

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 February 10, 2009 - 1:14 p.m.
4 21 South Fruit Street
5 Suite 10, Room 103
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:
8 Docket No. 2008-002: Application of
9 Tennessee Gas Pipeline Co. for a
10 Certificate of Site and Facility for
11 the Concord Lateral Expansion Project.
12 (Deliberative Session)

13 PRESENT: SITE EVALUATION COMMITTEE:
14 Thomas S. Burack, Cmsr. Dept. of Environmental Services
15 (Chairman of SEC - Presiding Officer)
16 Thomas B. Getz, Chrmn. Public Utilities Commission
17 (Vice Chairman of SEC)
18 Graham J. Morrison, Cmsr. Public Utilities Commission
19 Clifton C. Below, Cmsr. Public Utilities Commission
20 Harry T. Stewart, Dir. DES - Water Division
21 Robert Scott, Dir. Air Resources Division (DES)
22 George Bald, Cmsr. Dept. of Resources & Econ. Dev.
23 Amy L. Ignatius, Dir. Office of Energy & Planning
24 Randall Knepper Public Utilities Commission
Brad Simpkins Forest Protection Bureau
Ted Austin Division of Parks & Recreation

23 COURT REPORTER: Steven E. Patnaude, LCR No. 52
24

1
2 ALSO PRESENT: Michael J. Iacopino, Esq.
3 Counsel for the Committee
4 Cedric Dustin
Administrator for the Committee

5 0210-TGP.txt
Peter C. L. Roth, Esq.
6 Senior Assistant Attorney General
N.H. Dept. of Justice
7 Counsel for the Public
8 Reptg. Tennessee Gas Pipeline Co.:
Donald Pfundstein, Esq. (Gallagher,...)
9 Eric Newman, Esq. (Gallagher,...)

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1 P R O C E E D I N G S

2 CHAIRMAN BURACK: Well, good afternoon,
3 ladies and gentlemen. My name is Tom Burack. I am the
4 Commissioner of the State's Department of Environmental
5 Services, and also serve as Chair of the State Site
6 Evaluation Committee. We're here today for a public
7 meeting of the New Hampshire Site Evaluation Committee.
8 And, as many of you already know, this Committee is
9 established by RSA 162-H. The membership of this
10 Committee includes the commissioners or directors of a
11 number of State agencies, as well as specified key
12 personnel from various State agencies.

13 And, at this point, I would like to ask
14 the members of the Committee to introduce themselves. I
15 will point out that we do have two folks here with us
16 sitting today who are new to their positions in state
17 government. These folks will actually not be voting in
18 this matter, but we thought it might be helpful for them
19 to sit and observe the proceedings, so that they are
20 acquainted with how we operate as we move into future
21 proceedings.

22 Having said that, I'm going to turn
23 things over to Commissioner Bald.

24 CMSR. BALD: I'm George Bald,
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1 Commissioner of the Department of Resources and Economic
2 Development.

3 DIR. AUSTIN: Ted Austin, Director of
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4 Parks, one of the two new members.
5 DIR. STEWART: Harry Stewart, Department
6 of Environmental Services, Water Division Director.
7 DIR. SCOTT: Bob Scott, Department of
8 Environmental Services, Air Resources Division Director.
9 CMSR. BELOW: Clifton Below, PUC
10 Commissioner.
11 VICE CHAIRMAN GETZ: Tom Getz, Chairman
12 of the Public Utilities Commission and Vice Chair of this
13 Committee.
14 CMSR. MORRISON: Graham Morrison, PUC
15 Commissioner.
16 DIR. SIMPKINS: Brad Simpkins, interim
17 Director, Division of Forests and Lands, one of the new
18 members.
19 MR. KNEPPER: Randy Knepper, Director of
20 Safety for the Public Utilities Commission.
21 DIR. IGNATIUS: Amy Ignatius, Director
22 of the Office of Energy and Planning.
23 CHAIRMAN BURACK: I'd also like to
24 introduce Peter Roth, who is Counsel for the Public.
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1 Thank you for being here today. We're also joined by
2 Cedric Dustin, who is the Administrator for this matter
3 for the Site Evaluation Committee, and to my immediate
4 right is Michael Iacopino, who serves as legal counsel to
5 the Site Evaluation Committee for this particular matter.
6 I'm going to provide some background
7 here that's a little bit lengthy, but important to provide
8 this information. And, we will then turn to deliberations
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9 on the matter that is before us. And, then, there is one
10 other minor matter I'm just going to raise at the end
11 relating to an inquiry we received from a community in New
12 Hampshire about our process in anticipation of future
13 potential applications to this Committee.

14 So, the agenda for today's public
15 meeting really is based upon a single item, and that is
16 the deliberative phase of the adjudicative proceedings in
17 the Docket Number 2008-02, Application of Tennessee Gas
18 Pipeline Company for a Certificate of Site and Facility
19 for the Concord Lateral Expansion Project. Today's
20 meeting was convened as the result of an Order and Notice
21 of Public Meeting that was issued on January 27, 2009.
22 Notice of today's public meeting was published in the
23 Manchester Union Leader on January 30, 2009. And, I have
24 just received a copy of the affidavit of publication. It

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1 was also published in the Concord Monitor on January 30,
2 2009; in the Telegraph on January 30, 2009; and in the
3 Pelham/Windham News on January 30, 2009. And, affidavits
4 of this publication are on file with the Committee.

5 So, at this point we will proceed with
6 our agenda. Again, Agenda Item Number 1, Docket Number
7 2008-02, Application of Tennessee Gas Pipeline Company for
8 a Certificate of Site and Facility for the Concord Lateral
9 Expansion Project. On April 22, 2008, Tennessee Gas
10 Pipeline Company, also known as "Applicant", filed an
11 Application for Certificate of Site and Facility for the
12 Concord Lateral Expansion Project, known as the
13 "Application". The Application seeks a Certificate of

14 Site and Facility, known as the "Certificate", for the
15 construction and operation of an energy facility in
16 Pelham, Hillsborough County, New Hampshire, consisting of
17 a new 6,130 horsepower compression station on the
18 Applicant's Line 200 System known as the "Concord Lateral
19 System", and we'll refer to that as the "Lateral", in
20 Pelham, New Hampshire. The construction and operation of
21 the compressor will allow the Applicant to provide an
22 incremental 30,000 dekatherms per day of capacity to
23 EnergyNorth. The Application for a Certificate of Site
24 and Facility also seeks approval of upgrades at the

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1 Applicant's existing Laconia Meter Station, which is
2 located in Concord, New Hampshire, known as the "Meter
3 Station", including piping modifications to accommodate
4 the additional capacity.

5 The facilities are proposed to be
6 located on private property located in Pelham,
7 Hillsborough County, New Hampshire and in Concord,
8 Merrimack County, New Hampshire. The new compressor
9 station will be located on a parcel of land located by the
10 Town of Pelham -- I'm sorry, identified by the Town of
11 Pelham Tax Map as Lot 1-5-111. Those are the map, parcel
12 and lot numbers. The Pelham location consists of
13 11.6 acres, of which 4.2 acres will be fenced to contain
14 the compressor building and required auxiliary buildings.
15 The upgrades at the Meter Station in Concord, New
16 Hampshire, will occur at 17 Broken Bridge Road, Concord,
17 New Hampshire. The Meter Station is an existing structure
18 located within a fenced area in Concord, and occupies

19 0.50 acres.

20 The compressor station in Pelham is
21 proposed to consist of a 6,130 horsepower turbine,
22 turbine-driven centrifugal compressor unit fueled by
23 natural gas that will be installed inside a new compressor
24 building. Associated facilities that will also be

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1 constructed and operated by the Applicant include a filter
2 separator, a discharge gas cooler, and blow-down silencer,
3 control building, and an auxiliary building.

4 In order to accommodate the increased
5 capacity created by the proposed compressor unit in
6 Pelham, the Applicant also seeks approval of plans to
7 modify station piping at its existing Meter Station
8 located in Concord, Merrimack County, New Hampshire. The
9 existing Meter Station is comprised of two measuring
10 facilities: The Concord measuring facility and the
11 Laconia measuring facility. The Applicant proposes to
12 replace a total of approximately 60 feet of existing
13 4-inch and 6-inch pipe from Line 273C-100 to the Laconia
14 measuring facility with 12-inch pipe. Additionally,
15 existing 6-inch piping within the Meter Station will be
16 reconfigured and reconnected between Lines 273C-100 and
17 270B-100 to serve as a tie-over line to insure continuous
18 service in the event of outages on the primary line.

19 On June 16, 2008, the Committee held a
20 hearing for the purpose of reviewing the Application in
21 order to determine if it contained sufficient information
22 for the Committee to carry out the purposes of RSA 162-H.
23 The Committee found that the Application did contain

24 sufficient information and accepted the Application by
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1 order dated June 20, 2008.
2 When an Application for a Certificate of
3 Site and Facility is filed, RSA 162-H requires that the
4 Attorney General shall appoint an attorney to serve as
5 Counsel to the Public. Counsel to the Public represents
6 the public in seeking to protect the quality of the
7 environment and in seeking to assure an adequate supply of
8 energy. Counsel to the Public is accorded all the rights
9 and privileges and responsibilities of an attorney
10 representing a party in a formal action. As I indicated
11 previously, the Attorney General appointed Senior
12 Assistant Attorney General Peter Roth to serve as Counsel
13 to the Public. Mr. Roth participated in all of the
14 proceedings in this docket and is present here today.

