

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 March 5, 2009 - 10:08 a.m.
4 Public Utilities Commission
5 21 South Fruit Street
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:
8 SEC DOCKET NO. 2008-04:
9 Application of Granite Reliable
10 Power, LLC, for a Certificate
11 of Site and Facility for the
12 Granite Reliable Power
13 Windpark in Coos County, New
14 Hampshire.
15 (Prehearing conference)

16 PRESENT:	SITE EVALUATION COMMITTEE:
17 Thomas B. Getz, Chrmn.	Public Utilities Commission
18 (Chairman of SEC Subcommittee - Presiding)	
19 Donald Kent	Dept. of Resources & Econ. Dev.
20 Glenn Normandeau	Fish & Game Department
21 Robert Scott, Director	DES - Air Resources Division
22 Christopher Northrop	N.H. Office of Energy & Planning
23 William Janelle	Dept. of Transportation
24 Michael Harrington	Public Utilities Commission

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21 Counsel for the Committee: Michael J. Iacopino, Esq.

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

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2 APPEARANCES:

3 Reptg. Granite Reliable Power, LLC,
4 and Noble Environmental Power:
Douglas L. Patch, Esq. (Orr & Reno)
Susan S. Geiger, Esq. (Orr & Reno)
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Reptg. Counsel for the Public:
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Reptg. N. H. Fish & Game Division:
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Reptg. Clean Power Development:
William Gabler

Reptg. N. H. Wind Energy Association:
Farrell Seiler

Reptg. the Appalachian Mountain Club:
David Publi cover

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P R O C E E D I N G S

CHAIRMAN GETZ: All right. Good morning, everyone. We'll open the prehearing conference in Docket 2008-04, the Site Evaluation Committee, concerning the Application of Granite Reliable Power for a Certificate of Site and Facility for a windpark in Coos County. Let's take appearances for the record please.

MR. PATCH: Good morning, Mr. Chairman. Doug Patch and Susan Geiger, from Orr & Reno, for GRP.

CHAIRMAN GETZ: Good morning.

MR. GABLER: Good morning, Mr. Chairman. Bill Gabler, for Clean Power Development.

CHAIRMAN GETZ: Good morning.

MR. SEILER: Farrell Seiler, for the New Hampshire Wind Energy Association.

CHAIRMAN GETZ: Good morning.

MR. BROOKS: Allen Brooks --

CHAIRMAN GETZ: Well, let's go behind you. We'll let you go last.

20 DR. PUBLICOVER: David Publicover, for
21 the Appalachian Mountain Club.

22 CHAIRMAN GETZ: Good morning.

23 MR. MULHOLLAND: I'm Evan Mulholland,
24 for the Fish & Game Department.

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1 CHAIRMAN GETZ: Good morning.

2 MR. BROOKS: Allen Brooks, Counsel for
3 Public.

4 CHAIRMAN GETZ: Good morning, everyone.
5 Okay. I have a list of items that I want to try and work
6 through. I think I've got everything, I may have missed
7 something, but let's first start out with outstanding
8 motions. The only outstanding motions I see that need to
9 be resolved concerns the Applicant's Motion to Strike and
10 Motion in Limine regarding testimony filed by Fish & Game.
11 And, objections have been filed on those motions just
12 recently. I'm prepared to rule on these at this moment.

13 Is there any further argument or
14 resolution among the parties with respect to the Fish &
15 Game testimony?

16 MR. PATCH: Mr. Chairman, if I could
17 just briefly address you about that. We're still in the
18 midst of negotiations. And, our client is diligently
19 trying to work through that. So, it would be my
20 recommendation, I haven't discussed this with the other
21 parties, but, if you would be willing to defer that until
22 Monday, it's our hope that we'll have something signed and
23 submitted. And, if it is, then, in all likelihood, we
24 would withdraw our motions. And, so, presumably, then

1 their objections would be withdrawn as well, I guess.

2 So, anyway, that's the status of the
3 settlement discussions right now on that issue.

4 CHAIRMAN GETZ: Mr. Mulholland.

5 MR. MULHOLLAND: Mr. Chairman, some of
6 this will become more clear I think as we go along. But,
7 as Attorney Patch said, we haven't reached any agreement
8 yet, so we're proceeding under the assumption that we're
9 having a regular hearing on these endangered species and
10 threatened species issues. And, I have no problem with
11 waiting till Monday, it just makes it a little difficult
12 to know exactly what we're going to be doing on Monday, if
13 we wait until then.

14 CHAIRMAN GETZ: Well, and I don't want
15 to use up hearing time with further argument about these
16 motions. I'm hoping that we'll get right to
17 cross-examining witnesses first thing at 10:00 on Monday
18 morning. Does anybody else have any position that they
19 want to state for the record with respect to the
20 admissibility of the Fish & Game testimony?

21 DR. PUBLICCOVER: We concur with Fish &
22 Game's objections, the Appalachian Mountain Club --

23 [Court reporter interruption]

24 DR. PUBLICCOVER: I just wanted to note

1 that Appalachian Mountain Club concurs with Fish & Game's
2 objections. We have no position on whether you rule now
3 or later, but we share Mr. Mulholland's concerns that

4 delaying it would make it a little confusing as to how to
5 prepare for Monday.

