

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 September 28, 2009 - 8:42 a.m.
4 21 South Fruit Street
5 Suite 10
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. (Hearing regarding
15 motions for rehearing)

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, Exec Dir. Fish & Game Dept.
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

20 * * *

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

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

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RE: N. H. FISH & GAME'S MOTION FOR REHEARING

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ISSUE: ADDITIONAL AMOUNT OF \$25,000

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DISCUSSION BY:

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Chairman Getz

37, 39

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Dr. Kent

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Mr. Harrington

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Dir. Scott

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ISSUES: OWNERSHIP OF WETLAND MITIGATION
PARCEL AND LAND TRANSFER

11

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DISCUSSION BY:

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Chairman Getz

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Dir. Scott

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Dr. Kent

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MOTION by CHAIRMAN GETZ to grant the three
motions for rehearing as proposed by N. H.

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Fish & Game, except to modify the motion
concerning the timing of the \$25,000 payment
to be consistent with the recommendation made
by the Applicant

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SECOND by DIR. SCOTT

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P R O C E E D I N G

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CHAIRMAN GETZ: All right. Good

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morn ing, everyone. We'll open this hearing in Site

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Evaluati on Commi ttee Docket 2008-04. In this stage of the

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proceeding, we have motions for rehearing that have been

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filed by the Applicant, Counsel for the Public, Department

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of Fi sh & Game, and the Industrial Wind Action Group. We

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also have a number of responses to those motions. And,

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the intent today is to just go through all of the motions,

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to have a discussion, and deliberations, if we conclude

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that we're ready to deliberate on all of the issues.

12

And, before we begin with some

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introductory matters and some discussion that I'll lead on

14

what's the standard of review for a motion for rehearing,

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let's start with introductions, and begin on my far right.

16

DIR. SCOTT: Good morning. My name is

17

Bob Scott. I'm the Director of the Air Resources Division

18

with the New Hampshire Department of Environmental

19

Services.

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MR. NORTHRUP: Chris Northrop, Principal

21

Planner, with the New Hampshire Office of Energy &

22

Planning.

23

DIR. NORMANDEAU: Glenn Normandeau,

24

Director of Fish & Game.

1 MR. HARRINGTON: Mike Harrington, New
2 Hampshire PUC.

3 CHAIRMAN GETZ: I'm Tom Getz. I'm
4 Chairman of the Public Utilities Commission and Vice Chair
5 of the Site Evaluation Committee, and Chair of this
6 subcommittee.

7 MR. JANELLE: I'm Bill Janelle. I'm the
8 Assistant Director of Project Development with the
9 Department of Transportation.

10 DR. KENT: Don Kent, Department of
11 Resources & Economic Development.

12 MR. IACOPI NO: Mike Iacopi no, Counsel
13 for the Committee.

14 CHAIRMAN GETZ: And, let me just briefly
15 speak to motions for rehearing. They're filed under RSA
16 541:3. And, in summary, the general rules with respect to
17 motions for rehearing are that an agency may grant
18 rehearing when a party states good reason for such relief.
19 Good reason may be shown by identifying new evidence that
20 could not have been presented in the underlying
21 proceeding, or by identifying specific matters that were
22 either overlooked or mistakenly conceived by the deciding
23 tribunal. A successful motion, however, for rehearing
24 does not merely reassert prior arguments and request a

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1 different outcome.

2 In terms of actions by an agency on
3 rehearing, we have several options. The most obvious is,

4 if a motion for rehearing is denied, based on our
5 deliberations, then we would write an opinion and order to
6 that effect. If we conclude that a motion for rehearing
7 should be granted, there's at least a couple of options.
8 One could be that it would -- that we would, in writing,
9 conclude that something in the order should be changed
10 from below, and we would make a decision to that effect.
11 Or, we could determine that we would want another hearing,
12 an actual evidentiary hearing on the matter. So, in
13 essence, there's at least three options that we would have
14 before us based on our review of the materials in the
15 motions and objections and responses that have been filed
16 by the parties.

17 So, with that, I would start with a
18 review of the motions one-by-one, beginning with Counsel
19 for the Public. Anything before we begin? Director
20 Normandeau.

21 DIR. NORMANDEAU: Chairman Getz, I just
22 wanted to bring to your attention that, following Fish &
23 Game's submittal of their motion, I had communication
24 inside the Department, which I believe -- because of which
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1 I believe I should recuse myself in this proceeding today.
2 And, --

3 CHAIRMAN GETZ: Okay. Well, certainly,
4 it's the individual's decision with respect to a decision
5 to recuse. So, as I understand it, this is a
6 communication that you had after the motion was filed, and
7 this is the Fish & Game's motion?

8 DIR. NORMANDEAU: That is correct. Once
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9 it became public, I saw it for the first time when it was
10 delivered to me, had communication with staff on the
11 issues that were raised. And, I feel, following that,
12 that it's incumbent on me to recuse myself from today's
13 proceedings because of that.

14 CHAIRMAN GETZ: I guess there's a couple
15 of things that we could consider in that respect, whether
16 it should apply to just those issues or to the entire
17 proceeding. But, I guess, Mr. Iacopino, would it be the
18 better course that Director Normandeau not participate at
19 all and actually absent himself from the proceeding?

20 MR. IACOPI NO: If this communication
21 arose after the filing of the motion for rehearing by the
22 Fish & Game Department, I think that there's enough
23 crossover between these motions that it's probably best if
24 he recused himself from ruling on any of the motions for
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1 rehearing.