15 And, I also wish to introduce Attorney
16 Donald Pfundstein, who represents the Applicant in this
17 matter. And, Mr. Pfundstein, you are joined by one of
18 your colleagues here as well?

19 MR. PFUNDSTEIN: Attorney Eric Newman,
20 from my office as well.

21 CHAIRMAN BURACK: Thank you very much.
22 No other parties have sought to intervene in this docket.

23 On July 16, 2008, the Committee visited
24 the proposed sites in Concord and Pelham, New Hampshire
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1 for the purpose of conducting site inspections. Also on

2 July 16, 2008, the Committee held public information
3 hearings in Concord and in Pelham. At the public
4 information hearings, the Applicant presented information
5 to the public, and questions and comments from the public
6 were received by the Committee.

7 Between July 16, 2008 and December 1,
8 2008, the parties engaged in a series of informal
9 technical sessions to discuss the proposed Project and
10 exchange important information. The Applicant and Public
11 Counsel engaged in those sessions and were able to reach
12 agreement with each other on a number of issues raised in
13 this docket, but were unable to come to a complete
14 stipulation. On December 1, 2008, the Committee, after
15 public notice, held an adjudicative hearing where it heard
16 from witnesses for the Applicant and from Public Counsel.
17 During the course of the adjudicative proceeding, the
18 Applicant submitted, without objection, a total of 17
19 exhibits, in addition to the Application and its
20 appendices. Likewise, Counsel to the Public submitted 19
21 exhibits. Although I opened the floor for public comment
22 at the adjudicatory hearing, no members of the public
23 sought to address the Committee.

24 Consistent with the instructions from
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1 the Chair, the Applicant and Public Counsel filed post
2 hearing memoranda on December 11, 2008. The Applicant
3 also filed a reply memorandum on December 15, 2008.
4 Additionally, since December 1, 2008, the Committee has
5 received all of the exhibits for which we had reserved
6 exhibit numbers in this proceeding. Thus, we are ready to

7 proceed with our public deliberative process in this
8 docket.

9 In order to guide our deliberations in
10 an efficient manner, I suggest that we organize our
11 deliberations in the manner set forth at RSA 162-H,
12 Section 16, IV. And, more specifically, the six items
13 enumerated there are as follows:

14 And, again, I propose that we take these
15 in this order in our deliberations. First would be a
16 discussion of available and competing alternatives; the
17 second would be a discussion of the project's impact on
18 the environment; third would be a discussion of the
19 financial, managerial, and technical capability of the
20 Applicant to construct and operate the proposed facility
21 in compliance with any terms and conditions of the
22 Certificate; fourth, there will be a discussion of whether
23 the proposed facility will unduly interfere with the
24 orderly development of the region, keeping in mind the

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1 views of municipal and regional planning commissions and
2 governing bodies; fifth will be a discussion of whether
3 the proposed Project will have an unreasonable adverse
4 effect on any of the following: Historic sites,
5 aesthetics, air quality, water quality, the natural
6 environment, public health and safety; and, finally, we
7 will have a discussion as to whether operation of the
8 proposed facility is consistent with state energy policy.

9 Presumably, upon completion of our
10 deliberations on each of these six questions, we will be
11 able to have a vote to determine the wishes of the

12 Committee with respect to this matter. And, I will just
13 note that we are somewhat time-constrained this afternoon.
14 And, we are going to try to press forward as quickly as we
15 can to complete our deliberations while we have a quorum
16 present.

17 So, if there are no questions, we will
18 then begin with the deliberations. And, I will invite
19 discussion of the available and competing alternatives.

20 MR. IACOPINO: Mr. Chairman, I would
21 point out for the members of the Committee that, at
22 Section 7.1 through 7.1.9 of the Application, that's pages
23 16 through 20 of the Application, there is a discussion in
24 the Application about alternatives that the Applicant

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1 considered. And, if you all wish to draw your attention
2 to those pages. Those alternatives, at least according to
3 the Application, appear to consider both route
4 alternatives, as well as operational alternatives. And,
5 as I indicated, that's Page 16 through 20 of the
6 Application. So, it's in Section 7 of the Application.

7 So, I would just point that out to the
8 Committee to open it up for the alternatives to discuss.

9 CHAIRMAN BURACK: Thank you.

10 Discussion?

11 MR. IACOPINO: Would you like me to
12 summarize that portion of the Application for you, Mr.
13 Chairman?

14 CHAIRMAN BURACK: It would be helpful if
15 you would, please.

16 MR. IACOPINO: Okay. Thank you. In

17 essence, there was a number of -- well, first of all, let
18 me just back up a second. As part of the FERC process,
19 the Applicant also had to engage in an alternatives
20 analysis. And, there is also a -- we have as an exhibit,
21 Exhibit I, which is the FERC Certificate, and Exhibit O,
22 which is the environmental assessment that went into the
23 FERC Certificate. But it appeared to me from the
24 Application, Mr. Chairman, that the siting alternatives

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1 that the Applicant considered were two other sites, one
2 located in Windham, New Hampshire, which on a property
3 that was actually owned by the Applicant. But, as it
4 turns out that, although the site environmentally was
5 probably optimal, it was not large enough. And, at the
6 site that they have since proposed is considerably -- is
7 further away than existing residents are at the
8 Alternative Site 1. The second alternative site was on
9 Nashua Road, in Londonderry, New Hampshire. And, although
10 the Applicant found that property to be environmentally
11 viable for the Project, financially they did not own that
12 property, and financially at the time it appeared that
13 purchasing the property would unnecessarily increase the
14 rates that the Applicant would have to charge for its
15 services.

16 There were also benefits to the property
17 in Pelham that are listed on Page 19 of the Application.
18 Specifically, probably the biggest benefit being that
19 there was no wetlands impact in this particular site, and
20 that it was located in an industrial park, an already
21 existing industrial park.

22 The Applicant, as I understand their
23 Application, also considered not building at all, and
24 found that not to be feasible, because there is a need for
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1 the increased gas. And, they also considered some
2 operational alternatives, such as pipeline looping, for
3 using other ways to transport the gas, none of which were
4 as feasible or as viable as building this compressor
5 station on the property that is located in Pelham, which
6 you all saw at the time of the Site Evaluation Committee
7 visit.

8 So, that's sort of a summary of what the
9 competing alternatives were that were offered by the
10 Applicant. And, as I said, those are all listed in
11 Section 7 of the Application.

12 CHAIRMAN BURACK: Thank you. Would it
13 be also a correct statement that we did not receive any
14 testimony or other information from any parties offering
15 alternative analyses of this?

16 MR. IACOPINO: I'm not aware of any.
17 Actually, there is some testimony supporting the
18 alternatives analysis used by the Company by I believe
19 Mr. Stokdyk in his testimony, which was appended to the
20 Application, and actually is listed as "Exhibit B", as in
21 "boy".

22 CMSR. BALD: Mr. Chairman, do you want
23 us to -- are we planning on voting on each of the
24 different items or are we going to wait till the end of --

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1 MR. IACOPINO: I don't know -- My
2 recommendation, Mr. Chairman, is that, not that we
3 necessarily have a vote, but it might be, just to get a
4 sense from the Committee as to whether they feel that they
5 received sufficient information with respect to each of
6 these issues, and if they have any difficulties or if they
7 want to support each particular aspect of the statutory
8 requirements. I don't know that it's necessary to take a
9 vote on each particular item. The ultimate vote will come
10 once you have deliberated on all of these items.

11 CMSR. BALD: That's fine. I guess then
12 I would just add, Mr. Chair, that I'm satisfied that there
13 was -- that they did good job of looking at the
14 alternatives.

15 CHAIRMAN BURACK: Any others who would
16 rather have a differing view, dissatisfied with the level
17 of information that has been provided to satisfy this
18 requirement?

19 (No verbal response)

20 CHAIRMAN BURACK: Okay. Very good.
21 Thank you. We can come back to this, if folks think of
22 other items that they wish to raise on that topic. But
23 let's turn then to a discussion of the Project's impact on
24 the environment. And, clearly, the Application does

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1 impact a number of environmental concerns. I should point
2 out that we do have on file three permit applications that
3 have been filed with the Department of Environmental
4 Services. One is a permit for a subsurface waste disposal
5 system, the second is for an Air Permit, and the third is

6 for an Alteration of Terrain Permit. And, so, those three
7 permit applications are on file. And, Mr. Stewart,
8 perhaps you could speak to the Subsurface Waste Permit and
9 the Alteration of Terrain Permit?

10 DIR. STEWART: Yes. In terms of the
11 Subsurface Disposal Permit and the Terrain Alteration
12 Permit, both were -- the Project is very straightforward,
13 I think, from an engineering perspective, in terms of, you
14 know, the road, related roads and building. And, so, the
15 Terrain Alteration Permit, the material submitted was
16 adequate, and the conclusions of the Terrain Alteration
17 Program was that the Project was permissible, with certain
18 conditions, which were really standard conditions in that
19 sense. And, the Subsurface Permit is for a relatively
20 small on-site wastewater system, and that also is very
21 straightforward and is approvable.