6 CHAIRMAN GETZ: Okay. All right. Well,
7 let me -- let's defer that for the moment and move onto
8 some other items on the list I've put together.

9 There's an issue about order of
10 witnesses that -- in the report of the scheduling
11 conference that Mr. Iacopino submitted. And, as I
12 understand it, Mr. Brooks, Public Counsel had proposed
13 that we go by subject matter as much as possible, rather
14 than by party. And, it seemed to me, looking at the order
15 of witnesses that's in the report of the scheduling
16 conference, that we could essentially address both issues,
17 it seems, if we were to move the Pelletier and Gravel
18 panel to the end of the Applicant's presentations, and
19 then we would move into Counsel for the Public, with the
20 Mariani and Sanford and Lloyd-Evans witnesses, and then to
21 Fish & Game with its witnesses, and then onto AMC, Dr.
22 Publicover, and then into the Linowes and Keene
23 testimonies, we've effectively got to the same result. Is
24 there any issue with that, Mr. Patch, about moving the
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1 Pelletier and Gravel panel?

2 MR. PATCH: This is probably more a
3 scheduling problem than anything, Mr. Chairman. But Mr.
4 LaFrance is the Town Moderator in his town that Tuesday,
5 and he asked if there was a way to do his testimony last,
6 so that that was why we had come up with that schedule.
7 But, if that's your ruling, obviously, then we'll have him
8 here on that Tuesday, if it looks like we'll get to him

9 that Tuesday. So, that was our main reason for coming up
10 with that order of witnesses.

11 CHAIRMAN GETZ: Well, when you say "that
12 Tuesday", I'm looking at we're starting Monday, the 9th;
13 Tuesday, the 10th; Wednesday, the 11th. And, it looks
14 like you wanted to put Mr. LaFrance on Wednesday, the
15 11th, correct?

16 MR. PATCH: That was what we thought.
17 Obviously, we don't know how long it will take for each of
18 the panels and the other witnesses before them. But, you
19 know, it was our thinking that we probably wouldn't get to
20 Mr. LaFrance and Mr. Lobdell until that Wednesday, but
21 that depends, obviously, on cross-examination and
22 Committee questions.

23 CHAIRMAN GETZ: Certainly. Mr. Brooks,
24 do you have any position on this issue?

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1 MR. BROOKS: No, that actually makes
2 sense to me. I just wanted to bring up one more thing
3 Peter asked me to raise, which is that the second witness
4 on the Counsel for the Public List, Trevor Lloyd-Evans, he
5 apparently is going to be away, and the first available
6 day would be the 19th. We're not scheduled to have any
7 witnesses on the 19th. Peter wanted me to ask, and with
8 permission of the Applicant, whether or not just Trevor
9 Lloyd-Evans could provide the testimony at the beginning
10 of the 19th, before closing arguments. I know that's
11 different than what you talked about before, but, again,
12 that's a scheduling matter that Peter wanted me to raise.

13 CHAIRMAN GETZ: Well, it's a significant
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14 scheduling matter, seeing as we were hopeful of closing
15 the proceedings by the 17th, and just doing closings on
16 the 19th. All right, let's -- Mr. Patch.

17 MR. PATCH: Well, I guess we didn't
18 realize we'd be addressing all these issues with you, Mr.
19 Chairman. But, one other order of witness issue that we
20 had, Mr. Hessler, who we had lower down in the order that
21 we talked about at the scheduling conference has indicated
22 that he has to testify in Vermont on the 10th, and asked
23 if we could take him on Monday, on the 9th. And, so, we
24 were hoping to start with the Decker, Lyons and Mandli
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1 panel. And, depending on how long that took, to put Mr.
2 Hessler on right after them on Monday, if we got through
3 them. And, if we got to mid afternoon and didn't get
4 through them, maybe to take Mr. Hessler. And, then, just,
5 since we're talking about scheduling, one other issue,
6 Mr. Borkowski. He could be here next week, if he really
7 had to. He asked if he could be deferred until the 16th.
8 I know that was on financial issues. So, just so we know,
9 those are all the scheduling issues that we had.

10 Now, in terms of Mr. Lloyd-Evans, I
11 mean, this is the first I've heard of that. And, I -- I
12 don't know. If we were going to try to complete before
13 the 19th, I thought we were going to try to complete all
14 the witnesses on either the 16th or the 17th. So, it just
15 seems as though, if there's a way to do it, if we could do
16 him before the 19th that would make more sense.

17 CHAIRMAN GETZ: Okay. Well, I'm
18 certainly not adverse to some flexibility in the schedule.

19 And, I don't think there's any problem with trying to move
20 Hessler up in the order of the Applicant's witnesses. And
21 I would just suggest, with respect to the Gravel/Pelletier
22 panel vis-a-vis the LaFrance/Lobdell panel, that we plow
23 through Monday, Tuesday, and Wednesday, however long it
24 takes for each witness.

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1 MR. PATCH: Yes.

2 CHAIRMAN GETZ: And, did we put the
3 Gravel/Pelletier panel at close to the end as possible,
4 trying to recognize, if we can, Mr. LaFrance's other
5 obligations. Does anybody have any objection to that
6 general approach?

