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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

October 29, 2010 - 10:00 a.m.
21 South Fruit Street, Suite 10
Concord, New Hampshire

RE: SEC Docket No. 2010-01
Application of Groton Wind, LLC,
for a Certificate of Site and
Facility for a 48 Megawatt Wind
Energy Facility in Groton,
Grafton County, New Hampshire.
(Prehearing conference)

PRESENT:	SITE EVALUATION COMMITTEE:
Michael Iacopino (Presiding as Hearings Examiner)	Counsel for the Committee
Chairman Thomas B. Getz (Presiding after 2:50 p.m.)	N.H. Public Utilities Comm.

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

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APPEARANCES:

Counsel for the Applicant: Susan S. Geiger, Esq.
Douglas L. Patch, Esq.
(Orr & Reno)

Counsel for the Public: Peter C.L. Roth, Esq.
(Sr. Asst. Atty. General)
Evan Mulholland, Esq.
(Asst. Atty. General)
Michelle Thibodeau
Department of Justice

Reptg. the Town of Groton: Miles Sinclair, Selectman

Reptg. the Town of Plymouth: John McGowan, Esq.
(Donahue, Tucker & Ciandella)

Reptg. the Town of Rumney: H. Bernard Waugh, Jr., Esq.
(Gardner, Fulton & Waugh)

Richard Wetterer, pro se

James Buttolph, pro se

Cheryl Lewis, pro se

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1 P R O C E E D I N G

2 MR. IACOPINO: Sorry about the delay,
3 folks. My name is Mike Iacopino. And, I am counsel for
4 the Committee. I'll be presiding, at least for the time
5 being, over our prehearing conference today in Docket
6 Number -- Site Evaluation Committee Docket Number 2010-01,
7 regarding the Application of Groton Wind for a Certificate
8 of Site and Facility for a renewable energy facility
9 located in Groton, Grafton County, New Hampshire.

10 I've passed out an agenda for our
11 conference today. But, before we get into that, I wanted
12 to address a couple of other issues with the parties. I
13 note that on Thursday -- I'm sorry, earlier this week
14 there was a filing by Mr. Buttolph entitled something like
15 "Expedited Motion to Suspend Proceedings." I've received
16 an objection to that today. I have spoken to the
17 presiding officer. He has asked me to try to get
18 everybody's positions and try to figure out where
19 everybody stands on that motion, at the time we were not
20 aware of the objection, before getting into more of the
21 technical stuff that we would get into in the prehearing
22 conference. And, he also asked me to see if there was any
23 room for agreement amongst the parties about the issues
24 raised in that motion.

1 I also don't know if everybody has
2 received yet, but we received a filing from the Division
3 of Historic Resources yesterday, which is problematic, and
4 should be -- everybody should be getting it today, where I
5 literally received it via e-mail after 5:00 last night. I
6 sent it over to Jane to distribute. I'm sure she hasn't
7 gotten to it yet, though. But there is letters from them
8 that I'll try to get printed out while we're here. So,
9 there are those issues that we will try to address first.

10 What we're going to do is, obviously, as
11 you all know, I can't rule on behalf of the Subcommittee
12 in this case. I'm going to just sort of get the lay of
13 the land for the presiding officer. And, if he determines
14 it necessary to come down and hold a more formal hearing,
15 Mr. Getz will be doing that.

16 But, before we get into all that, why
17 don't we get everybody's appearances on the record here,
18 so we know who's here on the record. Why don't we start
19 with the Applicant, go back down that side of the room,
20 and then come up to the front and back down the other side
21 of the room.

22 MS. GEIGER: Yes. Good morning. Susan
23 Geiger and Douglas Patch, on behalf of the Applicant.
24 We're from the law firm of Orr & Reno.

1 MR. IACOPINO: Mr. Wetterer.

2 MR. WETTERER: Richard Wetterer,
3 intervenor from Rumney.

4 MS. LEWIS: Cheryl Lewis, intervenor
5 from Rumney.

6 MR. BUTTOLPH: Jim Buttolph, intervenor
7 from Rumney.

8 MR. SINCLAIR: Miles Sinclair, Board of
9 Selectman, Town of Groton.

10 MR. IACOPINO: Mr. Roth.

11 MR. ROTH: Peter Roth, with Michelle
12 Thibodeau, for Counsel for the Public.

13 MR. IACOPINO: Mr. Waugh.

14 MR. WAUGH: I'm Bernard Waugh,
15 representing the Town of Rumney.

16 MR. IACOPINO: John.

17 MR. MCGOWAN: John McGowan, from
18 Donahue, Tucker & Ciandella, for the Town of Plymouth.

19 MR. IACOPINO: Okay. All right. The
20 motion that was filed asserts a number of reasons that the
21 intervenors from the Buttolph Group seek to essentially
22 delay the proceedings until they can get additional
23 information.

24 If I understand the motion correctly,

1 and, Mr. Buttolph, I'll let you correct me if I'm wrong,
2 in the motion you assert, first of all, that, take care of
3 the easy one first, that the Committee itself didn't
4 provide you with enough time to arrange to have Mr. McCann
5 testify, either by -- by video conference. Secondly, as I
6 understand it, you have a problem with the supplemental
7 filing that was filed I believe on October 12th by the
8 Applicant, which was a rather large filing, contained a
9 number of supplements to different parts of the
10 Application and a number of appendices. And that, I mean,
11 in order to basically shorthand what you say is that, as I
12 understand it, you're basically saying it's an improper
13 supplement, and that you'd be -- your intervenor group is
14 essentially taken by surprise by some of the information
15 in there, including the proposal of a new, and I don't
16 mean this in the technical term, but a new transmission
17 route and the effects that that has on the permits from
18 the Department of Environmental Services, on the need to
19 construct a new substation somewhere in the vicinity of
20 the Beebe River Substation. And, obviously, the effects
21 of both of those things on the Alteration of Terrain and
22 Wetlands Permits.

23 On the mitigation package, that was
24 amended by including a payment, mitigation payment, and,

1 with regard to Division of Historical Resources, what you
2 claim is a lack of information, I guess that isn't really
3 -- that doesn't really pertain to the supplemental nature
4 of the filing. But, generally, you're just -- you're
5 claiming there's a lack of historical resource
6 information. And, that also, with regard to the filing by
7 the Fish & Game Department, that there's a lack of
8 appropriate study with regard to the letter that they had
9 forwarded to the Committee a couple weeks ago.

10 And, also, with regard to the sound
11 testing by Mr. Tocci, that you had insufficient time,
12 because that was filed on October 22.

13 Is that a good summary of --

14 MR. BUTTOLPH: That's pretty fair. I
15 would say that the primary problem we had with the October
16 12th filing wasn't so much what was in the filing, because
17 we don't really know, we haven't had the time to study the
18 filing, it was the timing of the filing. We understand
19 that some of these plans were available substantially
20 before October 12th. For example, early September we
21 understand that there was a plan submitted to ISO-New
22 England as an example. So, there's a time period between
23 the beginning of September and the middle of October, when
24 information was already available, sufficient information

1 to have other agencies address some of the concerns, and
2 we weren't made aware of it.

3 MR. IACOPINO: Other than the ISO
4 filing, which is a different type of filing, is there any
5 other information contained in that period of time that
6 you believe should have been seasonably updated to you?
7 Because the reason why -- the reason why I exclude the ISO
8 filing in what I'm going to talk about is, most filings
9 with the Independent System Operator are not generally
10 made public, because they involve infrastructure that is
11 considered, in many cases, to be confidential because for
12 security reasons. I don't know exactly what the filing
13 was. I assume it was an application for them to perform,
14 as I understand from the thing, to perform a system
15 feasibility study, which is one of the very first studies
16 that ISO is requested to do. That application normally,
17 in my experience, an application to ISO to do that is not
18 normally made part of the record in an SEC proceeding.
19 But, quite frankly, usually the Applicant is well beyond
20 the system feasibility study before they have filed with
21 us.

22 So, I do know, however, that ISO has
23 concerns. For instance, if they do issue a system
24 feasibility study, ISO itself will mark that as

1 "confidential" and will say "It's not to be distributed
2 publicly due to security reasons."

3 MR. BUTTOLPH: I don't want to be
4 misunderstood that we have a concern with not having seen
5 the precise filing -- information that went to them. Our
6 concern is, there was sufficient information, when they
7 presented it to ISO-New England, to have resulted in a
8 change in the Application --

9 MR. IACOPINO: I see.

10 MR. BUTTOLPH: -- over a month before
11 the Application was actually changed. In this time frame
12 that we have, starting at the very beginning, as the
13 Applicant and everybody knows, everyone is on an extremely
14 tight time frame. An entire month went by, it appears, it
15 says "early September", I'm not sure what the date was, an
16 entire month went by, out of a nine month period of time,
17 that is hard for us to understand as to what could be a
18 conceivable explanation that is appropriate for that
19 length of time delay.

20 MR. IACOPINO: Let me ask you again,
21 just so that I can understand sort of the contours of the
22 thing. What other studies, other than ISO, or what other
23 parts of that filing did -- are you claiming that, I
24 understand the argument about the filing coming on October

1 12th, I also can understand the claim that, you know, this
2 wasn't a supplement here and there, that it was a
3 substantial amount of information. And, that's sort of a
4 generic claim that I understand, and, you know, that the
5 presiding officer will eventually rule on that.

6 But, in terms of specifics, are there
7 other specific parts of that that you -- that you believe
8 were available earlier and should have been provided
9 earlier, other than the material and the information
10 pertaining to the transmission -- not the transmission
11 line, but the ISO filing?

12 MR. BUTTOLPH: Well, first of all, I
13 would just say, with respect to the ISO filing, and I know
14 that's not your question exactly, but that ISO filing
15 changed a number of things. It changed, certainly, the
16 DES information, and it also -- it changed, I guess, the
17 Fish & Game filing -- information that they came forward
18 with. So, all of these things changed as a result of
19 this, of this filing on October 12th -- I'm sorry, of the
20 ISO information. So that we didn't get privy to it till
21 October 12th. So, these other agencies had this
22 information, so a whole bunch of things have changed.

23 There are a couple of other, you know,
24 concerns. Like, for example, and I think you, probably

1 graciously attempting to be subtle about the whole tone of
2 our filing, there has been what we think has been somewhat
3 of a pattern of information that hasn't been made
4 available on a timely basis. Another example would be,
5 during the public hearing, there was a commitment by
6 Mr. Cherian to, I believe it was a "record request", I
7 think is the term that was used, for the number of houses
8 within one mile? Two kilometers of the property. And, we
9 never got that information, for example. That would have
10 been very helpful to have had on a timely basis. So, we
11 have that overall concern.

12 The data requests, there have been a
13 number of issues with not getting very much information
14 back during those data requests. And, that's been a
15 concern that happened for us back during that process of
16 discovery.

17 MR. IACOPINO: Okay. What I'm trying to
18 do, though, I'm trying to get to the specifics, so that we
19 can see if there's some middle ground here. That's my job
20 right now.

21 MR. BUTTOLPH: Sure.

22 MR. IACOPINO: Because I'm not the
23 decider of this issue. I am sort of the person who's here
24 to try to see if there is a middle ground on these issues.

1 I mean, there are different ways, obviously, that we can
2 -- that we can deal with the issues that you raise, if
3 parties are agreeable to doing it. And, that's what I'm
4 tasked with addressing right now. And, if we do, as I
5 said, if we do need just basically a decision to be made,
6 you know, Mr. Getz will hear the arguments and render a
7 decision at some point.

8 MR. BUTTOLPH: Sure. I would, if I
9 could ask a question about the --

10 MR. IACOPINO: The reason why I'm asking
11 for specific studies or information is because that's
12 generally the way that we can get to figuring out "Okay.
13 What's needed? What's not needed? What might we need
14 more time on? Or, what would we not need more time on?"

15 MR. BUTTOLPH: Sure.

16 MR. IACOPINO: Those sorts of things.
17 That's why I'm asking about the specific sort of instances
18 of what it is that you're concerned about.

19 MR. BUTTOLPH: Well, the nature of us
20 having to analyze this information that was made available
21 a month after it conceivably could have or should have
22 been made available, the nature of that problem is that we
23 haven't had the time to thoroughly analyze and study that
24 information. It's been only two weeks, I guess. So,

1 that's -- that's an issue.

2 I do have a question, if I could, if I
3 may?

4 MR. IACOPINO: Sure.

5 MR. BUTTOLPH: My understanding is, the
6 legislation requires that the SEC make a decision by, is
7 it December 22nd, is that my understanding?

8 MR. IACOPINO: Two hundred forty (240)
9 days. I don't know -- 240 days from the date of
10 acceptance. I think it's around the 22nd or 23rd of
11 December.

12 MR. BUTTOLPH: Okay. So, it's in that
13 time frame.

14 MR. IACOPINO: Right. Unless the
15 Committee determines that a suspension of the proceedings
16 is in the public interest, --

17 MR. BUTTOLPH: Okay.

18 MR. IACOPINO: -- and they make a ruling
19 in that regard. So, yes. We're talking about right
20 before Christmas is when, the track that we're on right
21 now, --

22 MR. BUTTOLPH: Right.

23 MR. IACOPINO: -- that a decision would
24 normally be issued.

1 MR. BUTTOLPH: So, there is an
2 opportunity, should the Committee rule, to, if it's in the
3 public interest to move this beyond that date, they could
4 make such a ruling, if they decide that?

5 MR. IACOPINO: Yes. The Committee
6 certainly could. I mean, in order to grant your motion,
7 they would have to determine that it was in the public
8 interest --

9 MR. BUTTOLPH: All right.

10 MR. IACOPINO: -- to suspend
11 deliberations.

12 MR. BUTTOLPH: I guess what I'm getting
13 at is, there's no opportunity to grant our motion and meet
14 the schedule. For example, if we had one or two weeks,
15 that kind of puts the Committee in a bind, I understand,
16 on the tail end.

17 MR. IACOPINO: Well, how much time do
18 you think you would need?

19 MR. BUTTOLPH: Yeah, probably two weeks,
20 something like that.

21 MR. IACOPINO: Were there any other
22 specifics that you think I haven't summarized, in terms of
23 the issue raised by your motion?

24 MS. LEWIS: Could I speak for a moment?

1 MR. BUTTOLPH: I'm not sure, if I could
2 --

3 MR. IACOPINO: No problem, that's fine.

4 MS. LEWIS: There were a number of data
5 requests to the Applicant by a number of different parties
6 involved requesting information concerning the
7 interconnection/power line aspect of it. And, I guess
8 part of it is we feel that, given the fact that there is
9 confidential information, that's not what we're looking
10 for. But all those data requests by -- there were a
11 number by the Town of Rumney, by the Public Counsel, we
12 had asked some ourselves. And, when that change took
13 place, our understanding was, when it came to the data
14 requests, if any information changed, that they had an
15 obligation to notify us that that data request was no
16 longer correct. And, how --

17 MR. IACOPINO: To seasonably update.

18 MS. LEWIS: Right, and how that was
19 changed. And, I mean, there's numerous questions out
20 there that, in this particular situation, with the
21 interconnection aspect, that we feel we should have been
22 notified right then. It would have made a huge difference
23 in us preparing for the hearings. And, we feel we've lost
24 that opportunity.

1 MR. IACOPINO: Were there any other
2 specifics with regard to the relief requested in the
3 motion?

4 MR. BUTTOLPH: There was the Mike
5 McCann, the fact that it's been, what, 48 hours, I think,
6 since we knew that the ruling had been made.

7 MR. IACOPINO: I know, but I don't -- I
8 mean, like I say, I don't make the decision for the
9 Committee. But I think that you had fair notice that you
10 were responsible for bringing him here. And, if you were
11 going to present the witness, what you were looking for
12 was basically some accommodation. The Committee's agreed
13 to give that to you, in the form of video conferencing,
14 and have decided that the law doesn't permit telephonic,
15 but you're going to have to deal with the logistics of
16 that. And, there are folks here from the PUC, from their
17 IT section who, around noontime, can meet with you to see
18 if there's any way that they can help you. They don't
19 have the facility, though, to -- they have got a screen
20 back there, that's about it. They don't have a video
21 conference hook-up facility, just so you know.

22 So, I understand that's an issue, I
23 understand that you're raising it. But I have a pretty
24 good idea of sort of the feeling from the Site Evaluation

1 Committee about that part of your motion. Of course, I
2 don't make the decisions, you know, the presided officer
3 will.

4 MS. LEWIS: I think our biggest part --
5 our biggest argument in that is the fact that, up until 48
6 hours ago, we didn't -- we didn't know for sure, with the
7 limited resources that we have, whether we were planning
8 for a plane ticket, hotel accommodations, and everything
9 else, that we need to go out and buy equipment to enable
10 to make all this happen, or if it was going to be done by
11 phone, which meant, in effect, so --

12 MR. IACOPINO: I understand. But it
13 doesn't change the fact that your obligation as a party is
14 to provide -- is to bring the witness, I mean, in the
15 first instance. And, what you've asked for is an
16 accommodation, which was granted, maybe not as seasonably
17 as you would like, but it doesn't change that your initial
18 obligation is to present the witness. You know, you've
19 presented his prefiled testimony, it was your obligation
20 to have him here to be subject to examination, as part of
21 on rules and part of our thing. I mean, we understand
22 that you asked for an accommodation. We understand, I
23 mean, the order came out on the day it came out, no
24 question about it. And, I do understand that that, you

1 know, if you were waiting for that, that that could cause
2 some issues. I mean, he's not going to be called on
3 Monday, apparently, anyway, and probably won't be until
4 later in the week, if, of course, depending on what
5 happens with this motion. But, you know, there is time to
6 arrange for the video conference hook-up, that
7 accommodation can be arranged, if you can get the
8 equipment. But, like I say, I'm not the one to decide it.
9 But I think that's, you know, I mean, I think, with regard
10 to that particular issue, that's not really an issue with
11 any other party, that's an issue with the Committee, and,
12 as counsel to the Committee, I think I can speak to what
13 the rules are for the Committee.

14 But, other than that, because what I
15 want to do next is I just want to go around and see what
16 other people -- what the other parties think about your
17 motion, before I get to the Applicant and their objection.
18 Did everybody get a copy of the Applicant's objection?

19 MR. SINCLAIR: I did not.

20 MS. GEIGER: Oh, I'm sorry.

21 MR. IACOPINO: If you could just give
22 Mr. Sinclair one.

23 MR. SINCLAIR: And, I don't have a copy
24 of the motion either.

1 MR. IACOPINO: You didn't get the
2 motion? The motion was emailed to everybody on the list.

3 MR. SINCLAIR: It could have been, but
4 it wasn't provided to me.

5 MR. IACOPINO: I don't have a copy here,
6 I only have it on my computer.

7 MR. SINCLAIR: Perhaps in the office.

8 MR. IACOPINO: Mr. Wetterer, do you have
9 a position with respect to Mr. Buttolph's motion?

10 MR. WETTERER: Well, I think that he has
11 raised some important questions about lack of time to
12 prepare and to go over material, and I see no reason why
13 there couldn't be a postponement.

14 MR. IACOPINO: So, you support the
15 motion?

16 MR. WETTERER: Yes.

17 MR. IACOPINO: Okay. Mr. Sinclair, I'll
18 skip you, okay. How about the Town of Plymouth?

19 MR. MCGOWAN: No position.

20 MR. IACOPINO: Town of --

21 MR. WAUGH: Likewise, the Town of Rumney
22 takes no position.

23 MR. IACOPINO: Counsel for the public?

24 MR. ROTH: I have not had a great

1 opportunity to review the motion, and no opportunity to
2 review the objection. You know, what I do recall from the
3 motion is they did raise some, I thought, fairly important
4 issues, with respect to the timing of the grant of the
5 motion with respect to Mr. McCann. I would point out that
6 there was actually pending a motion to strike Mr. McCann's
7 testimony, and in addition to the request for him to
8 appear telephonically or by video. I think it is fairly
9 burdensome for a party to come up with video conferencing
10 capability or make flight arrangements, and to do so
11 without knowing whether he's even going to be allowed to
12 speak would be, I think, a stretch.

13 But, without having an opportunity to
14 review these things and consult internally, it's difficult
15 for me to take a firm position on them one way or the
16 other at this point.

17 Also, you know, you mentioned at the
18 beginning that there's a DHR filing which is problematic,
19 and then we have the Fish & Game letter. And, just, you
20 know, if two weeks would solve that, then maybe that's the
21 way to go. But, as I said, I don't feel strongly about it
22 one way or the other at the moment, and I would need to do
23 some further analysis and consultation.

24 MR. IACOPINO: Okay. Have I missed

1 anybody, except the Applicant yet?

2 (No verbal response)

3 MR. IACOPINO: Okay. Ms. Geiger, with
4 regard to, I've just been able to scan your objection, if
5 you could perhaps summarize what your position is with
6 regard to the motion before us.

7 MS. GEIGER: Sure.

8 MR. IACOPINO: And, then, we'll see if
9 there's any middle ground available.

10 MS. GEIGER: And, we understand that the
11 intervenors filed this motion on an emergency basis, and
12 therefore we tried to respond quicker than the -- and did
13 respond shorter than the ten days that are normally
14 allowed under the rules, being mindful of the need for the
15 Subcommittee to act before Monday.

16 Basically, and I won't go through it
17 point by point, a couple of items I'll address first that
18 Mr. Buttolph provided orally this morning, with respect to
19 updating data requests, or responses to data requests. I
20 believe that the intervenors were told at least a couple
21 of times, perhaps by yourself, but that, in the event that
22 there were answers to data requests that they felt were
23 insufficient, that they could have moved to compel. So,
24 that's one issue.

1 The second issue, about untimeliness of
2 supplementing, the filing that we made on October 12th was
3 consistent with the deadlines in the procedural schedule
4 that was set out back in June. I think everybody knew
5 that there was a supplemental -- opportunity for
6 supplemental testimony on October 12th. The filing that
7 was made to update the Application for information that
8 had transpired since the filing was made back in March of
9 this year is no different from the supplemental filings
10 that have been made at least in the last two dockets that
11 the Subcommittee has considered related to renewable wind
12 facilities. My understanding is that similar filings are
13 made with respect to other dockets that the Committee
14 hears. So, in that respect, I believe that the issues
15 that have been raised in the motion really relate to the
16 procedural schedule.

17 In addition to that, information about
18 the -- the new information that was filed with ISO-New
19 England, I've explained in the motion, the ISO-New England
20 filing came about as a problem that the Applicant
21 experienced with PSNH. That was information that -- that
22 situation was beyond the Applicant's control. It was in
23 the hands of a third party. And, through working with
24 PSNH, the Applicant became aware that it needed to make a

1 refiling of its interconnection request with ISO-New
2 England, and it did that.

3 Given the various pieces of information
4 that are contained in the supplemental filing, relating to
5 things not just to that issue, but to a whole host of
6 other issues that have transpired and things that have
7 been updated since the Application was filed, the
8 Applicant made a conscious decision to make its filing in
9 one -- one binder, one filing, if you will, rather than
10 making all these filings piecemeal. We thought it would
11 be more user-friendly to the parties, as well as to the
12 Committee. Again, we did so within the time frame that
13 was established in the procedural order that was issued
14 back in June.