22 CHAIRMAN BURACK: Okay. If I may, it's
23 my understanding that, although this wouldn't typically be
24 the way this occurs, in this instance that permit has been

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1 approved already, perhaps in part because there is a
2 statutory time frame for those issuance?

3 DIR. STEWART: Yes, I think that the
4 Subsurface Program, because it's a quick turnaround
5 program really got ahead of our process, and did, in fact,
6 issue the permit sometime ago.

7 CHAIRMAN BURACK: Okay. Thank you. Are
8 there any questions or issues that members of the
9 Committee would like to raise with respect to either of
10 those two issues, the Terrain Alteration Permit or the

11 Subsurface Permit?

12 (No verbal response)

13 CHAIRMAN BURACK: Okay. Director Scott,
14 could you speak to air permitting issues relating to this
15 proposed facility?

16 DIR. SCOTT: Sure. Can everybody hear
17 me? The Project, as proposed, meets all state and federal
18 air pollution control requirements. Similarly, there's no
19 exceptional issues going on regarding the permit. So,
20 again, I feel there's no issues with the Project related
21 to air quality -- anyways, there's no outstanding issues
22 regarding the Application or the Air Permit. That the
23 Project, as proposed, is projected to meet all air quality
24 standards, both federal and state.

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1 CHAIRMAN BURACK: So, again, just for
2 those who may not be familiar with this process, if we
3 were to move forward and issue a Certificate of Site and
4 Facility for this Project, we would be taking the
5 conditions of at least the Air Permit and the Terrain
6 Alteration Permit, I would assume as well the Subsurface
7 Permit, and we would essentially adopt those as elements
8 and conditions of this permit. Commissioner Below.

9 CMSR. BELOW: That makes sense. And, I
10 think we should just also note that, as part of the
11 federal process, they completed an environmental
12 assessment that's in this record as Exhibit 0, that's
13 generally showing no adverse environmental impacts.

14 CHAIRMAN BURACK: Is there additional
15 discussion of the environmental impacts associated with

16 this Project? Chairman Getz.

17 VICE CHAIRMAN GETZ: Mr. Chairman, if I
18 could make a procedural suggestion. Because the statutes,
19 with respect to findings that we have to make, is written
20 kind of in two parts, and I think you addressed some of
21 this in your introductory remarks. But it says, in the
22 case of energy facilities, "the Site Evaluation Committee,
23 after having considered available alternatives, fully
24 reviewed the environmental impact of the site or route,

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1 and other relevant factors, must find that the site and
2 facility", and then there's five subsets: One going to
3 "financial, technical, and managerial capability"; "unduly
4 interfering with the orderly development"; "unreasonable
5 adverse effect on aesthetics"; and "consistency with the
6 state energy policy". I think the discussion we've had so
7 far goes to the preparatory requirements about having
8 considered available alternatives and fully reviewed the
9 environmental impact. With the remaining five, I think it
10 might be in order that, as you've already adopted, to have
11 counsel give some introduction to each of the five
12 remaining subsets, and then if we actually make findings
13 on those subsets.

14 So, I think it's fair to say, consistent
15 with what Commissioner Bald has already said and what
16 Commissioner Below has said, that we have considered the
17 available alternatives and we've reviewed the
18 environmental impact. But now we should take steps to
19 make the five required findings that would go to whether
20 the Application is approved.

21 CHAIRMAN BURACK: Thank you. I think
22 that's a very good procedural suggestion, and we will
23 proceed on that basis.

24 CMSR. BELOW: And, on the next point,
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1 I'll go ahead and make a motion that we find that the
2 Applicant has the financial, managerial, and technical
3 capabilities to construct and operate the proposed
4 Project.

5 VICE CHAIRMAN GETZ: Second.

6 CHAIRMAN BURACK: Seconded by Chairman
7 Getz.

8 CMSR. BELOW: And, I would note, you
9 know, they had financial documents included as Appendix C,
10 and they, you know, have a long history of operating both
11 in New Hampshire and throughout the country such projects.
12 And, that's also supported in the Application, Section 2,
13 in Appendices B and C, and the Stokdyk testimony, at
14 Page 3 through 5, and the FERC Certificate, Exhibit I.

15 CHAIRMAN BURACK: Okay. Thank you. So,
16 we have a motion and a second to make findings, as it's
17 been now suggested by Commissioner Below. Is there
18 further discussion of the financial, managerial, and
19 technical capabilities of the Applicant?

20 (No verbal response)

21 CHAIRMAN BURACK: Additional items that
22 should be included in support of such findings?

23 (No verbal response)

24 CHAIRMAN BURACK: Anything further on
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1 that?

2 (No verbal response)

3 CHAIRMAN BURACK: Okay. All right.

4 Yes, let me call the question on this particular finding
5 then, and ask for a -- I'm just going to do this by just
6 an oral vote. All in favor of the motion, please
7 significant by saying "aye"?

8 (Multiple members indicating "aye".)

9 CHAIRMAN BURACK: Opposed?

10 (No verbal response)

11 CHAIRMAN BURACK: Abstaining?

12 (No verbal response)

13 CHAIRMAN BURACK: Okay. Very good.

14 Thank you. Let's move then to -- go ahead.

15 CMSR. BELOW: Just because of the rules
16 and the statute, it's probably worth noting that that
17 represents an absolute majority of the full membership of
18 the Committee, that vote that was just taken, in the
19 affirmative.

20 CHAIRMAN BURACK: Thank you. As
21 Commissioner Below is pointing out, that vote does
22 represent a majority of the voting quorum here.

23 Let's move then to a discussion of
24 whether the orderly development of the region would be

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1 unduly interfered with, keeping in mind the views of
2 municipal and regional planning commissions and governing
3 bodies. And, would welcome a motion on this matter.

4 DIR. IGNATIUS: Thank you, Mr. Chairman.
5 I would move that the Applicant has demonstrated that
6 these projects will not conflict with the orderly
7 development of the region. And, I'll address that in a
8 moment, if there's a second.
9 CHAIRMAN BURACK: So, you would move
10 that we make a finding to that effect?
11 DIR. IGNATIUS: If I forgot to say that,
12 yes.
13 CHAIRMAN BURACK: Okay. Thank you.
14 CMSR. BALD: Second.
15 CHAIRMAN BURACK: Second by Commissioner
16 Bald. Okay. Discussion?
17 DIR. IGNATIUS: Thank you. As part of
18 any of these applications, you have to submit it to
19 municipal officials, it goes out to regional planning
20 commissions to get their comments. It was done in this
21 case, and we have not received any opposition. There was
22 no testimony coming forward that it disturbed any of the
23 planned development of the communities affected by these
24 proposals in the Application. And, testimony from
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1 Mr. Phillip also addressed this issue I think adequately,
2 and we did not have issues brought to us that would cause
3 us to consider that this was in any way disturbing the
4 planned development of the region. So, for that reason, I
5 think the Applicant has satisfied that term.
6 CHAIRMAN BURACK: And, the testimony
7 that you're referring to is the Phillip testimony adopting
8 Mr. Malcolm's testimony, is that correct?

9 DIR. IGNATIUS: That's correct.
10 CHAIRMAN BURACK: Okay. Thank you.
11 Further discussion of this particular issue, related to
12 orderly development?
13 (No verbal response)
14 CHAIRMAN BURACK: Okay. Very good.
15 MR. IACOPINO: Mr. Chairman, I just want
16 to find something.
17 CHAIRMAN BURACK: Yes.
18 MR. IACOPINO: It occurs to me it's not
19 been marked as an exhibit, and, as a matter of fact, I
20 seem to recall that there was, in fact, a letter from the
21 Central New Hampshire Planning Commission not opposing the
22 Project. If I can find that, and I may have it confused,
23 but, if I can find that, I will make sure that that gets
24 circulated to everybody before the issuance of a final
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1 order.
2 CHAIRMAN BURACK: Okay. And, if it is,
3 that could also be referenced in the final order. Counsel
4 for the Applicant, do you have any recollection of such a
5 document?
6 MR. PFUNDSTEIN: Unfortunately, no.
7 CHAIRMAN BURACK: Okay. Fair enough.
8 We will all search our files and our memories. And, if it
9 is there, we will include it. If not, it will not be
10 included. Okay. So, we have a motion, which has been
11 seconded, to find -- make a finding with respect to the
12 issue of orderly development of the region. Is there any
13 further discussion of that matter?

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14 (No verbal response)
15 CHAIRMAN BURACK: Okay. Seeing none,
16 all in favor, please say "aye"?
17 (Multiple members indicating "aye".)
18 CHAIRMAN BURACK: Opposed?
19 (No verbal response)
20 CHAIRMAN BURACK: Abstentions?
21 (No verbal response)
22 CHAIRMAN BURACK: Thank you. Again, let
23 the record reflect that there was a clear majority, in
24 fact, a unanimous vote in favor of that motion.
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1 Let us turn then to a discussion of the
2 next item here. And, again, I will read from the statute
3 here: We "must find that the site and facility will not
4 have an unreasonable adverse effect on aesthetics,
5 historic sites, air and water quality, the natural
6 environment, and public health and safety." And, there
7 are, obviously, a number of different elements here to
8 this particular matter, and I would suggest that we try to
9 take these one at a time. First, aesthetics, and then
10 historic sites. We've had some discussion already of air
11 and water quality, but we should have further discussion
12 of that, as well as the natural environment, and, finally,
13 public health and safety. And, I would point out that, in
14 the context of the public health and safety discussions,
15 we need to give due consideration to the issue that I
16 think has been the principal issue of contention here in
17 this matter, at least with respect to the concerns raised
18 by Counsel to the Public, which is the issue of noise and

19 noise controls. So, we will need to discuss and consider
20 that as part of the discussion of public health and
21 safety.