2 CHAIRMAN GETZ: All right. Okay.

3 DIR. NORMANDEAU: Thank you.

4 CHAIRMAN GETZ: Thank you.

5 (Director Normandeau leaving the hearing
6 room at 8:49 a.m.)

7 CHAIRMAN GETZ: Okay. Then, let's start
8 with the Applicant's August 14, 2009 motion for rehearing.
9 And, there are two issues raised by the Applicant. The
10 first concerns an ordering clause in Page 2 and 3 of our
11 order attached to the decision from July 15. And, the
12 ordering clause says "Further Ordered that, this
13 Certificate is conditioned on the present ownership

14 structure of the Applicant, to wit the Applicant is owned
15 by Noble Environmental and Freshet Wind Energy, and
16 neither the Applicant nor the Applicant's assets shall be
17 transferred by sale or other method to any other person or
18 entity without the prior written approval of the
19 Subcommittee."

20 And, I guess what the Applicant is
21 seeking is a clarification that this condition is not
22 meant to prevent it from assigning its rights under the
23 Certificate for collateral security purposes to aid in
24 obtaining financing for the Project. And, I also believe

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1 that the Counsel for the Public has weighed in on this
2 issue in a response filed on August 25th.

3 And, I think the bottom line of that
4 response is it appears that the Applicant may use the
5 Certificate as collateral without approval of the
6 Committee, and thus further clarification is necessary.

7 So, let's open the floor to any
8 discussion, questions, concerns about this first item on
9 the motion for rehearing. Mr. Harrington.

10 MR. HARRINGTON: My first question would
11 be to the other members of the Committee, does anyone feel
12 as though that this condition is meant to prevent it from
13 assigning rights under the Certificate for collateral
14 security purposes to aid in obtaining financing for the
15 Project?

16 CHAIRMAN GETZ: Mr. Scott.

17 DIR. SCOTT: I'll speak for myself.

18 That was not the language, my intention that the language

19 that we used would preclude this.

20 CHAIRMAN GETZ: Okay. And, I guess,
21 from my perspective, I would not have read that clause to
22 have a -- prevent the Committee from assigning its rights
23 for security as part of financing for a project. So, in
24 terms of written clarification, I would agree with Counsel
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1 for the Public that there's no further action that we
2 would be required to take with respect to this, with this
3 motion.

4 So, unless anyone has anything further
5 on that issue, I would move onto the second item?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. And, let's move
8 on then to the second issue raised by the Applicant. And,
9 the Applicant says -- this is with respect to another
10 ordering clause, that says "Further Ordered that, if after
11 notice and an opportunity to be heard, the Site Evaluation
12 Committee determines that the Project is having an
13 unreasonable adverse [effect] on any species, it may take
14 appropriate action within its jurisdiction." The
15 Applicant says "this condition is very likely to prevent
16 it from obtaining financing". "The Subcommittee may at
17 some point in the future take an action, such as
18 curtailing operations or shutting down turbines that could
19 adversely impact the economics of the Project." "It's
20 arguable that the Subcommittee left the door open to make
21 a new and different finding on the issue of no
22 unreasonable adverse impact on the natural environment."

23 We also have -- Counsel for the Public
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24 has weighed in on this issue as well. And, specifically,
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1 with respect to some additional conditions proposed by the
2 Applicant, Counsel for the Public contends that those
3 additional conditions are not required and would argue
4 against their adoption. Though, he does suggest some
5 changes in conditions, some rewording of his own.

6 And, we also have a response on this
7 issue from the Industrial Wind Action Group filed on
8 August 24th. And, they argue that the Applicant's motions
9 for rehearing should be denied as well.

10 So, is there any discussion with respect
11 to this item? Mr. Harrington.

12 MR. HARRINGTON: I guess it's -- I
13 understand, you know, and I can empathize with the
14 Applicant's position here that they're worried about the
15 ability to get financing. But it doesn't seem to go along
16 with what the law is. I mean, if we come across new
17 information that says that there's some adverse --
18 unreasonable adverse impact on the natural environment,
19 then I think we're bound to do something with it. We
20 can't simply say "Well, we've already issued the
21 Certificate, so let's ignore the new information."

22 In the filing they say that the
23 Committee can suspend or revoke a certificate. And, so, I
24 would certainly think that would imply we could change
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1 some of the conditions. I mean, the way they're stating

2 it almost is, if we found something that was an
3 unreasonably adverse impact on the natural environment,
4 our options would be to either revoke the Certificate or
5 to do nothing. And, I think that clearly a middle ground
6 is allowed, which would say you can change the
7 requirements on that. That isn't to say it's going to
8 happen. But, if something comes up, I don't see how we
9 can just simply ignore it and say "pretend we didn't have
10 the new information."

11 CHAIRMAN GETZ: Mr. Scott.

12 DIR. SCOTT: I agree with
13 Mr. Harrington. Whether we have this as an explicit
14 condition or not, I think it is there, by our purview as a
15 committee, I don't see how this puts more constraints than
16 would otherwise be on the Applicant. So, I'm at a loss to
17 understand why this is more onerous.

18 CHAIRMAN GETZ: Well, and I guess from
19 my perspective as well, that the fact that we may take
20 appropriate action within our jurisdiction, if something
21 that is occurring has an unreasonable adverse effect, I
22 don't think that really does much more than state what the
23 law is under RSA 162-H:12 with respect to enforcement.
24 That would be my read of that clause.

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1 Is there any other discussion? Any --

2 MR. HARRINGTON: Just with regard to the
3 affidavit by Martin Pasqualini, I believe that's how it's
4 pronounced. I mean, they make a point, but, as Chairman
5 Getz just stated, we've basically restated the law. And,
6 I don't see how we have any option to say "we're going to

7 ignore new information if it's brought to our attention."
8 We're not on a witch hunt here, but, if it comes to our
9 attention, we have to act accordingly. I don't think we
10 have any option here.