7 MR. BROOKS: No.

8 MR. IACOPI NO: I also would just point
9 out, I think -- I understand it that that panel with
10 Mr. LaFrance and Mr. Lobdell is going to address some
11 environmental issues anyway.

12 MR. PATCH: Yes. I mean, that's true.
13 Mr. Lobdell is a wetlands; Mr. LaFrance is more on
14 construction-related issues. But, you're right, both of
15 them are environmentally related.

16 MR. IACOPI NO: Okay. It may not be -- I
17 mean, we still may be accommodating what Public Counsel
18 wanted to try to do to get all the witness of, you know,
19 dealing with the environment sort on the same -- in the
20 same group.

21 CHAIRMAN GETZ: Yes. I'm comfortable
22 with that. That, whether the Gravel and Pelletier panel
23 is the last panel for the Applicant or the second to last

24 panel, I think that substantially meets the goals of the
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1 proposal by Public Counsel. And, I take it, Mr. Brooks,
2 you're fine with that?

3 MR. BROOKS: Yes, we are fine with that.
4 I just want to make sure, if we can go over quickly
5 through my notes, what the full order will be just to make
6 sure I understand.

7 MR. IACOPI NO: Actually, why don't you
8 tell us what -- I'm sorry.

9 CHAIRMAN GETZ: Go ahead.

10 MR. IACOPI NO: Why don't you tell us
11 what your order is proposed to be and where you need to
12 change it, and then we can just --

13 MR. PATCH: Yes. All right.
14 Lyons/Decker/Mandli first, Hessler second, I had Gravel
15 and Pelletier third, but, obviously, we'll move them. So
16 it would be Vissering, Luhman, it sounds like, from what
17 you said, Mr. Chairman, we could then go with
18 Gravel/Pelletier, and then Lobdell and LaFrance after
19 them, because they're both environmental.

20 CHAIRMAN GETZ: Well, let's step one --
21 when you say -- were you including Borkowski moving up
22 with Hessler?

23 MR. PATCH: I wasn't, because Borkowski
24 had asked if he could come on the 16th.

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1 CHAIRMAN GETZ: Okay.

2 MR. PATCH: Now, if you tell me he has
3 to be on that Monday with Hessler, then, you know, I'll
4 tell them that and he'll be here. But he had asked if
5 there was any chance to do him on the 16th.

6 CHAIRMAN GETZ: My preference would be
7 to have him on the 9th, and try to segregate the financial
8 issues, and make sure we have enough time for them
9 beginning on the 16th, and going into the 17th, if
10 necessary.

11 MR. PATCH: That's fine. So, then, it
12 would be Lyons/Decker/Mandli, Hessler/Borkowski,
13 Vissering, Luhman, Gravel and Pelletier, and Lobdell and
14 LaFrance. And, then, Lowe and Wood would be on the 16th,
15 because they're the financial witnesses.

16 CHAIRMAN GETZ: Right.

17 MR. IACOPI NO: Can I ask a question?
18 This is a question for all the parties. Putting Gravel
19 and Pelletier and Lobdell and LaFrance on one after the
20 other, is it possible that that could be done in a single
21 day?

22 MS. GEIGER: It all depends on
23 cross-examination.

24 MR. PATCH: Out of our control.

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1 MR. IACOPI NO: Other parties want to
2 chime in?

3 MR. PATCH: Can I just say one thing
4 quickly on that? I think it depends, to some degree, on
5 whether or not we have a settlement agreement on the
6 issues related to the high-elevation mitigation plan.

7 Because, if we do, then it would seem to me that some of
8 the --

9 MR. IACOPI NO: Let's assume we don't,
10 for these purposes, --

11 MR. PATCH: Right.

12 MR. IACOPI NO: -- because I'm just
13 trying to get an idea of what the worst case scenario is.

14 MR. BROOKS: I would add the same
15 comment. But, based on that assumption, I think that it
16 would be -- it would be possible, and, of course, it's
17 hard to tell what you're going to get on cross-examination
18 when you ask the person questions, what your follow-ups
19 are going to be." I'd say that, in general, in doing
20 witnesses, that that's a very full day, and you're push it
21 right to the end of that day. And, I didn't know, since
22 you did want to have things back to back, I assume then
23 Mariani and Sanford, you don't plan on having go that same
24 day, you'll let them go on the next day, because that

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1 would really be a lot of people on --

2 MR. IACOPI NO: Probably. I mean, I
3 think we're just going to go through in the order. But
4 I'm just seeing -- the way that I'm looking at it, it
5 looks as though Gravel/Pelletier, Lobdell and LaFrance
6 will all wind up being on the same day, unless Gravel and
7 Pelletier are maybe a day earlier.

8 MR. BROOKS: I think it's possible, but
9 that -- that is probably the limit of what you could do in
10 a day. And, I can't guarantee that it could get done.

11 CHAIRMAN GETZ: Okay. Thank you.

12 MR. IACOPI NO: I don't know. It may be
13 that Gravel and Pelletier will wind up testifying on
14 Tuesday anyway.

15 MS. GEIGER: Yes, I think, if I can just
16 interject, I think Ms. Vissering and Ms. Luhman's
17 presentations and cross-examinations are not going to take
18 very long on the 11th -- on the 10th, I'm sorry, on
19 Tuesday. So, what we were proposing to do was to start
20 with Gravel and Pelletier on Tuesday.