22 But, perhaps we could start with a
23 discussion of aesthetics? Actually, before we get there,
24 it might be helpful to us to actually have a motion that

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1 we make a finding to this effect, and then we can proceed.

2 DIR. SCOTT: So moved.

3 CHAIRMAN BURACK: A motion from
4 Mr. Scott, again, that we make a finding that the Project
5 will not have an unreasonable adverse effect on
6 aesthetics, historic sites, air and water quality, the
7 natural environment, and public health and safety. Is
8 there a second to that motion?

9 CMSR. BALD: Second.

10 CHAIRMAN BURACK: Second by Commissioner
11 Bald. Thank you. Let's have a discussion now of this
12 item, and let's begin by first considering the issue of
13 aesthetics?

14 (No verbal response)

15 CHAIRMAN BURACK: And, again, I will
16 note for the record, obviously, this is a somewhat
17 subjective matter, as I indicated in my opening remarks,
18 members of the Committee have made site visits to both the
19 proposed sites, so that we have seen them, we have seen
20 drawings of the proposed facilities and proposed facility
21 modifications. And, so, I think we have an understanding
22 of what the change in aesthetics will be as a result of
23 the construction of the two locations. Ms. Ignatius?

1 testimony and the site visit showed the two locations are
2 very different from one another. The one in Concord is
3 already a developed industrial spot, where there will just
4 be an expansion of some of the piping and some
5 rearrangement of what's there. But, probably, to the
6 observer, once the construction is done, it probably won't
7 look much different than it already does, and doesn't
8 encroach on neighbors in any way. It will be fairly
9 similar. So, I don't think there is any argument that
10 there's any real change in the aesthetics at the Concord
11 site.

12 The Pelham site is very different,
13 because it's in a wooded area, and will definitely disturb
14 that woods with the construction. Part of it is near
15 other industrial development and part of it is near
16 residential development. The testimony and the site visit
17 showed efforts to minimize the disturbance of that wooded
18 area, to keep -- to try to minimize the impact towards the
19 residential side of the property with buffers, so that
20 noise will be absorbed somewhat with the natural
21 vegetation, to not cut more than was necessary, and to
22 recognize that from one side of the property it is a
23 change in what they're used to seeing in that direction
24 and to minimize that as much as possible. And, I was

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1 satisfied that they had taken those steps and would not --
2 it would not be an unduly adverse impact on the aesthetic

3 nature of that area.

4 CHAIRMAN BURACK: Thank you. Are there
5 other comments or observations with respect to the issue
6 of aesthetics?

7 MR. KNEPPER: I would echo the
8 discussion just taken place. Yes, I think you would be
9 hard-pressed to notice, even at the Concord site, what
10 would transpire or change. It's already a gas facility.
11 It has piping above ground. I think it would be hardly
12 noticeable of any disturbance there.

13 And, as far as the Pelham site, there is
14 already a right-of-way clearing through the woods for the
15 existing pipeline. This would be an extension of that.
16 And, it is in an industrial setting, whether it's an
17 industrial park, so I see it not having an adverse impact
18 as well.

19 CHAIRMAN BURACK: I might -- Yes, I
20 believe there is testimony from Mr. Fillip, this is at
21 Pages -- really at Page 4 of his testimony. And, I
22 believe at least some of these figures I actually included
23 in my opening statement.

24 With respect to the site in Pelham, the
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1 actual land necessary for construction the Applicant has
2 identified as being approximately 6.8 acres, which
3 consists of 2.6 acres of temporary workspace and 4.2 acres
4 for operation of the facility. They also -- Mr. Fillip,
5 in his testimony, also indicates that approximately
6 4.8 acres of the 11.6 acre parcel will be utilized as a
7 buffer and visual screening both during and after

8 construction. And, he indicates that that amount of the
9 acreage, that is the 4.8 acres, will not be affected by
10 either the construction or operation of the facility. So,
11 that's just some further information on the amount of land
12 that would, in fact, be kept essentially in its natural
13 state and preserved as a buffer.

14 Mr. Fillip also indicates that the
15 access road will be located within the 4.2 acre area
16 designated for permanent disturbance for operation of the
17 compressor station, so that there's not additional
18 disturbance outside the 4.2 acres for the access road.

19 Further comments or discussion with
20 respect to the issue of aesthetics?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Thank you.
23 Let's then proceed to the next item that is specified in
24 the statute, which is consideration of potential or
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1 unreasonable adverse effects on historic sites.

2 MR. IACOPINO: Mr. Chairman, I'll just
3 start off just to bring everybody's attention to Exhibit
4 N, which is a letter dated July 9, 2008, from the New
5 Hampshire Division of Historical Resources, which
6 indicates, in pertinent part, that "All archeological and
7 architectural surveys have been completed, concluding that
8 no historic resources will be affected by the proposed
9 Project. The Division of Historical Resources formally
10 signed off on this Project in May 2008." And, that's
11 Exhibit N, I'm reading directly from Exhibit N.

12 CHAIRMAN BURACK: Thank you. Discussion
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13 of this point?

14 VICE CHAIRMAN GETZ: Mr. Chair, I would
15 suggest that the letter from Division of Historic
16 Resources satisfactorily addresses the requirement that
17 there be no unreasonable adverse effects and support a
18 finding by the Committee with respect to that issue.

19 CHAIRMAN BURACK: Okay. Thank you. Any
20 further discussion of the historic sites issue?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Thank you. If
23 not, let's move to a discussion then of air quality, and
24 whether there would be any unreasonable adverse effect on

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1 air quality from the Project, from the site and facility.

2 VICE CHAIRMAN GETZ: Mr. Chairman, I
3 would similarly take the position with respect to this
4 issue that the DES Air Permit satisfactorily addresses the
5 issue that there be no unreasonable adverse effect on air
6 quality, and that's a sufficient basis for our finding
7 with respect to this, with this topic.

8 CHAIRMAN BURACK: Thank you. And,
9 again, this would be the Air Permit that, at least in
10 draft, appears currently as "Exhibit K", I believe?

11 VICE CHAIRMAN GETZ: Yes, Mr. Chairman.

12 CHAIRMAN BURACK: And, Director Scott,
13 that's consistent with the statement that you made earlier
14 --

15 DIR. SCOTT: That's correct.

16 CHAIRMAN BURACK: -- with respect to the
17 Air Permit?

18 DIR. SCOTT: That's correct.

19 CHAIRMAN BURACK: Okay. Thank you. Is
20 there any further discussion of air quality issues with
21 respect to the Project?

22 (No verbal response)

23 CHAIRMAN BURACK: All right. Thank you.

24 The next item we should consider then is whether the

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1 Project will have -- will not have an unreasonable adverse
2 effect on water quality. Mr. Stewart.

3 DIR. STEWART: Mr. Chairman, I believe
4 that the Project will not have adverse effects on water
5 quality. We've talked about the Terrain Alteration, the
6 Subsurface actions that would be included as exhibits. In
7 addition, there is a Spill Prevention Program that's in
8 place for the facilities under FERC regulations, I
9 believe. And, also, there are no wetlands impacts, which
10 is actually pretty unique for a project of this sort.

11 CHAIRMAN BURACK: Thank you. My
12 understanding as well is that the Spill Prevention Program
13 and other mandatory FERC regulations pertaining to the
14 site and its potential impacts on water quality are
15 addressed in Appendix G to the Application. And, this
16 includes what's called a "Upland Erosion Control,
17 Revegetation and Maintenance Plan".

18 And, there is, in addition, in Appendix
19 G, there is a copy of the Spill Prevention, Control, and
20 Countermeasure Plan that's been proposed for the facility.
21 And, this is actually in reference to the issue of
22 historic resources. I might just point out that, in

23 Appendix G, there is also a document entitled
24 "Unanticipated Discovery Plan for Cultural Resources".
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1 Again, this lays out procedures that would guide the
2 discovery of unanticipated cultural resources and human
3 remains. So, that has also been addressed as part of the
4 FERC Application.

5 And, finally, I would point out that, in
6 Appendix G, there is a Waste Management Plan for the
7 facility, setting out how various types of waste,
8 including hazardous waste, non-hazardous waste, and
9 special waste, such as asbestos, PCBs, and universal
10 waste, will be handled by the facility. Again, all by way
11 of helping to ensure that proper environmental procedures
12 are followed and that measures are taken to prevent
13 contamination of water, thereby affecting water quality.

14 Are there other items that should be
15 considered by the Committee with respect to the potential
16 of unreasonable adverse effects on water quality of this
17 proposed Project?

