

MR. HARRINGTON: This is a follow-up going back to that, I don't know if it's just my copy, but looking at the Operation and Maintenance Agreement, a couple of questions, I guess. This is a copy of the existing one that's in the books now?

MR. PFUNDSTEIN: Yes.

CHAIRMAN BURACK: Could you state what exhibit you're looking so I can turn to it?

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MR. HARRINGTON: Exhibit D.

CHAIRMAN BURACK: Exhibit D. Thank you.

MR. HARRINGTON: And, the first four or five pages, and then there's a signature page, then it starts out with a page listed as "Appendix A-8", and I'm wondering what happened to the rest, A-1 through 7?

MR. PFUNDSTEIN: Actually, the Application, we attached what we believe to be were the relevant sections, --

MR. HARRINGTON: Okay.

MR. PFUNDSTEIN: -- because this is what described the responsibilities of GE, basically. Now, we can file the entire document, I don't see any reason why we can't. The reason we didn't, it was voluminous.

MR. HARRINGTON: No, that's fine. I just wanted to know -- make sure I wasn't missing something. And, what you're saying then is that this would be the basis for a new document that would be not exactly the same, because it would be with the new company?

MR. PFUNDSTEIN: I guess I'd let the buyer -- it would be the same.

MR. KOSEL: The same document.

MR. HARRINGTON: It's the same document.
itself. Okay. Thank you.

CHAIRMAN BURACK: Are there other questions?

(No verbal response)

CHAIRMAN BURACK: Is there further discussion? Is there further discussion of the draft schedule? Mr. Below.

CMSR. BELOW: The only question I might have is, if per chance there's no intervenors, is there's not any -- there's none indicated today, perhaps, when it gets to the point of the prehearing conference on March 13th, and the March 19th, the Chair issuing an Order of Notice of Procedural Schedule and Final Hearing, maybe at that point the Chair could have some discretion to accelerate the final hearing, if there's no Intervenors and the intervening steps aren't necessary.

MR. PFUNDSTEIN: Great.

CHAIRMAN BURACK: That's, I think, an excellent suggestion, and I think that's the way that, I'm seeing a lot of nodding heads, and I think that's the way we will proceed. Certainly, if we can move this along more quickly than what's set out here, based on a lack of Intervenors or other issues arising, we will certainly make every effort to do that.
MR. PFUNDSTEIN: Thank you, Mr. Chairman.

MR. NEEDLEMAN: Thank you.

CHAIRMAN BURACK: Okay. I think, then, what I'd like to do is see if there is a motion to adopt this proposed timeline, as we have modified it?

DIR. SCOTT: So moved.

(Commissioner Bald indicating.)

CHAIRMAN BURACK: Motion by Commissioner Bald. Is there a second?

MR. HARRINGTON: Second.

CHAIRMAN BURACK: Second by Mr. Harrington. Any further discussion?

(No verbal response)

CHAIRMAN BURACK: Hearing none, all in favor?

(Multiple members indicating "aye".)

CHAIRMAN BURACK: Opposed?

(No verbal response)

CHAIRMAN BURACK: Abstentions?

(No verbal response)

CHAIRMAN BURACK: None. Thank you.

Okay, we've adopted a timeline. I would also entertain a motion to ratify the retention of the law firm of --
Michael Iacopino's law firm to serve as legal counsel to
the Site Evaluation Committee for purposes of this
proceeding?

DIR. STEWART: So moved.

CHAIRMAN BURACK: Motion from Mr. Stewart.

CMSR. BALD: Second.

CHAIRMAN BURACK: Second from Mr. Bald.

Any discussion?

(No verbal response)

CHAIRMAN BURACK: All in favor?

(Multiple members indicating "aye").

CHAIRMAN BURACK: Opposed?

(No verbal response)

CHAIRMAN BURACK: Abstentions?

(No verbal response)

CHAIRMAN BURACK: Thank you. Motion carries. Okay. Are there any other matters that we
should address with respect to this, this proceeding at
this time? Mr. Getz.

VICE CHAIRMAN GETZ: Well, perhaps one
more motion, that may be a matter of "belts and
suspenders". But I would move, to the extent that it's
necessary, that we designate the Chairman, Commissioner
Burack, as presiding officer, and that he be designated to resolve any procedural matters that arise during the conduct of this proceeding, and a single order can be issued by him under that authority. So moved. Is there a second?

DIR. CLARK: Second.

CHAIRMAN BURACK: Second by Director Clark. Any discussion?

(No verbal response)

CHAIRMAN BURACK: Hearing none, all in favor?