21 CHAIRMAN GETZ: Well, that's, yes, I
22 guess my hope was we were going to move -- we're going to
23 get a fair amount accomplished on Monday and Tuesday.
24 And, then, everybody understands that direct testimony is
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1 going to be limited to whatever it takes, four, five, six
2 questions to qualify the witnesses, and then no summaries,
3 no supplements, and then we're going straight to
4 cross-examination. So, I'm hopeful that we'll progress
5 fairly well through these issues.

6 And, let me, I guess, address a related
7 issue, with respect to the daily schedule, to make sure
8 there's no -- or, make sure that we have an understanding
9 of what the schedule is going to look like. Starting at
10 10:00 each day, we'll go to around noon, and some of this
11 is driven by how long Mr. Patnaude can go at one time. So
12 it's looking like a couple of hours, hour and a half, two
13 hours. So, break around noon for lunch, take about an
14 hour and a quarter for lunch, because it takes some folks
15 some time to prepare for the afternoon and actually get
16 their lunch and eat it and digest it, start in the

17 afternoon about 1:15. Go for another 90 minutes to two
18 hours, break around 3:00. We'd probably have in the
19 neighborhood of a half hour recess at that point. Resume
20 around 3:30, and then go to 5:00, 5:30 range. That would
21 look like pretty much the parameters of the daily
22 schedule. I don't want to stop at particular times of
23 day. And, I'd like to try to make sure that we are
24 breaking at natural breaks, in terms of cross-examination
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1 and change of witnesses, that kind of -- that kind of
2 thing. So, that's what I'm looking at for the daily
3 schedule. And, that would apply Monday, March 9th,
4 Tuesday, March 10th, Wednesday, March 11th. If we still
5 need to go on non-financial issues, then we have, Friday,
6 March 13th is available, and then pick up Monday, March
7 16, with financial issues, and Tuesday, March 17th, with
8 financial issues. And, I guess we have to address this
9 outstanding issue, what to do about Mr. Lloyd-Evans.

10 And, well, let me continue with some of
11 these other scheduling issues. At this point, we have
12 reserved the DRED's Offices of Division of Forests and
13 Lands, in Lancaster, for 3:00 to begin closing statements
14 or to hold closing statements on Thursday, March 19th.
15 Now, of course, that presumes that we have finished
16 everything else and we're in a position to do closing
17 statements. And, we have reserved Monday evening, March
18 23rd, the Lancaster Town Hall, for a final Public
19 Statement Hearing.

20 So, let me make this distinction. The
21 closing statements, on March 19th, is not an opportunity

22 for public comment. This will be for closing statements.
23 Of course, if the public wants to come and observe, it's a
24 public hearing. And, this was part of our earlier ruling
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1 on the motion to hold all the hearings up there, that we
2 would hold that -- we would hold closing statements in
3 Coos County. So, that's -- the plan is to do that on the
4 19th. And, then, on the 23rd, for the Public Statement
5 Hearing, the intention is for the public that wants to
6 weigh in, and not for the parties to make any presentation
7 of any kind that evening. But it's an opportunity for
8 public statement. Mr. Patch.

9 MR. PATCH: Mr. Chairman, just two
10 questions. One, on the 19th, I think we originally had
11 heard it was 3:00. Is that still the time or is it going
12 to be earlier on that day?

13 CHAIRMAN GETZ: Yes, it's 3:00.

14 MR. PATCH: It's 3:00?

15 CHAIRMAN GETZ: I believe that's what I
16 said.

17 MR. PATCH: And, the second thing that I
18 think we addressed briefly at the scheduling conference,
19 but the Applicant would like to have at least the
20 opportunity to bring back rebuttal witnesses, if
21 necessary, after intervenor or Public Counsel witnesses
22 have testified. I don't know that it will be necessary or
23 not, because we don't know, you know, what might be said
24 and whether that would be necessary. But, if so,

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1 presumably that would come on the 17th or would it --

2 CHAIRMAN GETZ: Well, that --

3 MR. PATCH: If you were to allow it.

4 CHAIRMAN GETZ: If you were going to
5 make a motion, and it were to be granted, --

6 MR. PATCH: Yes.

7 CHAIRMAN GETZ: -- the goal would have
8 it be done in advance of the 19th.

9 MR. PATCH: Right.

10 CHAIRMAN GETZ: And, it's not going to
11 be possible to have the hearings on the 18th. So, we're
12 looking at the -- we would be looking at the 17th, if
13 that's at all feasible.

14 MR. IACOPI NO: Or, perhaps even the
15 16th, if we get through with the financial panels.

16 MR. PATCH: Right. That's right.

17 MR. IACOPI NO: Because, as I understand
18 it, those are -- there's a panel that's going to be
19 presented by the Applicant, is that right? Just the one
20 panel, on financials, is going to be Mr. Wood and --

21 MR. PATCH: Yes.

22 MR. IACOPI NO: Yes.

23 MR. PATCH: Well, for us, and then Mr.
24 Sundstrom, presumably, for Public Counsel.

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1 MR. IACOPI NO: So, there's only really
2 two -- we only have two sets of prefiled testimony on
3 financial matters.