15 There are other, you know, other
16 references in the motion that deal with, you know,
17 allegations that the intervenors need more time to
18 evaluate things like the mitigation package. Now,
19 respectfully, the mitigation package that's been updated
20 and has been filed with the supplemental filing is
21 substantially the same as the original mitigation package,
22 with the exception that there's an additional \$150,000
23 payment to the New Hampshire Aquatic Resource Mitigation
24 Fund. So, there really isn't a whole lot to analyze

1 there.

2 You know, the other issues relating to
3 Fish & Game's lack of specificity or finality with respect
4 to its position. You know, again, Fish & Game has had the
5 Applicant's studies for a long time, with the exception of
6 one. There was a misunderstanding on the part of the
7 Applicant. It filed with -- I believe it filed a bat
8 study with Fish & Game on October 12th. And,
9 unfortunately, it was filed with Mr. Perry, as an SEC
10 member, and the Applicant -- Applicant's representatives
11 didn't understand that that information was not going to
12 be made available directly to the folks at Fish & Game who
13 needed to look at it.

14 The complaint about not having enough
15 time to review Mr. Tocci's filing that was made October
16 22nd, well, we share those concerns. We didn't really
17 have a whole lot of time either. We haven't had a whole
18 lot of time to look at that. But we all knew, going into
19 the -- or, at least we were all in agreement when Public
20 Counsel filed its -- after Public Counsel filed its
21 motion, and we got direction from the presiding officer to
22 work on an arrangement that would allow Mr. Tocci to do
23 the additional studies that the intervenors wanted and
24 that Public Counsel wanted, we all agreed that he could do

1 that, and that he would make his filing, additional
2 report, on October 22nd. And, that was not a new -- that
3 should not have been a surprise to anybody.

4 The procedural order was issued on
5 June 25th establishing all of the deadlines, except for
6 the one related to Mr. Tocci. Nobody moved for
7 reconsideration of those dates. We all understand that
8 there's a very tight time frame established under 162-H
9 for renewable energy facilities. And, I think we're all
10 operating under the same burdens. However, we don't think
11 that there's sufficient reason at this point to delay
12 these proceedings. The Applicant has made a substantial
13 filing, a comprehensive filing, and we're prepared to go
14 forward on Monday. Thank you.

15 MR. IACOPINO: Let me just ask you a
16 couple of questions, Ms. Geiger. And, this does not
17 necessarily actually relate to the specifics raised by Mr.
18 Buttolph. But, in the filing from October 12th, some of
19 the stuff that -- some of the additional appendices that
20 you've filed do appear to be relatively recent, --

21 MS. GEIGER: Uh-huh.

22 MR. IACOPINO: -- in October, and that I
23 understand. But there is also some -- a number of
24 appendices that go back as far as June and July. Were

1 those made available to the intervenors?

2 MS. GEIGER: Well, without knowing
3 exactly which ones you're talking about --

4 MR. IACOPINO: Well, I'm just looking at
5 your table of contents here.

6 MS. GEIGER: Okay.

7 MR. IACOPINO: And, I see, for instance,
8 Appendix 47, the peregrin falcon surveys -- or, the work
9 plan for the peregrin falcon surveys, the Phase I Avian
10 Risk Assessment is dated "June of 2008".

11 MS. GEIGER: I think --

12 MR. IACOPINO: Your Natural Heritage
13 Bureau memo, the -- I guess Appendix 44 is a mitigation
14 package that your vendor submitted to DES, I assume that's
15 what that is. And, then, just looking at the stuff that
16 appears to be older, these letters from the Town of -- the
17 Planning Board and Selectboard, I think those were
18 actually part of our record already.

19 MS. GEIGER: Right.

20 MR. IACOPINO: But those other studies
21 that I've just referenced in June and July, are those
22 things that have been available to all the parties? I
23 should know off the top of my head, but I don't.

24 MS. GEIGER: Yes. I think that the --

1 on the Phase I Risk Assessment, the Curry and Kerlinger,
2 and the proposed work plan on the peregrin falcons, those
3 two things were referenced in Mr. -- either referenced --
4 they were referenced in Mr. Gravel's original prefiled
5 testimony back in March. And, I need to go back and
6 check, I can't say for sure, but I think that either or
7 both of those have been requested in connection with data
8 requests.

9 MR. ROTH: Or a tech session request.

10 MS. GEIGER: Or a tech session.

11 MR. ROTH: Yes.

12 MS. GEIGER: And, I think we did provide
13 them.

14 MR. IACOPINO: Did you get those,
15 Mr. Buttolph, to the best of your knowledge?

16 MR. BUTTOLPH: I don't recall getting
17 them.

18 MR. IACOPINO: Do any of the other
19 intervenors recall receiving those reports? This is
20 Appendix 46 and Appendix 47 of the October 12th filing
21 from the Applicant, it's a Phase I Avian Risk Assessment
22 from Curry and Kerlinger.

23 MR. ROTH: Phase I we got in response to
24 a data request.

1 MR. IACOPINO: And, then, the proposed
2 work plan for peregrin falcons?

3 MS. GEIGER: I think -- I think that was
4 provided as well, because I think I remember seeing it as
5 an appendix to the --

6 MR. ROTH: Yes. We got that as attached
7 to the data requests in July.

8 MR. IACOPINO: I'm going to assume that,
9 if it was given to Counsel for the Public, it got
10 circulated to everybody. Whether everybody had an
11 interest in it or --

12 MR. ROTH: Vernal pool survey data.

13 MS. GEIGER: I mean, Mr. Presiding
14 Officer, the Applicant has answered over 500 data
15 requests, and has done the best that we can to keep track.
16 I just can't remember off the top of my head what's been
17 provided. But, if Public Counsel says that they received
18 them, I don't have any reason to believe that they weren't
19 circulated to all of the parties, since that's the
20 standard practice.

21 MR. IACOPINO: And, I think you can
22 probably see what I'm trying to do. I'm just trying to
23 narrow down and find out exactly what -- what specific
24 information there is that may or may not be problematic,

1 which may or may not require additional study by the
2 parties. And, --

3 MS. GEIGER: I mean, one thing I would
4 point -- I'm sorry to interrupt. But one thing I would
5 point out is that we didn't expect to get probably the
6 most significant piece of information from State agencies
7 that is usually rendered in these dockets, that is the
8 decision on the Alteration of Terrain Permit and the
9 Wetlands Permits. We actually got those a couple of weeks
10 early.

11 MR. IACOPINO: They were dated
12 October 8th. I didn't receive them in my office until
13 October 14th. So, --

14 MS. GEIGER: But they weren't even due
15 to be filed in this docket, my understanding is they
16 weren't even due to be filed in this docket till October
17 25th.

18 MR. IACOPINO: Right. That was the
19 deadline for State agencies, based upon the time table in
20 the statute.

21 MS. GEIGER: Correct. So, basically,
22 DES I think did us all a huge favor by issuing that
23 information at least two weeks early by my count.

24 MR. IACOPINO: I understand your

1 position. But what I'm trying to figure out is what --
2 what issues, you know, can perhaps be resolved to
3 everybody's benefit, and especially to the Committee, so
4 that we do -- we are capable of having a full
5 consideration of the proceedings -- of the Application.

6 I know that Mr. Buttolph and Ms. Lewis
7 raised an issue about that Alteration of Terrain Permit,
8 about an amendment to it, if I recall correctly. I'm just
9 looking to see if I can find it. Ms. Lewis, I know you
10 raised this issue with me previously, about there was a
11 resubmission or amendment of the Alteration of Terrain
12 Permit. Do you know where you got that information from?

13 MS. LEWIS: Well, I think it was in the
14 final decision and conditions that were listed. All I was
15 referring to was it says "the revisions of the
16 information", it just alludes to it, and that's the part
17 that we have not seen.

18 MR. IACOPINO: Okay. Is that in the
19 Alteration of Terrain or is that in the Wetlands? Do you
20 remember?

21 MS. LEWIS: I believe it was in the
22 Alteration of Terrain.

23 MR. IACOPINO: Well, let me direct it to
24 the Applicant. Was there some form of amended or

1 resubmitted application for the Alteration of Terrain
2 Permit?

3 MS. GEIGER: Mr. Presiding Officer, it's
4 my understanding that the Applicant's consultant, VHB, had
5 been working with DES throughout, you know, since the
6 Application was filed, as they typically do. It's also my
7 understanding that there was some back-and-forth with VHB
8 over slight revisions and other changes to address
9 concerns that DES had. That's normal practice in -- it's
10 been my experience at least that that's a normal process
11 in these SEC proceedings. That the consultants will
12 respond to the program area to DES. Not every piece of
13 paper or communication that the Applicant's consultants
14 have with DES, for example, or other State agencies are
15 filed as pleadings or exhibits with the Committee. It's
16 my understanding that, and I believe the Committee has
17 expressed this thought in other orders, that the siting
18 process is an iterative process, and that there is some
19 back-and-forth between the Applicant and DES and other
20 State agencies, in order to work out issues that are
21 related to the underlying applications that have been
22 filed with the program areas.

23 MR. IACOPINO: Right. I --

24 MS. GEIGER: And, that's what I believe

1 occurred. I believe that there was a subsequent -- some
2 information that had been provided to DES and that DES
3 considered.

4 MR. IACOPINO: I think what the motion
5 suggested, though, that there was an amended and
6 resubmitted AOT permit or application. And, that's just
7 what I'm trying to find out. Did we actually do something
8 that was a -- did they actually perform, you know, a
9 resubmission of the application? Because I think that's
10 different than just the iterative process that goes on
11 between --

12 MS. GEIGER: And, I don't know the
13 answer to that. I would need to check with the
14 consultants to see whether they filed a full-scale
15 amendment to their -- and this is the Wetlands
16 application?

17 MR. IACOPINO: Well, that's what I'm --
18 can you -- do you have the final determinations,
19 Mr. Buttolph or Ms. Lewis, where it says that, because
20 I've had some difficulty this morning finding it myself?

21 MR. BUTTOLPH: Yes.

22 MR. IACOPINO: That's good. Which page?
23 I mean, I think that these final determinations, they
24 appear to apply to plans from July 9th, 2010, revised

1 plans.

2 MS. LEWIS: Right. And, that was our
3 whole point. That July 9th, there was something that was
4 submitted that we have not been able to see or have any
5 understanding of. I mean, it could just be something very
6 minor or it could be something very significant. And,
7 without the ability to even see what it is, how can we,
8 you know, go forward with questioning or asking the
9 Committee to, you know, review some of this, if we don't
10 have the ability to even know what it is?

11 MR. IACOPINO: Do we know what your
12 original -- when your original application was filed?

13 MS. GEIGER: It was filed on March 26th.

14 MR. IACOPINO: Okay.

15 MS. GEIGER: And, if, with all due
16 respect to the intervenors, if they knew on October 8th,
17 or had reason to believe that there was some issue with a
18 filing that had been made by VHB with DES, they could have
19 easily picked up the phone and called DES to find out what
20 that was all about. Again, it has not been my experience
21 that technical specifications that are filed in response
22 to requests from a State agency get filed with this
23 Committee and circulated to all the parties.

24 MR. IACOPINO: I guess I -- I guess my

1 question, though, is what -- do we know what the revisions
2 were? Are these -- I know you filed a large roll of plans
3 with us when you originally came in. Is there --

4 MS. GEIGER: I don't know exactly what
5 was filed on July 9th. I don't. I don't know if it was a
6 whole set of plans, I don't know if it was just something
7 minor, I just don't know.

8 MR. IACOPINO: Can you find that, can
9 you find that out for us?

10 MS. GEIGER: I will find out. I can
11 call VHB and find out exactly what that was. Is that
12 something you want to take a recess now for me to check
13 on?

14 MR. IACOPINO: No. Let's finish up with
15 the rest of these things here. There is the Colby,
16 Appendix 52, which it appears to be another study that you
17 had appended in your supplemental filing, regarding "Wind
18 Turbine Sound and Health Effects". Is this a document
19 that was requested at the tech sessions or is that just a
20 new -- something new that the Applicant's --

21 MS. GEIGER: That is referenced in
22 Mr. O'Neal's supplemental prefiled testimony. And, so, we
23 thought, out of fairness to the parties, that we would
24 provide a copy of it, rather than just citing to it.

1 MR. IACOPINO: Okay. And, then, the
2 balance of these appendices that have been filed are of
3 reports that have come in closer in time to now. In
4 October, I take it the Spring and Summer 2010 Acoustic Bat
5 Survey Report was just completed in October?

6 MS. GEIGER: Yes.

7 MR. IACOPINO: I'll skip the FAA stuff
8 for a minute. The End-of-Field letter that was produced
9 to Historic Resources is dated October 5th. We've already
10 discussed the DES permits. What about the post
11 construction fatality surveys from Lempster? Those are
12 dated September 30th. Were those requested specifically
13 as part of this docket by any of the parties or --

14 MR. ROTH: I think those came up in a
15 technical session of probably the Applicant's experts.

16 MR. IACOPINO: Okay.

17 MR. ROTH: I recall them, there being a
18 discuss about that during the technical session at the
19 Fish & Game Department.

20 MR. IACOPINO: And, I guess my other
21 question to you, one of the issues raised by Mr. Buttolph
22 is the list of residences within two kilometers that
23 Mr. Cherian indicated he would provide at the -- actually,
24 it wasn't at a tech session, it was at a public hearing.

1 And, is that what's included in that Appendix 1 of Volume
2 II? You have no idea.

3 MS. GEIGER: I believe we responded to
4 that question. I did not bring all of the Applicant's
5 answers to the 500 data requests that were made, because
6 we're not planning on burdening the record and marking
7 them all. I'm not sure if Mr. Roth has a copy of them.

8 MR. ROTH: Of which?

9 MS. GEIGER: Of the Applicant's
10 responses to the data requests?

11 MR. ROTH: I do. And, I was just
12 looking on the post construction mortality survey, we
13 requested it in a data request. And, the response was "A
14 post construction mortality survey for Lempster was
15 completed after the first operational year, but a report
16 has not yet been finalized. It will be made available to
17 the SEC when it has been finalized." And, so, obviously,
18 it was not attached to the data request response in July.

19 MS. GEIGER: Because it wasn't done
20 until the end of September.

21 MR. IACOPINO: Apparently, it's dated
22 September 30th, according to the October 12th filing.

23 MR. ROTH: Okay.

24 MR. IACOPINO: And, it was included with

1 that filing. So, what I'm just trying to do, though, is
2 find out what --

3 MS. GEIGER: My understanding is that we
4 did respond to a question about how many structures were
5 within a, I believe, a two-mile radius.

6 MR. ROTH: Well, structures, but --

7 MS. GEIGER: And, Mr. McCann references
8 that number in his prefiled testimony, so we must have
9 provided it. I just don't have -- physically don't have
10 the document here that indicates our response to that
11 particular data request.

12 MR. ROTH: So, it would have been a
13 response to Mr. Buttolph?

14 MS. LEWIS: It was the public hearing.
15 And, Chairman Getz actually spoke on it and said that it
16 would be recorded in the public hearing minutes as a data
17 request. And that, once Mr. Cherian came up with those
18 numbers, it would be published on -- along with those
19 minutes. And, --

20 MR. IACOPINO: Right. But there was,
21 and just so everybody is talking about the same thing,
22 there was a filing that the Applicant made early on, and I
23 think it's -- I think it's what is here as Volume II.
24 What I guess I'm pointing out is, this is actually part of

1 our record back in April of 2010, because part of the
2 Application was titled and was supposed to happen, if I
3 remember correctly, the letter that I got was supposed to
4 have that information in it, but it didn't.

5 MR. ROTH: Mike?

6 MR. IACOPINO: And, then, the Applicant
7 sent a list of homeowners. And, now, I'm just trying to
8 figure out if that is, in fact, if that list of residences
9 is in response to two kilometers or not.

10 MR. ROTH: We requested that information
11 in our data requests in July. The answer that was
12 provided by the Applicant was "Please see response to
13 Wetterer Question Number 6." And, I don't have Wetterer
14 Question Number 6. Perhaps Mr. Wetterer has Question --

15 MR. WETTERER: I did not bring them with
16 me.

17 MS. LEWIS: I think I have that here.
18 Well, here the answer says "A listing of all residents
19 does not exist." However, if you look at Adam Gravel's
20 prefiled testimony, he specifically states that "VHB has a
21 map specific with residents", does not say "structures",
22 it says "residents". And, in all of the studies that have
23 been done by both the visual, as well as the sound, it
24 refers to "houses", not "structures".

1 MR. IACOPINO: Can the Applicant check
2 and see if there's some way to answer that question more
3 directly, in terms of "structures within 2 kilometers"?

4 MR. PATCH: Is it "structures",
5 "residences"? What is it?

6 MS. LEWIS: Residences.

7 MR. IACOPINO: Residences.

8 MR. PATCH: Residences.

9 MR. IACOPINO: That's what you're asking
10 about, residences?

11 MR. BUTTOLPH: Yes. It was a residence
12 question.

13 MR. PATCH: Within two kilometers.

14 MR. IACOPINO: I think that -- I don't
15 know that the two kilometer range was actually specified,
16 but I do recall that we did get a list of residences
17 shortly after the Application was filed, because the
18 Applicant noticed an error in the way that a portion of
19 Volume I of the Application was drafted, and we did get a
20 letter saying "this was supposed to be included in" I
21 think it was "Part E", or something like that. I don't
22 have that -- well, I may have it with me.

23 MS. LEWIS: I think -- I'm sorry, that
24 was abutting properties.

1 MR. IACOPINO: Was it?

2 MS. LEWIS: Yes.

3 MR. IACOPINO: Okay.

4 MS. GEIGER: Well, there was a request
5 made for the list of landowners in proximity to boundary
6 of the leased land, and that was something that we
7 provided to the Committee on April 22nd, 2010. But I will
8 go back and check to see what -- I guess I'm kind of
9 confused, because I'm almost certain that Mr. McCann's
10 prefiled testimony refers to a number of houses or
11 structures within I believe a one or two-mile radius.
12 And, you know, I'm not sure where he got that information
13 from, other than I think that we answered that question.
14 But I will go back and look. And, if you would like us to
15 submit the response to the data request or provide it to
16 everyone?

17 MR. IACOPINO: Well, that's what I'm
18 trying to figure out, is if there's -- there's apparently
19 been a data request. And, you know, I mean, I think that
20 the intervenors have a point, if it hasn't been answered,
21 it should be answered.

22 MS. GEIGER: Because it's information
23 that they have no clue about. I mean, this is information
24 that is known, this is information that at least one of

1 their witnesses --

2 MR. IACOPINO: Well, that's -- yes. But
3 he may have just done a Google --

4 MS. LEWIS: He did it based on the 258
5 structures.

6 MR. BUTTOLPH: Structures, not
7 residences.

8 MS. LEWIS: That's the only information
9 that we have been given, as far as --

10 MS. GEIGER: And, I think that's all we
11 have. I don't think we can say what's a structure and
12 what's a house, I think that's the problem. And, I think
13 we have answered that question, but I will look.

14 MR. IACOPINO: All right.

15 MS. GEIGER: Yes. And, furthermore, I
16 know that I've indicated this earlier, but, to the extent
17 that the intervenors felt that there was a piece of
18 information that was lacking, they could have moved to
19 compel, and they didn't.

20 MR. BUTTOLPH: Mr. Iacopino? Mr.
21 Chairman? A record request, just so I'm clear on it,
22 isn't that, in effect, a directive that says "you must
23 comply"?

24 MR. IACOPINO: Normally. Normally, if

1 the Committee makes a record request, the Applicant is
2 required to respond, if they can. And, if they can't,
3 they will let the Committee know. The only -- the only
4 somewhat unusual thing is, quite frankly, the Committee
5 doesn't normally make record requests as part of a public
6 information hearing, in fairness. I mean, that's not
7 something, at least in my -- it's not that it can't be
8 done, it's just that it's not as normal a procedure as
9 when the Committee is sitting formally, in a room like
10 this, having an adjudicative proceeding. Quite often, we
11 will have record requests sometimes made on the last day
12 of the adjudicatory hearing. Only because things come up
13 that are -- people have not thought about or have not
14 foreseen to be relevant, and they become relevant.

15 So, I mean, with regard to some of these
16 issues, flexibility is always, part of any administrative
17 hearing, there is always an amount of flexibility that has
18 to exist. But what I'm trying to do here is trying to
19 sort of parse out your motion, find out what exactly is
20 there -- I'm going to stand for a little bit, because my
21 back's hurting me -- find out exactly what is there that
22 is really at the heart of it, what is it that you need in
23 order to proceed, and is that something that is available,
24 in fairly short order, where we can just perhaps move

1 around some of the scheduling of the hearing, or is it
2 something that, in fact, requires, you know, a suspension
3 of deliberations, as you've requested, and a rescheduling
4 of the adjudicatory hearings.

5 And, so, that's why my next question to
6 you is, in essence, really, it seems to me what we're
7 talking about is whatever the revisions were for the DES
8 permits, the July 9th revision, it appears that that's
9 what the final permits are based on. So, that is -- does
10 appear to be an issue that, you know, but it's also
11 something that we can probably find out relatively
12 quickly.

13 The other issue is this issue of the
14 structures or residences. And, I understand both sides of
15 that argument, that, you know, that the Applicant can't
16 necessarily determine which structure is necessarily a
17 residence or not. But that -- but that information seems
18 like it should be available as well, and should be
19 available in fairly short order.

20 The other issue that you've raised is
21 the issue of the mitigation package. And, as I understand
22 it, your question isn't really about the \$150,000, it's
23 why did the -- I forget which agency it was, I guess it
24 was Wetlands, but, anyway, why did they require a

1 mitigation amount of \$150,000? What is it that's exactly
2 being mitigated? And, again, I mean, if that information
3 that -- I'm fairly sure that can be obtained in pretty
4 short order and provided. I mean, there's --

5 MS. GEIGER: I mean, there's really no
6 mystery there. It's an enhanced mitigation package.
7 Mitigation packages change during the course of --

8 MR. IACOPINO: But there must be an
9 explanation as to why the particular figure of \$150,000
10 was chosen.

11 MS. GEIGER: From DES, I mean, --

12 MR. IACOPINO: Yes, from DES. I mean,
13 --

14 MR. PATCH: Should they ask DES then or
15 should we ask or --

16 MR. ROTH: Or from the Applicant's
17 experts, who worked that out.

18 MR. IACOPINO: Right. You submitted the
19 mitigation package.

20 MS. GEIGER: Right. Right.

21 MR. IACOPINO: DES responded and --

22 MS. GEIGER: They will be available for
23 cross-examination.

24 MR. IACOPINO: Okay. But their point is

1 is they're claiming they don't have that. Whatever the --
2 that's my understanding. Am I correct? You don't have
3 whatever they submitted as a mitigation package to DES?

4 MS. LEWIS: It went from 20,000 to
5 150,000. And, there's nothing in there to suggest whether
6 it be communications, whether it be meetings, whether it
7 be a revised package. What -- how did that go from one to
8 the other, without any information whatsoever available to
9 justify it?