(Multiple members indicating "aye").

CHAIRMAN BURACK: Opposed?

(No verbal response)

CHAIRMAN BURACK: Abstentions?

(No verbal response)

CHAIRMAN BURACK: Thank you. Motion carries. Okay. Anything else with respect to this matter?

(No verbal response)

CHAIRMAN BURACK: If not, gentlemen, thank you very much for being with us here today to begin this matter. We look forward to working with you as we see this matter through. So, thank you.

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MR. IACOPINO: Mr. Chairman, I'll have an order for you to sign and for the Applicants to publish probably by the end of the day.

CHAIRMAN BURACK: Thank you very much. We will seek to get that out as expeditiously as we can. Okay. This concludes the first portion of today's public hearing.

Okay. We will now proceed to Agenda Item Number 2, which is Docket Number 2008-02, promulgation of organizational and procedural rules. Today is a public hearing regarding the promulgation of organizational rules and procedural rules for the Site Evaluation Committee. Formal notice of hearing on these rules was originally published in the New Hampshire Rulemaking Register on January 18, 2008, Volume XXVIII, Number 3, at Pages 1 and 3. Notice was also published in three different newspapers in connection with the notice on the Newington matter that we just heard, including in the Union Leader, on February 1st of this year; Foster's Daily Democrat, on January 31 of this year; and Portsmouth Herald, on February 4 of this year.

So, what I'd like to do now is turn the discussion over to Vice Chairman Getz, who will present the proposed rules, and thereafter we will take public
comment, if any, on these proposed rules. Vice Chairman.

VICE CHAIRMAN GETZ: Thank you, Mr. Chairman. Just note for the record that the Committee voted on December 13, 2007, to adopt Initial Proposals of organizational and procedural rules. That the hearing this morning is held pursuant to RSA 541-A:11 under the Administrative Procedures Act for the purposes of taking public comments on the proposed rules, and also note for the record that a quorum of the Committee is required for consideration of the rules, and that, in fact, a quorum is present today.

I think the Chairman has already noted the various means of publication. And, I think we’ve had a couple of instances in the past where we’ve provided general background on these rules that are filed in compliance with Senate Bill 140 from last year to adopt new procedural rules. So, at this point, would turn to members of the public that have signed up to make public comment. And, I also note that the deadline for written comments is February 21.

So, Mr. Cunningham, on behalf of the Sierra Club, if you could make your public comments please, sir.

MR. CUNNINGHAM: Mr. Chairman, thank you
very much, members of the Committee. I have written

suggestions to make to the rules today, I don't have

e enough copies, unfortunately. I think there are just ten

there.

MS. AMIDON: I'll make additional

copies, so that all the members of the Committee have it.

MR. IACOPINO: It looks like there's

about nine there.

MR. CUNNINGHAM: The testimony I want to

offer, perhaps we can wait till everybody has a copy of

the suggestions that I've made on behalf of the New

Hampshire Sierra Club, but the testimony I have to offer

is patterned after the testimony that I gave before the

Science, Technology & Energy Committee, in support of

House Bill 1562. I know Commissioner Getz attended those

hearings, and the bill was offered by Gene Andersen of

Lebanon. And, the bill is still pending before Science,

Technology & Energy Committee. At that hearing,

Commissioner Getz offered testimony on the process this

Committee engaged in in the Lempster process, and his

testimony was persuasive and credible. And, I want to

compliment the Committee on doing such an outstanding job

in that process, and hearing and listening to the

environmental concerns that were raised and the community

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concerns that were raised during that process. It was a
good job, an outstanding job, and you're to be
complimented.

However, as per the testimony that I
offered on House Bill 1562, I think this -- the rules are
deficient in a number of respects. When you have my
suggestions in front of you, I've offered some suggestions
that have both procedural due process import and
environmental import. In Part 201.04, the rules simply
call for notifying people who may have residences or
buildings on impacted properties. The Sierra Club
suggestion is that every property owner, whether there's a
building there or not, should be notified in writing that
a new project is pending and may affect or impact their
property. In Part 201.04(g)(3), I substitute this
language, and I think this is critical. The notice should
include a "description of all adverse impacts on the
environment that may be caused by the proposed facility,
including impacts to the interconnected broader
environment."

Now, what this means is, and the severe
limitations, for example, in the wetlands permitting
process, confine examination of the wetlands impact to the
dredge and fill area itself. So, what this notice should
require is a broader look at the environmental impacts of
a new siting in energy projects.