11 CHAIRMAN GETZ: Well, let me just say
12 one thing about this affidavit. I mean, I would not rely
13 on that for any -- in any particular for our decision on
14 this matter. I think, you know, the record is closed, and
15 anything that Mr. Pasqualini has to say that goes to the
16 facts of the issue shouldn't be admitted. So, I would
17 just rely on our interpretation of the order and our
18 interpretation of the statute. So, --

19 MR. HARRINGTON: I guess my point was
20 that, even if it was to be admitted, it wouldn't have any
21 bearing, because the law is what it is, and we have to
22 deal with that.

23 CHAIRMAN GETZ: Okay. Thank you. Then
24 what we can do, we can proceed in a couple of ways here.

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1 I mean, we can deal with each motion as we go along as we
2 complete the motion or we could wait till we're done. But
3 I think that essentially takes -- addresses the motions
4 for rehearing from the Applicant.

5 So, I guess I would move that we deny
6 the Applicant's motion for rehearing on both counts.

7 MR. HARRINGTON: Second.

8 CHAIRMAN GETZ: All those in favor
9 signify by saying "aye"?

10 (Multiple members indicating "aye".)

11 CHAIRMAN GETZ: Opposed?

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(No verbal response)

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CHAIRMAN GETZ: None opposed. So, I'll note for the record that the motion carries unanimously.

So, let's now to turn to Counsel for the Public's motion for rehearing. And, it's a motion filed on August 14th. And, we also have a response from the Applicant that was filed on August 19th. And, the Counsel for the Public's motion concerns essentially the breadth of our finding under RSA 162-H:16 and whether the Applicant has demonstrated financial capability in this proceeding. And, Counsel states that "At the time of the hearings, the Applicant" -- "neither the Applicant nor its parent company possessed sufficient capital or credit to

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pay for the construction of the facility", that "the evidence presented... suggests there's no way to accurately predict when the Applicant will be able to raise the capital or credit", speaks to the "uncertainties in the market". That there's a "lack of objective assurance that the project will be constructed and operated in compliance with the certificate". And, that the -- makes the argument that the "ruling concerning financial capability is not in accord with the plain language and purpose of the statute." And, there's argument that the -- our finding here is "not consistent with precedent in previous rulings of the Site Evaluation Committee with respect to what constitutes "financial capability." And, that it "broadens the standards for approval", our actions here. And, Counsel proposes that we revise the Certificate in a condition regarding financial capability.

17 And, the Applicant responds, and among
18 other things, contends that Public Counsel's consultant
19 "testified that the Applicant had demonstrated the
20 capability to undertake the financing", and that the
21 condition imposed by us is "consistent with the law and
22 more than sufficient to protect the public". And, they
23 contend that "counsel has not raised any new issues" with
24 respect to financial capability.

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1 So, let's open the floor for discussion
2 on Public Counsel's motion for rehearing. Mr. Scott.

3 DIR. SCOTT: As, Mr. Chair, you've kind
4 of alluded to, I just wanted to point the Committee, the
5 Subcommittee to our certificate, and remind everybody that
6 the requirement of the current Certificate in effect says
7 that "no construction will begin until financing is in
8 place." So, the existing Certificate is conditioned, that
9 is a condition. So, it's not a certificate that says they
10 can go build, it's a Certificate that says, "once they
11 have financing, and have met all the other conditions,
12 they can build." So, I think that's an important factor
13 as we consider this.

14 CHAIRMAN GETZ: Mr. Northrop, did you
15 have something?

16 MR. NORTHROP: Just a minor comment, Mr.
17 Chairman. That it doesn't seem like Counsel for the
18 Public has brought up any new information that we haven't
19 already looked at during the course of the hearing. So,
20 --

21 CHAIRMAN GETZ: Mr. Harrington.

22 MR. HARRINGTON: Yes. Just as a follow
23 up to that, I think the fact of conditions that we talked
24 about of getting financing approved before construction
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1 started was, in fact, brought up by the Applicant, and
2 they agreed to it during the hearings. So, I mean, this
3 issue was discussed. And, I agree with Chris that there's
4 no new information here. We don't even really get to the
5 merits of it. This was already debated and fleshed out
6 during the original hearings.

7 CHAIRMAN GETZ: Anyone else?

8 (No verbal response)

9 CHAIRMAN GETZ: Well, I guess one thing
10 I would -- oh, Dr. Kent.

11 DR. KENT: Yes. I agree that most of
12 this is old news. The only thing that seems to be new in
13 the Counsel for the Public's argument is a
14 reinterpretation of the requirement for adequate
15 financing. And, I'm not persuaded by his argument that
16 this should mean present "monetary resources", as opposed
17 to arranging for finances before construction.

18 CHAIRMAN GETZ: Yes, I think I agree,
19 Dr. Kent, with that view. That I guess Counsel for the
20 Public takes the position that essentially narrows what
21 would constitute adequate financial capability, and he
22 construes our earlier decision as really speaking to
23 managerial capability. I guess I would disagree with
24 that, that characterization. That what we have looked to
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1 is that the capability of the Applicant to obtain
2 financing, which it has done in the past, and it has
3 financial expertise and the personnel resources to obtain
4 financing, and that that is consistent with what I believe
5 is a plain and fair reading of the statute with respect to
6 "financial capability".