4 MR. PATCH: Right. That's right.

5 CHAIRMAN GETZ: And, let me make sure
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6 there's a meeting of the minds on this issue. With all of
7 the witnesses, is the intention to, to witnesses who have
8 done direct and supplemental testimony, to have
9 cross-examination on both sets of testimony at the same
10 time?

11 (No verbal response)

12 CHAIRMAN GETZ: Looks like there is a --

13 MR. PATCH: Nodding of heads.

14 CHAIRMAN GETZ: -- consensus among the
15 parties on that issue. Okay. So, --

16 MR. IACOPI NO: There's one other issue
17 that Mr. Seiler had an issue with respect to -- he wanted
18 to raise a request to make another data request, I think,
19 is that what it was? Farrell, could you tell us what that
20 is?

21 MR. SEILER: Well, the data request
22 would be driven by the supplemental that has been
23 submitted as of February 24th. Those are where the
24 questions would come from.

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1 CHAIRMAN GETZ: Okay. And, were these
2 not raised as part of the technical session that was held
3 with those issues or what's the --

4 MR. SEILER: Well, the difficulty of the
5 technical session is that I was required to sign a
6 confidentiality agreement. And, it was unclear whether
7 the information contained or expressed during that
8 particular session was all-encompassing. In other words,
9 there are certain parts of the docket which are public,
10 and I wasn't quite sure at that point whether or not I

11 could address questions to the publicly available
12 information, as opposed to what information was being
13 presented that was presumed to be confidential.

14 CHAIRMAN GETZ: Okay. Have you
15 discussed this with the -- I assume it's of the
16 Applicant's supplemental testimony?

17 MR. SEILER: Yes.

18 CHAIRMAN GETZ: And, I'll just -- of the
19 financial witnesses?

20 MR. SEILER: As well as the Public
21 Counsel's.

22 CHAIRMAN GETZ: And, have you discussed
23 this with either of the counsel?

24 MR. SEILER: Not yet.

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1 CHAIRMAN GETZ: Okay. Well, rather than
2 dealing with this in the abstract, since they apparently
3 don't know what the question is. Let's -- I am hopefully
4 going to walk through some of these issues, and the last
5 issue on my list was marking exhibits, which I was going
6 to leave to counsel, give you an opportunity to raise that
7 with the parties, and then I'm available to come back, if
8 I need to rule, if there's some objection to this
9 proposal. Mr. Patch.

10 MR. IACOPINO: Farrell, I just -- I just
11 wanted to make sure that the record is appropriately
12 limited here. Your request to Public Counsel's expert,
13 Mr. Sundstrom, at the technical session, he answered you.
14 He said, "That's not my field. I am not a wind engineer.
15 I don't base anything that I do on that." So, really, if

16 I understand what you're looking for, it's only from the
17 Applicant. Am I correct in that?

18 MR. SEILER: Yes.

19 MR. IACOPI NO: Okay.

20 MR. SEILER: The original data would
21 come from the Applicant.

22 MR. IACOPI NO: Okay.

23 MR. PATCH: Mr. Chairman, I might have a
24 solution to the Lloyd-Evans issue. If -- Since on the
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1 19th, as I understand it, we're only going to be doing
2 closing arguments, there might be an opportunity to do
3 Mr. Lloyd-Evans there, and then any rebuttal witnesses
4 that, again, assuming for a minute that we were to ask and
5 you were to grant the opportunity to do that, there might
6 be an opportunity to do both of those, you know, on that
7 day, just as an option.

8 CHAIRMAN GETZ: Well, then, it's
9 certainly not going to be a 3:00 to 5:00 event then. It
10 would be something, I assume, that we would have to start
11 much earlier, I think, with respect to that. And, any
12 other parties have any comment on that proposal?

13 (No verbal response)

14 CHAIRMAN GETZ: Okay. Then, I will take
15 it under advisement.

16 MR. MULHOLLAND: Mr. Chairman, thinking
17 about that, I'm pretty sure that we would object to a
18 motion for rebuttal witnesses, if that motion were made.

19 CHAIRMAN GETZ: Okay.

20 MR. PATCH: My co-counsel reminded me of
Page 20

21 one thing. Mr. Gravel is apparently not going to be
22 around on the 19th, which I didn't realize he is
23 potentially one of the people we would want as a rebuttal
24 witness. So, maybe I should withdraw my suggestion. I'm
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25

1 sorry.

2 CHAIRMAN GETZ: Okay. Well, I think
3 that there's going to be some flexibility and some
4 movement as we progress from March 9th on. So, we will be
5 prepared to address those motions as they arise.

6 Another issue I would like the parties
7 to address, rather than try to address it now on the
8 record, is, when I leave the room and you're working with
9 counsel on marking exhibits, is handling of confidential
10 materials. There's a variety of ways that it's been
11 handled in Site Evaluation hearings and Public Utilities
12 Commission hearings. So, I don't have any preference for
13 any particular approach. But, to the extent we have
14 confidential material, and it needs to be on the record,
15 then we have to make sure that it's protected. And, so,
16 there has to be some understanding among the parties what
17 approach you want to take in terms of redacting the record
18 or having a -- try to address the issues in blocks of
19 confidential material.