This I certainly believe is part of the
constitutional procedural due process that should be
required in anything that is going to impact or adversely
affect people's property. And, certainly, environmental
impacts beyond the narrow confines of the project itself,
or the narrow confines, for example, of the wetlands,
should be examined and considered by this Committee.

If the Committee would look at, and I'm
not just assuming this or making this up, if the Committee
would look at the "purpose" clause of 162-H:1, you'll find
that references to the environment, and at least eight
times in the "purpose" clause, that it is part of the
Committee's responsibility to examine the environmental
impacts of projects. At the bottom of 162-H:1, and in II,
it says this: That there should be provided "a full and
timely consideration of the environmental consequences,
all entities planning to construct facilities in the state
should be required to provide full and complete disclosure
of such plans." So, what we are asking is that, not only
that narrow impacts of the project be considered, but the
broader impacts of the interconnected environment be
considered as well, and not be limited by just the narrow,
narrow confines of the project locations.

If you look at my suggestions on Part 201.04(g)(4), I would make the same argument. That an environmental assessment has to be conducted in conjunction with examination of these projects, and, again, not just in the narrow confines of the project. And, that there should be a burden of proof. And, I know Commissioner Getz and I somewhat disagreed on this language during the Committee hearings on HB 1562, but our proposed language is that "The environmental assessment must demonstrate a reasonable certainty that the proposed facility will not cause significant adverse environmental impacts, or, if the project is expected to cause significant environmental impacts, a detailed description of each such impact and, importantly, a description of alternatives that will minimize such impacts, including the alternative of no action and any significant environmental impacts such alternatives may have."

Now, the idea of examination of alternatives is to look at "are there ways to build this or construct this project that will be less environmentally damaging?" And, I would suggest to the Committee once again that this is -- the support for this rules language is found in the "purpose" clause of {SEC Dockets 2008-01 & 2008-02} (02-11-08)
162-H:10, where the Committee has the responsibility to carefully examine the environmental impacts of the project.

Finally, and one of the things that I think is most deficient, in terms of the examination and responsibility of this Committee, is the body of people to challenge the siting decisions. If the Committee may recall, if, for example, if a landowner, who's losing his alfalfa field, a landowner who's losing his timberland, a landowner who's losing his view, a landowner who is losing his pond, unless he has a hundred of his best friends sign up with him, he can't come to the Siting Committee and be heard, as a matter of right, unless a hundred people sign up to support him. That's totally inappropriate. I find that and I would subject to you that's totally inappropriate from an environmental standpoint, it's totally inappropriate from a standpoint of property rights. And, I would suggest to you very strongly that it's totally inappropriate from the aspect of procedural due process. If you or I are impacted by these siting decisions, we should have a right to come in and at least challenge that decision, if we are adversely affected by that decision, and not have to be bound and confined to finding a hundred people or the unanimous tenor of a board.

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of selectmen to come in and challenge.

Now, I know that this Committee can take cognizance of complaints by landowners or property owners that are impacted by these siting decisions. That's not enough. My suggestion to the Committee is that the rules should provide that any person adversely affected by a siting decision shall have the right to come in and be heard as a matter of right. That's not to say that you'll find that the siting decision should be changed or will be changed. But, I think, as a matter of right, that person, who is injured or adversely affected, before his property is taken by eminent domain should have the absolute right to come and challenge the decision.

I just cannot understand how legislation of this nature can be so prohibitive of individual property rights in this state, and notwithstanding the consequences to the environment. I thank you very much for listening to my comments. And, I'd certainly be willing to take questions.

CHAIRMAN BURACK: Thank you, Mr. Cunningham. Susan Geiger, from the law firm of Orr & Reno. Ms. Geiger.

MS. GEIGER: Yes. Good morning, Chairman Burack and members of the Committee. I'm Susan
Geiger, from the law firm of Orr & Reno. And, I'm here today representing Iberdrola Renewable Energies U.S.A. We appreciate the opportunity to provide these comments to the Committee, and we commend the Committee for its work on this initial draft, which we believe will greatly assist parties in drafting applications and in participating in proceedings before the Committee.

We have just a couple of suggestions for the Committee's consideration. They're based upon our experience in working with the Department of Justice's 800 rules and upon practice before the Committee. And, we think these suggestions will promote efficiency and fairness.

The first suggestion that we have is that Draft Rule 202.06(c) should require service by e-mail, unless a party or person listed on the service list has indicated an inability to receive service by e-mail. This is similar to the PUC's Rule 203.11(a).

Other rules in the Draft Rules that the Committee has circulated here contemplate the use of e-mail for communications relating to the SEC process. For example, proposed Rule 201.01(a) requires the Application to be filed in electronic format, and 202.04(d)(3) requires attorneys and other persons appearing in a representative
capacity to provide their e-mail address when filing an appearance.