10 MR. BUTTOLPH: A substantial change or
11 not?

12 MS. GEIGER: There have been no -- there
13 have been no substantial changes to the wetlands impacts
14 from the initial Application.

15 MR. IACOPINO: Appendix 44 appears to
16 be, of your supplemental filing, appears to be a
17 mitigation package from VHB?

18 MS. GEIGER: Yes. Right.

19 MR. IACOPINO: And, is that -- is that
20 the document that has gotten us to the point where we're
21 at with the mitigation today?

22 MS. GEIGER: That's the memorialization
23 of the mitigation package.

24 MR. IACOPINO: Does that include, and I

1 don't have it in front of me, unfortunately, I forgot to
2 bring that volume, but does that include the \$150,000
3 payment?

4 MS. GEIGER: Yes.

5 MR. IACOPINO: And, that's been provided
6 to the intervenors?

7 MS. GEIGER: Yes. That was part of the
8 supplemental filing.

9 MR. ROTH: I know that at some point
10 during the technical session at Fish & Game we asked for
11 sort of a single document that set forth the entire
12 mitigation package.

13 MS. GEIGER: Uh-huh.

14 MR. ROTH: And, I can't remember whether
15 we got it.

16 MS. GEIGER: I think we did provide that
17 in response to a data request.

18 MR. ROTH: I'll take your word for it,
19 but I just don't remember.

20 MS. GEIGER: I think we did. No,
21 because I remember you did want everything in one spot.

22 MR. ROTH: Right.

23 MS. GEIGER: And, I believe we did
24 answer that.

1 MR. ROTH: These are the tech -- these
2 are the data request responses. I don't know that I have
3 the responses from tech session. So, if that was an
4 additional filing beyond the data requests, --

5 MS. GEIGER: It was.

6 MR. ROTH: -- then I don't have it.

7 MS. GEIGER: It was.

8 MR. ROTH: But I don't, you know, I
9 don't know whether that included the 150, that's the
10 thing. Whether the 150 is something new.

11 MS. GEIGER: I think it's the -- the 150
12 was -- the 150 existed as of July 28th, 2010. So, the
13 tech session was after --

14 MR. ROTH: So, the August response --

15 MS. GEIGER: Right.

16 MR. ROTH: -- would have included that
17 figure, if it -- I don't know whether that was provided to
18 everybody or just me.

19 MR. IACOPINO: Well, I'm going to ask
20 everybody to go back and look at their responses from the
21 tech sessions.

22 In the supplemental filing, I think that
23 the intervenors are correct. If this is the first time
24 that they're seeing that it, it's apparently something

1 that was submitted back in July. And, you know, I mean --

2 MS. GEIGER: I'm almost positive that we
3 submitted in response to a data request, and that would
4 have been in August. And, further, --

5 MR. IACOPINO: Maybe. I'm going to ask
6 that all the parties check their data requests, although I
7 have copies of them, I don't have them handy.

8 MS. GEIGER: And, again, the only thing
9 that has changed in the mitigation package to my
10 understanding is the payment, the additional payment.

11 MR. IACOPINO: And, that may not have
12 even changed, if this information was provided in response
13 to the tech session questions.

14 MS. GEIGER: It hasn't. It hasn't
15 changed since then.

16 MR. IACOPINO: No, I'm saying that, if
17 the figure in July was 150,000 --

18 MS. GEIGER: Yes.

19 MR. IACOPINO: -- that was offered by
20 VHB as part of -- that's what is contained in Appendix 44.

21 MS. GEIGER: Right.

22 MR. IACOPINO: If that information was
23 provided back when we had the tech session, and it may
24 have been, I recall that as well, that list of mitigation

1 that was requested. If that was provided, then it's not
2 even new. I mean, we're not really talking about a new
3 thing. And, the Appendix 44 is three pages, and contains
4 three mitigation components.

5 MR. ROTH: I guess, I mean, from the
6 point of view of "what is the source of the 150?",
7 presumably there was some submission -- submittal with DES
8 that would have established that. And, if that could be
9 provided to us before the hearing, whenever the hearing
10 is, that would be most useful.

11 MR. IACOPINO: I actually think that
12 it's probably -- I think that that filing from July is
13 probably the best.

14 MS. GEIGER: I think --

15 MR. IACOPINO: I mean, it explains in
16 it, like Appendix 44, and albeit, it was filed October
17 12th, so there was a gap between the time that it was sent
18 over to DES and the time it was filed with this Committee.
19 It may have been provided as part of the data requests,
20 but that sort of goes through the three components of it.
21 And, it appears that it was accepted by DES, although this
22 document doesn't say it was accepted by DES. That appears
23 to be based upon the final determinations from DES what
24 was accepted. But I don't know that we have sort of an

1 explanation from DES specifically, except that it was an
2 increase from 20,000 to 150,000, which might be one of the
3 reasons why DES accepted it, a significant increase, but I
4 don't know. Other than what's in the final determination
5 and what's in the July 28th Appendix 44 of the
6 supplemental filing, --

7 MR. ROTH: If the Applicant would agree
8 to check with their consultant and provide anything that
9 was provided by the consultant to DES to substantiate that
10 figure, if anything, that would be --

11 MR. IACOPINO: Yes, if there's any
12 correspondence --

13 MR. ROTH: -- that would be helpful.

14 MR. IACOPINO: -- between DES and the
15 Applicant between July 28th and October 8th, when they
16 issued the final determination, if you could provide that
17 to the parties. That's probably going to be an issue
18 anyway.

19 MR. PATCH: Could we just be clear about
20 that? Any correspondence to e-mails, any kind of traffic
21 that might have gone back and forth, because --

22 MR. IACOPINO: Anything that addresses
23 the reasons for the increased mitigation, --

24 MR. PATCH: Okay.

1 MR. IACOPINO: -- acceptance of the
2 increased mitigation. Is there any other issue,
3 Mr. Buttolph, with regard to that that you would like to
4 see from the Applicant as well?

5 MR. BUTTOLPH: No.

6 MR. IACOPINO: I mean, because you'll
7 have -- you have Appendix 44 now. And, I understand the
8 complaint, that you should have had it back in July.
9 Okay, I understand that part of it. But my goal is to see
10 what we need to do to have a comprehensive hearing, all
11 right? So that, if they can get you any correspondence
12 regarding that mitigation plan, if there is any, and
13 that's probably something that would wind up being
14 requested in the middle of the hearing anyway, if people
15 were questioning about it.

16 So, let me just sort of summarize the
17 information that I think that we can get. A revision, if
18 there has been a revision of the Alteration of Terrain
19 Permit application and the Wetlands Permit application.
20 We know there was a revision on July 9th. What did that
21 consist of? Was it just -- because it doesn't actually
22 say "resubmitted", "amended and resubmitted", or anything,
23 it says a "revision of July 9th". And, the Applicant is
24 correct, that there are oftentimes things that will change

1 because of just during the course of working with the
2 people from DES --

3 (Off the record.)

4 MR. IACOPINO: Sorry about that. So, if
5 we can determine what was that revision. Was it actually
6 a resubmittal? Was it more what parts of those
7 applications were revised? Secondly, you're going to try
8 to get us the residences or structures, as best as you
9 can, within two kilometers of the proposed facility. Any
10 correspondence regarding the change in the mitigation
11 package between the filing from the Applicant's vendor on
12 July 28th and the final decision issued by DES on
13 October 8th. Were there other --

14 MS. GEIGER: I can tell you right now,
15 there hasn't been any anything changed between the filing
16 that was made on July 28th to now.

17 MR. IACOPINO: No, I didn't say --

18 MS. GEIGER: It's the same mitigation
19 plan.

20 MR. IACOPINO: I said "any
21 correspondence", though, about it. Because what they're
22 legitimately looking for is what -- you submitted a
23 mitigation plan on July 28th. On October 8th it was
24 accepted.

1 MS. GEIGER: Yes.

2 MR. IACOPINO: Or at least the
3 mitigation payment figure was accepted. What we want is
4 any correspondence about that back and forth between your
5 client and the DES.

6 MS. GEIGER: Between the dates of
7 July 28th through --

8 MR. IACOPINO: Yes. Yes.

9 MS. GEIGER: Okay.

10 MR. IACOPINO: Yes.

11 MS. GEIGER: Thank you.

12 MR. IACOPINO: If it exists. If it
13 doesn't exist, it doesn't exist.

14 MS. GEIGER: Okay.

15 MR. IACOPINO: And, that, you know, it
16 is what it is. I mean, legitimately, what they're looking
17 for is if there's any sort of further explanation, other
18 than what's contained in your supplemental filing, about
19 why that amount is in, and I do understand their further
20 argument, we should have had that back in July.

21 Okay. What -- Mr. Buttolph, can you
22 tell me why you would not be prepared to go forward with
23 regard to Mr. Tocci's data and his --

24 MS. LEWIS: I can answer that. One of

1 the biggest things for me -- I'm sorry. Obviously, the
2 results of that conclude that there will be a major impact
3 on my business. And, in order for me to truly prepare to
4 address that whole issue, I need to do a lot of business
5 work to be able to come up with some kind of indication,
6 some type of data as to what I believe the impact could
7 potentially be.

8 MR. IACOPINO: You mean in terms of the
9 effect on the profitability of your business?

10 MS. LEWIS: Yes.

11 MR. IACOPINO: Okay. And, other than
12 with its specific effect on Baker River Valley Campground,
13 were there any other issues about Tocci's studies that
14 raise an issue for the intervenors?

15 MR. BUTTOLPH: No.

16 MR. IACOPINO: Okay. What type of work
17 do you have to do, Ms. Lewis, in terms of preparing for
18 that?

19 MS. LEWIS: Well, considering our season
20 literally just ended, it's a lot of data-crunching, a lot
21 of trying to figure out, you know, comparisons from last
22 year, coming up with percentages, just being able to make
23 an intelligent estimation of what kind of impact it will
24 have.

1 MR. IACOPINO: Do you have any sort of
2 estimate of how long that would take you to do? I take it
3 this isn't something that you normally do at the end of
4 the season, this is something you're going to have to do
5 --

6 MS. LEWIS: Well, I certainly do it by
7 tax time, but not something I necessarily have done now.
8 But, I mean, this is going to be going -- this is going to
9 be doing a lot of comparisons to previous years and where
10 our growth rate's at, and what, you know, my projected
11 growth rate would be in the coming years, and what
12 potential the wind farm could do to that. So, I mean, I
13 think that's quite considerable.

14 MR. IACOPINO: But do you have an
15 estimate of the amount of time it would take? And, you
16 know, I don't mean to be a pest about it, but that's
17 really what we're talking about here. Even if I had the
18 authority and was going to grant your motion right now, --

19 MS. LEWIS: Right.

20 MR. IACOPINO: -- one of the things that
21 I would be asking is "well, how much time are we going to
22 need?"

23 MS. LEWIS: I mean, I would like at
24 least a month, quite frankly, because I'd like to be able

1 to consult with my accountant as well.

2 MS. GEIGER: Excuse me, Mr. Iacopino?

3 MR. IACOPINO: Yeah.

4 MS. GEIGER: Could I address that or ask
5 a question?

6 MR. IACOPINO: Sure.

7 MS. GEIGER: I'm not understanding why
8 Ms. Lewis needs additional time to compile some business
9 information. From her first point of participation in
10 this docket, she has indicated concerns about the
11 Project's potential impact on her business. I'm not
12 understanding what specifically it is about Mr. Tocci's
13 report that we just got that necessitates a delay in the
14 schedule. What specifically about his sound findings
15 creates something different or new that requires Ms. Lewis
16 to do additional work? And, I apologize. I'm just not
17 understanding.

18 MS. LEWIS: May I answer that?

19 MR. IACOPINO: Well, if you'd like to
20 articulate that, Ms. Lewis, why don't you go ahead.

21 MS. LEWIS: First of all, based on the
22 sound studies that the Applicant had done, I thought that
23 the impact would be -- I felt it would be significant, but
24 I felt it was -- I was under the impression it was going

1 to be less significant than what Tocci's studies came back
2 at. Tocci's studies, to me, are -- there's a potential
3 for devastation of my business, in my opinion.

4 MR. IACOPINO: How are you -- just
5 articulate for us how you're interpreting the Tocci study?

6 MS. LEWIS: Because the Tocci sound
7 studies are estimating a 12 to 13 decibel increase over
8 the baseline of my ambient sound; whereas Mr. O'Neal had
9 suggested, and even in Mr. Tocci's supplemental testimony,
10 he had suggested anything greater than 10 will be a
11 significant impact, and he's put me at 12 to 13. Whereas,
12 Mr. O'Neal had clearly stated he thought it would be
13 negligible, if anything, and had basically said the noise
14 from the wind farm would not even be heard over the
15 ambient noise in my campground. And Mr. Tocci, in my
16 opinion, proved that very wrong.

17 MR. IACOPINO: Now, I guess -- but the
18 next part, can you articulate how you're going to
19 translate that into the impact on your business? I mean,
20 I understand you're going to try to figure out what your
21 present level of business is, --

22 MS. LEWIS: Uh-huh.

23 MR. IACOPINO: -- okay, and what it's
24 been. I understand that. But the next step in that, it

1 would seem to me, would have to do with "how do you
2 somehow translate that into a future effect on your
3 business?" Do you know how you're going to go about that?

4 MS. LEWIS: Well, one of the things that
5 I will need to go back and do, which I hadn't done
6 previously, --

7 (Court reporter interruption.)

8 MS. LEWIS: -- I need to go back and
9 determine my percentages of my rock climber customers
10 versus my customers that are in RVs. And, that's going to
11 be very time-consuming. I've always had ballpark figures.
12 But I think I need to come -- to spend some time and
13 really determine, and also determine the -- over the last
14 five years the growth of my rock climber business versus
15 other aspects of my business, because that's truly where I
16 focus my marketing and everything else is on my rock
17 climbers. And, there's not going to be a rock climber out
18 there that wants to stay there with that kind of increase
19 in sound, if they're in tents.

20 MR. IACOPINO: So, that it's your
21 intention, though, to try to crunch those numbers and
22 testify about that yourself?

23 MS. LEWIS: Yes.

24 MR. IACOPINO: All right.

1 MS. GEIGER: Excuse me. We've heard
2 about the rock climbers I think for a while now. That's
3 not a new issue. I understand what Ms. Lewis is saying,
4 is that now she has some information in the record that
5 gives her some concern. Quite frankly, you know, we're
6 prepared to rebut that. But this is not a new issue. She
7 has had concerns and expressed those concerns throughout
8 this docket. And, the fact now that there's a piece of
9 information in the record that -- that it's essentially,
10 in her opinion, substantiating her claim, does not
11 necessitate a delay in the docket. This is information
12 she should have compiled before now. It's not anything
13 she needs in response to Mr. Tocci.

14 MR. IACOPINO: How many sound witnesses
15 do we have in this docket? How many --

16 MS. GEIGER: We have Rob O'Neal, from
17 Epsilon.

18 MR. IACOPINO: Okay.

19 MR. ROTH: And, we have Gregory Tocci.

20 MR. IACOPINO: And, if I recall, there's
21 no other sound witnesses?

22 MR. ROTH: All of the witnesses are
23 sound, I'm sure.

24 (Laughter.)

1 MR. IACOPINO: Noise witnesses.

2 MS. GEIGER: Thank you.

3 MR. IACOPINO: No other noise witnesses,
4 I suppose.

5 MR. ROTH: And competent, too.

6 MR. IACOPINO: Okay. Well, I mean, one
7 way to deal with this, one possible way to deal with this
8 particular issue, and this is unlike the other issues that
9 we've discussed, where maybe just the getting of
10 information, facilitating that information back and forth
11 resolves the issue, but one way that this particular issue
12 might be able to be dealt with is to put off the testimony
13 about the sound issues to a later date, rather than some
14 kind of continuation of the entire proceeding, but that,
15 and giving you an opportunity, I mean, I don't think we're
16 going to be able to do it for a whole month, but to give
17 Ms. Lewis an opportunity to try to calculate what this
18 effect may have on her business, so that she can present
19 that to the Committee.

20 And, I understand that there's probably
21 a legal argument that parties could make that an
22 individual impact on one specific business may not be
23 something that is relevant to the Committee, but that's a
24 decision that the Committee would have to make. So,

1 that's one, that's one way to deal with this particular
2 type of issue, that's sort of a middle ground.

3 MS. LEWIS: Can I respond to that real
4 quick?

5 MR. IACOPINO: Sure.

6 MS. LEWIS: My only concern in doing
7 that is I believe my property value will be significantly
8 impacted by the whole sound issue. So, if Mike McCann
9 testifies prior to the sound information, I mean,
10 significantly before that, that may not give us an
11 opportunity to tie them in together, which --

12 MR. IACOPINO: Okay. But is it your
13 belief that Mr. McCann would actually testify about a
14 particular increase or decrease in value of your
15 particular property? Because that's not how I understand
16 his testimony.

17 MS. LEWIS: Well, --

18 MR. IACOPINO: I mean, I think he talks
19 about general trends, and that's not going to change,
20 regardless of whether he testifies on the first day or
21 after the sound experts come on.

22 I mean, I don't understand, and please
23 correct me if I'm wrong, Mr. Buttolph, but I don't
24 understand Mr. McCann's testimony to be any specific

1 testimony that any particular property located near this
2 particular project is going to decrease in value by any
3 particular amount. As I understand it, he's testifying
4 generally about the effects of wind plants -- wind farms
5 on surrounding properties, based upon his experiences in
6 Illinois and other places. I don't understand him to be
7 hired to or to be testifying about decreasing any specific
8 property by any particular amount. And, I think that's
9 what you're talking about, Ms. Lewis.

10 His testimony is not going to change
11 because your campground is now being assaulted by 12 or 13
12 or 15 more decibels. His testimony is going to be the
13 same regardless of when it comes, I would imagine. I
14 mean, am I incorrect about that, Mr. Buttolph?

15 MR. BUTTOLPH: He was intending to use a
16 couple of properties as an example as a possibility during
17 the hearing.

18 MR. IACOPINO: You might want to
19 supplement his testimony very quickly then, because
20 there's going to be an --

21 MS. GEIGER: No, I'm going to have to
22 object to that.

23 MR. IACOPINO: Well, look, I'm going to
24 tell him, you know, he's given an opinion, all the parties

1 in the case are relying upon what was given. I think
2 today was the day for filing of any supplemental testimony
3 based on State agency reports.

4 MS. GEIGER: Correct.

5 MR. IACOPINO: The 22nd was any
6 supplemental testimony. If he's going to start giving
7 opinions about specific properties that are not in his
8 testimony, you're going to have to -- you're going to have
9 to supplement his testimony, you're going to have to get
10 permission from the Committee, from the presiding officer
11 of the Committee, to present that type of information.
12 You know, so, --

13 MR. ROTH: Can I address another issue
14 that you I think brought up, in terms of Ms. Lewis's
15 testimony on the impacts on her business. Would she have
16 an opportunity to file prefiled direct testimony on that
17 and then --

18 MR. IACOPINO: Well, that's why -- one
19 of the questions that I asked her.

20 MR. ROTH: If we chose another date for
21 that testimony to be --

22 MR. IACOPINO: Yes. One of the
23 questions I asked her was whether she would have any other
24 witnesses or it was just going to be her as well.

1 Obviously, it's easier to deal with one person's
2 testimony, rather than, you know, more than one. And,
3 it's always easier to deal with the owner of the
4 property's testimony than an expert's. That's why I asked
5 her about those things.

6 But, yes. I mean, she certainly, it
7 seems to me, if we're going to -- if the middle ground
8 that we chose to proceed with was to put the sound experts
9 on at a later date, I would certainly expect that there
10 would be some supplemental filing by Ms. Lewis.

11 MR. PATCH: Mr. Iacopino, I'm just
12 trying to understand why putting the sound experts off
13 until later? They have already filed their testimony, we
14 know what they're going to say. She's asking more time
15 for her to do an assessment on her business. That's not
16 going to change what the sound experts say or don't say.
17 So, I'm not -- I'm trying to understand why that would be
18 necessary?

19 MR. IACOPINO: I think, though, it gives
20 her, I mean, I would imagine she wants to cross-examine
21 those people about those effects, so she can quantify them
22 for the purposes of her -- or, she wants to understand
23 those studies, so that she can quantify them for the
24 purposes of anything that she presents in her case.

1 MR. PATCH: But does that mean, if it
2 had been 8 or 9 dBA, instead of 12 or 13, that she
3 wouldn't have asked for the time?

4 MR. IACOPINO: I mean, I would leave
5 that to her to decide. I mean, I think she does have a --
6 I mean, she has a legitimate concern with respect to that.
7 So, what I'm trying to do is to see if there is something
8 we can do as far as the scheduling goes that accommodates
9 that concern for Ms. Lewis. If she needs a full 30 days,
10 I -- you know, my gut tells me that's probably not going
11 to be doable. But, if there is some day that we can
12 decide that maybe we put the sound experts on at a later
13 time, give her the opportunity to address her business
14 numbers, and then cross-examine those sound experts with
15 regard to what she learns, you know, like I say, I'm not
16 deciding this. I'm simply throwing this out there as sort
17 of a middle ground on a way to resolve an issue amongst
18 the parties in this case.

19 You know, I'm not hearing a whole lot of
20 agreement with that idea, but, Mr. Waugh. You don't have
21 to stand, that's okay. I'm only standing because my back
22 hurts.

23 MR. WAUGH: No. I represent the Town in
24 the sense of the taxpayers of the Town of Rumney as a

1 whole. And, I think one of the main reasons I came down
2 here today was to ask the question I'm about to ask, and I
3 didn't see an opportunity to do that under your agenda,
4 nor have we gotten to your agenda. So, may I ask it now?

5 MR. IACOPINO: Sure. But does it --
6 will it advance us at all in terms of what I'm trying to
7 see if there's any room for agreement here with regard to
8 these sound experts?

9 MR. WAUGH: I don't know.

10 MR. IACOPINO: Then, I'd ask you to wait
11 one minute, okay?

12 MR. WAUGH: All right.

13 MR. IACOPINO: So, I'm not hearing, and
14 I guess I'm going to go around and ask just what each, I
15 understand the Applicant objects to any delay in putting
16 on the sound testimony. That's all I'm talking about is
17 putting on the sound witnesses. I understand that
18 Mr. Buttolph and Ms. Lewis would prefer that, it's not
19 their best remedy, but they would prefer that over just
20 simply going forward and full bore with the full hearing
21 next week.

22 Mr. Wetterer, do you have a position?

23 MR. WETTERER: Well, I can't determine
24 how long it would take Cheryl to --

1 MR. IACOPINO: I'm not asking you how
2 long, just that concept. I'm talking -- I'm speaking
3 conceptually here.

4 MR. WETTERER: I think the concept of
5 adding to her testimony or that question that she has to a
6 later date is reasonable.