18 (No verbal response)

19 CHAIRMAN BURACK: Okay. Very good.
20 Thank you. Let's then proceed to a discussion of the next
21 element identified in the statute, which is whether the
22 Project will not have an unreasonable adverse effect on
23 the natural environment. Mr. Scott.

24 DIR. SCOTT: Mr. Chair, I'd like to
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1 suggest that, between the environmental permit for air
2 quality, water quality, and I believe Mr. Phillip's
3 testimony at Pages 8 and 9, between those items, I think
4 the natural environment I would like to suggest is
5 adequately covered within the Application.

6 CHAIRMAN BURACK: Very good. I don't
7 have a -- do you have a copy of Mr. Phillip's testimony
8 here? I just want to identify what the elements are that
9 he --

10 MR. IACOPINO: Mr. Phillip addressed
11 fish, wildlife -- fish, wildlife, wetlands, and visitation
12 -- and vegetation, I'm sorry, in his testimony, actually,
13 in adopting Mr. Malcolm's testimony. He drew the
14 conclusion that there would not be any fish affected by
15 the Project and that it's not located within a quarter
16 mile of a Federal Wild, Scenic and Recreational River
17 System. He further concluded that there may be some
18 temporary impacts during construction on wildlife in the
19 area, but that the overall long-term effect to wildlife,
20 that they would be pretty much undisturbed, and that human
21 activity in the area will still be infrequent once the
22 construction has been completed. Essentially, he, in the
23 testimony, the gist of his testimony was that any change
24 in the habitat is going to be temporary. And, that the

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1 temporary workspace will be subject to restoration. And,
2 essentially, he came to the same conclusions with respect
3 to wetlands and vegetation.

4 Mr. Chairman, I would also point out to
5 the Committee that, in that same Appendix G, there is a

6 plan for erosion control, revegetation, and maintenance,
7 and that's Appendix G to the Application. And, again,
8 that's one of the plans that's mandated that the Applicant
9 follow under the FERC certificate, which is also marked as
10 an exhibit.

11 CHAIRMAN BURACK: Are you, in fact,
12 referring to what's labeled here in Exhibit G as "Federal
13 Energy Regulatory Commission's Wetland and Waterbody
14 Construction and Mitigation Procedures"? Was that --

15 MR. IACOPINO: Yes. And, actually, I
16 was referring to a different report in there, which was,
17 just a minute, --

18 CHAIRMAN BURACK: I see it here.
19 "Upland Erosion Control, Revegetation and Maintenance
20 Plan"?

21 MR. IACOPINO: Yes, that's it.

22 CHAIRMAN BURACK: Okay. So, both of
23 these plans, again, as part of the FERC submittal, then
24 would go to the issue of addressing the potential impacts
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1 on the natural environment.

2 MR. IACOPINO: And, my recommendation to
3 the Committee, obviously, is that the Application and the
4 plans that are contained with it become part of the
5 conditions of the Certificate, which must be complied with
6 by the Applicant during construction and operation of this
7 facility, if you grant the Certificate.

8 CHAIRMAN BURACK: Understood. Okay.
9 Thank you. Further discussion then of this issue relating
10 to the natural environment?

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(No verbal response)

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CHAIRMAN BURACK: Okay. Let's turn then to a discussion of the last element. It's really taken together the notion of public health and safety that, again, this Project will not have an unreasonable adverse effect on public health and safety. And, let's discuss that topic. And, again, as I indicated before, I think this necessarily needs to include a discussion of the noise issue that has been raised, and on which I might note that there was -- there were memoranda of law filed on this topic by the parties. But, perhaps we can start with other issues, other than noise, and then turn to the noise issue.

MR. IACOPINO: As a legal perspective, I
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would just point out to the Committee the safe operation of a gas pipeline is extensively regulated by the Natural Gas Act through the Federal Energy Regulatory Commission. And, just historically, this Committee in the past has always required an applicant, such as Tennessee Gas, to comply with all the safety requirements of the Natural Gas Act, as well as with I believe it's 49 CFR Part 192, which are the safety regulations pertaining to transportation of natural gas. And, historically, we have always required those. And, historically, we've also delegated safety issues from the state perspective to be delegated to the Safety Division of the Public Utilities Commission, for the purposes of, if an issue arises, reporting back to the Committee, so that we have a state agency that, although they may not have technical jurisdiction in our state,

16 with the way our state promotes its Safety Division, but
17 we would have an agency that can, in fact, report back to
18 us and make recommendations to this Committee about this
19 very important issue of making sure that the
20 transportation of the gas is safe.

21 MR. KNEPPER: Can I make a comment?

22 CHAIRMAN BURACK: Please do, Mr.
23 Knepper.

24 MR. KNEPPER: While I'm not an attorney,
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1 I think it's the Natural Gas Safety Act that is the one
2 that references that. The FERC deals with the Natural Gas
3 Act, and the Safety Act of '68 brings in those regulations
4 of Part 192 that deems the -- what they call the "Pipeline
5 Material Hazardous Safety Administration" to be the
6 jurisdictional body that would oversee that. The role of
7 the Safety Division at the Public Utilities Commission, we
8 act as an agent of that Pipeline Hazardous Material Safety
9 Administration on interstate. And, we have had
10 discussions with that administration down in Washington,
11 and discussions about probably taking temporary oversight
12 of that line through the -- in conjunction with them, for
13 the construction and commissioning of the Project. So,
14 after the commissioning, we would probably throw that role
15 back to the PHMSA agents and let them handle the
16 maintenance aspect of the Project, of the Project going
17 forward. So, that should give some comfort to the parties
18 here in New Hampshire that there will be inspectors
19 on-site from the Safety Division of the PUC during the
20 construction aspect of this Project.

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CHAIRMAN BURACK: Mr. Getz.

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VICE CHAIRMAN GETZ: Yes. Mr. Chairman,

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23 I would suggest that, putting aside for the moment solely
24 the issue of noise, that there's a sufficient basis in the

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1 record, and in light of the comments made by Mr. Knepper
2 about the pipeline regulation context in which we operate,
3 that there's -- that there will not be an unreasonable
4 adverse effect on the public health and safety if we grant
5 the Certificate.

6 CHAIRMAN BURACK: Okay. Thank you. I
7 understand there's also some testimony from Mr. Phillip on
8 this matter, and don't know if counsel could just
9 summarize that testimony for us as well.

10 MR. IACOPINO: Yes. In Mr. Phillip's
11 testimony, he indicates that the Applicant intends to
12 "operate and maintain the facilities in accordance with
13 the safety standards established by 49 CFR Part 192. The
14 standards imposed are in accordance with the Natural Gas
15 Pipeline Safety Act of 1968, as it has been amended."
16 That there will be "regularly scheduled maintenance",
17 which will ensure that they "meet standard service
18 requirements". That their standard operating procedures
19 "include activities such as calibration, maintenance and
20 inspection of equipment, monitoring pressure, temperature,
21 and vibration data, and traditional landscape maintenance,
22 such as mowing and application of fertilizer". And, that
23 their standard operations also include "periodic checking
24 of safety and emergency equipment and cathodic protection

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1 systems". That the "facilities will be marked and
2 identified in accordance with these regulations". And,
3 that all of the maintenance on the facilities "will be in
4 compliance with the requirements of the Commission's 2003
5 Plan, and all other applicable regulatory requirements".
6 And, that is taken from Page 10 of Mr. Phillip's --
7 actually, of Mr. Malcolm's testimony, which was adopted by
8 Mr. Phillip.

9 CHAIRMAN BURACK: Thank you. Is there
10 any further discussion of safety issues, health and safety
11 issues, other than noise?

12 MR. KNEPPER: I would like to note that
13 this is the first pipeline compressor station to be built
14 in New Hampshire. There are no others. But it is not the
15 first in the region. There are numerous of these in both
16 Maine and Massachusetts and Connecticut and the rest of
17 the New England region. So, while it's new to New
18 Hampshire, it is not new to the region.

19 CHAIRMAN BURACK: Thank you. Okay.
20 Let's proceed then to a discussion of the issue of noise.
21 Again, I might ask Mr. Iacopino if he could summarize for
22 us what the -- what positions that have been set forth on
23 this issue by the Applicant and by Counsel to the Public.

24 MR. IACOPINO: I will do that. As you
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1 all know, we received a post hearing memorandum from both
2 the Applicant and Public Counsel, as well as a reply
3 memorandum from the Applicant. The issue centers over
4 what the maximum limit -- sound limit should be at the

5 proposed Project. I think that the Applicant and Public
 6 Counsel both agree that there are a good number of
 7 mitigation measures, operational mitigation measures that
 8 the Applicant intends to use in this compressor station
 9 down in Pelham, and the noise that we're talking about is
 10 primarily confined to the Pelham site. And, I don't think
 11 that there's any disagreement between them on -- in terms
 12 of the specifications that the Applicant is going to
 13 comply with. And, those are contained in I believe it was
 14 the November 6, 2008 Sound Report, Section 4, and
 15 Table 4.1, and the following -- the following text in that
 16 Sound Report sets forth the specifications.