7 So, is there any other discussion about
8 Public Counsel's motion for rehearing?

9 MR. HARRINGTON: I guess the only other
10 point I'd make is, if you looked at this the way that
11 Public Counsel is reading the statute, it would be very,
12 very difficult for anybody to go forward, because they're
13 in a kind of a Catch 22 situation: You cannot get
14 financing until you get the Certificate, but their reading
15 would be you can't get the certificate until you get
16 financing. And, I don't think the intent of the statute
17 was to make it so difficult to build energy facilities,
18 which is what it would be according to the way they're
19 reading it.

20 CHAIRMAN GETZ: All right. Anything
21 further?

22 (No verbal response)

23 CHAIRMAN GETZ: Okay. Hearing nothing
24 then, based on the conversation, I would move that we deny
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1 Public Counsel's motion for rehearing.

2 MR. HARRINGTON: Second.

3 CHAIRMAN GETZ: Okay, we have a second.

4 All those in favor signify by saying "aye"?

5 (Multiple members indicating "aye".)
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6 CHAIRMAN GETZ: Opposed?

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing none opposed, so
9 the motion carries unanimously.

10 Let's -- Well, let me just note one
11 thing for the record. We also had a filing, a letter by
12 Councilor Burton that was filed on August 19th, indicating
13 his objection to the motion for rehearing by Public
14 Counsel that we just deliberated.

15 Let's turn to Industrial Wind Action
16 Group's motion for rehearing at this time. And, there are
17 a number of items set forth in the August 14th motion.
18 I'd like to just go through those one-by-one. And, also
19 note that, on August 19th, the Applicant has filed its
20 response objection to that motion for rehearing and all of
21 the subparts within it.

22 Okay. Start with the first item, and it
23 comes under the heading of "Consideration of
24 Alternatives". And, Ms. Linowes states that "the
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1 Applicant failed to conduct the necessary alternatives
2 analysis to consider options that minimize impact",
3 asserts that "the Committee did not apply the criteria
4 established in 162-H, but instead used business criteria."
5 And, also alleges that it was clear from the transcript
6 that the Committee was concerned about a reduction in the
7 number of megawatts of the Project that could happen if
8 the Applicant lost its position in the interconnection
9 queue. And, that generally summarizes the argument.
10 Though, of course, you've all had the opportunity to read

11 the argument in its entirety.

12 And, the objection from the Applicant
13 basically argues that we, in our decision, provide a
14 thorough description of the alternatives that were
15 considered and cited to the record, and that the --
16 contends that the motion on this issue should be denied.

17 So, any discussion about the
18 consideration of alternatives? Mr. Janelle.

19 MR. JANELLE: Well, I think, with regard
20 to the environment, I think the alternatives that were
21 looked at did consider the environment as well, especially
22 where you look at reducing the number of turbines, you
23 look at eliminating turbines from a western ridge. And,
24 by reducing the number of turbines, you have fewer roads,

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1 fewer actually siting of turbines as well. So, I think
2 that the environmental consideration was there as well.

3 CHAIRMAN GETZ: Dr. Kent, did you have
4 something?

5 DR. KENT: Yes. I think I'll just make
6 one comment about the entire motion. The motion, in my
7 opinion, does not present new evidence that was
8 unavailable at the original hearing, nor does it address
9 issues that might have been overlooked. I would say we
10 considered each of these issues thoroughly before we
11 decided on the Certificate.

12 MR. HARRINGTON: I'll make it easy.
13 Ditto.

14 MR. NORTHROP: I was going to agree with
15 Dr. Kent, and now with Mr. Harrington, too.

16 CHAIRMAN GETZ: Well, I guess, let me
17 ask this question. Are you both saying with respect to
18 the entire motion? All of --

19 MR. HARRINGTON: Just the first issue.

20 MR. NORTHROP: Right. Right. Just the
21 first.

22 CHAIRMAN GETZ: Okay. Thank you. All
23 right. Well, then let's turn to the second argument that
24 was put forth, with respect to decommissioning. And, the
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1 motion states that "By adopting the decommissioning
2 conditions, the Committee recognizes that site restoration
3 is a necessary component of certifying a project."
4 States that "no information in the record establishes the
5 cost of decommissioning", and therefore there's no basis
6 to "assert that the Applicant has the financial capability
7 to meet the conditions of decommissioning." That "the
8 Committee should aver" in an order "that the local
9 communities and the public shall not be held financially
10 responsible for decommissioning", and we "should set a
11 proposed bond to reflect the full decommissioning costs."

12 And, the Applicant responds that the
13 IWAG has "failed to point out that the agreement with Coos
14 County requires detailed site-specific estimates of
15 decommissioning costs that must be provided prior... to
16 commencement of construction, and every five years
17 thereafter", and that "the agreement contains a
18 comprehensive list of items to be addressed during
19 decommissioning."

20 So, let's have a discussion on the
Page 20

21 decommissioning issue. Mr. Harrington.

22 MR. HARRINGTON: Well, I guess now I'll
23 agree with Dr. Kent. I think this is just rehashing
24 information and argument that was brought up before. And,
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1 clearly, if you look at the terms that are in that
2 agreement with Coos County, they cover getting the full
3 decommissioning fund in place up to ten years, and then
4 there's a provision that we specifically added to make
5 sure that prior to the ten years, which will be full
6 funding, that they provide proof through insurance or
7 other means of its financial ability to carry out
8 decommissioning.