7 MR. IACOPINO: Mr. Sinclair, does the
8 Town of Groton take any position?

9 MR. SINCLAIR: No position.

10 MR. IACOPINO: Mr. --

11 MR. MCGOWAN: No position.

12 MR. IACOPINO: Mr. Waugh.

13 MR. WAUGH: No.

14 MR. IACOPINO: Okay. Counsel.

15 MR. ROTH: If it would get us to a point
16 where the hearing is done within the time required, I
17 think that's a fine idea, to provide a date -- a later
18 date for, I mean, we've done in the past, where we've had
19 issues that were late-breaking, so to speak, or issues
20 that came up as a result of an agreement reached between
21 the Applicant and other parties, scheduled additional days
22 of testimony within the schedule, and further out, rather
23 than in the bulk of all the trial dates. And, it works
24 reasonably well. So, I guess I would just say, it sounds

1 like a good idea, but it's subject to the availability of
2 my expert as well. I don't know, you know, whether he's
3 been planning that, you know, sail-around-the-world trip
4 starting, you know, the week after the trial and then he's
5 gone, but, you know, that's an issue, scheduling. But --

6 MR. IACOPINO: Are there scheduling
7 issues with Mr. O'Neal that you're aware of?

8 MS. GEIGER: Not that I'm aware of, but,
9 obviously, I don't know.

10 MR. IACOPINO: Well, we're going to --
11 we always deal with scheduling issues anyway, so we'll
12 have to deal with that. Okay. All right. So, I guess we
13 don't have any kind of agreement that this is a middle
14 ground that the parties can agree to. All right.

15 Okay. Mr. Waugh, your question.

16 MR. WAUGH: I think the question I have
17 is preceded by the fact that the Town of Rumney has
18 reached an agreement with the Applicant. It was certainly
19 the hope of the Selectmen that their reaching agreement
20 with the Applicant would allow them to not undergo the
21 expense of having me attend these entire proceedings.
22 And, so, the question I have, I suppose, is there an
23 opportunity on one day next week, let's say Monday, for me
24 to come in and out with about a five minute presentation

1 on the fact that we have this agreement and address the
2 Committee on that?

3 MR. IACOPINO: Is the agreement in
4 writing?

5 MR. WAUGH: Yes, it is.

6 MR. IACOPINO: Can you get it filed?

7 MR. WAUGH: I brought it today to be
8 marked as an exhibit.

9 MR. IACOPINO: Okay. And, it's signed,
10 it's a fully executed agreement --

11 MR. WAUGH: Yes, it is.

12 MR. IACOPINO: -- between the Town and
13 the Applicant?

14 MR. WAUGH: Yes.

15 MR. IACOPINO: Have the other parties
16 been privy to it at all?

17 MR. WAUGH: Well, obviously, the
18 Applicant has. I haven't shared it with anyone else,
19 because I didn't have the signed copy until recently.

20 MR. IACOPINO: All right. I'm sure that
21 all the parties are going to want to review it first. I'm
22 sure that Counsel for the Public is going to want to
23 review it. So, the answer to your question is "we don't
24 know yet." But it may very well be. And, I'll just give

1 you an example. The recent hearings that we did with
2 Laidlaw, a similar agreement had been struck between the
3 Applicant in that case and the City of Berlin. The City
4 of Berlin came in on one day, when their City Planner was
5 testifying. And, basically, her testimony was in support
6 of the agreement. And, that's really -- I think their
7 lawyer showed up one or day, but they did not have -- they
8 were not present for the entire proceedings. You're not
9 required to be here for the entire proceedings. The Town
10 of Rumney is not required to have a representative here.
11 If they choose not to, it's not going to, I mean, the mere
12 fact that you're not here is not going to effect the
13 decision of the Committee one way or another on any
14 particular issue.

15 However, if there is a dispute about
16 whether or not the agreement with the Town of Rumney is
17 consistent with any of the criteria that the Committee has
18 to consider, you may want to be here. I can't, you know,
19 and I can't tell you whether there's going to be a dispute
20 about that until the other parties review that agreement
21 and decide, you know, decide whether they're going to
22 support it, oppose it, or take some other position with
23 respect to it.

24 I assume that some witness from the

1 Applicant -- that the agreement will probably wind up
2 being discussed by some witness from the Applicant. I
3 don't -- you didn't plan on putting on any witnesses as
4 far as I know, right, about it?

5 MR. WAUGH: That's correct.

6 MR. IACOPINO: Okay. So, I mean, I
7 think you might want to wait. You might, from a
8 substantive standpoint, you might want to wait and see
9 what these other parties have to say about your agreement.
10 From a procedural standpoint, we can probably accommodate
11 you being here on whatever day that particular agreement
12 is put in. I'm sure the Court -- I'm sure the presiding
13 officer will let you address it. But I can't guarantee
14 you that it won't be attacked by some other party during
15 the various -- you know, what happens is sometimes you
16 have these witnesses come up, and you might have an
17 agreement, and you might not be expecting, you know,
18 somebody to cross-examine another witness about something
19 that's in that agreement. "Does this look like a good
20 idea, Mr. Witness?" And, the witness says "Well, no, it
21 looks like a terrible idea." And, if you're not here,
22 it's a risk that you run to not redirect or recross
23 whatever your position is with regard to that particular
24 witness.

1 MR. WAUGH: Well, I guess I have to say
2 that, you know, there is an interest in the taxpayers of
3 Rumney not to have to spend thousands of more dollars to
4 participate in the proceeding when they have already
5 reached an agreement. The purpose of the agreement would
6 be and the purpose of my presentation would be to
7 indicate, basically, that this is this agreement, we hope
8 that the Committee will adopt it as part of the final
9 order. That we are not necessarily -- that we are not
10 necessarily opposed to the positions of any other parties
11 which may be consistent with it, you know, nor are we
12 actively supporting those positions.

13 MR. IACOPINO: No. But my only point is
14 is that, procedurally, we can probably accommodate what
15 you're asking. My point is just to give you a warning
16 that, because you have an agreement with the Applicant,
17 doesn't mean that the Committee is going to adopt that
18 agreement. And, you might find that there are other
19 parties during the course of the proceeding that oppose
20 either the entire agreement or portions of it. By not
21 being here, the taxpayers of Rumney may not be represented
22 if, during some portion of the hearing, that agreement is
23 discussed with other witnesses on days when their lawyer's
24 not here. It's perfectly fine. I mean, we can do that,

1 we can procedurally accommodate you, and I'm sure we
2 probably would. However, I'm just saying is that, you
3 know, you also have to be aware that, if you're not here
4 to defend a portion of the agreement that may come in, and
5 I don't know what your agreement says, but, if you're not
6 here to defend that through examination of some witness
7 who might attack it, and I don't know who it might be, --

8 MR. WAUGH: You know, Mr. Iacopino, I
9 understand what you're saying. I think you haven't
10 understood what I said, which is this entire proceeding is
11 a huge imposition upon the taxpayers of the Town of
12 Rumney, and I am trying to minimize that.

13 MR. IACOPINO: I understand that. And,
14 all I'm saying is you're free to not appear here on any
15 day that you want to not appear. And, that's not going to
16 affect any decision made by this Committee. However, all
17 I'm saying is that, just because you come in on a certain
18 day and you talk about Exhibit 1, your agreement, doesn't
19 mean that it isn't going to be referenced at other times
20 during the course of the hearing. If you're not here, and
21 there's some -- it's referenced at some point during the
22 rest of the hearing, I understand you're trying to save
23 the taxpayers money. But, by the same token, you're here
24 to represent their interests as well. So, all I want you

1 to know is just a warning that, because you bring it in on
2 a particular day, does not mean that it's limited to
3 discussion on that day, and it won't be, --

4 MR. WAUGH: I understand.

5 MR. IACOPINO: -- because of the nature
6 of the proceeding.

7 Were there any other issues before we
8 get to the agenda that I did pass out, which is really
9 more of a technical session, that anybody wanted to raise?

10 (No verbal response)

11 MR. IACOPINO: Let's take a break for
12 the reporter. Fifteen minutes?

13 MR. ROTH: Mike?

14 MR. IACOPINO: Actually, it's a quarter
15 of 12.

16 MR. ROTH: Yes. What about lunch?

17 MR. IACOPINO: How about if we come back
18 at 12:30? Is that okay for everybody?

19 MS. GEIGER: Sure.

20 MR. IACOPINO: And, while we're on
21 break, Susan, do you mind if you can -- can you reach your
22 client or your vendor --

23 MS. GEIGER: I will.

24 MR. IACOPINO: -- and find out about

1 that July 9th revision issue?

2 MS. GEIGER: I will. I will do my best.

3 (Whereupon a lunch recess was taken at
4 11:46 a.m. and the prehearing conference
5 resumed at 12:45 p.m.)

6 MR. IACOPINO: We go back on the record.

7 It's 12:45. We're back on the record in the prehearing
8 conference in Docket Number 2010-01, Application of Groton
9 Wind. Before the break, it was explained to us that the
10 Applicant will be having Mr. Walker arrive here with his
11 July 9 revision of the DES permit applications, and he
12 will be here to answer questions. Also, I believe that
13 Ms. Geiger had a response with regard to the outstanding
14 -- the issue about the data request regarding the
15 properties within two kilometers. Is that the data
16 request you were going to address?

17 MS. GEIGER: Yes. Actually, I'd like to
18 address, in your opening remarks you talked about
19 revisions to a Wetlands Permit application. In talking to
20 Mr. Walker, he said the Wetlands Permit application --
21 neither the Wetlands Permit application, nor the AOT,
22 Alteration of Terrain Permit, applications were actually
23 amended. There were no revised applications filed. What
24 was filed was some documents in response to -- in response

1 to comments that DES had provided during the course of
2 their review. So, he'll speak to that when he gets here.
3 But it's my understanding, based on my conversation with
4 him, that there was no revised applications filed with
5 DES. That the Applicant only provided information, I
6 think revised plans maybe, in response to requests from
7 DES, through the normal process that occurs in these
8 dockets.

9 With respect to the next issue, I found,
10 in reviewing our -- the Applicant's responses to
11 Mr. Wetterer's data requests, he had posed a question,
12 "the number" -- "Please state the number of residences
13 within one and a quarter miles from any of the proposed
14 wind turbines and the individual distances. Please
15 explain how these distances were measured, i.e., along the
16 travel ways or as the crow flies, and whether this
17 distance is measured to the property line or the wall of
18 the dwelling." In response to that question, the
19 Applicant said "A listing of all residences does not
20 exist. However, it is possible to get an approximation of
21 the number of structures within a one and one-quarter mile
22 radius of the Groton Wind Project. Approximately, 258
23 structures are within one and one-quarter mile radius of
24 the turbines. Without an exhaustive effort to ground

1 truth this data, it is not possible to obtain accurate
2 data on the precise number of homes within a one and
3 one-quarter mile radius from the turbines. The 258
4 structures include homes, barns, businesses, garages,
5 sheds, and other structures, and were photo interpreted
6 using publicly available orthophotographs from the Natural
7 Agricultural Imagery Program dated 2009. The 258 figure
8 should not be interpreted to mean residences only. The
9 distances were measured using GIS software from the center
10 point of each turbine to the certain point of any
11 structure within one and one-quarter mile radius from each
12 turbine."

13 MR. IACOPINO: Do you have the data
14 request number? How is that data request identified?

15 MS. GEIGER: I just -- it's data request
16 from Intervenor Wetterer, Number 6.

17 MR. IACOPINO: Okay. Number 6?

18 MS. GEIGER: Yes.

19 MR. IACOPINO: Okay. Now, I'm going to
20 show how really American I am. How does two kilometers
21 relate to a mile and a quarter?

22 MS. GEIGER: I had to ask someone that
23 question, too.

24 MR. SINCLAIR: Pretty close, 1.2 miles.

1 MS. GEIGER: And, I think that's why we
2 answered it, I think that's why the one and a quarter --
3 I'm assuming that we were asked about one and one-quarter
4 miles because it translates to roughly the same distance
5 that we were asked about earlier.

6 MR. IACOPINO: Okay.

7 MS. GEIGER: So, in my opinion, I think
8 that we fairly provided that information or a response to
9 that question very -- much earlier in the proceedings.

10 MS. LEWIS: Can I speak to --

11 MR. IACOPINO: You may. Just keep your
12 voice up, though, okay?

13 MS. LEWIS: Okay. Our biggest concern
14 was regarding the public hearing, in fact, I think I had
15 read Mr. Wetterer's response as well for that data
16 request, but, in the public hearing itself, it was very
17 specific about the residences. And, it was specific, and
18 Mr. Getz had stated that it was -- that would be taken as
19 a record request. So, I feel like it -- that had been
20 requested prior to that data request. And, we were under
21 the impression that that was going to be forthcoming at
22 some point, as far as the number of specific residences
23 within that radius. And, that's what we've been looking
24 for from day one. And, you know, to date we still don't

1 have an answer on that.

2 MR. IACOPINO: All right. Well, I
3 understand what your position is, and I guess that's
4 something that Commissioner Getz will have to consider in
5 resolving the motion, if we don't have an agreement. I
6 will say to you, though, is that it's a pretty
7 comprehensive answer. You know, they haven't designated
8 which ones are residences, but you could certainly
9 probably, as a party in the proceeding, say "well, we're
10 going to conclude that they're all residences." And, in
11 doing that, you have a greater effect. You're talking
12 about a greater effect. Now, I can't tell you that the
13 Committee will necessarily agree with that. But that is
14 certainly a position that a party in response to that
15 might take at the adjudicatory hearing, or you might take
16 some other position. But I think that, I mean, it just
17 seems to me that, short of sending somebody to every one
18 of those pieces of property where there's a structure have
19 been identified to determine whether it's a home, a barn
20 or a shed or something or other, I'm not -- I've never
21 seen the Committee require that. But, short of doing
22 that, I don't know how else they could be more specific.
23 If your position is they should have done that, I mean,
24 that's certainly your right to have that position, and you

1 can present that to the Chairman. And, since he was the
2 one who made it as a record request, he might agree with
3 you, but I don't know, you know.

4 MS. GEIGER: Actually, he did not make
5 it as a record request. We've gone back and reviewed the
6 transcript. This was a question that was read from the
7 written questions that were submitted by members of the
8 public at the public hearing up in Plymouth. And, I
9 believe you read the question into the record.

10 MR. IACOPINO: I was the reader of all
11 the questions, I remember that.

12 MS. GEIGER: Right.

13 MR. IACOPINO: But did he not, after the
14 point, say "well, we'll take that as a record request" or
15 --

16 MS. GEIGER: He said, "Maybe one
17 procedure, maybe one procedure we can adopt is, if there's
18 questions that you don't have the answer to, we're going
19 to put the transcript online, similar to what we do in a
20 hearing at the PUC and the SEC, is like a record request.
21 So, we'll just note those questions. Give you an
22 opportunity to make the answer in writing, and we'll post
23 it on our website next to the transcript."

24 I will -- I know that we did not

1 actually make a filing with the Committee of this
2 information, but we have answered the question for the
3 parties. If the Committee would like us to file it with
4 the Committee, so that it can be posted on the website,
5 we'd be happy to do that.

6 MR. IACOPINO: Well, I think that we're
7 probably -- what I'm probably going to do is, I mean, you
8 identified the record request, and we'll, at some point,
9 probably on Monday, I probably will be requesting, just so
10 that the record is complete, that the record request that
11 you're relying on become part of the record. We'll mark
12 it as whatever the appropriate exhibit is at the time.

13 MS. GEIGER: Right. But I just think
14 it's patently unfair for this intervenor to argue that
15 this should be a basis for a delay in this proceeding.
16 She's had the answer to this question in her hands since
17 we answered this question of Mr. Wetterer. I just don't
18 think it's fair at this point to use this as a reason to
19 delay the proceedings.

20 MR. IACOPINO: Right. But, in fairness
21 to the intervenors, this is not the only thing that
22 they're saying.

23 MS. GEIGER: I understand that.

24 MR. IACOPINO: I mean, they have listed

1 several. What I've been trying to do is try to get down
2 to the meat of each of them to see whether there's
3 something short of what they're requesting that can be --
4 that will accommodate their requests that can be done by,
5 and all the parties can agree. So far, I understand that
6 we're not all agreeing, so we'll move on at this point.
7 And, I guess Mr. Getz will resolve those issues. What I
8 would like to do is, I see you do have Mr. Walker here.

9 MS. GEIGER: Hello.

10 MR. IACOPINO: Are you prepared to have
11 him address or to show these folks what it is?

12 MS. GEIGER: Sure.

13 MR. IACOPINO: Actually, why don't we do
14 this. Let's see if we can get through Items 2, 3 on my
15 agenda, and then do that. Only because I anticipate that
16 what we're probably going to have to do is sort of break
17 into a mini technical session and have him show the other
18 parties what the documents are, so that they can -- and
19 then probably request copies. So -- but I think that,
20 just physically, that's going to be a little bit more
21 complicated than dealing with II and III on my agenda. II
22 involves discussion of the Applicant's presentation.
23 Essentially, what I'm looking for is what is your
24 preferred order of witnesses that you're going to call?

1 Do you intend to do them individually? Do you intend to
2 put them on as panels? And, then, we'll talk to the other
3 parties as to what the appropriate order of examination of
4 the witnesses or the panels would be. And, we'll start
5 with you, Ms. Geiger.

6 MS. GEIGER: Sure.

7 MR. IACOPINO: Do you have an idea of
8 what your order of witnesses would be?

9 MS. GEIGER: Yes. Thank you. We, on
10 Monday, we would like to call as our first witness Ed
11 Cherian. Assuming we are finished with -- we, obviously,
12 will just have very brief direct examination and make him
13 available for cross. Assuming that we finish with the
14 cross-examination of Mr. Cherian, we can then move onto
15 Mr. Hecklau.

16 MR. IACOPINO: What's his first name?

17 MS. GEIGER: John. John Hecklau.

18 MR. IACOPINO: And, he is with who?

19 MS. GEIGER: His consulting firm I
20 believe is called "EDR". He is the visual impact witness.

21 MR. IACOPINO: All right.

22 MS. GEIGER: And, then, if we finish
23 with Mr. Hecklau, we can move onto to Ms. Luhman, on
24 historical site information.

1 MR. IACOPINO: Okay.

2 MS. GEIGER: And, I'm not sure, that
3 sounds like an aggressive schedule, but we'll also make
4 sure that we have Mr. Gravel here, too. Just in case, if
5 we finish with those three witnesses, we can start up with
6 Mr. Gravel. Not sure we'll finish him. But what we'd
7 like to do on Tuesday, we have two witnesses flying in
8 from Portland, Oregon, Trevor Mihalik and Kevin Devlin.
9 And, we'd like to be able to start with them first thing.
10 We won't put them on as a panel, they're going to be
11 testifying individually.

12 MR. IACOPINO: Separately? Okay.

13 MS. GEIGER: So, we'll put Mr. Mihalik
14 on first, and then Mr. Devlin. But we'd like to, if --
15 that might mean that we have to, if we haven't quite
16 finished with another witness the day before, we may have
17 to interrupt that testimony, so that we can get these
18 witnesses on and off.

19 MR. IACOPINO: But, with regard to
20 whether it's Mr. Gravel or Ms. Luhman, they're -- we're
21 not going to have a problem that, if we interrupt their
22 testimony, that they're not going to be here later on
23 Tuesday?

24 MS. GEIGER: Not that I'm aware. I

1 think they're all aware of the schedule, they have been
2 made aware of the schedule for a long time. This
3 particular week, the 1st through the 5th, to my knowledge,
4 doesn't pose a problem to any of our witnesses, except for
5 Ms. Rendall, she can't be here on Friday.

6 MR. IACOPINO: Okay.

7 MS. GEIGER: But we're hoping we'll be
8 done with our case before then.

9 MR. IACOPINO: Okay. And, so, we've
10 gotten through Mr. Devlin then.

11 MS. GEIGER: Right. And, then, --

12 MR. IACOPINO: And, by the way,
13 Mr. Mihalik and Mr. Devlin, are they both financial
14 witnesses?

15 MS. GEIGER: No. No. Mr. Mihalik is
16 substituting for Mr. Canales. He's the financial witness.
17 And, then, Mr. Devlin is the managerial and technical
18 witness.

19 MR. IACOPINO: And, then, after those
20 six witnesses?

21 MS. GEIGER: Then, we'll put on Mr.
22 O'Neal for sound.

23 MR. IACOPINO: Okay.

24 MS. GEIGER: Then, Mr. Gravel, if we had

1 not finished with him prior to this. And, then, our last
2 -- our last group, whether that be on Tuesday or
3 Wednesday, will be the panel of Mike Leo, Nancy Rendall,
4 and Pete Walker. They all work for VHB. And, Mr. Leo is
5 dealing with some water quality issues, and Ms. Rendall
6 and Mr. Walker deal with wetlands and mitigation.

7 MR. IACOPINO: Okay. I understand the
8 point of, if we get to Mr. Gravel on Monday, interrupting
9 his testimony to have the folks come from the West Coast
10 to testify. Is there a reason why you would -- why you
11 would have him after Mr. O'Neal or is it just --

12 MS. GEIGER: We could.

13 MR. IACOPINO: You could have him before
14 Mr. O'Neal as well?

15 MS. GEIGER: We could, if we needed to.

16 MR. IACOPINO: Okay. All right. I just
17 wanted --

18 MS. GEIGER: Yes.

19 MR. IACOPINO: Just so that we're aware.
20 Okay. So, really, only one panel -- two panels, financial
21 witnesses and the --

22 MS. GEIGER: No.

23 MR. PATCH: Just one.

24 MR. IACOPINO: No, just one. That's

1 right. Okay. Any objection to that setup of the
2 witnesses? I understand, in the past, I've heard
3 objections about panel testimony. Is there going to be
4 any objection to that in this particular case?

5 MR. ROTH: I don't object to the
6 particular -- to what I'm calling the "Wednesday panel",
7 Leo, Rendall, and Walker. My only hesitation about any of
8 what was just proposed is having Mr. Gravel split days.
9 And, the reason, my problem with that is is I have my own
10 ornithologist, who cannot be here on Monday morning, and
11 I'd rather him not to have to spend practically three days
12 here, because Mr. Gravel's testimony is split over two
13 days. I'd like him to be able to observe Mr. Gravel's
14 testimony. But it seems overly burdensome to have him be
15 here Monday, Tuesday, and then whatever day
16 Mr. Lloyd-Evans actually is here for his own
17 cross-examination.

18 MS. GEIGER: That's fair enough. I
19 understand that.

20 MR. IACOPINO: Would there be any
21 problem with switching Mr. O'Neal and Mr. Gravel? So,
22 that Mr. O'Neal being possibly the fourth witness on
23 Monday, if we get that far?

24 MS. GEIGER: Yeah, I would have some

1 difficulty with that.

2 MR. IACOPINO: Okay.

3 MS. GEIGER: And, the only issue I would
4 have -- the only suggestion I could make is if we could
5 all agree that, if we can make it through on Monday Mr.
6 Cherian, Mr. Hecklau, and Ms. Luhman, if we finish up a
7 little early, we just finish up early, and we just don't
8 start with another witness, because then that will prevent
9 the situation that Attorney Roth is talking about, where
10 we start with a witness and then we don't get to that
11 witness later on.