17 The issue, as I understand it, that has
 18 occurred is that the Federal Energy Regulatory Commission
 19 has essentially created, through its regulations, and
 20 applied in its Certificate in this case a maximum sound
 21 limit of 55 dB(A) Ldn on this particular Project. The
 22 counsel to the public believes that, since the predicted
 23 sound levels, if these mitigation practices that everybody
 24 agrees are going to be used are used, are 46 to 48 dB(A)

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1 Ldn, Public Counsel believes that it would be more prudent
 2 to put a maximum sound limit of 50 dB(A). So, we're
 3 talking about the difference between 55 dB(A) Ldn and 50
 4 dB(A) as a condition on the sound levels.

5 The Applicant argues that this Committee
 6 is preempted under the doctrine of federal preemption by
 7 the provisions of the Natural Gas Act and the regulations
 8 promulgated by FERC, as I understand this 55 dB(A) is a
 9 standard that FERC applies across the country. And, you

10 heard testimony I believe from Mr. Stokdyk saying that it
11 would be impractical for the Company to essentially follow
12 different standards in different places, as far as the
13 maximum limit goes.

14 Public Counsel believes that, since the
15 predicted sound levels are such that they should be under
16 50 dB(A), that the Applicant would, in essence, be a
17 better neighbor if it limited itself to 50 dB(A), and that
18 there is, in fact, a cushion there between the 46 and 48
19 dB(A). Public Counsel does not believe that the doctrine
20 of federal preemption applies in this specific instance,
21 and, in its memorandum, cites to the actual FERC
22 Certificate, which talks about us, being the Site
23 Evaluation Committee, not doing anything that unreasonably
24 delays or interferes with the Project, and that this

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1 wouldn't unreasonably delay or interfere with the Project,
2 because it is a -- it's compatible with the mitigation
3 package that is going to be built into this particular
4 facility anyway.

5 So, there you have it. There is an
6 argument that federal preemption essentially rules the
7 day, and an argument against it by Public Counsel. I'm
8 more than happy to give you my opinion on it or you can,
9 if you all wish to discuss it first, I think --

10 CHAIRMAN BURACK: I think we need to
11 discuss it first. But I just want to make sure we're
12 clear that there is an understanding that, regardless of
13 what level we were to specify in the order itself, that
14 what is being proposed to be constructed by the Applicant,

15 and what is included in the Project Application as
16 approved by FERC, is designed to achieve a 46 to 48 dB(A)
17 Ldn, is that correct?

18 MR. IACOPINO: Yes. I understand that
19 to be an estimate of the predicted performance. And, as I
20 also understand it, that was done subsequent to the
21 predictions that were provided to FERC, which, when the
22 FERC sound -- when FERC dealt with sound, the Applicant
23 apparently had not yet incorporated many of these
24 specifications, and was looking at a predicted sound level

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1 of 54.7 Ldn -- dB(A) Ldn at that point in time. And that,
2 since the FERC Application, has agreed to these additional
3 specifications. And, they are included in that
4 November 8th letter from HFP.

5 CMSR. BELOW: November 6th.

6 MR. IACOPINO: November 6th, I'm sorry,
7 which is --

8 CMSR. BELOW: Exhibit H.

9 MR. IACOPINO: Yes, Exhibit H,
10 Applicant's Exhibit H, and it's also in one of Public
11 Counsel's exhibits as well. So, yes, I think there's an
12 agreement on the physical specifications of what's going
13 to go into the station. There's just a disagreement as to
14 the condition of the maximum limit of sound level.

15 CHAIRMAN BURACK: Thank you.
16 Commissioner Below.

17 CMSR. BELOW: I would -- I don't know
18 whether we're preempted or not. Though, from the
19 arguments, I think it's probably more arguable that we

20 likely might be preempted or are preempted. But,
21 irregardless, I think that the good news is the Applicant
22 has proposed to go beyond the federal requirement, but I
23 don't think they should be penalized for those additional
24 measures, although I think we should hold them to doing
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1 those measures, but also hold them to the FERC sound
2 level. So, I think if we provide two conditions to that
3 effect, and I could be more precise, I think we will have
4 -- we can find that there would not be an unreasonable
5 adverse impact on public health and safety with regard to
6 noise.

7 So, the specific conditions that I would
8 propose is that "The Applicant shall construct, operate,
9 and maintain the station so that it remains in full
10 compliance with applicable FERC sound level regulations."
11 And, that the second condition I'd propose is "The
12 Applicant shall design and construct the proposed
13 compressor station in substantial conformity with the
14 parameters and specifications contained in Section 4,
15 Station Sound Level Treatment Summary, in the report of
16 HFP Acoustical Consultants, Inc., dated November 6, 2008,
17 Applicant's Exhibit H."

18 CHAIRMAN BURACK: Okay. Thank you. So,
19 that's some conditions for us to consider if we do wish to
20 move forward with those. Before we get to potential
21 conditions, I want to see if there's further discussion
22 that people would like to have with respect to this issue
23 of noise levels, including the legal issue of preemption?
24 Ms. Ignatius.

1 DIR. IGNATIUS: I have some real
2 question on our authority to order anything below the FERC
3 level, but I appreciate the Company's design to bring that
4 noise level down, and their commitment during the hearings
5 that they would build to those lower levels. And,
6 anything we could stress as a condition to have them make
7 every effort they can to be at that lower level I think
8 would be important to do. So that, although we may not
9 have the authority to mandate below the 55, we certainly
10 have the authority to give strong encouragement to hold
11 the Company to its own testimony, that it would make every
12 effort it can to be at that lower level. And, further, if
13 it were tested to be consistently higher than the expected
14 level, that there be some exploration of why. Because the
15 specifications, the design package that's been presented
16 to us were that it would come in at that lower level. I
17 understand there will be some fluctuation, and it's not a
18 hard number all the time. And, I'm not asking that it
19 always be at, you know, precisely at that 46 to 48. But,
20 if, in some interval of testing, and I frankly have
21 forgotten what the testimony was on how often the testing
22 might occur, if there were some periodic testing, and it
23 were to find that it was significantly above the expected
24 level, though still below the 55, I think it's a fair

1 question to ask why, and is there any further mitigation
2 steps that could be taken. If there are not, that won't

3 impose tremendous cost or disruptions, and I don't think
4 we have the authority to mandate that there be, but I
5 think it's still fair to ask those questions along the
6 way, if it turns out that it's running at higher than that
7 46 to 48 level that the Company has engineered it to run
8 at.

9 CHAIRMAN BURACK: Thank you. Further
10 discussion of this issue? Mr. Knepper.

11 MR. KNEPPER: It's my understanding that
12 they're only going to test this once. Is that correct?
13 That's what we heard on --

14 CHAIRMAN BURACK: My recollection of the
15 testimony is consistent with that, that there would be one
16 test after construction had been completed. And, Mr.
17 Pfundstein, do you wish to speak to that? Is that
18 correct?

19 MR. PFUNDSTEIN: Mr. Chairman, it's my
20 understanding that, within 60 days of in-service, they
21 will need to test the facility to make sure it complies
22 with the federal requirement. And, to the extent that it
23 does not, they would be required, within the next 12
24 months, or perhaps 12 months from the in-service, I'm not

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1 sure, to make corrections to get within federal
2 compliance, then they need to demonstrate with a
3 subsequent test that they have done that. That's the way
4 the federal protocol works.

5 CHAIRMAN BURACK: Thank you very much,
6 Attorney Pfundstein. Ms. Ignatius.

7 DIR. IGNATIUS: Well, in like of that,

8 and I appreciate the reminder of what the schedule was,
9 which is a schedule of one event, I think it is within our
10 authority to require additional testing. I don't think
11 that would be preempted. And, to ask that some schedule
12 of tests, perhaps quarterly, be done to assess where we
13 are on noise.

14 MR. IACOPINO: And, I would just point
15 out that, as part of the FERC Certificate, and just so
16 that you're all aware, I think it's Condition 13, on Page
17 15 of the order issuing the Certificate, specifically lays
18 out the post construction requirement. And, that is that
19 "Tennessee shall make all reasonable efforts to ensure
20 that predicted noise levels from the Compressor Station
21 270B1 are not exceeded at the NSAs and file noise surveys
22 with the Secretary no later than 60 days after placing the
23 compressor station in service. If noise attributable to
24 the operation of the compressor station at full loads

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1 exceeds 55 dB(A) Ldn at any nearby NSAs, Tennessee should
2 file a report on what changes are needed and should
3 install additional noise controls to meet the level within
4 one year of the in-service date. Tennessee should confirm
5 compliance with these requirements by filing a second
6 noise survey with the Secretary no later than 60 days
7 after it installs the additional noise controls."

8 I would recommend to you all as a
9 Committee that, whatever you do as far as requirements of
10 testing go, that you require that anything that gets filed
11 with FERC also gets copied to this Committee as well.