20 My assumption is that it's going to be
21 largely related to the financial issues on the 16th and
22 17th. Actually, well, let me say, is that a fair
23 conclusion on my part, that, with confidentiality, we're
24 really talking about the financial issues?

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1 MR. BROOKS: I think that, previously,
2 the only other issue that came up was wind data, came up
3 in a technical session. I don't know if that's going to
4 come up again. Or, whether that actually is more related
5 to the financial aspect or not.

6 CHAIRMAN GETZ: Okay.

7 MR. PATCH: Yes.

8 MR. IACOPI NO: Actually, I think that's
9 related to the information that New Hampshire Wind Energy
10 Association is looking for, I believe.

11 MR. SEILER: I think that the wind data
12 is very much connected to the financial data. You really
13 can't understand the financials until you understand the
14 wind data and the energy output of those machines in the
15 entire project, because they drive the financials.

16 CHAIRMAN GETZ: Okay. All right. Then,
17 we get back to -- The main issue is, I'm going to ask you
18 to try to come to some agreement among yourselves about an
19 approach for handling the confidential material as it
20 comes up during the hearings. And, counsel will report
21 back if there's agreement. If there's not an agreement,
22 then be prepared to rule on how we should proceed on that
23 issue.

24 Oh, one other thing I wanted to get on
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1 the record. And, this is -- it goes to, well, basically
2 it comes under Rule 202.03, Withdrawal of Presiding
3 Officer or Committee Member. I just want to make a full

4 disclosure, I am a member of the Appalachian Mountain
5 Club. And, I have not polled the other members of the
6 Committee, I subject that one or more other members are
7 members of the Appalachian Mountain Club. Rule 202.03
8 says, "Upon his or her own initiative, or upon the motion
9 of any party, a member of the Committee shall, for good
10 cause, withdraw from a proceeding to consider an
11 Application or Petition." And, then it goes onto say
12 "good cause shall exist if a Committee has a direct
13 interest in the outcome of the proceeding, including, but
14 not limited to, a financial or family relationship within
15 the third degree of relationship with any party or
16 representative or made statements or engaged in behavior
17 which a reasonable person would believe indicates that he
18 or she has prejudged the facts of the case or personally
19 believed he or she cannot fairly judge the facts of the
20 case." And, then it concludes that "mere knowledge of the
21 issues, the parties, or any witness shall not constitute
22 good cause for withdrawal."

23 I don't believe that my membership in
24 the Appalachian Mountain Club constitutes good cause or
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1 that it puts me in a position where I cannot fairly judge
2 the facts of the case, and I certainly haven't prejudged
3 the facts of the case. So, I just wanted to get that on
4 the record. That I don't -- it's my opinion that mere
5 membership in the organization doesn't constitute a basis
6 for disqualification.

7 Oh, and I guess one last issue that
8 we're prepared to address is briefing. And, to the extent

9 I need a ruling -- make a ruling, there's only going to be
10 one round of briefs. And, have the parties any thoughts,
11 proposals on the timing of that single round of briefs in
12 this case? Mr. Patch.

13 MR. PATCH: We talked about it briefly
14 at the scheduling conference. And, given the timeframes
15 in the statute, I think it would have to be done fairly
16 soon after the 19th or the 23rd. I think, according to
17 the schedule that was adopted, April 6th I think is the
18 date by which the Committee is supposed to issue an order.
19 And, obviously, everything gets pretty compacted there.
20 So, I would think that we probably ought -- should be page
21 limits, too, in order to accommodate that schedule. But
22 perhaps within a week of the closing of the record.

23 CHAIRMAN GETZ: Well, I was looking at
24 possibly Friday, March 27th, or Monday, March 30th. Are
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1 there any thoughts on those issues by any of the other
2 parties?

3 MR. BROOKS: March 30th I think would
4 work better than the 27th.

5 MR. PATCH: I support that.

6 CHAIRMAN GETZ: Anybody else?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Let's set March
9 30 for the briefing date, again, assuming we timely
10 complete the actual hearings. And, I would not -- I don't
11 think there's any reason or any need to put a page limit
12 on the briefs.

13 MS. GEIGER: Excuse me, Mr. Chairman.

14 One thing that would be very helpful, I think, is if you
15 put a time-of-day deadline on the closing briefs, for the
16 filing of the briefs. It's been our experience thus far
17 that I think we filed most of our things by the close of
18 business, 4:30, 5:00. We just think it would be unfair if
19 we made our filing at that time, and then others were, you
20 know, to read our filing and then wait till midnight to
21 make their electronic filing, and have the benefit of
22 basically doing rebuttal. So, I think it would make sense
23 and be fair to everyone if you could put a time-of-day
24 deadline in the -- on the 30th.

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1 CHAIRMAN GETZ: Any thoughts?