12 MR. ROTH: I mean, the switch with Mr.
13 O'Neal creates the same problem for me with respect to my
14 sound guy. So, --

15 MR. IACOPINO: You don't want any
16 witnesses interrupted.

17 MR. ROTH: Well, not those two. Anybody
18 else I'm okay with.

19 MR. IACOPINO: All right. Well, we'll
20 -- I'll recommend that that's what we do, we end with
21 Ms. Luhman. I imagine that Mr. Cherian and Ms. Luhman are
22 going to have substantial cross-examination anyway.

23 MS. GEIGER: So, if that's okay, if the
24 understanding is that -- my only offer with respect to

1 Mr. Gravel was that I just didn't want to, you know, have
2 the Bench be looking for another witness and not have
3 someone here. But, if the understanding among all of us
4 and the Committee is that, if we end early on Monday, we
5 end early, and there won't be a need to bring a witness
6 forward to start, and then --

7 MR. IACOPINO: Yes. I'll let the
8 Chairman now about that. I don't think it's going to be
9 an issue.

10 MS. GEIGER: Okay. So, then, what I
11 would propose then, if we do that, then I would propose to
12 start on Tuesday with Mr. Mihalik, Mr. Devlin, then Mr.
13 O'Neal.

14 MR. IACOPINO: Whatever.

15 MS. GEIGER: And, then, if we don't
16 finish with Mr. O'Neal, he would come the next day, and
17 then Mr. Gravel.

18 MR. IACOPINO: What -- are we sure that
19 Mr. Mihalik and Mr. Devlin will be here if the Chair wants
20 to start at 9:00? Or are they coming in that morning or
21 are they coming in the night before?

22 MS. GEIGER: They're coming the night
23 before. And, I was going to ask you about that. Whether
24 or not we could begin the subsequent -- I know that the

1 hearing is noticed for 10:00 on Monday morning.

2 MR. IACOPINO: Monday.

3 MS. GEIGER: So, we have to start at
4 10:00 on Monday. But I was wondering if we could begin
5 the subsequent days at 9:00?

6 MR. IACOPINO: I would like to, but I
7 deal with different Chairs nowadays, and different Chairs
8 of different subcommittees like to do things differently.
9 If this was last month, we would be here at 9:00. I don't
10 know. I'll find out. But it will be either 9:00 or 10:00
11 most likely. So, okay.

12 Anybody else have any reservations or
13 any objections they want to lodge to that order of
14 witnesses proposed by the Applicant with regard to their
15 witnesses? Or, if there's any scheduling problems, any
16 issues that any of the intervenors or the towns or anybody
17 has with regard to that?

18 (No verbal response)

19 MR. IACOPINO: Okay. Hearing none, the
20 next issue that we will take up is what's going to be the
21 order of examination of those witnesses. What we normally
22 do is, because each of these witnesses have already filed
23 prefiled testimony, the Applicant's lawyers will usually
24 introduce the witness, ask them if they have any changes

1 to be made to their prefiled testimony or supplemental
2 prefiled testimony, and at that point, unless there's
3 something new, tender them for cross-examination.

4 Cross-examination usually occurs by the parties first, and
5 then the Committee asks questions. And, there's usually
6 some time for redirect, depending upon the time of day and
7 the nature of the testimony.

8 So, the next issue that we need to deal
9 with is the order of examination. In the past, I know
10 that Public Counsel has asked to go last. It has worked
11 well oftentimes, especially for intervenors, who are not
12 represented by counsel, because lots of times they may not
13 ask questions or have forgotten to ask questions or
14 whatever, and Counsel for the Public in the past has
15 generally done a very nice job of cleaning up those sorts
16 of things. And, so, usually it's the Committee's
17 preference that Counsel for the Public be the last, last
18 in the order of examination. So that we have first and
19 last, and then we have to figure out who's going in
20 between.

21 And, does anybody have any particular
22 desire to be in any particular place between first and
23 last?

24 (No verbal response)

1 MR. IACOPINO: My suggestion then would
2 be to do the three towns, followed by the intervenors,
3 followed by Public Counsel. And, the reason for that is
4 that I have found generally that the cities and towns
5 don't have long cross-examinations for most witnesses.
6 There usually are particular points that they are
7 concerned about, that they essentially ask the questions,
8 they do it very quickly. And, that leaves us with the
9 more exhausting cross-examinations that generally come
10 from intervenors who oppose an application, and from
11 Public Counsel, who is representing the interests of the
12 public.

13 So, what I'm going to propose in this
14 case then is that the order of examination for all of the
15 witnesses will be -- will be the Town of Groton, followed
16 by the Town of Rumney, followed by the Town of Plymouth,
17 followed by -- I'm going to put the Mazur/Wetterer
18 intervenors, and then the Buttolph intervenors, and then
19 Counsel for the Public. Is there any objection to that
20 order and did I include everybody?

21 (No verbal response)

22 MR. ROTH: So, just so I understand
23 who's on first, but, actually, it's who's on second.

24 MR. IACOPINO: Right.

1 MR. ROTH: So, Mazur/Wetterer is just
2 the Mazur family members and Mr. Wetterer?

3 MR. IACOPINO: Right.

4 MR. ROTH: And, Buttolph includes?

5 MR. IACOPINO: Buttolph, Lewis, Spring.

6 MR. ROTH: Buttolph, Lewis, Spring,
7 okay.

8 MS. GEIGER: And, could we get some
9 clarification or a reminder as to the ground rules with
10 respect to the questioner from each of the intervenors?

11 MR. IACOPINO: That's going to -- we're
12 going to get to that next. Okay. Let me just make my
13 list here. We've got -- what did I say? I said Groton,
14 Rumney, Plymouth, right? The reason why I put them in
15 that order, just so that the lawyers for the towns know,
16 is I'm not anticipating much cross-examination from Groton
17 at all. Rumney has already advised us --

18 MR. WAUGH: We may not even be here.

19 MR. IACOPINO: -- there's an agreement
20 and may not be here. And, I'm really not sure where
21 Plymouth stands on its position on the Application. I do
22 know that your fire chief, at one point or another, had
23 some issues. And, I don't know if they will be subject,
24 as part of your examination of the various witnesses. So,

1 --

2 MR. MCGOWAN: No. I mean, I can tell
3 you that the fire chief will be a witness for us, but that
4 matter won't be a subject of cross of any Applicant's --

5 MR. IACOPINO: All right. We'll get to
6 the order of presentation of the other witnesses in just a
7 minute.

8 MR. MCGOWAN: Yes.

9 MR. IACOPINO: Mr. Buttolph and
10 Ms. Lewis, have you designated somebody who will basically
11 be speaking for your group? Asking the questions, making
12 the arguments?

13 MR. BUTTOLPH: Is it possible for us to
14 --

15 MR. IACOPINO: I would like you to
16 designate one person. And, if, for some reason, during
17 the course of the proceeding, there is a need for somebody
18 else to do it, to simply ask the permission at that time.
19 But I think it's best at the beginning to just have
20 somebody that we can look to to say "okay, you're up."
21 And, if, for some reason, there is, you know, obviously,
22 there's an order saying you have to designate somebody.

23 MR. BUTTOLPH: Okay.

24 MR. IACOPINO: If there is some reason

1 why you want, for instance, if you wanted Ms. Lewis to do
2 a particular cross-examination, if you were the designee,
3 you can simply ask the Chairperson. What we want to
4 really avoid is we don't want you to ask questions, and
5 then Ms. Lewis, and then Mr. Spring, and basically defeat
6 the purpose of combining the intervenors together. So
7 that we're hoping that you're all going to work together
8 and, you know, cooperate with each other.

9 MR. BUTTOLPH: Yes.

10 MR. IACOPINO: But, for our purposes
11 today, we should just designate somebody. And, then, like
12 I say, in any particular examination, you want to ask to
13 have somebody else do that examination, you're free to ask
14 that.

15 MR. BUTTOLPH: I'll be the designated
16 individual.

17 MR. IACOPINO: Okay. And, Mr. Wetterer,
18 because nobody from the rest of your intervenor group is
19 here, I'm assuming you're going to be the --

20 MR. WETTERER: No, actually I won't.
21 Dr. Mazur will be the spokesperson.

22 MR. IACOPINO: Okay. Is he planning on
23 being here for all of the days of hearing?

24 MR. WETTERER: I believe so.

1 MR. IACOPINO: Okay. Okay.

2 MR. ROTH: And, Mike, in my corner, we
3 will actually -- I will be doing -- I will be the
4 designated person, but there will be instances where
5 Ms. Thibodeau will cross-examine one or more witnesses,
6 and the 3rd, I will not be present, and Attorney
7 Mulholland will be the designated person.

8 MR. IACOPINO: Okay. But are you
9 anticipating -- you're not anticipating breaking up
10 witnesses though?

11 MR. ROTH: No. No.

12 MR. IACOPINO: Okay.

13 MR. ROTH: But it may vary from witness
14 to witness who does it.

15 MR. IACOPINO: Okay.

16 MR. BUTTOLPH: And, if I could just
17 clarify what I had said as well. I intend to be the
18 spokesperson. But there will be times when I won't be
19 here, I know that, certainly later in the afternoons at
20 times, and also Tuesday, which is a problem.

21 MR. IACOPINO: Okay. I'm going to --
22 you need to ask permission, he doesn't, because they're
23 all -- well, actually, I don't know about Ms. Thibodeau,
24 but they're all members of the Bar.

1 MR. BUTTOLPH: Okay.

2 MR. IACOPINO: But I don't think it's
3 going to be a problem, just so you know. What we really,
4 like I said, what -- the whole idea of combining the
5 intervenors together is to avoid having seriatim questions
6 of the same witness by different individuals.

7 MR. BUTTOLPH: We understand that.

8 MR. ROTH: Mike, I will seek permission
9 from the Chair for Ms. Thibodeau to participate.

10 MR. IACOPINO: Okay. And, again, I
11 don't see that as a problem, just so you know.

12 MR. ROTH: Right.

13 MR. IACOPINO: I'm just pointing out
14 that, in the past, the last hearing it was you and
15 Mr. Brooks, and we didn't know who was doing each, and it
16 didn't make a difference because, you know, you're both
17 lawyers.

18 MR. ROTH: Sometimes we both ask
19 questions of the same witness, too.

20 MR. IACOPINO: I know it. I know. Yes,
21 Mr. Waugh.

22 MR. WAUGH: I guess I'm still -- I'm
23 still looking for an opportunity to -- I'm just wondering
24 if, even before the first witness starts, and particularly

1 now that you're talking about maybe having a shorter day
2 on Monday, if there would be time for some sort of a brief
3 opening presentation?

4 MR. IACOPINO: I am thinking, I've got
5 to discuss it with the Chair, but I'm thinking that we're
6 going to try to accommodate your request about entering
7 that exhibit and giving your pitch about it on Monday,
8 because I think we're going to have -- is that a problem?

9 MS. GEIGER: The Town of Rumney
10 Agreement is also on the Applicant's witness list. It's
11 -- the agreement is referenced in Mr. Cherian's prefiled
12 testimony. He will be discussing that as an update to
13 indicate for the record that a signed agreement is going
14 to be filed.

15 MR. IACOPINO: I understand that he
16 wants to make a little presentation about it on behalf of
17 the Town. I don't think it's going to be an issue. And,
18 I think Monday is probably the best day, given what we've
19 heard about the thing. I mean, as a practical matter,
20 it's going to be -- it's the entry of an exhibit, and the
21 Committee is going to determine whether it's going to
22 adopt that exhibit as part of its certificate, if it
23 grants one in this case.

24 MR. ROTH: I'm not so sure the first

1 thing Monday morning is the appropriate time to have
2 testimony about that exhibit, where nobody has seen it on
3 Friday afternoon.

4 MR. IACOPINO: I've actually --

5 MS. GEIGER: I've got a copy of it right
6 here.

7 MR. ROTH: I don't have it.

8 MR. IACOPINO: I would recommend to the
9 signatories to the agreement that they provide copies to
10 everybody today. I think it just makes things go
11 smoothly.

12 MS. GEIGER: We're ready to mark, so --

13 MR. IACOPINO: All right. So, you'll
14 have it today. I don't know whether it will be first
15 thing, whether it will be after Mr. Cherian's testimony,
16 at some other point during the morning of Monday. But it
17 does make sense, if he wants to make a five or ten minute
18 presentation about it, why the Town signed it, you know,
19 I'm sure that we're probably going to accommodate that.
20 We've done that in every other case that we've had where
21 there's been an exhibit reached between a town, and we've
22 done it with Counsel for the Public as well.

23 MR. ROTH: Perhaps we can put that in to
24 the mystery position at the end of Monday?

1 MR. IACOPINO: Maybe. But I don't want
2 to keep Mr. Waugh here all day, if we don't have to.

3 MR. ROTH: I do. No, I'm just kidding.

4 MR. IACOPINO: Ms. Lewis, yes.

5 MS. LEWIS: I just had a quick question
6 concerning that. It's been termed a "presentation". Does
7 that mean that we would be able to cross-examine?

8 MR. IACOPINO: No, you won't be able to
9 cross-examine Mr. Waugh. You will be able to
10 cross-examine Mr. Cherian. Mr. Waugh is just -- what he's
11 going to do is just explain why the Town or what the Town
12 has agreed to from his perspective. There's --
13 Mr. Cherian will be available. Like I say, you can --
14 there's not -- there's not going to be a witness from the
15 Town. And, if that is a problem that you want to argue is
16 a reason why the Committee should not either accept that
17 exhibit or a reason why the certificate should not be
18 granted, you're free to argue, not at that time, but as
19 part of your overall argument that, you know, that's what
20 -- that your relief should be granted because they didn't
21 present a witness. But we have oftentimes accepted these
22 things as exhibits. And, like I said, the Committee may
23 adopt it as part of a Certificate of Site and Facility, if
24 they grant one, or they may not. In the last hearing that

1 we had, the Committee actually augmented an agreement with
2 the City, and actually put a couple of extra conditions --
3 attached a couple of extra conditions to it as part of
4 granting a certificate.

5 MS. LEWIS: I guess I'm confused. Why
6 wouldn't it be entered as an exhibit, just the same way
7 all the other exhibits are entered then?

8 MR. IACOPINO: Because one of the
9 things, under RSA 162-H, that the Committee must consider
10 is the views of regional/municipal planning commissions
11 and town governing bodies. So, that way, essentially, we
12 have their reason, doesn't mean that they're going to
13 adopt their reasoning, but we know what their view is.
14 And, that's basically the reason why, in the past, and
15 probably on Monday, the Committee will do the same thing.
16 Yes, sir.

17 MR. BUTTOLPH: This is just such an
18 example where the spokesperson is going to change. Cheryl
19 is going to be the spokesperson for our group for the rest
20 of the afternoon.

21 MR. IACOPINO: Okay. Thank you. And,
22 I'm sorry we couldn't get through the whole thing before
23 you had to leave, Mr. Buttolph.

24 MR. BUTTOLPH: You did your best.

1 MR. IACOPINO: Okay. So, we're through,
2 I guess we've gotten through II on my agenda. III is the
3 presentation of the witnesses from other parties. The
4 first thing that we've got to resolve is what's going to
5 be the order of that. And, I will turn to Counsel for the
6 Public. Do you wish to present your witnesses next?

7 MR. ROTH: Sure.

8 MR. IACOPINO: Okay.

9 MR. ROTH: We have Greg Tocci and Trevor
10 Lloyd-Evans. Hopefully, both of them could be fully
11 cross-examined in one half day. I don't know. That's
12 going to be largely up to the Applicant, I think, but --

13 MR. IACOPINO: Does anybody have any
14 objection to Public Counsel going next, putting on its two
15 witnesses? That would get us through 12 -- well, not 12
16 witnesses, but 12 witness sessions up to that point. I
17 take it we would then use the same -- the same order, only
18 allowing the Applicant to cross-examine last, is that --

19 MS. GEIGER: Thank you. Yes.

20 MR. IACOPINO: So that the order of
21 examination for Counsel for the Public's witnesses would
22 be Town of Groton, Town of Rumney, Town of Plymouth, each
23 of the intervenors, and then the Applicant, if I did that
24 right.

1 MR. ROTH: I don't know, maybe it's too
2 soon in your process today to determine this, but are we
3 looking at Wednesday or Thursday for Tocci and
4 Lloyd-Evans?

5 MR. IACOPINO: It would be my hope that
6 they would be Wednesday afternoon. But somebody did
7 describe this as "ambitious", and, in my experience, it
8 probably is. So, my guess, it would be either Wednesday
9 afternoon or Thursday morning.

10 The Town of Groton did not have any
11 witnesses to present, right?

12 MR. SINCLAIR: Correct.

13 MR. IACOPINO: Okay. The Town of Rumney
14 did not have any witnesses to present, right?

15 MR. WAUGH: Correct.

16 MR. IACOPINO: So, then we have the Town
17 of Plymouth, and it's your intention to put Chief Clogston
18 on?

19 MR. MCGOWAN: Correct.

20 MR. IACOPINO: Okay. And, again, we
21 would use the same order. How long do you expect him to
22 be?

23 MR. MCGOWAN: Fifteen minutes max.

24 MR. IACOPINO: How much

1 cross-examination does the Applicant think they will have
2 of Chief Clogston?

3 MS. GEIGER: I don't think any more than
4 an hour. But I -- when you asked "how much direct?" My
5 understanding was, for all the witnesses, they were just
6 going to be --

7 MR. IACOPINO: I was actually -- you and
8 I understand this process more than a lot of other people
9 who come here.

10 MS. GEIGER: Okay.

11 MR. IACOPINO: And, I meant to ask him
12 how long he thought the whole witness would be.

13 MS. GEIGER: Okay.

14 MR. IACOPINO: But I understood, when he
15 said "15 minutes", he meant just introducing him.

16 MS. GEIGER: Okay. Okay.

17 MR. IACOPINO: That's why I did turn to
18 you, because I know that you have -- that there are
19 issues. Is there any -- I know, at one of the technical
20 sessions, the chief came and answered questions, I know he
21 filed the prefiled testimony. Is there any change in his
22 position from before?

23 MR. MCGOWAN: No.

24 MR. IACOPINO: Okay.

1 MS. GEIGER: Could I probe that further,
2 since we are in an informal session? I recalled that he
3 answered a question that I posed at that --

4 (Court reporter interruption.)

5 MS. GEIGER: And, I know that you
6 weren't there, --

7 MR. MCGOWAN: Uh-huh.

8 MS. GEIGER: -- but I asked him "if the
9 Applicant and the Town of Rumney were able to reach
10 agreement on fire safety issues, would he be satisfied
11 with that?" And, I believe the answer I got was "yes".
12 And, so, the issue I have is that, since we've reached
13 agreement with the Town of Rumney, --

14 MR. MCGOWAN: Yes.

15 MS. GEIGER: -- whether, in light of
16 that, he's okay? And, I understand you haven't seen the
17 agreement, and he hasn't either, so --

18 MR. MCGOWAN: I have seen -- I have seen
19 the agreement. And, Casino, he's in New Mexico right now.

20 MS. GEIGER: Okay.

21 MR. MCGOWAN: So, I don't believe he has
22 had a chance to see it. So, it's possible that he would
23 see it and be satisfied. But, short of that, --

24 MS. GEIGER: Okay.

1 MR. MCGOWAN: -- his position wouldn't
2 be changing.

3 MS. GEIGER: Okay.

4 MR. MCGOWAN: If that answers --

5 MS. GEIGER: Yeah. And, if there's some
6 way we can know about that between -- I mean, if there's
7 some way you can contact him and have him review the
8 agreement and see whether or not --

9 MR. MCGOWAN: Yes. He's doing training,
10 so I don't know how --

11 MS. GEIGER: Yes. Even early next week
12 would be great.

13 MR. MCGOWAN: Yes. Oh, most definitely.

14 MS. GEIGER: Thank you.

15 MR. IACOPINO: Yes. For all the
16 parties, please feel free, if something has changed, where
17 there's an agreement, and you're not going to need to or
18 you think there will be significantly less
19 cross-examination or significantly less time that anybody
20 is going to spend with a particular witness, or there's
21 some new agreement that makes a witness unnecessary for
22 some reason, please let everybody know, including myself,
23 because that's information that the Committee will like to
24 have, to get through this in a prompt manner.

1 MR. ROTH: Just for the --

2 MR. IACOPINO: Go ahead.

3 MR. ROTH: -- so that the Town of
4 Plymouth understands, even if he is satisfied with the
5 Rumney agreement, I expect that he will still be on for
6 cross-examination, because I may have questions for him or
7 the other intervenors may as well. So, I know, in the
8 past, generally, when there's been an agreement, the
9 witness who submitted testimony still stands.

10 MR. IACOPINO: Yes. And, usually, they
11 will. But, usually, that testimony has gotten a lot
12 shorter, and that's what I was addressing. But you do
13 understand that, because his prefiled testimony is in our
14 record, he will have to be here for cross-examination?

15 MR. MCGOWAN: Uh-huh.

16 MR. IACOPINO: Okay. All right. The
17 Mazur group, do you know how many of -- I know that -- I'm
18 sorry.

19 MR. MCGOWAN: Are we talking about when
20 he would go?

21 MR. IACOPINO: Probably, well, he would
22 come after Counsel for the Public's witnesses, which we
23 just said are likely to be Wednesday afternoon or Thursday
24 morning, and, quite frankly, more likely Thursday morning.

1 MR. MCGOWAN: Okay.

2 MR. IACOPINO: So, you're probably
3 talking either late Thursday morning or Thursday
4 afternoon. And, please let me add a disclaimer here for
5 everybody with my estimates of time; they could be too
6 short, they could be too long. You know, calling these
7 things are never easy. Usually, things take longer than
8 we think they're going to take.

9 MR. MCGOWAN: My only concern is that,
10 yes, it does take longer. And, if -- he's gone the
11 following week, he's on vacation. And, if there's any way
12 we can make sure that we do get to him. Because it looks
13 -- sounds like this is going to spill over into -- would
14 you expect it to spill over --

15 MR. IACOPINO: It's not going to be the
16 following week, because the PUC has hearings, I believe,
17 that next week.

18 MR. MCGOWAN: Okay.

19 MR. IACOPINO: So, it will be -- what
20 will happen is what we often do, Mr. McGowan, is we'll
21 recess to the call of the Chair, and I'll have nine people
22 up here that I've got to coordinate calendars with. So,
23 if this case, if we go through Friday, actually, and I
24 know we have one issue with one member on Friday, too.

1 So, if we go through Friday, and we're not done with
2 taking the evidence, it's not likely to be Monday.

3 MS. GEIGER: And, can I ask why?
4 Because I think, in the procedural schedule, the 8th and
5 9th is reserved --

6 MR. IACOPINO: It said "reserve seven
7 days".

8 MS. GEIGER: Okay.

9 MR. IACOPINO: It said "reserve seven
10 days", but we couldn't -- the Committee couldn't do it.

11 MS. GEIGER: Oh. I thought it was the
12 8th and 9th for sure?

13 MR. IACOPINO: No. I'll double-check
14 that, but that's not my understanding. And, I think, in
15 fact, I think the PUC has something going in here next
16 week with the three Commissioners.