9 I just see no merit to this argument,
10 either because it's not new, and, even if it was new, it's
11 covered.

12 CHAIRMAN GETZ: Okay. Anything else on
13 decommissioning?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. Then, let's move
16 onto the third item, is "Impacts on Property Values", and
17 the motion states that "We found no applicable information
18 in the record on which the Committee could validly
19 conclude property values will not be impaired", and that's
20 the essence of the argument. The Applicant disputes the
21 argument by Industrial Wind Action Group, and states its
22 belief that our "findings on the impact of the Project on
23 property values and tourism were correct and are supported
24 by substantial information in the record", and cites to

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1 the record, and essentially takes the position that
2 there's nothing new on this issue.

3 So, is there any discussion with respect
4 to property values? Mr. Scott.

5 DIR. SCOTT: Again, I think that the
6 movant here has failed to make a case. I think that the
7 Committee has spent a fair amount of time on this issue.
8 We had seen the testimony of Ms. Vissering, I'm not sure
9 how she pronounces it, looking at this. And, I don't
10 think there was any case to be made that property values
11 would go up. And, I think we've done our due diligence
12 and it's incorporated in our original order.

13 MR. IACOPINO: Mr. Scott, did you mean
14 to say "property values would go down"?

15 DIR. SCOTT: Correct. I'm sorry. We
16 saw no information that would bear an impact of any on
17 property values. I'm sorry.

18 CHAIRMAN GETZ: Other discussion? Mr.
19 Northrop.

20 MR. NORTHROP: Essentially the same
21 comments, that there's no new information that was
22 presented here, and it's just a different argument, just a
23 different interpretation of the information we've already
24 seen, and we've, I think, made our decision on it.

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1 CHAIRMAN GETZ: All right. Then, let's
2 turn to the next issue, was "Impacts on Tourism". And,
3 the motion begins by saying that "The Committee found the

4 Project will have no negative effect on tourism", and the
5 motion argues that we -- the movant "can find no evidence
6 in the record to substantiate our finding", and notes that
7 there is a "predominance of letters written to the
8 Committee" speaking to the "beauty of the area".

9 And, the Applicant, in its objection,
10 again just disputes the motion by the Industrial Wind
11 Action Group. And, I guess I'll leave it at that for
12 purposes of opening the floor for any discussion about the
13 tourism issue.

14 MR. HARRINGTON: I think this was
15 covered and covered very well. If you remember, during
16 the hearings we even had to get blown up pictures of the
17 simulated view from Lake Umbagog because we couldn't see
18 the wind turbines on the smaller size pictures. So, I
19 think we covered this whole issue of how it would affect
20 tourism, and I don't see any new arguments that were
21 raised in the motion.

22 CHAIRMAN GETZ: Mr. Scott.

23 DIR. SCOTT: And, I'll remind the
24 Subcommittee, too, we even had discussions and put
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1 conditions in regarding a lot of safety issues, because we
2 had some concerns raised that, I think, in
3 Mr. Harrington's view, would be a, what, a --

4 MR. HARRINGTON: Attractive nuisance.

5 DIR. SCOTT: -- an attractive nuisance,
6 of people who would want to see this type of thing. So,
7 again, I don't see a case made here.

8 CHAIRMAN GETZ: Okay. Dr. Kent.

9 DR. KENT: I would add that, in our
10 listening to the public, particularly at Lancaster, it was
11 clear that there was no overriding opinion about whether
12 they would be a nuisance or an attraction. And, that
13 said, none of those opinions really meet the standard of
14 whether we're going to have an impact on tourism or not.
15 There was no evidence, credible evidence provided of
16 impacts to tourism from the erection of windparks. And,
17 that's the standard.

18 CHAIRMAN GETZ: Okay. Anything further?

19 (No verbal response)

20 CHAIRMAN GETZ: Then, let's move onto
21 the next item, it's with respect to the Independent System
22 Operator System Impact Study. And, the argument in this
23 area is that "Absent the completed System Impact Study,
24 the Committee cannot be certain of the impacts of the
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1 Project on the operation of other power plants. Since the
2 ISO's primary obligation is grid reliability and the safe
3 integration of the Project..., any required adjustments to
4 output necessary to ensure grid integrity are outside the
5 Committee's and the Applicant's control." And, the
6 Industrial Wind Action Group proposes two conditions be
7 added to the order: That we "require the Applicant to
8 submit the final SIS Study along with any interconnection
9 and substation plans... prior to construction", and that
10 "the parties will have two weeks to file comments on the
11 study", and that the Applicant would be required to
12 implement any changes determined necessary by ISO."

13 And, in its objection, the Applicant

14 states that "the system impact study is a study prepared
15 by the ISO and, while it may be of interest to the
16 Subcommittee", that we have "no authority to change the
17 study. Accordingly, giving parties the opportunity to
18 comment...is unreasonable" and "serve no useful purpose".

19 Discussion? Mr. Harrington.

20 MR. HARRINGTON: Well, the first thing I
21 guess we should note here is that the System Impact Study
22 contains critical energy infrastructure information, and,
23 as such, cannot be released to the public. So, we
24 couldn't comply with this even if we wanted to. Second, I

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1 will note that this is a new argument, but I don't go
2 along with the merits of it. Of this idea that somehow
3 it's going to adversely impact anticipated revenues for
4 existing energy projects, well, it basically allows this
5 to compete in the marketplace, in lieu of a purchase power
6 agreement, so that the most economic generator would be
7 dispatched. And, I suppose that you could say that that
8 would adversely affect existing generators, it could to
9 the extent that the existing generators are more expensive
10 than this project, if they indeed went on line. That's
11 competition. That's what we're trying to promote in New
12 England, as far as our restructuring of the electric
13 market. So, this would fly in the face of that by saying
14 that "we're not going to allow new generation to come on
15 because it may be cheaper than the existing generation."