The reason that we make this suggestion is that it will eliminate the time and expense associated with making and mailing hard copies to multiple parties and other interested persons listed on the service list. In addition, it will also avoid time delays that result in communicating via the United States Mail. From personal experience, for example, in the past, written communications from the Committee, for example, have taken up to several days to reach communicants in downtown Concord. So, when you have a short timeframe, for example, to respond to either an order of the Committee or a motion that's filed by another party, it's most helpful to just have them served by e-mail, so that the process can be a little bit more efficient and timely.

The other suggestion that we have, one of the other suggestions is that we add a provision to proposed Rule 202.21, which requires that, if members of the public file written statements and other written material with the Committee, subcommittee or presiding officer, we believe that they should also provide copies of such filings to the Applicant, Counsel for the Public, and any other persons or parties listed on the service.
list prior to the close of the record. The reason for
this request is fundamental fairness. If public
statements and public comments are going to be filed with
the Committee, we think it's only fair that all parties
should receive copies of them. You know, currently,
member of the public can file comments with the Committee.
And, if the Committee doesn't take it upon itself to
inform everyone on the service list, the Applicant and
other parties have no way of knowing what's been put into
the record, you know, unless they make a constant check of
it. So, we think that it's only fair that, if members of
the public want to submit written comments, especially
after the hearing is closed, I think, if the hearing is
going on, and members of the public show up and give oral
comments, and then follow them up with written
proceedings, then all of the interested parties will be
there and will know about them. The problem arises is, if
public comments, especially written comments and materials
are submitted to the Committee after the close of the oral
hearings, parties, such as the Applicant and Counsel for
the Public don't know about them, and, therefore, would
not be given an opportunity necessarily to follow up with
any rebuttal or any other communications or information
that they feel would be relevant and appropriate.

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And, lastly, another recommendation that we have is based upon a rule that the PUC has, and it's PUC Rule 203.28, which provides that "The Commission shall take a view or conduct an inspection of any property which is the subject of a hearing before the Commission, if requested by a party, on its own motion, if the Commission shall have determined that the view or inspection will assist the Commission in reaching a determination in the hearing." And, I don't believe anybody has ever challenged the Site Evaluation Committee's authority to take a view. This has happened in the past, and I think that it's very helpful to all interested parties. So, it may not be absolutely critical or necessary to include this in the rules. But the PUC has a rule such as this one, and I mention it only because I think it might be helpful in making sure that the Committee's authority is reflected in its rules, and that parties who think that views would be helpful could make a request for that under the rules.

Again, we thank you for the opportunity to make these comments. I think the only thing I would add, and I wasn't prepared to do this until I heard Mr. Cunningham's comments, is just remind the Committee that, under 541, RSA 541, any party who is aggrieved by
the Committee's decision, is directly impacted by it, can move for a rehearing. So, there is an opportunity for any interested party, who is directly aggrieved, to file for a rehearing. And, I don't think that that needs to be put in the Committee's rules.

Thank you. I'd be happy to answer any questions, if you have them.

VICE CHAIRMAN GETZ: Thank you.

Mr. Cunningham and Ms. Geiger are the only members of the public who have signed up to make comments. Turn to the Committee, if there's questions or comments from the Committee? Commissioner Below.

CMSR. BELOW: I have a comment and a suggestion for something to add to the rules that I'd just like to make publicly. Under Site 201.03, "Format of Application", I suggest that, after (a), there be a new (b) and (c), and the other ones be renumbered. (b) could read something like this: "Double-sided printing or coping of applications is permitted and encouraged, although not required." And (c): "An electronic version of the application shall be provided in PDF, Portable Document File, or Word format. If the electronic version of the application is greater than five megabytes in size, it should be submitted as multiple files, each five
megabytes or smaller in size."

And, then, a similar provision could be added under 202.05 as (3) and (4), replacing the word "application" for "document" or "each document". And, just speaking to that, recently, through the Governor's last meeting with agency heads, there was a memo that I think DES helped write, and it came from the Energy Coordinator, encouraging agencies to go to double-sided copying because of the energy and resources that that saves. And, a lot of times people filing don't know that's allowed or encouraged. And, if we say that, I think that would reduce the amount of paper we have to carry around to these hearings. And, obviously, because we say we're going to post the application on the Web, it would really help if the applicant submitted it in electronic format, instead of having us have to scan it. And, the idea about a size limit is that some people have a hard time downloading, you know, 20-megabyte files. So, if it's in pieces, people can download it if they want to view it on their own computer or open it. So, those are a couple of thoughts.