17 MS. GEIGER: Monday afternoon.

18 MR. IACOPINO: But, nonetheless, I'll
19 double-check that. But my guess is, if we're not done on
20 Friday, and, like I say, I know one member of our
21 Committee does have an issue on Friday, and luckily we'll
22 have enough members to cover, I believe. But, if we're
23 not done on Friday, it's likely we'll recessed to
24 another day, that will be determined by the Chair, and

1 notice will go to all the parties.

2 The other thing, by the way, is, in this
3 notice, I don't know if anybody noted, Thursday afternoon,
4 at 2:00 p.m., has been reserved for public comment. So,
5 particularly with respect to the towns, if there are
6 townspeople who wish to come and voice their opinions, the
7 best time to come here to do that would be Thursday at
8 2:00 p.m.

9 MR. ROTH: Thursday or Tuesday? I
10 thought you said "Tuesday"?

11 MR. IACOPINO: Thursday. It's in the
12 order. Thursday, November 4th, at 2:00 p.m. Okay.
13 Mr. Mazur, do you know -- I know that we have your
14 prefiled testimony, we have Dr. Mazur's e-mails, which he
15 considers to be prefiled testimony, and we have Theresa's
16 prefiled testimony. Are all three of you planning on
17 taking the witness stand? I assume you are, because you
18 filed prefiled testimony.

19 MR. WETTERER: I really can't answer
20 that at this time. I would assume so. When would this be
21 taking place?

22 MR. IACOPINO: Well, like I say,
23 everything is in flux. But it would be sometime after
24 Chief Clogston, who we're saying will probably be

1 Thursday, late Thursday morning or Thursday afternoon.

2 So, probably Thursday afternoon, Friday morning, in that
3 time frame.

4 MR. WETTERER: I know Dr. Mazur will be
5 here. Well, he will be here on that day. I'm not sure I
6 will be able to attend Thursday or not. Can I leave that
7 open at this point or do you need to know for sure?

8 MR. IACOPINO: Well, here -- the issue
9 that gets raised as a result of that is that you've filed
10 prefiled testimony.

11 MR. WETTERER: Uh-huh.

12 MR. IACOPINO: Which you want the -- I'm
13 sure you want the Committee to consider.

14 MR. WETTERER: Yes.

15 MR. IACOPINO: Because you filed
16 prefiled testimony, you should be subject to
17 cross-examination.

18 MR. WETTERER: I see.

19 MR. IACOPINO: And, you know, the
20 testimony that I've perused that you filed and Dr. Mazur's
21 filed, via e-mail, which some people may have a problem
22 with it, but we have it, and even Theresa Mazur have
23 filed, all seems to deal with the same subject. What I
24 was going to recommend to you, --

1 MR. WETTERER: Uh-huh.

2 MR. IACOPINO: -- was that you all sit
3 as a panel, subject to cross-examination by anybody who
4 has questions for any of you, because your testimony
5 definitely overlaps. Obviously, Dr. Mazur has a different
6 expertise.

7 MR. WETTERER: Uh-huh.

8 MR. IACOPINO: But it's still about the
9 same issues.

10 MR. WETTERER: Right.

11 MR. IACOPINO: And, that way I was going
12 to recommend that your group sit as a panel, which is
13 certainly one way to do it. But I'm not going to tell you
14 how to present your case.

15 MR. WETTERER: I think that would be
16 fine.

17 MR. IACOPINO: Okay. So, what we will
18 do is put -- is go with the Mazur panel after Chief
19 Clogston. And, the order of witness -- order of
20 examination will go the same way, only, obviously, they
21 won't cross-examine themselves. And, then, Cheryl Lewis,
22 have you guys determined how you want to present? Is
23 Mr. Spring planning on actually testifying?

24 MS. LEWIS: Yes. He will be here.

1 MR. IACOPINO: Okay. Have you given any
2 thought to the presentation from your group?
3 Understanding, I understand that there's the request still
4 pending, a motion still pending, and Mr. Getz will resolve
5 that at some point. But, right now, assuming we're going
6 forward, is there a particular plan for the way you want
7 to present your witnesses?

8 MS. LEWIS: I think we'd prefer to be
9 individual.

10 MR. IACOPINO: Okay. I'm drawing a
11 blank. Mr. Spring did file prefiled testimony?

12 MS. LEWIS: He did, uh-huh.

13 MR. IACOPINO: Do you recall generally
14 what issues he hit?

15 MS. LEWIS: His concern is more
16 sound/road issues, his animals. His property is very
17 close to it. And, he's on Groton Hollow Road, so --

18 MR. IACOPINO: So, you're anticipating
19 -- do you know what order the three of you would --

20 MR. ROTH: Mike, I think Carl Spring
21 also had testimony concerning the policy behind having
22 wind generation power, and the cost/benefit analysis and
23 that kind of stuff. Wasn't that --

24 MR. IACOPINO: Oh, I thought that was

1 Mr. --

2 MS. LEWIS: That's more Jim.

3 MR. IACOPINO: Yes, I thought that was
4 Mr. Buttolph.

5 MR. ROTH: Oh, that was Jim?

6 MS. LEWIS: Jim, yes.

7 MR. ROTH: Okay. I'm sorry. I thought
8 Carl had some of that, too.

9 MR. IACOPINO: Yes. Mr. Buttolph has a
10 -- he approaches most of the issues, --

11 MR. ROTH: Okay.

12 MR. IACOPINO: -- if I recall correctly,
13 in his, he's got sort of a more macro view, if I remember
14 correctly. But, do you know what order, between the three
15 of you, you would prefer to go?

16 MS. LEWIS: There isn't a preference. I
17 think the only preference would be would be if Jim could
18 be in the morning. Beyond that, it really makes no
19 difference to us.

20 MR. IACOPINO: Okay. So, well, because
21 Mr. Spring doesn't come as much as you, I'll put you ahead
22 of him, okay?

23 MS. LEWIS: Okay.

24 MR. IACOPINO: And, I don't know where

1 this leaves us. If the Mazur panel is on Thursday
2 afternoon, then it's likely Mr. Buttolph would be on
3 Friday morning. But, if, for some reason, we don't get to
4 the Mazur panel until Friday, it may be later Friday
5 morning. It all depends on how much cross-examination.
6 And, I'm going to go through that in just a minute. But
7 I'm going to list the following witnesses for the Buttolph
8 group. Mr. Buttolph, Jim Buttolph first, Ms. Lewis
9 second, and Mr. Spring third. And, if that changes, if
10 you do think, Ms. Lewis, that there's any benefit to any
11 permutation of that sitting as a panel, whether all three
12 of you or two of you, which two I don't know, please just
13 let us know, it's not going to be a problem.

14 MS. LEWIS: Okay.

15 MR. IACOPINO: Unless somebody objects.

16 Okay.

17 MS. LEWIS: Thank you.

18 MR. IACOPINO: Now what I want to do, we
19 have a list of basically 17 --

20 MR. ROTH: Mike, what about Mr. McCann?

21 MR. IACOPINO: Oh, yes.

22 MS. LEWIS: Yes. Thank you. We would
23 prefer to have him before us.

24 MR. IACOPINO: That's probably wise.

1 That's going to be -- I think Mr. Buttolph is going to
2 run, well, I think we may all run into some problems with
3 running out of a week here. But that, just so you know,
4 that Jim might have to make some arrangements, because
5 it's looking like you're going to be in an afternoon under
6 that, just so -- has everybody -- well, I don't know if
7 everybody knows this, but that the Committee has granted
8 Mr. Buttolph's request to have the testimony of Mr. McCann
9 by video conferencing. There's a screen back there on the
10 wall. And, as I understand it, Mr. Buttolph met with some
11 of the tech people here today to find out what type of
12 equipment he needs to provide in order to have that occur.
13 And, so, that testimony will be by video conference. One
14 of the conditions of that granting of that motion is that
15 we have to have the same opportunity to observe
16 Mr. McCann, as we would the witnesses who are sitting over
17 here. And, that, if he's going to be referring to any
18 papers or computers or stuff, they have got to be visible.
19 And, if asked, he's got to tell us what they are, just
20 like a witness who would be sitting here, if he's
21 reviewing a document, the party questioning him has a
22 right to say "what is it that you're reviewing?" Also, we
23 have to be able to have as good a view of him as we would
24 of these witnesses. Quite frankly, we'll probably have a

1 better view, if he's on the screen back there.

2 MS. GEIGER: Will he be able to see us?
3 Is it via Skype or a two-way --

4 MR. IACOPINO: That I don't know what
5 Mr. Buttolph's plans are.

6 MS. LEWIS: At this point, no, I believe
7 it's going to be a Web camera situation.

8 MR. IACOPINO: Well, that may -- when I
9 Skype, you actually can see both yourself and the other
10 party. There is a way to do it. But I don't know if
11 that's -- if Skype is his method.

12 MS. LEWIS: It's not.

13 MR. IACOPINO: It's not?

14 MS. LEWIS: No. He was hoping to
15 purchase a Web camera of some sort.

16 MR. IACOPINO: Is there some concern
17 about him seeing you, Ms. Geiger?

18 MS. GEIGER: No. The only concern I
19 have, and I think it was expressed in my objection to the
20 motion is, to the extent we want to cross-examine him on
21 documents that have been premarked for identification,
22 that he actually has them in hand and is actually
23 referring to the same document that we're referring to
24 when we ask him the question. And, so, I guess it would

1 be up to Mr. Buttolph or someone from the intervenor group
2 to get him a copy of all of the exhibits that we're going
3 to be bringing with us on Monday.

4 MR. IACOPINO: What I would like you to
5 do, and you'll have time to do this, because he won't be
6 until later in the week, I'd like you to talk with Mr.
7 Buttolph about what exhibits you want him to have.
8 Because I think it's unrealistic for him to have every
9 exhibit sitting there, and I think it might actually be
10 counterproductive, if he's got a big pile of stuff sitting
11 there to the Committee actually being able to see him.
12 So, if you could please coordinate with Mr. Buttolph about
13 what are the pertinent exhibits that he should have. I
14 know that most of our record, even right up to the stuff
15 we got last night right now is on the Web, although the
16 data requests are not. So, if there's any particular
17 thing that is not on the record, in our record on the
18 website, I'm going to trust that the parties will talk to
19 each other and make arrangements that he has that, okay?

20 What I want to do now, so we've got 17
21 -- 18, 18 witnesses or witness panels. What I'm going to
22 do now, I'm going to go through each witness very quickly,
23 I'm going to go around the tables and ask how much time
24 you think you're going to spend with him. And, we're just

1 going to go down that left side and back up this front
2 side. For Mr. Cherian, Ms. Lewis, any idea how long your
3 intervenor group will have to -- will take on
4 cross-examination of Mr. Cherian?

5 MS. LEWIS: Rough estimate, one and a
6 half hours.

7 MR. IACOPINO: Mr. Wetterer?

8 MR. WETTERER: I have no idea, maybe
9 half an hour.

10 MR. IACOPINO: Does the Town of Groton
11 anticipate questioning Mr. Cherian at all?

12 MR. SINCLAIR: Zero time.

13 MR. IACOPINO: Okay. Town of Plymouth?
14 No. Town of Rumney?

15 MR. WAUGH: No.

16 MR. IACOPINO: And, Counsel for the
17 Public?

18 MR. ROTH: One hour.

19 MR. IACOPINO: Mr. Hecklau. Let's go
20 down again. Ms. Lewis? He's the visual impact expert.

21 MS. LEWIS: Fifteen minutes.

22 MR. IACOPINO: Mr. Wetterer?

23 MR. WETTERER: Five minutes.

24 MR. SINCLAIR: Zero.

1 MR. IACOPINO: Anything from Rumney?

2 MR. WAUGH: No.

3 MR. IACOPINO: Okay. And, Peter?

4 MR. ROTH: Fifteen.

5 MR. IACOPINO: Hope Luhman. The
6 Buttolph group?

7 MS. LEWIS: Well, we had half an hour
8 originally. But, now with the new information that was
9 just released today, I would say it's going to be a lot
10 longer than that.

11 MR. IACOPINO: Do you have any idea of
12 how much longer?

13 MS. LEWIS: I mean, quite honestly, we
14 haven't even had a chance to look at what was released
15 today. So, I guess, rough guess, an hour to an hour and a
16 half.

17 MR. IACOPINO: Understand, I mean,
18 there's not going to be anybody up here sitting here with
19 a stopwatch saying "okay, you have to stop, because you
20 said "an hour"." However, if the questions, if you're not
21 moving along or there are -- you're being repetitive, the
22 Chair may very well say "Look, wrap it up."

23 MS. LEWIS: Uh-huh.

24 MR. IACOPINO: Okay. Mr. Wetterer?

1 MR. WETTERER: I don't think we'll have
2 any questions for her, for Ms. Luhman.

3 MR. SINCLAIR: Zero.

4 MR. IACOPINO: Plymouth? Rumney?

5 MR. MCGOWAN: Same.

6 MR. WAUGH: The same.

7 MR. IACOPINO: And, Mr. Roth, I expect
8 somewhat of a similar answer.

9 MR. ROTH: Yes, 15 to 30, depending on
10 what I see in the DHR thing.

11 MR. IACOPINO: I think you might
12 actually be more than that, but, okay. I'm going to go to
13 Mr. Gravel next, although I understand that that might not
14 actually be the order that we go. So, it's just the order
15 I have it on my paper. The Buttolph group? Mr. Gravel is
16 their wildlife biologist.

17 MS. LEWIS: Yes. One hour.

18 MR. IACOPINO: Mr. Wetterer?

19 MR. WETTERER: Thirty minutes.

20 MR. SINCLAIR: Zero.

21 MR. MCGOWAN: Zero.

22 MR. WAUGH: None.

23 MR. IACOPINO: Okay. And, Mr. Roth?

24 MR. ROTH: One hour.

1 MR. IACOPINO: Okay. Trevor -- how do
2 you say Trevor's last name, Trevor Mihalik?

3 MS. GEIGER: "Mihalik".

4 MR. IACOPINO: "Mihalik".

5 MS. GEIGER: Uh-huh.

6 MR. IACOPINO: Okay. Ms. Lewis?

7 MS. LEWIS: Five minutes.

8 MR. IACOPINO: Mr. Wetterer?

9 MR. WETTERER: Fifteen minutes.

10 MR. IACOPINO: I take it that the towns
11 won't have any?

12 (No verbal response)

13 MR. IACOPINO: Okay. And, Mr. Roth?

14 MR. ROTH: Thirty minutes.

15 MR. IACOPINO: And, the next witness I
16 have listed here is Kevin Devlin on managerial
17 capabilities. Ms. Lewis?

18 MS. LEWIS: Fifteen minutes.

19 MR. IACOPINO: Mr. Wetterer?

20 MR. WETTERER: Ten minutes.

21 MR. IACOPINO: I take it there won't be
22 any town issues?

23 (No verbal response)

24 MR. IACOPINO: Okay. Mr. Roth?

1 MR. ROTH: Thirty minutes.

2 MR. IACOPINO: Okay. Next is
3 Mr. O'Neal, on sound. Ms. Lewis?

4 MS. LEWIS: One and a half hours.

5 MR. IACOPINO: Mr. Wetterer?

6 MR. WETTERER: One hour.

7 MR. IACOPINO: Will the towns have any
8 questions of the sound experts?

9 MR. WAUGH: As much as I would like to
10 get into a huge discussion with Mr. O'Neal, whom I
11 unfortunately know from past experience, no.

12 MR. IACOPINO: Okay. Counsel for the
13 Public?

14 MR. ROTH: Well, after two and a half
15 hours by the intervenors, you'd think that should exhaust
16 everything, but I'm thinking maybe one hour.

17 MR. IACOPINO: Looks like a long day.
18 The Leo/Rendall/Walker panel, Ms. Lewis?

19 MS. LEWIS: One hour.

20 MR. IACOPINO: Mr. Wetterer?

21 MR. WETTERER: Thirty minutes.

22 MR. IACOPINO: Anything from the towns?
23 (No verbal response)

24 MR. IACOPINO: Okay. Mr. Roth?

1 MR. ROTH: One hour.

2 MR. IACOPINO: Okay. That's all -- is
3 that all of the Applicant's witnesses? Have I -- am I
4 correct in that? Okay. Then, move on to Mr. Tocci. And,
5 I'm just -- I know this isn't the order we'll do the
6 examination in, but the Applicant?

7 MR. PATCH: I'd say about an hour and 15
8 minutes.

9 MR. IACOPINO: Ms. Buttolph -- Ms.
10 Lewis? I'm sorry.

11 MS. LEWIS: One hour.

12 MR. IACOPINO: Mr. Wetterer?

13 MR. WETTERER: Thirty minutes.

14 MR. IACOPINO: Anything from the towns?

15 MR. SINCLAIR: No.

16 MR. IACOPINO: Mr. Roth?

17 MR. ROTH: He's my witness.

18 MR. IACOPINO: Oh, that's right.

19 MR. ROTH: But I'll take another half
20 hour.

21 MR. IACOPINO: You probably will, but
22 I'm not counting that right now. Trevor Lloyd-Evans,
23 Applicant?

24 MS. GEIGER: About an hour.

1 MR. IACOPINO: Buttolph group?

2 MS. LEWIS: One hour -- half hour.

3 MR. IACOPINO: He's an ornithologist.

4 MS. LEWIS: Yes.

5 MR. IACOPINO: Mr. Wetterer?

6 MR. WETTERER: Thirty minutes.

7 MR. IACOPINO: Anything from the towns?

8 (No verbal response)

9 MR. IACOPINO: Okay. The next witness

10 is the Town of Plymouth, Chief Clogston. Applicant?

11 MS. GEIGER: About an hour and 15

12 minutes.

13 MR. IACOPINO: Ms. Lewis?

14 MS. LEWIS: Fifteen minutes.

15 MR. IACOPINO: Mr. Wetterer?

16 MR. WETTERER: Fifteen minutes.

17 MR. IACOPINO: Anything from Groton?

18 (No verbal response)

19 MR. IACOPINO: Anything from Rumney?

20 MR. WAUGH: No.

21 MR. IACOPINO: Okay. Mr. Roth?

22 MR. ROTH: Thirty minutes.

23 MR. IACOPINO: All right. The Mazur

24 panel. Applicant?

1 MR. PATCH: I'll say 15 minutes.

2 MR. IACOPINO: Buttolph group?

3 MS. LEWIS: Isn't this us?

4 MR. IACOPINO: No, the Mazur panel.

5 MS. LEWIS: Oh, the Mazur. I'm sorry.

6 Fifteen minutes.

7 MR. IACOPINO: Yes, Ms. Geiger.

8 MS. GEIGER: Could we have some
9 clarification on the issue of friendly cross and what will
10 be -- how that will go? I mean, what I'm trying to get at
11 is that they're intervenors, they should be using their
12 cross-examination opportunity as a way to elicit direct
13 testimony from witnesses who may be aligned with their
14 positions. And, so, typically what happens is friendly
15 cross is first.

16 MR. IACOPINO: That makes sense. But
17 let's do this. Let's go through and see how much
18 everybody has got, and then I may just have to rearrange
19 the order when we get to the witness. What Ms. Geiger is
20 talking about is that, if there are parties that sort of
21 have aligning interests, it does make more sense for the
22 parties that have aligning interests to question that
23 party first, so that you have everything that the parties
24 with aligning interests might want to have out on the

1 record before its cross-examination. And, that way what
2 happens is, a friendly or an aligned interest doesn't
3 raise an issue, and then we have to go back around for
4 another round of cross-examination. It's just a matter of
5 making the proceeding run smoother. And, quite frankly,
6 it's easier for everybody. If you know, "okay, this is
7 what they're saying about all these issues, and I can, you
8 know, cross-examine them", and then we go back.

9 So, I think actually that's a good
10 point, Ms. Geiger. But I'm going to come back to that,
11 once I have everybody's idea of how much time, only
12 because I'm on a roll here with the time. And, I have to
13 read my own writing with respect to the order anyway.

14 So, we're on the Mazur panel, and the
15 Applicant said "about 15 minutes". How about the Buttolph
16 group?

17 MS. LEWIS: Fifteen minutes.

18 MR. IACOPINO: Do any of the towns have
19 any questions for the Mazur panel?

20 MR. WAUGH: May I ask for a
21 clarification? I guess I've been assuming that the
22 questions you're asking is about how much time you think
23 you'll need.

24 MR. IACOPINO: Right.

1 MR. WAUGH: But, if it turns out that
2 one of these witnesses does question some aspect of this
3 agreement, am I waiving my right to --

4 MR. IACOPINO: You're in the order. I'm
5 just trying to get an estimate.

6 MR. WAUGH: All right.

7 MR. IACOPINO: Because that's what my
8 boss is going to ask me for.

9 MR. WAUGH: So, the answer is "no".

10 MR. IACOPINO: And, Counsel for the
11 Public?

12 MR. ROTH: Thirty minutes.

13 MR. IACOPINO: Really? Okay. The next
14 witness would be Mr. McCann. Applicant?

15 MS. GEIGER: About an hour.

16 MR. IACOPINO: Mr. Wetterer?

17 MR. WETTERER: An hour.

18 MR. IACOPINO: I'm sorry?

19 MR. WETTERER: An hour.

20 MR. IACOPINO: Anything from any of the
21 towns on Mr. McCann?

22 (No verbal response)

23 MR. IACOPINO: Okay. And, Counsel for
24 the Public?

1 MR. ROTH: Fifteen minutes.

2 MR. IACOPINO: Okay. And, then, the
3 next witness is likely to be Mr. Buttolph. Applicant?

4 MS. GEIGER: Probably 45 minutes.

5 MR. IACOPINO: Mr. Wetterer?

6 MR. WETTERER: Thirty minutes.

7 MR. IACOPINO: Anything from the towns
8 for Mr. Buttolph?

9 (No verbal response)

10 MR. IACOPINO: Counsel for the Public?

11 MR. ROTH: Thirty minutes.

12 MR. IACOPINO: And, then, Ms. Lewis.

13 Applicant?

14 MR. PATCH: I'd say about 45 minutes.

15 MR. IACOPINO: Mr. Wetterer?

16 MR. WETTERER: Fifteen minutes.

17 MR. IACOPINO: Anything from the towns?

18 (No verbal response)

19 MR. IACOPINO: Mr. Roth?

20 MR. ROTH: Thirty.

21 MR. IACOPINO: And, then, Mr. Spring.

22 The Applicant?

23 MR. PATCH: Fifteen.

24 MR. IACOPINO: Mr. Wetterer?

1 MR. WETTERER: Fifteen minutes.

2 MR. IACOPINO: Anything from the towns?

3 (No verbal response)

4 MR. IACOPINO: Mr. Roth?

5 MR. ROTH: Fifteen.

6 MR. IACOPINO: Okay. Let's return to, I
7 guess, the issues where the issue of friendly
8 cross-examination would come up would be on witnesses 14
9 through 18, that would be the Mazur panel, Mr. McCann,
10 Mr. Buttolph, Ms. Lewis, and Mr. Spring. What I'm going
11 to do is simply recommend that we move the Buttolph group
12 up to first after the Mazur panel, on the Mazur panel, and
13 vice versa, on their four witnesses, that Mr. Wetterer's
14 group would go first for cross-examining the other four.
15 That way you've got your friendly cross-examination, your
16 aligning interests all out on the table first, and then
17 any cross-examination can follow.