16 CHAIRMAN GETZ: Okay. Other discussion?

17 (No verbal response)

18 CHAIRMAN GETZ: All right. Hearing

19 nothing, I guess let me just point out one issue with
20 respect to that. I think, Mr. Harrington, you spoke --
21 indicated that there's no -- that this may be a new
22 argument, but I just want to point to the standard for
23 considering a motion for rehearing. And, "good reason may
24 be shown by identifying new evidence that could not have
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1 been presented or by identifying specific matters that
2 were either overlooked or mistakenly conceived." So, I
3 think, with that standard, then the -- with this and with
4 other issues, the Industrial Wind Action Group, in my
5 view, hasn't met the standard of showing either that there
6 was new evidence that should be considered or that we
7 overlooked or mistakenly conceived our decision below.
8 So, --

9 MR. HARRINGTON: Yes, I stand corrected.
10 Clearly, this issue of the SIS was discussed during the
11 hearings. Thank you.

12 CHAIRMAN GETZ: All right. So, let's
13 turn on to the "Power Purchase". And, the Industrial Wind
14 Action Group recounts that "the Applicant has stated it
15 will be seeking a purchased power agreement", and then it
16 encourages the Committee to "require an executed purchase
17 power agreement prior to construction to ensure the
18 operating project is not idled due to no energy sales."

19 And, just the -- well, let's just --
20 I'll open the floor for discussion with respect to this
21 issue. Does anyone have any position to take on whether
22 we should require this additional condition?

23 MR. HARRINGTON: The only basis I can

24 see on this gets back to the financial part, which we've
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1 already addressed, and I think we stated clearly that they
2 have to show that they have adequate financing prior to
3 starting construction. It's just another condition that
4 would enhance their financials, which I think we've
5 already covered. So, I don't see any need for this.

6 DIR. SCOTT: I concur with that. It
7 seems like belt and suspenders, and duct tape on top of
8 that.

9 CHAIRMAN GETZ: Well, certainly, I think
10 we had heard evidence that a power contract may assist in
11 obtaining financing. But I guess our primary concern in
12 this area is that there be financial capability. And, I
13 don't think it's necessary for us to basically look at the
14 subsets of how financial capability or financing is
15 obtained, to make an express requirement that a power
16 purchase agreement be obtained by a certain time. So, I
17 would say that this is another area where it would be --
18 it would not be appropriate to change our original
19 decision.

20 So, let's turn on next to, under the
21 heading of "Natural Environment: Bird and Bat Analysis".
22 And, the motion asserts that "Although the Committee
23 admits the allayed its concerns over the impacts on the
24 natural environment, it is clear that the Committee still

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1 has concerns regarding other wildlife issues, specifically
2 breeding birds and raptors, bats, and migratory birds."

3 And, "Despite the order for additional studies, the
4 Committee proceeded with an apparent implied finding that
5 the project will not have an unreasonable adverse effect
6 on breeding birds, raptors, bats, or migratory birds."
7 And, that the seventh numbered paragraph of the motion in
8 this subsection says "Amendment to the order is
9 recommended to ensure the Applicant provides funds
10 commensurate with the level of independent expert activity
11 necessary to properly monitor and protect New Hampshire's
12 wildlife resources from the development. It is
13 inappropriate for New Hampshire's public through New
14 Hampshire Fish & Game to bear the costs for this essential
15 activity."

16 And, then, the Applicant responds that,
17 in reference to the Industrial Wind Action Group's
18 statement that "the Subcommittee proceeded with an
19 apparent implied finding", that "This allegation is
20 erroneous. The Subcommittee's finding on this issue was
21 not "implied", it was explicit, as it must be", and cites
22 to the decision at Pages 54 to 56. And, so, then the --
23 essentially, the Applicant "opposes the IWAG position" and
24 recommends that "the Subcommittee consider and implement
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1 its recommendation contained in its motion" with respect
2 to this issue.

3 So, any discussion on this part of the
4 motion for rehearing? Mr. Northrop.

5 MR. NORTHRUP: I'd make a similar
6 comment, this is information we've seen and gone over, and
7 there's nothing new to me that's been presented in the

8 motion that would cause me to think that we would need to
9 change the Certificate.

10 CHAIRMAN GETZ: Mr. Harrington.

11 MR. HARRINGTON: Yes. I don't think our
12 previous statement was an "apparent implied finding", it
13 was a finding, and that's what it was. So, I disagree
14 with the premise of this motion.

15 CHAIRMAN GETZ: Okay. Anything further?

16 (No verbal response)

17 CHAIRMAN GETZ: All right. Then, let's
18 move onto the final issue. It's with respect to "Conflict
19 of Interest". And, the "Industrial Wind Action Group
20 renews its complaint that Director Normandeau's position
21 on this Application cannot be separated from benefits
22 derived from the mitigation settlement reached by his
23 employees." States that "the appearance of conflicts --
24 of conflict still exists", and makes the argument that the
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1 "question of conflict persists even after" the decision
2 and order was issued, and makes assertions that the doubts
3 were raised about the public's -- whether the public's
4 interest was compromised, and it disputes the ruling below
5 that, with respect to our finding that there was no
6 conflict of interest that required a recusal.

7 And, the Applicant contends that we have
8 "thoroughly and properly addressed the issue" below, makes
9 additional argument that "Ms. Linowes raised the conflict
10 of interest issue too late in the proceeding and was
11 deemed to have waived", and contends that "Director
12 Normandeau had no direct, personal or pecuniary interest

13 in the outcome of this proceeding and was not required to
14 recuse himself."