12 CHAIRMAN BURACK: Okay.

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13 CMSR. BELOW: That's a good idea.
14 MR. IACOPINO: Thank you.
15 CHAIRMAN BURACK: Further discussion of
16 this particular item?
17 (No verbal response)
18 CHAIRMAN BURACK: Okay. I may just note
19 that I think a number of us, all of us I'm sure have
20 looked at this issue of preemption. I don't know that we
21 need to make a legal finding on it. I do believe that
22 there are -- there's significant case law out there, in
23 terms of both Supreme Court decisions, the U.S. Supreme
24 Court, as well as the New Hampshire Supreme Court as well,
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1 which would suggest that the Natural Gas Act does
2 effectively preempt the field with respect to regulation
3 of gas pipeline operations. And, accordingly, I think it
4 would behoove us to proceed along the lines that have been
5 suggested here. That is that we could adopt the federal
6 requirements really as a condition of this permit, as well
7 as the specifications that have been laid out and
8 described by Attorney Iacopino, as, in fact, presented in
9 the HFP report, their second report on this topic. And,
10 that such measures would ensure that the -- and would
11 support a finding that the Project would not have an
12 unreasonable adverse effect on noise levels as a component
13 of our consideration of public health and safety.
14 Okay. Other discussion of this topic?
15 (No verbal response)
16 CHAIRMAN BURACK: I think we probably
17 need to -- we had a motion at the beginning of this

18 discussion on this particular element, which did not
19 include any of the conditions that have been discussed
20 here. I believe Commissioner Below has suggested a couple
21 of specific conditions, Director Ignatius has suggested a
22 couple of possible conditions, including some additional
23 testing conditions. And, maybe we can get some resolution
24 on these issues at this point.

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1 Commissioner Below, could you summarize
2 the two conditions that you had -- that you had suggested.

3 CMSR. BELOW: That they construct and
4 operate it in compliance with the FERC regulations. But I
5 think I would add to that that they file with us in
6 conformance with their FERC conditions as well, and that
7 they also construct it consistent with the specifications
8 that were the basis for the lower projections that are
9 embodied in that report.

10 CHAIRMAN BURACK: Okay. Thank you. So,
11 would you -- I don't recall who made this motion on this
12 item. I think it was you originally, on this particular
13 --

14 CMSR. BELOW: This is the motion that we
15 find that the Project does not have unreasonable adverse
16 impacts on historic sites, aesthetics, air and water
17 quality, and public health and safety. I would move that,
18 assuming the conditions -- that we make the conditions as
19 discussed.

20 CHAIRMAN BURACK: Okay. Very good. Are
21 there any, in addition to those that Commissioner Below
22 has suggested, are there any other conditions that anyone

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23 would like to suggest that would be included as a
24 condition of that finding?

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1 (No verbal response)
2 CHAIRMAN BURACK: Okay. Very good.
3 MR. IACOPINO: I would just point out,
4 with respect, setting aside noise for the moment, with
5 respect to the environmental findings, including the
6 conditions of each of the environmental permits that have
7 been granted by your agency. And, traditionally, it's
8 also been in these, historically, we've generally
9 designated any issues pertaining to those, delegated the
10 resolution of any issues that come up with respect to the
11 air permit, water permits, and other permits at issue, to
12 your agency to deal with if there are slight changes or
13 modifications. So, I would suggest that we -- that your
14 order include that delegation authority to deal with the
15 minor modifications. And, historically, we've delegated
16 that to the state agencies with jurisdiction.

17 CHAIRMAN BURACK: It would seem to be an
18 appropriate condition to include here in this as well.
19 Ms. Ignatius.

20 DIR. IGNATIUS: If I may go back to
21 noise for just a moment. I've been thinking about it. I
22 had suggested quarterly testing, and didn't get a lot of
23 nods, and that's fair, and I'm not even sure what the
24 magnitude of such a request would be. I do think that --

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1 and so I'm willing to let that go. I do think that, "do

2 it once and never again" seems a little too loose for my
3 taste. And, that it would be completely appropriate to
4 require annual testing, maybe not more often than that.
5 But that, once it's constructed things, can operate very
6 differently after a while. And, after the first 60 days,
7 you've gotten through the initial shakedown period, and
8 that's good. But, two years into a project or three years
9 into a project, things could change as components age.

10 And, I think it's fair to ask that there
11 be an annual noise test. And, I don't even know what one
12 would describe it exactly, but something that gives a fair
13 appraisal of the operational sound level at the unit at
14 the full load level, the way the FERC required that that
15 be done, and the results be reported both to FERC and to
16 this Committee.

17 CHAIRMAN BURACK: So, your suggestion is
18 that we would include a condition of annual testing, in
19 addition to whatever testing FERC might require, and this
20 would be annual testing with respect to noise from
21 operations of the facility?

22 DIR. IGNATIUS: Well, if there is any
23 other FERC requirement, that might suffice. But, if there
24 is no FERC requirement, other than do it once 60 days out

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1 and never again, then I think it's fair to ask that we
2 impose an annual test requirement.

3 If there is already some other periodic
4 testing, we don't need to add on to it, as long as we see
5 the results.

6 CHAIRMAN BURACK: I believe, as Attorney
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7 Iacopino read to us or summarized the condition of the
8 permit itself, there is an initial test to confirm that
9 levels are below the 55 dB(A) Ldn level. And, if that is
10 satisfied, then there would be no further test
11 requirements under the FERC permit. However, if it were
12 not satisfied, then the Applicant would need to install
13 additional measures, and then retest. And, again, that
14 retest would not have to be repeated if, with the
15 additional measures, things were satisfied.

16 I believe that's a fair summary of what
17 the FERC permit requires. And, I gather what you're
18 suggesting is that we should be, regardless of the outcome
19 of that testing, even if it says initially that this is
20 operating within the parameters or, after some
21 modifications, that's it's operating within the
22 parameters, but that there would still be a requirement
23 for an annual test of noise levels?

24 DIR. IGNATIUS: That's correct. That's
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1 my recommendation. And, subject to counsel arguing that
2 that would be preempted or other arguments from the
3 Committee, I think it's a reasonable request.

4 CHAIRMAN BURACK: Counsel, do you have
5 any --

6 MR. IACOPINO: I'm not inclined to argue
7 with any member of the Committee. You know, I think it's
8 a policy decision you all, as the Committee, have to make.

9 CMSR. BELOW: I guess my concern would
10 be, who's going to monitor these reports? I mean, if it's
11 a noise survey, they need to do in the noise-sensitive

12 areas, I don't know how many points of collection that is,
13 but it does involve I'm sure getting, you know, a
14 professional out there and for some period of time
15 sampling noise levels at different locations. And, say
16 they do this every year, I'm just not sure who's going to
17 receive that report and care about it. I guess I'd rather
18 have a condition that, if we got complaints about the
19 noise level after the initial operation, that we could
20 require a subsequent noise survey, you know, up to once a
21 year to, you know, to assure that it's still operating in
22 compliance. But I'm not sure, if it proves that it's 46
23 or 48 decibels, is fairly, you know, fairly quiet
24 relatively in an industrial area, it's not exactly quiet,

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1 but it's not likely to be, you know, a problem if that's
2 what it does. And, if it continues to operate at that
3 level, if somebody doesn't complain and it's not bothering
4 anyone, then I'm just not sure what the point of annual
5 testing would be, unless there's a complaint. So, I would
6 like to see that converted to, if there's a complaint, we
7 could require them to test it.

8 MR. IACOPINO: I would just point out
9 that the Committee maintains continuing jurisdiction, if
10 you limit the sound level to 55 dB(A), or whatever limit
11 you choose as a policy matter, and the Company goes beyond
12 that, you do have, under our statute, RSA 162-H,
13 enforcement authority, which could include up to a
14 suspension of the Certificate, which would, in fact, bring
15 federal preemption issues squarely into play, but we do
16 have that authority, if, in fact, there's a determination

17 made that they are not complying with that condition.

18 I presume that the FERC has a similar
19 authority. And, that, if complaints are -- I don't know
20 how many complaints it takes to move at FERC, but, if they
21 receive complaints that their Certificate is being
22 violated, that there is probably a continuing
23 jurisdictional authority on their part to -- over the
24 Certificate that they have provided on this facility as
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1 well. So, I think there are some enforcement mechanisms,
2 in the event of a failure to follow the Certificate.

3 DIR. IGNATIUS: Mr. Chairman, I could
4 accept sort of flipping it that way. And, if it really is
5 operating fairly quietly, we don't need to have everyone
6 go to the expense of essentially proving a negative. And,
7 so, I could accept the approach that Commissioner Below
8 suggested.

9 CHAIRMAN BURACK: So, this would be a
10 condition that, if we were to receive, I don't know what
11 the threshold would be, but, if we were to receive
12 complaints of a significant enough either number or
13 magnitude or severity, again, I don't know how you would
14 structure that, how would you suggest doing that?

15 CMSR. BELOW: It would need to come to
16 this Committee. But, if we receive a complaint, it could
17 be just one, and we request, you know, that we could
18 request then, and the requirement would be that they do an
19 additional test, you know, up to once a year, if it's in
20 compliance. Obviously, if it's not in compliance, then
21 they need to keep retesting until it's brought into

22 compliance, which is sort of what the FERC says. But,
23 just the point is, if we receive a complaint, we could
24 require them, in subsequent years, to retest.

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1 MR. KNEPPER: I also think that we would
2 probably be the body that would receive that complaint,
3 versus FERC, just because we are more local, and people
4 aren't going to go to Washington to complain about that.

5 CHAIRMAN BURACK: So, that the
6 condition, in essence, would be that, were we to receive
7 one or more complaints regarding noise levels at the
8 facility, that we retain and reserve the right to request
9 testing or additional noise mitigation measures by the
10 Applicant?