18 Although I don't anticipate there's
19 going to be much concern about whether leading questions
20 or open-ended questions are asked, just so you know,
21 during those examinations.

22 Okay. Cheryl, just did Jim leave you
23 with any idea of exactly where he is with the video
24 conferencing, other than what you've already told us?

1 MS. LEWIS: No. Basically, just what
2 we've already told you. We're still -- we've been
3 speaking to Mr. McCann since the order was released about
4 -- and he was looking into it on his end, because he
5 didn't even own this. So, he, as of last night, he's
6 still trying to figure out things on his end. And, he
7 needs to figure it out on his end before we can figure out
8 how we take it from there.

9 MR. IACOPINO: It used to be, and I
10 don't know if this is still the case, but it used to be
11 that Kinkos and places like that actually provided a
12 service, where you could go in and they could video
13 conference you, if they had -- I don't know whether it's
14 called an "IP address" or some kind of address to where
15 it's being sent.

16 MS. LEWIS: Okay.

17 MR. IACOPINO: So, you might want to
18 look. And, I know the First Circuit Court of Appeals
19 actually did that a few times a couple of years ago in
20 cases that I was involved in. I didn't have to do it, but
21 --

22 MS. LEWIS: Okay. We appreciate that.
23 I'll call them today on that.

24 MR. IACOPINO: I mean, I don't know if

1 that's still something. Or, if -- I also know that right
2 now I can do it from my laptop. So, it may be that Kinkos
3 is out of that business at this point, but I don't know.

4 MS. LEWIS: Uh-huh.

5 MR. IACOPINO: But just throwing out a
6 suggestion. All right. Mr. Getz isn't going to be here
7 until about 2:30. I think that the next thing that --
8 well, let me move my agenda around a little bit. Does
9 anybody have any other issues regarding the procedures
10 that are going to be used that they want to raise or any
11 questions about what we've gone over so far, as far as the
12 procedures for the hearing next week?

13 (No verbal response)

14 MR. IACOPINO: All right. Let's move on
15 and mark some exhibits then. Oh, that's right. Ms.
16 Geiger, you have Mr. Walker here, and he's with respect to
17 the issue that we had raised, that had been raised
18 earlier, as part of the motion. And, part of what I was
19 doing earlier was trying to see if we can parse out what
20 the actual individual problems are that the intervenors
21 are pointing to. Two of those happen to be represent --
22 not "representations", but references in the final
23 determinations on the Wetlands Permit and the Alteration
24 of Terrain Permit to something call a "revised plan" of

1 July 9th, and also the mitigation -- the change in the
2 mitigation plan, where there's now a \$150,000 mitigation
3 payment to be made to the Aquatic Fund, I believe. And,
4 you brought Mr. Walker here to try to address those issues
5 for the parties. I take it he's brought some documents or
6 something with him. Does it make sense to take a break
7 for like 15 minutes and let you show everybody what he
8 brought?

9 MS. GEIGER: Sure. Can we go off the
10 record?

11 MR. ROTH: Can I just make a comment? I
12 think -- I think it's a fine idea for you to take a
13 proffer of sort from this gentleman with respect to the
14 issue in the motion. And, that's, I think, a very narrow
15 issue. And, I would object to this occasion being turned
16 into a de facto technical session on this witness and --
17 because there may very well be some, aside from the
18 continuance issue, the postponement issue, there may be
19 some due process issues about his testimony or the
20 information that he has, I just don't know. And, I
21 haven't had an opportunity to prepare, to interview him
22 about any of the things he's going to say. Nobody else
23 has. And, Mr. Buttolph isn't here.

24 So, I think, as far as, you know,

1 listening to him and hearing what he has to say about the
2 issue in the motion, whether there was a change in the
3 application, I understand Attorney Geiger referenced a
4 "new set of plans" that, you know, maybe that's the issue.
5 But we need to be very careful and very narrow about what
6 we do with him here today, I think. Because there's
7 really no notice of this and no opportunity for anybody to
8 prepare.

9 MR. IACOPINO: I understand that. But
10 part of what -- all this is informal, and all we're trying
11 to do is trying to understand what the reasons expressed
12 by the intervenors who filed the motion. I mean, you
13 know, and it's legitimate. If you look at the Page -- I
14 guess it's actually Page 1 on the Alteration of Terrain
15 Bureau final decision from October 8th, there is clearly a
16 reference there, it says "The revised plans dated
17 July 9th, 2010 and supporting documentation in the file
18 are part of this approval." They have represented that
19 they don't have those revised plans. I'm not sure the
20 Committee does, maybe we do. I'm sure Ms. Geiger will
21 point that out, if we do. But all I'm saying is, what I'd
22 like to do is take a break so that he could show these
23 things.

24 The other thing that we asked for was

1 any correspondence between the Applicant or its vendor and
2 the -- well, I guess I forget which agency in DES, but
3 over the mitigation plan. If there have been
4 correspondence between the mitigation plan, which was
5 submitted, and I had the date before, I don't have it now,
6 sometime back in July, I guess, and October 8th, when
7 these approvals came out. That's all. I'm not putting
8 him up for cross-examination or anything like that. I
9 just want, if they have these documents, let's let
10 everybody see what they are. And, that way at least we
11 know what we're dealing with.

12 It's very hard to make a determination
13 whether any party has been prejudiced by the filing of the
14 supplemental application without knowing what these things
15 are. And, that's really what they're claiming as part of
16 their motion.

17 MR. ROTH: Right. But I didn't -- yes.
18 Today's prehearing conference did not reference this
19 particular meeting, in terms of the notice of it. And, I
20 didn't come prepared to even think about that motion today
21 or the objection that were raised this morning. So, I'm
22 just urging caution and narrow limits on what we do with
23 this witness here today.

24 MR. IACOPINO: All right. What I'm

1 trying to do is, I'm doing this, and hopefully with an eye
2 towards maybe resolving the motion without the need for an
3 order from the Committee. I mean, if it turns out that
4 this July 9th thing is really nothing, you know, I have
5 seen nothing but good faith exhibited by everybody
6 throughout these proceedings. And, if it turns out that
7 it's nothing, it's a change of a couple sentences or
8 something like that, I mean, I presume that the movants
9 will say "Well, that isn't a big deal, we agree."

10 But, if it is something, and they want
11 to express that it appears to be something prejudicial to
12 their position as part of their argument to Mr. Getz, I
13 think they ought to have the opportunity to do that. You
14 know, it is what it is. We're not asking him to testify.
15 We're just asking him to show and explain what these
16 documents are to those parties who are interested in
17 knowing. If you're not interested in knowing, you don't
18 have to participate.

19 MR. ROTH: I would have been very
20 interested in knowing had I known that this was going to
21 be the subject of half of today's proceeding.

22 MR. IACOPINO: Yes. Usually an
23 Emergency Expedited Motion to Suspend the Proceedings is
24 going to be dealt with. All I'm trying to do is get it

1 resolved and get it settled one way or the other.

2 So, I'm going to let -- we're going to
3 take a break for 15 minutes, over Counsel for the Public's
4 objection. I'm going to ask that Mr. Walker and those
5 parties who are interested in seeing the documents that
6 he's brought, that you make him available. Understanding
7 none of this part of the proceeding is on the record.
8 It's to provide information to the intervenors and anybody
9 else who is desirous of looking at what is there.

10 And, if an argument -- further argument
11 is going to be made on the record, it will be made with
12 the Chairman at 2:30. So, we'll take a 15 minute break.

13 (Whereupon a recess was taken at 1:58
14 p.m. and the prehearing conference
15 resumed at 2:50 p.m.)

16 CHAIRMAN GETZ: Okay. Good afternoon,
17 everyone. My name is Tom Getz. I'm the Chairman of the
18 Public Utilities Commission, and also I am the presiding
19 officer and chairing the Subcommittee that will be
20 reviewing the Application to construct a wind facility in
21 Groton, New Hampshire, in Docket -- SEC Docket 2010-01.
22 This is a prehearing conference that had been scheduled
23 for today. And, I understand that you've been speaking
24 for several hours on a variety of issues in advance of the

1 hearings that are scheduled for Monday. And, Mr. Iacopino
2 advises me that it would be helpful to address the Motion
3 to Suspend the Hearings that was filed on October 27 by
4 the Buttolph/Lewis/Spring Intervenor Group. I've read
5 that motion. Mr. Iacopino has just given me an objection
6 by the Applicant that I have not had the time to read.

7 So, what I would propose for our
8 purposes this afternoon is that I would, since I've read
9 the Motion to Suspend, I would provide the Applicant an
10 opportunity to present its objection orally. And, then, I
11 would also let any other party that wants to speak to the
12 motion or the objection to weigh in. And, then, I would
13 let the -- finally, I'll give the last word on the
14 arguments to the intervenor group that submitted the
15 motion in the first place.

16 But, just for purposes of the record,
17 let's take appearances from the parties, so we can get
18 that on the record. If we could just go around the room,
19 starting with the Applicant.

20 MS. GEIGER: Yes. Good afternoon, Mr.
21 Chairman. Susan Geiger and Douglas Patch, from the law
22 firm of Orr & Reno, representing the Applicant.

23 CHAIRMAN GETZ: Okay. Good afternoon.
24 If we could --

1 MR. WETTERER: Richard Wetterer,
2 intervenor from Rumney.

3 CHAIRMAN GETZ: Good afternoon.

4 MS. LEWIS: Cheryl Lewis, intervenor
5 from Rumney, representing Buttolph.

6 CHAIRMAN GETZ: Good afternoon.

7 MR. SINCLAIR: Miles Sinclair, Board of
8 Selectmen, Town of Groton.

9 CHAIRMAN GETZ: Good afternoon.

10 MR. MCGOWAN: Good afternoon. Attorney
11 John McGowan, from the firm of Donahue, Tucker &
12 Ciandella, for intervenor Town of Plymouth.

13 CHAIRMAN GETZ: Okay. Good afternoon.

14 MR. WAUGH: I'm Bernard Waugh, from
15 Gardner, Fulton & Waugh, representing the Town of Rumney.

16 CHAIRMAN GETZ: Good afternoon.

17 MR. ROTH: Good afternoon, Mr. Chairman.
18 Peter Roth, from the Office of the Attorney General. With
19 me are Michelle Thibodeau and Evan Mulholland, also from
20 my office, as Public Counsel.

21 CHAIRMAN GETZ: Good afternoon.

22 MR. ROTH: Thank you.

23 CHAIRMAN GETZ: Okay. Well, before we
24 proceed, are there any questions, any other issues before

1 we address this, what I understand to be the remaining
2 outstanding motion is this one motion, is there anything
3 else before we hear arguments?

4 MR. ROTH: If I may, this is unrelated
5 to this, but it's a small procedural matter that perhaps
6 we can get out of the way now. During the proceeding, I
7 intend to ask Michelle Thibodeau, who is a law student at
8 New England School of Law, to conduct one or more
9 cross-examinations of witnesses. And, I would ask the
10 Chairman's permission to allow her to do that.

11 CHAIRMAN GETZ: Okay. Is there any
12 objection to that activity by the Public Counsel?

13 (No verbal response)

14 CHAIRMAN GETZ: And, I understand you
15 have -- that there's rules about sponsoring or being
16 responsible for the activity of students who are
17 undertaking such activities that you have to abide by, is
18 that correct, Mr. Roth?

19 MR. ROTH: I'm not sure that such rules
20 apply in these proceedings. But I have been supervising
21 her very carefully, and I have the utmost confidence that
22 she will do this well, and will be you know, take --
23 essentially undertake the attorney's oath with respect to
24 these proceedings, the same way any other member of the

1 Bar would.

2 CHAIRMAN GETZ: Okay. Thank you. Then,
3 we'll permit her to conduct the cross-examination.

4 MR. ROTH: Thank you.

5 CHAIRMAN GETZ: Okay. Ms. Geiger.

6 MS. GEIGER: Yes. Thank you, Mr.
7 Chairman. The Applicant received the objection filed by
8 the Buttolph Intervenor Group on Wednesday. And,
9 understanding that we were coming here today for a
10 prehearing conference, we submitted a, as best we could, a
11 response to the allegations that were contained in that
12 motion. And, I believe that our reasons are spelled out
13 as fully as we could under the time constraint that we
14 were under, but I'd just like to hit on some of the major
15 points that we've made.

16 The primary one being that it's the
17 Applicant's position that the reasons that the Buttolph
18 group are citing for an order to delay the hearing in this
19 case really relates to the procedural schedule that was
20 established back on June 25th by the Committee. These
21 dates were known in advance to all of the parties who
22 participated at the tech session that resulted in that
23 order, and certainly were known when the order was issued.
24 One of those deadlines allowed for the filing of a

1 supplemental prefiled testimony by the Applicant. And, as
2 has been the case in at least two prior SEC hearings with
3 which I've been personally involved on behalf of
4 applicants, the supplemental filings that were made on
5 October 12th consisted of the supplemental prefiled
6 testimony, as well as updates to the original Application
7 that was made back on March 26th. And, the reason for
8 that, obviously, is that six months or more have passed
9 since the original filing was made. And, as the Committee
10 understands or has understood historically, that the
11 siting process, with which we're all involved now, is an
12 iterative process. And, there are constant interactions,
13 if you will, between the Applicant and the State agencies
14 who have to issue permits, the underlying Wetlands and
15 Alteration of Terrain Permits in this case, as well as
16 other agencies, such as Historical Resources and the
17 Department of Fish & Game, who play a consultative role in
18 connection with the federal permitting process, as well as
19 the state permitting process at DES. The Applicant has
20 done that. And, what we did is, on October 12th, we made
21 a comprehensive filing to bring the Committee up to date,
22 to inform everyone else in the docket, of all of the
23 things as best we could up till that time that had
24 occurred with relation to this project.

1 The Buttolph Intervenor Group has taken
2 exception to a few things and a few of the deadlines that
3 they indicate are the basis for delaying the proceedings.
4 One of them is that they complained that the Applicant has
5 submitted in a supplemental filing an alternative route
6 for proceeding or bringing the power from its switchyard
7 into the substation at Beebe River. And, as I've
8 indicated in Paragraph 3 of my motion, Mr. Cherian, on
9 behalf of the Applicant, has, in several -- on several
10 public occasions, in Rumney and elsewhere, indicating that
11 the route was being finalized, that he was working with
12 the Electric Cooperative, and, clearly, that the
13 interconnection line alternatives were being explored.

14 Also, as I've indicated, in both the
15 supplemental filing and the motion, the Applicant
16 encountered difficulties with PSNH after the Application
17 was filed about the issue of interconnection. We sought
18 to resolve those issues with PSNH. And, ultimately, what
19 the Applicant was required to do was to make a refiling
20 with ISO-New England on a new interconnection plan.

21 But the footprint of the Project hasn't
22 changed since the time we made our filing back on March
23 26th. The turbines are still proposed to be located in
24 the same spots. Again, there have been a minor change in

1 terms of the overhead -- perhaps the alternative of
2 overhead lines, and that those alternatives had been --
3 had been expressed to be not in a final nature very early
4 on in this process.

5 In addition, the intervenors have
6 claimed that the DES filings -- findings that were issued
7 on October 8th recommending that the Alteration of Terrain
8 and the wetlands Permits be issued are premature and
9 incomplete, because they're silent on both the exact
10 locations of the electrical lines, as well as the
11 environmental impacts of constructing the substation.

12 I think, as I said earlier, the
13 Committee has, in the past, recognized that plans
14 sometimes can change between -- between the time of the
15 filing of the Application and the time of hearing. And,
16 furthermore, even after that, I think RSA 162-H:4, III and
17 III-a clearly indicate that the Committee can provide to
18 DES delegated authority to approve modified plans. And,
19 that's exactly what the DES has said in its permit
20 conditions. That any final construction plans that the
21 Applicant wants to build to must be reviewed and approved
22 by DES. So, we find that that's an insubstantial basis
23 for granting the motion.

24 One of the other bases is that the

1 intervenors complained that the Applicant hasn't fully
2 explained the magnitude of the mitigation package that the
3 Applicant has submitted with its supplemental filing. You
4 know, again, the mitigation package for wetlands is
5 essentially the same mitigation package that we filed on
6 March 26th, with the addition of a \$150,000 payment to the
7 New Hampshire Aquatic Mitigation Fund. We made all the
8 parties aware of that plan back, I think, August 17th,
9 when we responded to some technical session data requests.
10 So, that's not a surprise. That's not new information.
11 And, it hardly warrants an extension of the schedule in
12 this docket.

13 Again, the intervenors argue about lack
14 of information regarding historical resources. Now, I do
15 admit that we received a letter from the Division of
16 Historical Resources today. I have not been able to read
17 that letter, because I've been here all day. So, I don't
18 know, to the extent that my motion in Paragraph 7 makes a
19 representation about historical resources, I have to stand
20 by it as of the date it was filed. But, as of right now,
21 this moment, I haven't had a chance to go back to my
22 office to review that letter.

23 It's my understanding, however, that
24 Dr. Luhman, who will be here to testify next week, about

1 historical resources believes that the Project will not
2 have an unreasonable adverse effect on historic sites.
3 And, it's my understanding, subject to checking with her,
4 that she will stand by her prefiled and -- prefiled
5 testimony.

6 Again, the intervenors complained about
7 New Hampshire Fish & Game not making findings or
8 recommendations. We understand that Fish & Game has had
9 all the Applicant studies for some time. The only
10 exception to that is one study that was submitted by the
11 Applicant, not by its counsel, but the Applicant directly
12 submitted a study to Fish & Game, and they believe that,
13 because it was provided to Mr. Perry, who sits on the
14 Committee, that staff at Fish & Game had access to that
15 report. Which, obviously, isn't true, because we know
16 there are ex parte communication issues that prevent that
17 sort of communication from happening. That's what
18 happened there.

19 Again, the intervenors complain that the
20 sound studies that were conducted by the Public Counsel's
21 sound witness, Mr. Tocci, were filed too late, on
22 October 22nd, to give them sufficient time to respond and
23 analyze his information, and that they need more time
24 because of that. I would respectfully submit that we're

1 working under the same time constraints with respect to
2 analyzing Mr. Tocci's information as the intervenors. We
3 all knew back, at least on September 27th, when the
4 Committee issued its order granting Public Counsel's
5 request to retain Mr. Tocci, that he would be making a
6 filing on October 22nd. The intervenors knew that and we
7 knew that. And, we understood that it was a tight time
8 frame between that and going to hearing on November 1st,
9 but we nonetheless accepted it, and nobody moved for a
10 reconsideration of that order.

11 So, I would argue that at this late
12 date, trying to argue that the procedural schedule in this
13 docket somehow works an unfair advantage toward the
14 intervenors is not a sufficient basis for granting an
15 extension of time in this docket.

16 The other thing that we heard earlier
17 today on the record before Mr. Iacopino from the
18 intervenors was that Ms. Lewis feels that, because Mr.
19 Tocci is predicting an effect on her campground, which she
20 believes to be more serious than the effect that she --
21 that the Applicant's sound witness predicted, that she
22 should somehow be allowed more time to conduct some data
23 compilation that relates to her business activity. I
24 would submit that Ms. Lewis's complaints about the Project

1 really haven't changed since day one. They're really
2 about the effects on her business. And, the fact that we
3 have new sound data really shouldn't change anything in
4 terms of her preparation for the hearing. She'll have the
5 same amount of time that we do to cross-examine Mr. Tocci
6 about his data. I simply do not understand her arguments
7 concerning the need to compile more business or financial
8 information in relation to or as the result of Mr. Tocci's
9 sound testing at her campground.

10 Again, we simply believe that there's no
11 basis for granting the extension of time that's been
12 requested by the intervenors. And, we would respectfully
13 object to that. Thank you.

14 CHAIRMAN GETZ: Thank you.

15 Mr. Wetterer, did you want to speak to the motion or the
16 objection?

17 MR. WETTERER: No, not now.

18 CHAIRMAN GETZ: Thank you.

19 Mr. Sinclair?

20 MR. SINCLAIR: No, sir. Thank you.

21 CHAIRMAN GETZ: Mr. McGowan?

22 MR. MCGOWAN: No.

23 CHAIRMAN GETZ: Mr. Waugh?

24 MR. WAUGH: No.

1 CHAIRMAN GETZ: Mr. Roth?

2 MR. ROTH: Yes. Just a few comments,
3 Mr. Chairman. I only saw the objection this morning, and
4 haven't really had an opportunity to read it very
5 carefully. And, I only got the original motion on, I
6 suppose, Wednesday, and I was out of my office all day
7 yesterday attending to other matters, so I haven't had an
8 opportunity to study that very carefully either. Or, to
9 engage in what I would consider to be necessary
10 consultations and considerations in my office, but -- to
11 reach a firm position on the request.

12 But I would point out the following.
13 The late filings by the Department of -- the Division of
14 Historic Resources and the Fish & Game Department are
15 problematic for us. And, in particular, you know, we have
16 retained an expert on ornithology. And, we had an
17 opportunity as of, I believe, yesterday or today to file
18 supplemental testimony in response to the final reports by
19 the State agencies. And, obviously, we don't have a final
20 report by the Fish & Game Department, and apparently
21 nothing from DHR as well, on whether, you know, the
22 Project should go forward from their perspective. So,
23 we're deprived an opportunity to review that and provide
24 testimony on that from at least one of our experts.

1 The second issue is the alternative
2 route --

3 CHAIRMAN GETZ: Well, before we go to
4 the second issue, --

5 MR. ROTH: I'm sorry.

6 CHAIRMAN GETZ: -- does that go to the
7 issue of whether we should start on Monday and/or suspend
8 the whole proceeding or is there some other way to address
9 the issues with respect to DHR and Fish & Game, as opposed
10 to just suspending, which apparently is the motion by the
11 intervenor group?

12 MR. ROTH: Well, I'll start with Fish &
13 Game, because it seems to be a more clear problem for me,
14 because I don't know what's in the DHR comments. But the
15 Fish & Game issue essentially deprives Counsel for the
16 Public an opportunity to review Fish & Game's final
17 report. The Fish & Game's final report may very well say
18 nothing very much of any interest, and we could ultimately
19 conclude that there won't be any further testimony.

20 But, if, for example, Fish & Game issues
21 its final report two weeks after next week's hearing
22 closes, there's no point in submitting final testimony --
23 or, additional testimony on that, unless you were to
24 determine to reopen for another day of cross-examination

1 and hearings after that occasion came. So, I suppose that
2 would be one way of resolving that issue for us. The
3 other would be, of course, to move the hearing date.

4 So, as for the DHR issue, it's
5 impossible for me to comment about it, because I don't
6 even know what they said. I haven't seen that at all.