15 So, discussion?

16 DIR. SCOTT: Mr. Chair?

17 CHAIRMAN GETZ: Mr. Scott.

18 DIR. SCOTT: Obviously, Director
19 Normandeau has recused himself from this particular
20 hearing, but I would like to note and remind everybody of
21 his comment before he left, which was he had discussions
22 on this after this order was written that made him feel he
23 needed to recuse himself from this hearing. So, I
24 wouldn't want his absence today to be viewed as having

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1 needed to recuse himself at the very beginning of this.

2 CHAIRMAN GETZ: Though, and "this", you
3 were referring to his comments about his -- the particular
4 motion for rehearing that was filed on August 19th by Fish
5 & Game?

6 DIR. SCOTT: Correct.

7 CHAIRMAN GETZ: That that was the basis
8 for him recusing himself from consideration of any of the
9 motions for rehearing. Okay. Any further discussions?

10 (No verbal response)

11 CHAIRMAN GETZ: All right. Well, I
12 think, on all of the issues raised, I think it's a fair
13 summary to say that -- well, let me posit this and see if
14 there's any response. That there's no new evidence with
15 respect to any of the eight issues, and that there's no --
16 that no specific matters were identified that we either
17 overlooked or mistakenly conceived. With those standards

18 for rehearing, does anyone disagree with that summary of
19 the discussion we've just had?

20 (No verbal response)

21 CHAIRMAN GETZ: All right. Hearing
22 nothing, then I would move that we deny the Industrial
23 Wind Action Group's motion in its entirety.

24 MR. HARRINGTON: Second.

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1 CHAIRMAN GETZ: All those in favor?

2 (Multiple members indicating "aye".)

3 CHAIRMAN GETZ: Opposed?

4 (No verbal response)

5 CHAIRMAN GETZ: Hearing none, I'll note
6 for the record that the motion carries unanimously.

7 Lastly, let's turn to the motion by Fish
8 & Game for rehearing, it was filed on August 14. And,
9 note that the first item under that motion indicates that
10 "the July 15 decision... requires Fish & Game to consult
11 on, review and/or approve a number of plans, studies and
12 surveys", indicates that "Fish & Game will have to expend
13 a significant amount of staff time, an expense that had
14 not been anticipated". "Fish & Game estimates this work
15 will require 435 hours of staff time", "approximately
16 \$25,000", and a request that the Certificate be amended to
17 require the Applicant to "make a one-time payment of
18 \$25,000", "no later than 30 days from the date the
19 Certificate in this matter is final."

20 And, then, we have a response, the
21 Applicant's response on August 19th. With regard to the
22 \$25,000, the Applicant indicates it's "willing to

23 reimburse Fish & Game", states it's "inappropriate to
24 depart from the process by which other fees have been

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1 paid", and "objects to the payment within 30 days of the
2 date of Certificate". And, then, it states that,
3 "Notwithstanding [its] willingness to make the payments in
4 the amount and in the manner" it proposes, its
5 "willingness should not be construed as [its] acquiescence
6 to payment of any further amounts requested by any party
7 to this proceeding."

8 So, any discussion with respect to the
9 proposal by Fish & Game with respect to this additional
10 funding? Dr. Kent.

11 DR. KENT: My understanding is that the
12 Applicant has agreed to the \$25,000. The terms would be
13 that financing is in place first, which makes sense to me.
14 If we don't have financing in place, we're not going
15 forward. There's no need for Fish & Game to proceed.
16 Secondly, that we'll use some basic accounting here and
17 that Fish & Game will be reimbursed for its work, not
18 receive the money in advance.

19 CHAIRMAN GETZ: Other discussion?
20 Mr. Harrington.

21 MR. HARRINGTON: Just a comment I guess.
22 The first time I looked at this I said "Wow, they must be
23 getting paid an awful lot of money over at Fish & Game",
24 because this comes out to about \$120,000 a year, if you

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1 multiply this out by hours in cost. So, I'm a little
2 surprised that this is so much. Maybe they had planned
3 plan on working it on overtime or something at time and a
4 half or whatever, I don't know, but it seems like an awful
5 high number to me.

6 But, as Dr. Kent said, since the
7 Applicant has agreed to pay the fee, I would say that the
8 stipulation that it be paid as requested by the Applicant,
9 you know, not up front, is reasonable, and I would concur
10 with that.

11 CHAIRMAN GETZ: Other discussion?
12 Mr. Scott.

13 DIR. SCOTT: I don't want to delve into
14 why it wasn't asked originally, I suppose, which obviously
15 would have been the preference, rather than
16 after-the-fact. But, clearly, the State agencies have
17 financial difficulties right now. So, I would be loathed
18 not to -- I'd be loathed to put a burden on a State agency
19 in these times, which could be covered and should be
20 covered by an Applicant in this type of situation.

21 CHAIRMAN GETZ: Thank you. Any further
22 discussion on this part of the motion? Well, let me just
23 say this, and I think we're dealing with the substance of
24 the \$25,000. I mean, there was an argument that was also

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1 raised by the Applicant that the motion may be viewed as
2 "challenging the Certificate". It's "arguable that Fish &
3 Game has breached its agreement with the Applicant,
4 violated the order", and the Fish & Game responded to
5 that, indicating that that position is "unsupportable",

6 and said it's "merely asked to be compensated for
7 additional work, work that had not been anticipated."

8 And, I don't think that goes to the
9 substance of the motion, but I would agree with the
10 characterization by Fish & Game and would not construe any
11 action taken by Fish & Game with respect to its motion for
12 rehearing that would be in violation of any agreement or
13 representation it had made or undertook as part of this
14 proceeding.