11 CMSR. BELOW: Right.

12 CHAIRMAN BURACK: Okay. Are there any
13 other issues or conditions then that would need to be
14 discussed in the context of making the findings that are
15 under consideration here? Again, this is in 162-H:16,
16 IV(c), again, that "the site and facility will not have an
17 unreasonable adverse effect on aesthetics, historic sites,
18 air and water quality, the natural environment, and public
19 health and safety." Further discussion of this issue?

20 (No verbal response)

21 CHAIRMAN BURACK: Okay. If not, all in
22 favor of the motion, subject to the conditions that we
23 have discussed, agreed to include here?

24 (Multiple members indicating "aye".)

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1 CHAIRMAN BURACK: Any opposed?
2 (No verbal response)
3 CHAIRMAN BURACK: Any abstentions?
4 (No verbal response)
5 CHAIRMAN BURACK: Okay. Thank you. Let
6 the record reflect that that was also I believe a
7 unanimous vote of the quorum present. And, I will note
8 for the record that, regrettably Director Scott has to
9 leave to attend another meeting some distance from here,
10 but we still maintain a quorum for voting purposes.
11 CMSR. BALD: Mr. Chairman, do we have to
12 find that it's consistent with state energy policy as
13 well?
14 CHAIRMAN BURACK: Yes, we do. We need
15 to make a finding that the operation is consistent with
16 the state energy policy established in RSA 378:37.
17 CMSR. BALD: I so move.
18 CHAIRMAN BURACK: Okay. A motion by
19 Commissioner Bald. Is there a second?
20 DIR. STEWART: Second.
21 CHAIRMAN BURACK: Okay. Thank you. Is
22 there a discussion of this item?
23 CMSR. BELOW: I just think it speaks for
24 itself. And, obviously, the Project is supported by
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1 National Grid, one of the utilities, that it would support
2 in delivering natural gas.
3 CHAIRMAN BURACK: Again, I will just
4 read for the record that RSA 378:37 reads that "The

5 general court declares that it shall be the energy policy
6 of this state to meet the energy needs of the citizens and
7 businesses of the state at the lowest reasonable cost
8 while providing for the reliability and diversity of
9 energy sources; the protection of the safety and health of
10 the citizens, the physical environment of the state, and
11 the future supplies of nonrenewable resources; and
12 consideration of the financial stability of the state's
13 utilities." Again, that's the overall New Hampshire
14 energy policy, and the motion is that we find that the
15 site and facility operation is consistent with this state
16 energy policy.

17 Is there further discussion of this
18 item?

19 (No verbal response)

20 CHAIRMAN BURACK: Okay. If not, all in
21 favor please say "aye"?

22 (Multiple members indicating "aye".)

23 CHAIRMAN BURACK: Opposed?

24 (No verbal response)

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1 CHAIRMAN BURACK: Abstentions?

2 (No verbal response)

3 CHAIRMAN BURACK: Okay. Thank you.

4 Again, let the record reflect that there was I believe a
5 unanimous vote in support of that motion making that
6 finding as well.

7 MR. IACOPINO: Mr. Chairman, I would
8 just point out that the fact that Mr. Scott has left does
9 not -- we need a quorum of the entire Committee, and that

10 quorum still exists, despite Mr. Scott leaving.

11 CHAIRMAN BURACK: Thank you. With that
12 clarification, statement, okay. Mr. Below.

13 CMSR. BELOW: I'll move that we grant
14 the Applicant a Certificate of Site and Facility, with all
15 the conditions as we've discussed today. I'll stop there.
16 Obviously, that needs to be drafted up and we need to
17 review the order that implements our decision, you know,
18 before we execute the order, but that was the intent.

19 CHAIRMAN BURACK: Is there a second to
20 that motion?

21 (Non-verbal indication by Cmsr. Bald.)

22 CHAIRMAN BURACK: Second by Commissioner
23 Bald. So, we have a motion and a second to grant a
24 Certificate of Site and Facility to the Applicant, subject
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1 to conditions as we have discussed today and to the
2 Committee's review of an order that is, obviously, to be
3 drafted and circulated for review by the Committee.

4 Discussion of that motion?

5 (No verbal response)

6 CHAIRMAN BURACK: Okay. Are there any
7 additional conditions that anyone feels we should be
8 including here that have not already been discussed or,
9 counsel, are there any other general items that you can
10 think of should be to preclude us from identifying
11 additional conditions, if we feel that there are general
12 conditions that should, as a matter of standard
13 procedures, be included in such an order for a Certificate
14 of Site and Facility?

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15 (No verbal response)
16 CHAIRMAN BURACK: Any further discussion
17 then with respect to the motion?
18 (No verbal response)
19 CHAIRMAN BURACK: All right. If not,
20 all in favor of the motion to grant the Certificate of
21 Site and Facility, please indicate by saying "aye"?
22 (Multiple members indicating "aye".)
23 CHAIRMAN BURACK: Any opposed?
24 (No verbal response)

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1 CHAIRMAN BURACK: Any abstentions?
2 (No verbal response)
3 CHAIRMAN BURACK: Okay. Thank you.
4 Again, let me -- let the record reflect that there was
5 unanimity in the vote in support of issuance of a
6 Certificate of Site and Facility.
7 Recognize, Commissioner Bald, that you
8 need to depart. Thank you very much for staying to allow
9 us to complete our deliberations with a quorum present.
10 The one last item that I would like to
11 raise, I don't know if there is any other new business
12 that anyone else would like to raise, I simply want to
13 advise the Committee that I was recently contacted by
14 officials from the City of Berlin asking if we could
15 arrange for a representative of the Site Evaluation
16 Committee to travel to Berlin to meet with I believe it
17 was their City Council or Board of Alderman, forgive me, I
18 don't -- it's probably the Board of Alderman for the City,
19 to provide simply a summary of the process that the SEC

20 follows in reviewing matters that are subject to SEC
21 jurisdiction. There are one or two matters that the City
22 is anticipating may be subjects of applications that would
23 potentially fall under the jurisdiction of the SEC. And,
24 so, just some general information. I just wanted to make
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1 the Committee aware that that request has come in. I will
2 have further discussions with representatives of the City
3 to determine how we can -- how we can most effectively
4 meet their needs for information about the matter.

5 Any questions or discussion on that?

6 Ms. Ignatius.

7 DIR. IGNATIUS: I think it's a good idea
8 that we assist them in any way we can. I've gotten one
9 e-mail from someone who, from Berlin, who I think was
10 assuming things about the process that weren't necessarily
11 right. And, I sent back a note explaining how it worked
12 and the right to intervene and right to have a public
13 comment period, and that we would have a site visit if
14 anything were filed from that area. And, I think that
15 helped to clarify it a bit. So, there probably is a lot
16 of information swirling around. And, anything we can do,
17 either in person or sending materials or a conference call
18 or something to help them understand that would help at
19 the front end, before too much misinformation locks in.

20 CHAIRMAN BURACK: Very good. Thank you.
21 And, I might just point out that, as I think members of
22 the Committee are aware, and probably all in this room are
23 aware, the Committee itself does not have any full-time
24 paid staff. And, so, typically, inquiries about the

1 procedures of the Committee are, in the first instance,
2 handled by Tim Drew, who is the Administrator of our
3 Public Information and Permitting Unit at Department of
4 Environmental Services. We also frequently consult with
5 Attorney Iacopino, simply based on his depth of experience
6 with so many of these matters in recent years. But we
7 will again respond to the inquiries from the City.

8 Attorney Roth, you had a question about
9 this matter?

10 MR. ROTH: Mr. Chairman, as Public
11 Counsel or Counsel for the Public, I want to voice some
12 concern about this process, given the possibility that
13 folks in Coos County would want to ask specific and
14 pointed questions about ongoing projects, which contacts
15 could constitute ex parte contacts. And, that being said,
16 I would also volunteer to join the SEC or whatever member
17 that embarks on such a perilous journey to also provide
18 the insights from my perspective.

19 CHAIRMAN BURACK: Attorney Roth, thank
20 you very much for that offer. I think we are certainly
21 all cognizant of the importance of ensuring that there are
22 not ex parte communications in proceedings of this kind.
23 And, we need to clearly balance that, that concern,
24 against the need to make sure that there is an

1 understanding of how this process generally works. And,
2 your willingness to assist us in walking that line is much
3 appreciated. Thank you.

4 Okay. Any further discussion of any
5 other matters that should come before us today?

6 CMSR. BELOW: I just want to alert the
7 members of the Committee that there's a bill pending in
8 the House, Bill 55, before the House Science, Technology &
9 Energy Committee, that would do some clean-up on our
10 statute, including getting rid of the "Bulk Power
11 Facility" split, between that and the "Energy Facilities",
12 and consolidate it down to just "Energy Facilities".

13 CHAIRMAN BURACK: Okay. Thank you.
14 Yes. So, that is a piece of legislation that is pending
15 before the Legislature now, and we have been working with
16 members of the Legislature to answer their questions and
17 provide our suggestions for that legislation.

18 If there is nothing else to come before
19 us today, we will stand adjourned. Thank you.

20 (Whereupon the meeting was adjourned at 2:47 p.m.)

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{SEC DOCKET NO. 2008-002} {02-10-09}