Vice Chairman Getz: Anyone else?

Mr. Harrington.

Mr. Harrington: Yes, I had one question
and one comment. A question for the gentleman from the
Sierra Club. Your second and third comments or changes,
to 201.04(g)(3) and 201.04(g)(4), I just want to make this
clear. You're saying the statutory basis for those
comments is found in the "Declaration of Purpose" in RSA
162-H:1?

MR. CUNNINGHAM: That's our position,
yes.

MR. HARRINGTON: Okay. Thank you. I
had a separate comment on 201.04, this is under
Application of Certificate of Site and Facility, (e)(2),
which presently says "Capacity in megawatts, as designed
and intended for operation". I think that's a rather
ambiguous term and probably needs to be clarified.
Because, in the example of a wind project, it could be
100 megawatts could be its design, what it's intended
operation is not clear, because it's going to be all over
the place. Some days it may be 100, some days may be
zero, some days may be 20. So, I just think we should --
let me come up with a clarification to that section to
make it a little bit more clear as to what capacity we're
actually requesting people submit. And, I'll try to come
up with something and submit it. And, that was all I had.

VICE CHAIRMAN GETZ: Thank you. Anyone
else? Ms. Ignatius.

DIR. IGNAVIUS: Thank you. I just want
to make a comment on the issue of affected landowners, and
make sure that I'm understanding Mr. Cunningham's
comments. Under the current structure, if the locality
does all of the permitting, and it doesn't come before the
Site Evaluation Committee, there's an appeal process
through the normal planning and zoning standards. And,
so, anyone who's affected can participate in that
proceeding and can appeal that determination, without any
resort to signatures and petitions to the SEC. If the
case comes before the SEC, that aggrieved landowner who
feels they're affected by it can intervene and can appeal
any determination if they find it adverse. So, I guess
I'm not understanding the notion that you have to have
signatures and a petition for a landowner who feels
aggrieved by the petition, in order to be before -- to
have some rights on the land.

And, the final comment, about eminent
domain, this is not a proceeding, this is not an entity
that makes determinations as to eminent domain. That's
yet another process, with another set of rules for
participation and appeal, if it's -- if the person feels
they disagree with the determination.

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MR. CUNNINGHAM: My purpose, with respect to eminent domain is, once the Site Evaluation Committee decides that the site is appropriate under the statute, then that decision is -- renders the taking of that land a public purpose. So, the landowner, at that juncture, has no basis to challenge that location in any other proceeding. So, once the jurisdiction of this Committee is invoked and a decision is made by this Committee to take that man's land or farm or that business owner's building, that he has no other remedy other than eminent domain. Eminent domain does not permit him to challenge whether or not it's a public purpose. That decision is made prior to the eminent domain case itself. So, that's our position on that.

The literal language of the statute provides that there must be 100 voters before there is standing as a matter of right before the Site Evaluation Committee. That's in the language. And, we've urged the Science, Technology & Energy Committee to change that language to "adversely affected" property owner.

VICE CHAIRMAN GETZ: Commissioner Bald.

CMSR. BALD: I'm a little confused.

When was the last time we got involved on eminent domain on any project?

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VICE CHAIRMAN GETZ: Mr. Iacopino.

MR. IACOPINO: We do not. I think what the position being posited to you is that a applicant could come in and say "I want to build a plant here or there." If they've always owned the property or had a lease or had, at least for where the footprint of the plant is, has had ownership interests or equity interests in the title to that property, I can't imagine that we would ever just let some company come and say "I want to build a plant on, you know, Mr. Smith's land." We wouldn't have the authority to do that. So, we do not have eminent domain.

I think what Mr. Cunningham may be addressing is, once a plant is built, and the environmental aspects that go beyond the footprint of the -- of where the facility is actually located itself, that there may be impacts on abutters and people downstream or upstream, even far away, I think that may be more of what he's speaking about, more of a constructive eminent domain through the environmental effects. But I think that the statute addresses, that's why we have this entire process, to weigh what those effects will be on the greater community, and to decide and weigh the relative merits of the application.

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We've never -- We don't have authority
to do eminent domain. Unless the PUC or the state --

VICE CHAIRMAN GETZ: I think the
difference between an actual taking of real property and
some, I guess, constructive taking of other types of
property rights, which I guess is the theory, that there's
some interference with other landowners' use of their
property or enjoyment of their property in some way. So,
I think that's the theory.