15 So, then, there are two other items in
16 the Fish & Game's motion for rehearing: One is with
17 respect to the ownership of the wetland mitigation parcel.
18 "Fish & Game requests that the Certificate of Site and
19 Facility be amended to require the applicant to transfer
20 fee title to the entire 620 acre wetland mitigation parcel
21 to Fish & Game". And, it also, with respect to a land
22 transfer, asked that we "amend the Certificate to specify
23 that all fee transfers from the Applicant to Fish & Game
24 be made by deed include an acceptance line for signature
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1 by a Fish & Game official." And, that the Applicant has
2 -- well, the motion for rehearing indicates the Applicant
3 "has no objection to that relief", and the Applicant
4 confirms that in its filing on August 19th.

5 So, any discussion about those two
6 issues? Mr. Scott.

7 DIR. SCOTT: Just a clarification, that
8 the Fish & Game's language, I'm sure they didn't mean
9 this, but I just want to clarify. It says "Accordingly,
10 the Fish & Game requests that the Certificate of Site and

11 Facility be amended to require GRP to transfer fee title
12 to the entire 620 acre wetland mitigation parcel to Fish &
13 Game". And, the only issue I just want to be clear is, it
14 says "notwithstanding any provisions of the New Hampshire
15 Department of Environmental Services Wetlands Permit",
16 I'll read that to assume "any provisions preventing
17 ownership", not that they won't be required to meet the
18 provisions of that permit.

19 CHAIRMAN GETZ: All right. Thank you.
20 Okay. Any other discussion about that, those two items
21 that are agreed to among the parties?

22 (No verbal response)

23 CHAIRMAN GETZ: All right. Then,
24 essentially, then let me say I guess I would summarize

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1 that, based on the discussion, then the Committee -- the
2 Subcommittee is in favor of the payment by the Applicant
3 of the \$25,000, but not in advance, that it be done
4 after-the-fact, as proposed by the Applicant, and that we
5 also agree with the changes proposed with respect to the
6 details of the wetland mitigation parcel and the land
7 transfer.

8 Is that a fair summary of the situation?

9 Dr. Kent.

10 DR. KENT: Did you capture the timing of
11 that \$25,000 payment?

12 CHAIRMAN GETZ: Well, --

13 DR. KENT: Fish & Game asked for "30
14 days from issuance of the Certificate". That didn't make
15 sense to me.

16 CHAIRMAN GETZ: That we would use the
17 timing as proposed by the Applicant?

18 DR. KENT: Correct. Financing as
19 indicative of the Project is going to proceed.

20 CHAIRMAN GETZ: Okay. All right. Thank
21 you. Then, let me make a motion that we grant the motions
22 for rehearing, the three motions for rehearing as proposed
23 by Fish & Game, except to the extent that we modify the
24 motion in so far as it concerns the timing of the \$25,000
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1 payment to be consistent with the recommendation made by
2 the Applicant. So moved.

3 MR. HARRINGTON: Just a question on
4 that?

5 CHAIRMAN GETZ: Sure.

6 MR. HARRINGTON: So, if we grant it,
7 then can we just do a written order for rehearing or do we
8 have to have another public hearing like this?

9 CHAIRMAN GETZ: Well, we will be issuing
10 -- we have to issue an order --

11 MR. HARRINGTON: Okay.

12 CHAIRMAN GETZ: -- that will memorialize
13 our deliberations today.

14 MR. HARRINGTON: And that would be
15 sufficient? I'm just -- so, we don't have to have
16 another, because you say we're "granting the rehearing, we
17 have to then have another hearing?

18 CHAIRMAN GETZ: No.

19 MR. HARRINGTON: Okay.

20 CHAIRMAN GETZ: No. Unless you want

21 one?

22 (No verbal response)

23 CHAIRMAN GETZ: All right. Then, --

24 DIR. SCOTT: I'd like to second the

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1 motion.

2 CHAIRMAN GETZ: All right. We have a
3 second. All those in favor of the motion, please signify
4 by saying "aye"?

5 (Multiple members indicating "aye".)

6 CHAIRMAN GETZ: Opposed?

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing no opposed, I'll
9 note that the motion carries unanimously.

10 I think I've got everything on my
11 checklist, Mr. Iacopino. Have I missed anything? Is
12 there anything else we need to address?

13 MR. IACOPI NO: I think your checklist
14 and my checklist are the same, Mr. Chairman.

15 CHAIRMAN GETZ: All right. Anything
16 else from any of the members of the Subcommittee?

17 (No verbal response)

18 CHAIRMAN GETZ: All right. Hearing
19 nothing, then we'll close this --

20 MS. LINOWES: Mr. Chairman?

21 CHAIRMAN GETZ: -- hearing on the
22 motions for rehearing, and then we will issue a written
23 decision on this issue as quickly as we can.

24 Ms. Linowes.

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1 MS. LINOWES: Mr. Chairman, I'm sorry to
2 interrupt. I just wanted a clarification. The objections
3 that were filed by the Applicant to the motions for
4 rehearing, there were subsequent comments filed, and I
5 know you referenced one from Fish & Game. Is it my
6 understanding still that those comments filed by my
7 organization, Counsel for the Public, and Fish & Game are
8 part of the record? Thank you.

9 CHAIRMAN GETZ: As we indicated in
10 setting this hearing, all these motions are part of the
11 record. Everything is to be considered. It's not our
12 obligation to repeat every single word in deliberations of
13 every single written filing, and a summary of those is a
14 fair practice for the Subcommittee to undertake. And, we
15 have fully and completely considered all of the written
16 filings that have been made before us. And, this hearing
17 is closed.

18 (Whereupon the hearing ended at 9:48
19 a.m.)

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