2 MR. BROOKS: For electronic filing, I
3 think that the federal court also allows filings up until
4 midnight. So, if you want to put a time-of-day, you can
5 put it at midnight. Unless you feel it's better for the
6 parties, there are multiple people involved, if they feel
7 more comfortable with close of business, 5:00, that's
8 okay. I think our practice for electronic filings would
9 be that we have later in that calendar day to do that.

10 MS. GEIGER: That's fine. As long as
11 everybody is operating under the same assumption as to
12 when the absolute deadline is for making those filings.

13 MR. IACOPINO: All those who are going
14 to stay up until midnight and push the button, raise your
15 hand?

16 MS. GEIGER: You don't need to do that.

17 MR. IACOPINO: That's true. You don't
18 even have to do that. You're right.

19 CHAIRMAN GETZ: Okay. Well, I think
20 it's certainly fair to have a set time for everyone. And,
21 seeing as how I'm very eager to start reading these
22 briefs, let's say that the briefs will be due at 6:00 p.m.
23 on Monday, March 30. And, of course, that would be an
24 electronic filing is acceptable filing of the briefs.

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1 And, then --

2 MR. IACOPINO: I guess the other thing
3 is, if you're going to file on paper, you need to file
4 before the close of business so that there's somebody to
5 accept the document at DES.

6 MR. PATCH: Well, that's a good
7 question. Because I think some of the filings we've been
8 making here, in order to facilitate distribution, and
9 we've tried to do both. But, should it be made, you know,
10 original and so many copies with --

11 MR. IACOPINO: Nobody has filed on paper
12 as far as I know, I don't think, since the beginning of
13 this proceeding. I anticipate that would be -- this is
14 just a warning that, if you are going to try to file it on
15 paper, there's not going to be anybody there at 6:00 p.m.
16 to take it.

17 CHAIRMAN GETZ: Have all the parties
18 thus far been -- well, not all the parties are here,
19 unfortunately, but I assume all the parties that are here
20 are in a position to file electronically. Has there been
21 a problem with, or do we know, that other parties are not
22 in a position? Mr. Mulholland.

23 MR. MULHOLLAND: Mr. Chairman, what

24 we've been doing is filing electronically, but sending an
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1 original plus nine to Tom Burack, Commissioner Burack. I
2 mean, if we don't have to, that would be super.

3 MR. BROOKS: Again, just so people know,
4 who do want to do paper, and maybe they're not here, but
5 close of business for DES is 4:00, some people think it's
6 4:30 or 5:00.

7 MR. IACOPIANO: And, it's a risk of not
8 filing electronically, I guess is what I'm saying.

9 CHAIRMAN GETZ: Well, let's do this.
10 We've got some time to nail down the details about that.
11 But, certainly, at this point, and given the short time
12 before the running of the period of the -- for review,
13 that I think electronic filing is certainly acceptable.
14 If it turns out that there is a party that's not in a
15 position to do that, then we'll address that issue. And,
16 then, we're going to have to set some time for
17 deliberations following on the heels of March 30, but I'm
18 going to have to do that based on the availability of the
19 members of the Committee, and then we'll announce -- we'll
20 make a public notice of when we're going to conduct
21 deliberations.

22 Okay. Any other -- turn first to
23 counsel, any other issues that we need to address? To the
24 parties, any other issues? Dr. Publicover.

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1 DR. PUBLICOVER: Yes, this is just a
2 simple question.

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3 CHAIRMAN GETZ: They all say that.

4 DR. PUBLICOVER: Now, I may be likely
5 unavailable on the 19th, is there a problem with another
6 representative of the AMC given the closing statement,
7 since it's not testimony?

8 CHAIRMAN GETZ: No, that would be fine.

9 DR. PUBLICOVER: Thank you.

10 CHAIRMAN GETZ: And, just for -- in
11 terms of the way we intend to proceed on public or on the
12 closing arguments, it will just be -- there will be a set
13 up similar to this, there will be a front table, tables
14 for parties, and a podium for parties to come up and make
15 their closing arguments.

16 MR. PATCH: Mr. Chairman, just on that
17 issue, I think we had reached agreement during the
18 scheduling conference about time limits for the closing
19 arguments. And, just to be clear, I mean, as I recollect,
20 it was 30 minutes maximum.

21 CHAIRMAN GETZ: And which seems a
22 reasonable maximum from my position. Does everybody find
23 that time limit acceptable?

24 MR. BROOKS: Yes.

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1 CHAIRMAN GETZ: Okay. Then, looks like
2 we have agreement.

3 MR. MULHOLLAND: Yes.

4 CHAIRMAN GETZ: Any other issues we need
5 to address before recess to give you the opportunity to
6 talk about marking exhibits and handling of confidential
7 materials? And, I'm still prepared to -- I mean, I'll

8 come back. I'll give you a chance, I guess, specifically
9 Applicant and Mr. Mulholland, to talk about these pending
10 motions. But, again, I want to reiterate my earlier
11 position, I don't want to deal with this on Monday. And,
12 I'm prepared to rule on the motions today. But it does
13 raise up initially the underlying issue. When are we
14 going to see the -- I guess what I would characterize as
15 "jointly proposed conditions" with respect to the -- some
16 of the high altitude habitat issues?