MR. CUNNINGHAM: Mr. Chairman, may I
respond to what my concern is? For example, in the North
Country, we know, in the loop, there's inadequate
transmission capability. So, and suppose a developer
comes in and says "Look, I want to build X plant, and I
want to connect to the loop." And, so, there's additional
transmission needed. To do the additional transmission,
the towers may have to be enlarged and the width of the
right-of-way may have to be enlarged. And, once that
decision is made, that land has to be acquired. If a
landowner does not wish his property along the existing
right-of-way to be acquired, then it can be taken by
eminent domain, because of the decision of the Site
Evaluation Committee. That's my suggestion. That, if
there's structures or facilities that need to be expanded
or enlarged, for example, along an existing transmission, because of the need to upgrade transmission, he's going to be subject to eminent domain. And, I'm not suggesting that this Committee has any eminent domain authority at all. What I'm suggesting is, is that the Committee, once it decides that this is an appropriate location for upgrading transmission, then it is a public purpose for eminent domain purposes. And, the landowner basically has no say in that.

VICE CHAIRMAN GETZ: Well, I guess, I mean, these are issues of substantive law that I think go beyond the organizational and procedural rules. But we have your public comment and your concerns about these issues.

MR. CUNNINGHAM: Yes.

VICE CHAIRMAN GETZ: Mr. Harrington.

MR. HARRINGTON: Yes, just a follow-up, because I don't know if I've got a misdated one, but we're talking about the organizational rules, "102.15 "Petitioner" means":. Are you talking about adding a new section 102.15 or are you talking about adding it to the existing 102.14, which is now ""Petitioner" means:"?

MR. CUNNINGHAM: My suggestion there is an addition.
MR. HARRINGTON: So, a new section 102.15?

MR. CUNNINGHAM: Yes. Correct.

MR. HARRINGTON: Okay. And, what part of the law does that -- where is the statutory authority for that.

MR. CUNNINGHAM: It's a suggestion only. There is no statutory -- statutory authority for it. One of the suggestions we make in the pending bill is that that language be modified, so any person adversely affected has the right to appear before the Committee as a matter of right. At present, there is no suggestion -- there is no authority in the statute to adopt this rule. It is simply a point I wanted to make.

MR. HARRINGTON: And, can I just follow-up? Maybe this is just to -- I'm not even sure this is the right venue on this. But, in reading the section 102.14, I'm still -- I can't follow, quite follow the logic about Part (b). It says the "Petitioner", and then it lists "a petition endorsed by 100 or more registered voters", "a petition endorsed by 100 or more registered voters from abutting communities", "a petitioned endorsed by the board of selectmen", "or a petition filed by the potential applicant; or" and then we...
does that "or" apply to the section which is now (b), "a person who files a petition as defined in 102.13(b)", which is "other formal written request asking the Committee to take action". Could that logic be then to anybody who files a formal written request asking the Committee to take action is a "petitioner" under 102.14(b)? It seems like something's not right in the logic there, unless I'm missing it or I'm not reading it correctly.

MR. CUNNINGHAM: The way I read the rule is that, unless the Committee decides, and unless you have one of the existing categories in the rule, you have no right to appear before the Committee to be heard, unless the Committee, in its discretion, allows you the right to be heard. My suggestion is that, if you are adversely -- you or your property are adversely affected by a siting decision, you should have, as a matter of right, the ability to appear before the Committee.

MR. HARRINGTON: Well, I understand your position. But I think this is maybe something the Committee needs to look at, because maybe somebody can explain it to me later, by right now I'm not following.

MS. AMIDON: This is --

VICE CHAIRMAN GETZ: Ms. Amidon.
MS. AMIDON: Yes, Commissioner Getz.

What I think that definition was and why there's an (a) and a (b), I believe that we were trying to address the issue where a party to a proceeding might bring a motion for, you know, a petition for declaratory judgment or something like that before the Committee, and consistent with RSA 541-A, the procedural -- you know, the Administrative Procedures Act for New Hampshire. So, we'll figure that out. I can understand Mr. Harrington's comment, and I think that we can address that.

VICE CHAIRMAN GETZ: Other comments from the Committee?

CHAIRMAN BURACK: I have a question for Mr. Cunningham, if I may. Your suggested language on Part 201.04(g)(4) speaks to requiring "a description of alternatives that will minimize such impacts, including the alternative of no action". I want to make sure that the Committee understands what this language means as you intend it. I thought I heard you say that what this means is you're trying to, for the proposed project, and let's just take a hypothetical, let's just assume that we're talking about a wind project. The idea would be that you're looking at "what can you do to minimize the impacts of that wind project?" And, one of those could include
simply not doing the project at all, that is disapproving
the project. What you're not --- Just want to make sure
that I'm clear that you're not saying "well, you should
look at, well, could we get the same amount of energy from
some other type project, for example, let's do solar,
instead of wind, and be able to come in and say "this is
something that should also be considered by the
 Applicant".