7 CHAIRMAN GETZ: Okay.

8 MR. ROTH: Now, I think equally or
9 perhaps more problematic -- equally or more problematic,
10 and raising issues, I think, is the alternative route. I
11 don't -- it's difficult to determine what the
12 environmental impact of the Project is if we don't -- if
13 we didn't find out until essentially ten days ago where it
14 was going to be located. Significant elements of the
15 Project, the transmission or distribution lines and the
16 possibility of a substation, which is still not finalized,
17 are up in the air. And, I would just submit that every
18 other case that I've worked on before the Site Evaluation
19 Committee, the transmission line issue was resolved very
20 early on and it was part of the whole process. It wasn't
21 a late arrival such as this. Thank you.

22 CHAIRMAN GETZ: With respect to that
23 issue, on the alternative route, isn't it ultimately the
24 Applicant's at risk that the Committee will conclude that

1 they haven't carried their burden on some of those issues?

2 MR. ROTH: That's correct, your Honor --
3 I'm sorry, Mr. Chairman. But the process usually provides
4 an opportunity for the parties to assist in that issue by
5 cross-examining, by having experts analyze the locations,
6 by having, in addition, the Department of Environmental
7 Services to analyze the locations of the poles and the
8 substation or whatever else that they need to build. And,
9 all of that information is now not in the record, and the
10 parties don't have an opportunity to develop it.

11 But it's true that it is the Applicant's
12 burden. And, if they haven't been able to develop it and
13 simply say, as I think is done here, "well, DES can look
14 at it later and decide whether that meets their wetlands
15 criteria", maybe that's sufficient. But that's, you know,
16 I agree, that is, you know, I think I read a Supreme Court
17 decision a long time ago where I think it was Justice
18 Scalia said something like "the party who fails to
19 buttress his position on the hopes that he can do so later
20 does so at his own peril." And, maybe that's where we are
21 here. But it seems to me that many parties would have
22 liked the opportunity to have that information and work
23 with it while preparing for the hearing.

24 CHAIRMAN GETZ: Okay. Thank you. I

1 want to have -- give Ms. Lewis the opportunity to have the
2 last word on this. But, before we turn to that, Ms.
3 Geiger, can you respond to the arguments that -- or the
4 issues raised by Mr. Roth with respect to the DHR and Fish
5 & Game delays [sic] of the filings, and also with the
6 alternative route issues?

7 MS. GEIGER: Great. With respect to the
8 State agencies, as I've been given to understand that the
9 Applicant's representative experts, Dr. Luhman, for
10 example, has been in touch with Historical Resources, and
11 then Ms. Goland I think has been in touch with Fish &
12 Game, we haven't been given any reason to believe that
13 there's a problem with those agencies, with the caveat
14 that I need to go back and read the letter that we just
15 got today from Historical Resources. They are
16 consultative agencies. They don't issue permits in this
17 process. And, I know in other cases, Lempster, for
18 example -- well, Lempster, for example, where the issues
19 with Historical Resources had not been nailed down shut,
20 if you will, prior to the granting of the Application or
21 granting of the Certificate. Basically, I think what
22 happened in that case, we were -- the Applicant was
23 ordered to go out and conduct its Phase IB Archeological
24 Study and to coordinate with Historical Resources and

1 abide by all agreements that had been reached with
2 Historical Resources and basically comply with that
3 process. So, that piece was not nailed down. That was a
4 certificate, I believe, if memory serves correct, that we
5 were given a certificate subject to completing all of the
6 rest of the studies that Historical Resources needed of
7 the Applicant.

8 Again, Fish & Game, they play a
9 consultative role, both here, as well as at the federal
10 level, in consultation with the Army Corps and EPA on
11 federal wetlands issues, and Historical Resources
12 coordinates also. So, they don't actually -- I don't
13 believe that they're in the same position, if you will,
14 with -- as DES is with respect to actually having to make
15 a recommendation to this Committee on whether or not their
16 underlying permits should be granted or not. And, we do
17 have that recommendation from DES. We got that on
18 October 8th.

19 CHAIRMAN GETZ: So, you would -- your
20 position is, if I look at 162-H:6-a, VI, just give you a
21 moment.

22 MS. GEIGER: Yes.

23 CHAIRMAN GETZ: You're taking the
24 position that neither DHR or Fish & Game fall under that

1 paragraph or what is your position with respect to that?

2 MS. GEIGER: Without studying -- having
3 studied the statute, I think that provision, the way I
4 read that provision is, under VI, it talks about "All
5 participating state agencies shall make and submit to the
6 [committee] a final decision on the parts of the
7 application that relate to its jurisdiction." I go back
8 to I, and it talks about we have to "satisfy the
9 application requirements of each state agency having
10 jurisdiction, under state or federal law, to regulate the
11 construction or operation of the proposed facility", and
12 then we have to "include each agency's completed
13 application forms." I've always read the reference to
14 "state agencies with jurisdiction" under VI as "state
15 agencies that have jurisdiction to issue permits or to
16 somehow regulate the operation and construction of the
17 facility." Not just state agencies that want to
18 participate, if you will, in this process at the SEC.

19 CHAIRMAN GETZ: All right. Then, did
20 you have anything further about the route?

21 MS. GEIGER: The route, yes, Mr.
22 Chairman. As with other, let's use Lempster as an
23 example, and Noble as well, too. The interconnection
24 route, if you will, the distribution lines that will run

1 on the Co-op's distribution circuit, if you will, are at a
2 35 -- 34.5 kV level. Therefore, they're not transmission
3 facilities that this Committee has to certificate.
4 Meaning, this Committee does not need to make a
5 determination that the line -- that that portion of the
6 line has to satisfy all the statutory criteria that are
7 set forth in 162-H, I believe it's XVI, regarding
8 aesthetics, so on and so forth.

9 However, in the Lempster decision or as
10 one of the orders in that docket, the Commission has
11 indicated that that route, that interconnection route, if
12 you will, is subject to the Commission's review -- the
13 Committee's review in connection with the Project's
14 impacts on orderly development of the region. So, I think
15 we have to parse this very carefully. So, the
16 interconnection line that we are proposing to run largely
17 in the Co-op's distribution territory to the substation at
18 Beebe River we submit is not part of this Application.
19 It's 34.5 kV, it's not 100 kV.

20 CHAIRMAN GETZ: So, your position is
21 that, because on its own it wouldn't be subject to
22 jurisdiction?

23 MS. GEIGER: Correct. And, that --

24 CHAIRMAN GETZ: But does that mean you

1 consider it not an associated facility?

2 MS. GEIGER: No, I think it's fair. I
3 think we obviously want to make the Committee aware of the
4 things that the Applicant is doing in connection with this
5 Project. And, to the extent that that line impacts
6 orderly development of the region, then, obviously, we
7 believe that we have to inform the Committee and the
8 Committee should make a finding on that. But that's the
9 way it's been parsed in the past. In Lempster, I believe,
10 there was a line that ran from the Lempster Project, down
11 Mountain Road, I think, and then onto Route 10, and then
12 ten miles from Route 10, all the way into the Newport
13 Substation. That line was not certificated. It was,
14 obviously, part of the application, and it was vetted, if
15 you recall, with the Town of Goshen, in particular. But
16 the line itself was not certificated.

17 CHAIRMAN GETZ: All right. Thank you.
18 Again, --

19 MS. GEIGER: Mr. Chairman, just one more
20 thing I wanted to mention. And, probably the most
21 important thing about the change of all. The Applicant
22 heard a lot of criticism from folks in the Town of Rumney,
23 specifically in the Quincy Road area, about the initially
24 proposed route, because they were very concerned about the

1 fact that it was going to go in a new location that had
2 previously not had any utility poles on it. What the new
3 alternative does is, in reaction partially to that
4 complaint from those citizens, it moves the line into a
5 utility corridor. And, I think that's really important.
6 Because the Applicant heard those concerns, in addition to
7 the concerns that PSNH had about interconnection and
8 location and all of that, but part of the adjustment that
9 we made in this iterative process was in reaction to
10 concerns that we had heard from folks in the Town of
11 Rumney. And, now we have another alternative.

12 Oh. The other piece, too, would be
13 Groton Hollow Road, is the new alternative would propose
14 to avoid going down Groton Hollow Road, and would actually
15 be a -- would connect from the substation to Route 25 to
16 where the Co-op's poles are, in a new location. And,
17 we've put that in our supplemental filing.

18 CHAIRMAN GETZ: Okay. Thank you.

19 Mr. Roth.

20 MR. ROTH: Yes, Mr. Chairman. Thank
21 you. I'm glad to hear that there was a good reason for
22 the alternative route. And, I'm sure that will be
23 explained very well during the merits hearing, but it's
24 not really relevant to this issue. The issue here is, you

1 know, was this line proposed in time for us, for the
2 parties, to understand where it was going to be so we
3 could assess all of the impacts of the line.

4 I just wanted to understand something
5 here, because, in Paragraph 4 of the objection, it says
6 that "the Applicant re-filed an interconnection
7 application with ISO-New England proposing an
8 interconnection at 115 kV." Now, I thought I just heard
9 Attorney Geiger say "it's all 34". So, perhaps you can
10 clarify it?

11 MS. GEIGER: And, I apologize --

12 MR. ROTH: So, this isn't the Lempster
13 and Noble line. And, I guess I go back to the point, in
14 Noble Environmental Power, for example, we spent a lot of
15 time in that process working through where the poles were,
16 what the visual impacts were, the poles and the wires
17 coming down from the turbine area. And, so, to the extent
18 that it is -- there is an important impact of the
19 existence of poles and lines, and a substation that may or
20 may not be constructed, I think that it's important for
21 the parties and for the Committee to actually have a fully
22 developed record about that, which is very difficult to do
23 at this late stage in the game.

24 MS. GEIGER: And, I'd like to, and thank

1 you for pointing that out, Mr. Roth, I apologize, I did
2 misspeak earlier. The majority of the new alternative
3 line will be at the 34.5 kV level. That part's correct.
4 What I did overlook in my remarks, and Attorney Roth is
5 absolutely correct, is that there will be a -- there will
6 be a step-up facility, I believe, to raise the voltage
7 level from 34 to 115 kV. But my understanding is it's a
8 very, very short -- it's a very, very short distance.
9 That it's not -- it does not involve the 10 miles that
10 would otherwise be implicated I think under the
11 "transmission" definition in the statute. And, the --
12 again, it was set forth in the Application under -- in the
13 supplemental Application under -- on Page 3, and it
14 updates Section F.3.(e) of the initial Application.

15 CHAIRMAN GETZ: Okay. Thank you. I
16 think we're just about to you, Ms. Lewis. Does anyone
17 else want to weight in on any of these other issues,
18 before Ms. Lewis has the last opportunity to speak on the
19 motion and related issues?

20 (No verbal response)

21 CHAIRMAN GETZ: Okay. Hearing nothing,
22 then, Ms. Lewis.

23 MS. LEWIS: Thank you, Mr. Chairman.

24 CHAIRMAN GETZ: You can stay seated. It

1 will probably be easier for Mr. Patnaude to hear.

2 MS. LEWIS: Thank you. I guess, as far
3 as the intervenor group is concerned, we have three main
4 issues that we're very concerned about, which most --
5 which have been addressed quite a bit through the Counsel
6 for the Public. However, as far as the interconnection of
7 the transmission lines, the Applicant had submitted to ISO
8 back in September. And, our feeling is, we should have at
9 least been notified at that point in time, so that we
10 could at least start the process of understanding what
11 this meant to the residents of Rumney and where these were
12 actually going to be going, taking place. And, where --
13 what potential wetlands, anything else that might impact.
14 And, by just being notified very recently that there was a
15 major change, I think puts us at a huge disadvantage in
16 going forward into the hearings.

17 Secondly, I'd also like to mention,
18 Attorney Geiger had mentioned that originally the general
19 public did not want them down Quincy Road, which is
20 absolutely correct. However, there wasn't an opportunity
21 for them to go down Groton Hollow Road, as there weren't
22 the proper easements in place to do that. So, my
23 understanding is, that wasn't even an option. And,
24 without some of those easements in place, it would have

1 been -- it may have been more difficult to bring them down
2 Quincy Road, rather than Route 25, because it would have
3 been going in a different direction. So, I'm not sure
4 that was totally to appease the residents of Rumney. I
5 think there also may have been major costs, you know, cost
6 advantages for the Applicant in doing it the way that they
7 presently had applied for to the ISO.

8 I guess the next -- the next aspect that
9 we're quite frustrated about is the revised plan that was
10 submitted to DES July 9th. And, today, we just received a
11 binder that documents that, those revisions. And, it just
12 feels that there's no way we can be prepared for next
13 week, after just receiving this information today, that we
14 could go forward and have the ability to go through it in
15 time to see if we have any concerns. It doesn't mean that
16 we necessarily absolutely are going to have concerns, but
17 we should have the due process to be able to go through it
18 and really understand it.

19 And, the last thing I did want to
20 mention is the Division of DHR. I asked Mr. Iacopino in
21 the break if I could receive a copy of that. And, so, I
22 have read it. And, I think it's very significant. They
23 have thrown back the form to the Applicant because they
24 feel it's insufficient. And, based on this information

1 here, as of July, it was clear that there were issues with
2 forms being submitted, and the Applicant had provided us
3 with information, basically just saying it was ongoing.
4 Okay? There's a note from DHR that states that, on
5 August 20th, they had left a message for the Applicant to
6 try to continue working through this. September 15th, the
7 Applicant finally responded back to them and asked if they
8 could resubmit the forms. And, it wasn't until
9 October 21st, a week ago, that the Applicant actually
10 resubmitted this form. And, now, DHR has just come out
11 and sent it back and said, in no uncertain terms, that
12 it's unacceptable, and that there's a lot more work that
13 needs to be done with it.

14 And, our feeling is that the Applicant
15 has accused us of not wanting to follow the original
16 procedural schedule that was in place. And, we would
17 argue that the Applicant hasn't been fair during this
18 schedule. I mean, these issues have been going for a long
19 time. And, it isn't until the very last minute that these
20 things are submitted, right before the deadline, knowing
21 full well we're going to have no opportunity to be able to
22 look and understand any of these and how they may impact
23 us.

24 CHAIRMAN GETZ: Well, when you say

1 "these things" are you talking about the attachments of
2 the DES material or are you talking --

3 MS. LEWIS: Everything. The fact that
4 we're just getting this information, the fact that they
5 chose to basically move very slowly on the DHR questions
6 and concerns, because Dr. Luhman had suggested a while
7 back that a historical district within the village area of
8 Rumney needed to be further pursued. Now, I may be
9 articulating that incorrectly. But, I believe, in
10 general, that's what it stated. That there's a number of
11 historical homes throughout the village area in Rumney,
12 and it needed to be further -- further looked at.

13 And, as far as the residents of Rumney,
14 that's huge. That has a huge impact on what the state can
15 come back and say to us as far as what that means. You
16 know, what the Applicant's project could potentially mean
17 to that whole area in our village. And, by dragging their
18 feet and not dealing with this until a week ago, and even
19 now there's absolutely no decision, they're basically, you
20 know, going back to the drawing board, how can we go
21 forward Monday not having any idea? I mean, we have our
22 experts lined up for property values. If we don't have
23 more of a final decision or at least suggestions from DHR,
24 as to what this impact it could have, how can we

1 reasonably ask questions or go before the Committee and
2 say "this is why" --

3 CHAIRMAN GETZ: But ask questions of
4 whom? Of the Applicant, --

5 MS. LEWIS: The experts.

6 CHAIRMAN GETZ: -- about the historical
7 issues?

8 MS. LEWIS: Exactly. Because there
9 isn't any final document suggesting what the state
10 believes the impact will be, because this hasn't been
11 completed.

12 CHAIRMAN GETZ: Okay.

13 MS. LEWIS: And, they have had ample
14 time to get this done.

15 CHAIRMAN GETZ: Okay. And, did you have
16 other issues that you wanted to -- you said "three", but
17 you didn't address the noise issue, the supplemental
18 testimony that was addressed in the --

19 MS. LEWIS: Yes. I mean, I certainly
20 have concerns about that. I think we had, you know, in
21 our understanding, as far as the Applicant's sound studies
22 and all that, that was all that we had to use to determine
23 what we believed would be the impact, particularly on my
24 property and my business. And, it wasn't until the sound

1 studies came back that it was clear that this impact was
2 going to be significantly more. And, that's why that --
3 that is listed there. Just, although, you know, I
4 certainly do respect the schedule, and I understand that,
5 and I do understand the Applicant is going to have to
6 respond in that same time period. But, as far as my
7 ability to try to get what I feel is the relevant data and
8 information of the impact that it may have on me, it takes
9 time.

10 CHAIRMAN GETZ: So, what you're hoping
11 to do, it's not that you are necessarily going to try to
12 rebut or cross-examine Mr. Tocci on his findings, you want
13 to introduce something about the -- if Mr. Tocci's
14 evidence is -- we conclude to be persuasive, and that is,
15 and not the Applicant's, you say that that would be
16 particularly effects on you that you want to get into the
17 record, is that where you're headed?

18 MS. LEWIS: Absolutely. And, a
19 potential of me bringing an accountant to come in as well,
20 to explain, you know, a bit of the financial ramifications
21 that may have as well.

22 CHAIRMAN GETZ: Okay. Did you have
23 anything else?

24 MS. LEWIS: No, I do not. Thank you.

1 CHAIRMAN GETZ: All right. At this
2 point, I'd like to take a recess. I'll look at the
3 documents, look at the statute, consider the arguments.
4 And, I will try to return as quickly as I can with a
5 ruling. Thank you.

6 (Whereupon a recess was taken at 3:33
7 p.m. and the prehearing conference
8 resumed at 3:51 p.m.)

9 CHAIRMAN GETZ: Okay. We're back on the
10 record in SEC-2010-01. And, I'm going to address the
11 October 27 motion filed by the Buttolph/Lewis/Spring
12 Intervenor Group on October 27, moving to suspend the
13 hearings in this proceeding. And, first off, I'll note
14 that we're going to deny the motion to suspend the
15 hearing. But I want to walk through the pieces of the
16 motion and speak to certain subsets of the issues that
17 were raised.

18 First of all, I'll point out, as you're
19 all well aware, the Legislature prescribes very specific,
20 very short time frames for the consideration of petitions
21 for renewable energy facilities. And, the procedural
22 schedule that was approved back on June 25 was consistent
23 with those deadlines that are in RSA 162-H.

24 In terms of the issues raised in the

1 motion, I do not find that there's any basis for
2 concluding that there's been an abuse of discovery by the
3 Applicant in this proceeding.

4 Secondly, I want to address the issues
5 raised under the heading of "Project Details Remain
6 Undefined". And, I have certain concerns in this regard.
7 First of all, with respect to the general notion of the
8 alternative route and revised alternative interconnection
9 plan, I think, as the hearings progress and as the
10 information comes out, I suspect that the Committee will
11 be inclined to know more about that issue. Now, there's a
12 couple of different ways of looking at that. One is
13 whether the Applicant has carried its burden of proof.
14 Another is that the Committee may be inclined to hear more
15 information about those issues. I'm going to defer a
16 ruling on that until we see how the proceedings progress.
17 But I suspect one potential way of addressing that issue
18 is the possibility of an additional hearing date sometime
19 after next week. So that I'm just going to point that out
20 as a potential resolution of that issue, but that will be
21 something that we'll deal with as a Subcommittee once we
22 begin hearings next week.

23 The other issue is the Fish & Game
24 report. It does not appear to me that that comes under

1 the heading of something required under 162-H:6-a. But I
2 think Mr. Roth makes a good point that, until we see what
3 Fish & Game has to say, it's really premature to make any
4 kind of final ruling on that issue or make any
5 determination whether additional process or hearing dates
6 or some other remedy might be necessary. So, I'm going to
7 defer any action until we actually see what Fish & Game
8 has to say. But, I think, as I understand the process,
9 the Fish & Game, what's been filed with them by the
10 Applicant, that information has been available to the
11 other witnesses, other parties. But I guess what we don't
12 know is what Fish & Game will make of all that
13 information. So, again, we'll wait to see what Fish &
14 Game has to say.

15 With respect to Division of Historical
16 Resources, I think that issue more goes to the notion of
17 whether the Applicant has carried its burden to
18 demonstrate that there's no unreasonable adverse effect on
19 historic sites. And, to the extent that any party wishes
20 to use that information in its argument as to what action
21 the Committee should take, then they may do so. But I
22 don't see any necessity for extending the hearings on that
23 issue. But that's, certainly, the filing has been made,
24 and that is a piece of information that will be considered

1 by the Committee.

2 With respect to background noise levels
3 and the issue of, as I understand it, Ms. Lewis would like
4 to propose some additional testimony about the effects
5 that may accrue to her business, again, I'm going to take
6 that issue under advisement and decide next week whether
7 that additional opportunity should be provided.

8 So, and then I guess the fourth issue
9 raised in the motion was with respect to the delay in
10 issuing the order on the opportunity to have Mr. McCann
11 appear by video. And, an order has been issued on that,
12 and so that -- that issue or argument is moot.

13 My understanding is that there has been
14 some agreement on the order of witnesses for Monday. So,
15 my expectation is that we will begin the hearings at 10:00
16 on Monday, and that we will not be hearing further
17 argument at the beginning of the hearings on these other
18 subsidiary issues, but we'll consider them as we proceed
19 and get more information.

20 So, then, before we conclude this
21 afternoon, is there anything else that should get on the
22 record that I need to address before Monday? Mr. Waugh.

23 MR. WAUGH: Well, I raised with
24 Mr. Iacopino earlier the notion that I would like an

1 opportunity simply to address the agreement that the Town
2 of Rumney has with the -- the Town is not going to have
3 any witnesses, and we only have one exhibit, namely, the
4 agreement. And, for maybe five minutes max, just to talk
5 about the agreement and highlight some of the issues of it
6 and present it, so that the Town will not have to pay me
7 to participate in the remainder of the proceedings, if
8 they choose to do that.

9 CHAIRMAN GETZ: Is there any objection
10 to letting Mr. Waugh go first? Mr. Roth, did you have
11 something?

12 MR. ROTH: It's not so much of an
13 objection, other than to confirm that somebody, whether
14 it's the Applicant or the Town, will provide us a copy of
15 that agreement today, so that we can have time to review
16 it and determine what, if any, necessary cross-examination
17 of Mr. Cherian, who is the first witness on Monday, needs
18 to be addressed.

19 MR. WAUGH: I'll be glad to, I have it
20 on electronic format, I'll send it out to the list before
21 the -- before I leave my office tonight.

22 MR. ROTH: That will be fine.

23 CHAIRMAN GETZ: Okay. Anything further?

24 (No verbal response)

1 CHAIRMAN GETZ: Okay. Then, we'll close
2 at least my portion of this prehearing conference. And,
3 we'll see you Monday morning. Thank you, everyone.

4 MR. ROTH: Thank you.

5 MS. GEIGER: Thank you.

6 MR. ROTH: Thank you.

7 (Whereupon the prehearing conference
8 ended at 4:00 p.m.)

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