17 MR. MULHOLLAND: Mr. Chairman, Fish &
18 Game's draft of this document, which I'm not sure -- it is
19 what you're asking for. I'm not sure if it should be
20 termed an "exhibit" or some other sort of submission of
21 the Department of Fish & Game. It basically lists the
22 proposed conditions that we had tentative agreement on
23 between Fish & Game and GRP. I've made a bunch of copies.
24 I not sure if it should be an exhibit or some other
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1 submission, but I'm prepared either way.

2 CHAIRMAN GETZ: Well let's do this then.
3 I will recess the prehearing conference, give you an
4 opportunity to talk about marking exhibits, handling
5 confidential materials, and how you want to proceed on the
6 agreement among the Applicant, Fish & Game, and
7 Appalachian Mountain Club. I think there's a few ways of
8 handling it, a few ways of characterizing what exactly it
9 is, whether it's conditions, a settlement agreement, I
10 mean there's a variety of ways of doing that. But I will
11 give you the opportunity. I will be here all day. So,
12 I'm at your call to come back and resume the prehearing

13 conference.

14 MR. IACOPI NO: Do we get to keep Mr.
15 Patnaude with us for marking exhibits?

16 CHAIRMAN GETZ: Yes. We're off the
17 record.

18 (Off-the-record discussion ensued.)

19 CHAIRMAN GETZ: Back on the record. All
20 right. Is there anything else that we need to discuss?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Then, I'll recess
23 the prehearing conference. And, well, I assume I'm going
24 to have to come back to at least deal with the motions

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1 with respect to the Fish & Game testimony. I don't
2 anticipate, and if there's agreement among the parties on
3 the confidentiality and the marking of exhibits, then I
4 think that can be handled through a report by counsel.
5 So, having said that, we'll recess the hearing. Thank
6 you.

7 (Whereupon a recess was taken at 10:50
8 a.m. and the prehearing conference
9 reconvened at 12:56 p.m.)

10 CHAIRMAN GETZ: Okay. We're back on the
11 record in the prehearing conference in docket 2008-04,
12 Site Evaluation Committee, Application of Granite Reliable
13 Power. And, I understand from counsel that the only
14 outstanding issue is the Motion to Strike and the Motion
15 in limine by the Applicant, with respect to the testimony
16 filed by Fish & Game. Well, first of all, is that
17 correct? Is that the only pending issue?

18 MR. PATCH: I think so.

19 CHAIRMAN GETZ: All right. Well, as I
20 take it, the parties have not come to an agreement with
21 respect to that dispute. So, I'm prepared to make a
22 ruling. With respect to the Motion to -- well, let's deal
23 with the Motion in limine regarding evidence concerning
24 RSA 212-A first. I'm going to deny the motion, and permit
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1 the testimony to be submitted in its entirety. However,
2 we will take into consideration, in making our final
3 decision in this matter, the relative arguments pertaining
4 to the applicability and effect of RSA 212-A on the extent
5 of our authority in this proceeding. But, for purposes of
6 the testimony, we're striking the Motion in limine -- or,
7 denying the Motion in limine.

8 With respect to the Motion to Strike the
9 Testimony of Will Staats and Jillian Kelly, which I
10 understand it goes substantially to the status of Fish &
11 Game, with respect to this proceeding. I'm going to deny
12 that motion as well. The RSA 162-H and our -- the Site
13 Evaluation Committee's rules do not expressly provide for
14 an agency as Fish & Game to provide such testimony. On
15 the other hand, it doesn't expressly prohibit such
16 testimony. The testimony was filed in this proceeding on
17 December 19th, and the motion by the Applicant to strike
18 was filed on February 12th. I don't think there's any
19 basis for concluding that allowing the testimony would
20 interfere with the orderly conduct of the proceeding, and
21 conclude that, as well, that the introduction of this
22 testimony would serve the interest of justice.

23 To the extent that I need to make a
24 ruling granting intervention by Fish & Game to this
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1 proceeding, I grant that Petition to Intervene, inasmuch
2 as it serves the interest of justice and will not
3 interfere with the orderly conduct of the proceeding.

4 And, then, I guess, Mr. Iacopino, you
5 raised the issue of the --

6 MR. IACOPI NO: Ornithologist for Public
7 Counsel, is Trevor Lloyd-Evans, and that was the only
8 issue that was also not resolved, was Public Counsel's
9 request to permit him to testify on the 19th, because he
10 was not available until then, I guess, is the argument?

11 MR. BROOKS: Correct.

12 CHAIRMAN GETZ: Well, I guess my
13 suggestion at this point is, seeing how Mr. Roth is not
14 here, and it appears that Mr. Brooks may not have all of
15 the information regarding the availability of Mr. Trevor
16 Evans, let's deal with that next week during a recess.
17 But my preference is not to extend out to March 19th, but
18 I'd like to get some further details just on how much of
19 an inconvenience or how difficult it would be to get the
20 witness here prior to the 19th. So, let's defer that till
21 next week.

22 Okay. Anything else from the parties?
23 From counsel?

24 (No verbal response)

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1 CHAIRMAN GETZ: Okay. Hearing nothing,
2 then I'll close the prehearing conference, and see
3 everybody next week. Thank you.

4 (Whereupon the prehearing conference
5 ended at 1:02 p.m.)

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