MR. CUNNINGHAM: I don't pretend to be
the best judge of which is the best project for which
location. What I'm suggesting is that the critical
environmental impacts of the project be examined. For
example, a 400-foot wind tower or a group of wind towers
is on some gorgeous ridge in the North Country in the
White Mountains, perhaps we should look at some other
area. So, I'm suggesting -- certainly, the Sierra Club
supports renewable energy projects. What we do not
support is destroying beautiful ridgelines with 400-foot
towers in the White Mountains, for example. So, as part
of that siting process, I think the Committee has a
responsibility, and it should be in the rules to examine
"is there a better location to put that wind project?"
And, if the Committee decides that there is no good
location for that wind project, I think the Committee
should make that decision.

CHAIRMAN BURACK: Thank you for that clarification.

VICE CHAIRMAN GETZ: Anyone else from the Committee? Commissioner Below.

CMSR. BELOW: I guess I have a -- I'm a little confused about the suggestion from Mr. Cunningham on -- his very first suggestion on 201.04(b)(3), which I think you suggest, instead of having the Applicant provide site information that shows the location of residences, buildings, other structures and improvements, that they provide "names and tax mailing addresses of property owners within or adjacent to the site". Are you suggesting that instead of the location of structures or in addition to it?

MR. CUNNINGHAM: That would be in addition, Commissioner Below. In other words, my point is that everybody who owns property that's going to be impacted be the siting decision should be notified in writing, not just those who have residences or structures or buildings on the property.

CMSR. BELOW: So, that's your concern, not that this -- but that that be part of the application process?
MR. CUNNINGHAM: It's an expansion of
the definition of who should be notified in writing.

CMSR. BELOW: Okay. Thank you.

VICE CHAIRMAN GETZ: Any further comment
or questions?

(No verbal response)

VICE CHAIRMAN GETZ: Well, I guess I'd
like to say something at this point, just for the benefit
of the members of the Committee. Historically, I think
I've tried to keep members of the Committee advised of my
involvement, both last year in Senate Bill 140 and this
year in House Bill 1562. I, on behalf of the Committee
and as Vice Chair, have been involved in both of those
legislative undertakings. And, what I have tried to do is
work with the sponsors, with the various committees, with
all of the interested parties, developers, environmental
groups and other interested parties, but the focus of my
involvement has been really what I look at is the typical
agency perspective of trying to advise everyone how the
process works, what the law as it currently is, at least
how we're interpreting it, and not to take any personal
policy positions or advocating any policy positions
through the process.

And, Mr. Cunningham has been involved in

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some of those, and I believe also has Ms. Geiger and Mr. Patch from her firm, and numerous others. And, Mr. Cunningham noted that I think you described it as a "difference of opinion" in the current House bill. I guess I would just put it that I was trying to describe for the Committee a couple of things about some of the legislative proposals, and I think a couple of those are set out in his comments here. And, what I was trying to highlight for Science, Technology & Energy Committee just a couple of weeks ago is a couple of these proposals are really proposals for a change in policy. And, what I was trying to do was lay out for them what the policy choice they have is, rather than taking a position whether I personally or the Committee is arguing for or against a change.

And, two things may merit some further description. In Part 201.04(g)(4), there's a substitute "An environmental assessment demonstrating a reasonable certainty that the proposed facility will not cause significant adverse environmental impacts". My reading of the statute is there are two very different things involved in that sentence that are not what the statute requires now. One is it changes the burden of proof from a "preponderance of evidence" to a "reasonable certainty".

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And, also, the underlying test in the statute is that the Committee find, as we all saw in the Lempster case, that "there will not be an undue adverse reasonable effect", and here the language is changed to "will not cause significant adverse environmental effects". So, those are just different things.

And, the other thing I think is with respect to this whole notion of a "petitioner", there may be a merging or conflation of concepts. And, some of it goes to the notion of, under the statute, there's a very particular "petition" and "petitioner" process for some groups to come to the Committee to petition the Committee to take jurisdiction of a project that is not per se under its jurisdiction. Again, the Lempster is a case in point, where it was less than 30 megawatts, so we didn't per se have jurisdiction, but we had the authority to take jurisdiction. So, that's where this kind of complicated paradigm of numbered 100 voters, school board -- or, not "school boards" -- God forbid -- board of selectmen that would come and take and ask us to take authority, which is a different thing from the general use of the word "petitioner" that appears in the rules and appears in 541-A, if an individual wants to petition to become a -- to intervene and become a party in a proceeding. And, of
course, in Lempster, we saw individuals who came in, petitioned to intervene, asserted that they had some right, duty, or interest affected by the proceeding, and were granted intervention. So, I just want to try and make that distinction, because I think that's implicated by the filing.

And, I guess, if any of the Committee members are concerned that I'm going too far in the dozens of hours of testimony I've already given before the Legislature, --

MR. HARRINGTON: Too late now.

VICE CHAIRMAN GETZ: -- please let me know.

CHAIRMAN BURACK: And, if I may just add, Commissioner Getz and I speak regularly about issues before the Legislature, and we certainly are discussing these matters, and understand that what -- what's before the Committee and what issues we can appropriately speak to. So, just want to make clear that we are in communication on these matters on a regular basis.

VICE CHAIRMAN GETZ: Okay. Is there anything else on the public hearing to take comment on the organizational and procedural rules?

(No verbal response)

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VICE CHAIRMAN GETZ: Okay. Yes. I'll note that the deadline for written comments is February 21. Okay. So, then, we will close the portion of the hearing dealing with the rulemaking.

CHAIRMAN BURACK: Very good. Is there any other business to come before the Committee at this time?

CMSR. BELOW: Well, might we just think about how we're going to get to a final proposal. Obviously, we have to wait till the 21st and the written comments, if there's any additional ones they will be circulated at that point. But I think -- I don't know if there should be a little subcommittee to sort of try to incorporate some of the suggested changes and circulate those, working with Suzanne Amidon maybe. And, do we need to schedule a meeting to vote on a final proposal?

VICE CHAIRMAN GETZ: I think, at the last meeting, on December 13th, I was accorded the high honor of being designated to, I guess, presiding officer for the context of the procedural and organizational rules, to coordinate the further efforts that we need in this respect. So, I guess I would, rather than putting folks on the spot here, would be happy to entertain volunteers who would work as part of a subcommittee to
review the comments. And, I guess the -- I guess it's probably important that that be a number less than a quorum, so two, three, four folks would be a useful number, to kind of funnel the comments, after they're all here, and to compose a new draft. So, I will just send out an e-mail asking for volunteers for that process. And, then, once we've got that in hand, then I would make a proposal for the next public meeting to address a revised draft of the 100 and 200 rules.

Any other comment or suggestions on that approach?

CMSR. BELOW: Sounds good.

CHAIRMAN BURACK: Okay. Anything else to come before the Committee at this time?

DIR. IGNATIUS: Do we need to schedule a meeting to vote on a final proposal?

VICE CHAIRMAN GETZ: We will. And, I guess I was thinking some of that may be driven by -- well, I guess we could do this either way. We could either try to work on the revised rules, and then see what progress we've made and schedule a date. Or, we could schedule a date, which will drive the revising of the rules. I don't know, Ms. Amidon, is there some deadline,
of?

MS. AMIDON: No, not at this point, not
with this Initial Proposal. I think, actually, I was
looking at your meeting, your hearing with respect to the
prior proceeding, on the Newington facility, and looking
at that as a possible date.

CHAIRMAN BURACK: If I may, what I might
-- what I would suggest is that we at least tentatively
target April 28 as a date by which we might have a final
proposal available far enough ahead of time so that we
could at least consider it at that time, possibly take it
up for final adoption at that time. If this April 28th
final hearing for the Newington Energy matter ends up
being accelerated, because we don't have intervenors in
the other matter, we may find we don't have sufficient
time to be able to work this rules process through. But,
if we can, it would be helpful if we can have both of
these matters considered at the same time, so we won't
have to schedule a separate meeting specifically to take
up the rules.

VICE CHAIRMAN GETZ: Or, if we see that
we're making real progress on the revision, then I can
circulate to see what the schedules are to see if we can
convene a quorum.

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CHAIRMAN BURACK: Okay. We could that as well. Everyone's good with this?

(No verbal response)

CHAIRMAN BURACK: Okay. Anything else?

CMSR. BELOW: I move we adjourn.

CHAIRMAN BURACK: Motion to adjourn.

All in favor?

DIR. SCOTT: Second.

CHAIRMAN BURACK: Second by Mr. Scott.

All in favor?

(Multiple members indicating "aye".)

CHAIRMAN BURACK: We stand adjourned.

Thank you.

(Whereupon the public hearing ended at 10:42 a.m.)