

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

November 4, 2010 - 9:05 A.M. DAY 4
Public Utilities Commission
21 South Fruit Street MORNING SESSION
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.
(Hearing on the merits)

PRESENT: SITE EVALUATION SUBCOMMITTEE:

Chairman Thomas B. Getz N.H. Public Utilities Comm.
(Presiding)

Robert Scott, Director	Air Resources Division - DES
Brook Dupee, Bureau Chief	Dept. of Health & Human Serv.
Richard Boisvert	N.H. Div. of Historical Res.
Stephen Perry, Chief	Inland Fisheries - N.H. F&G
Charles Hood, Admin.	Dept. of Transportation
Donald Kent, Admin.	Dept. of Resources & Econ. Dev.
Eric Steltzer	Office of Energy & Planning
Michael Harrington	Public Utilities Commission

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Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: SUSAN J. ROBIDAS, LCR NO. 44

1 ALSO PRESENT:

2 Counsel for the Applicant: Susan S. Geiger, Esq.
3 (Groton Wind, LLC) Douglas L. Patch, Esq.
 (Orr & Reno)

4 Counsel for the Public: Peter Roth, Esq.
5 Evan Mulholland, Esq.
 (Asst. Atty. General)
6 Michelle Thibodeau

7 Reptg. the Town of Groton: Miles Sinclair, Selectman

8 Reptg. the Buttolph Group: James Buttolph, Intervenor
 Cheryl Lewis, Intervenor

9 Reptg. the Mazur Group: Lawrence Mazur, Intervenor
10 Christine Mazur, Intervenor
 Sarah Mazur, Intervenor

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

2 CHAIRMAN GETZ: Good morning. We'll
3 resume the hearings in Site Evaluation Committee Docket
4 2010-01. Note for the record that the nine members of the
5 Committee are present. So let's turn to appearances from
6 the parties.

7 MS. GEIGER: Yes. Good morning, Mr.
8 Chairman and Members of the Subcommittee. I'm Susan
9 Geiger from the law firm of Orr & Reno. And I, along with
10 my colleague, Doug Patch, represent the Applicant, Groton
11 Wind, LLC.

12 CHAIRMAN GETZ: Good morning.
13 Mr. Sinclair.

14 MR. SINCLAIR: Miles Sinclair,
15 Selectman, Town of Groton.

16 CHAIRMAN GETZ: Good morning.

17 DR. MAZUR: Dr. Mazur, Christine
18 Mazur, Sarah Mazur, part of the Mazur/Wetterer intervenor
19 group.

20 CHAIRMAN GETZ: Good morning.

21 MR. BUTTOLPH: Jim Buttolph,
22 intervenor from Rumney, along with Cheryl Lewis,
23 intervenor from Rumney.

24 CHAIRMAN GETZ: Good morning.

1 MR. ROTH: Good morning. Peter Roth
2 and Evan Mulholland, counsel for the Public. And with us
3 today, Michelle Thibodeau, also counsel for the public.

4 CHAIRMAN GETZ: Okay. Good morning.
5 So let's take stock. At the end of the day yesterday, I
6 think there was agreement that we would start this morning
7 with Mr. Gravel. We are at the point of Subcommittee
8 questions and then opportunity for redirect. We would
9 then turn from Mr. Gravel to Public Counsel's witness, Mr.
10 Lloyd-Evans. And then from there I believe Chief Clogston
11 is scheduled, would be the next witness after that. And I
12 think that's as far as I've gotten with the schedule for
13 today. Then, I think there's been some work going on with
14 respect to setting up the video conference for Mr. McCann.

15 Mr. Buttolph?

16 MR. BUTTOLPH: If I may, Mr. Chairman.
17 We were hopeful that perhaps Mr. McCann's testimony may be
18 scheduled for first thing tomorrow morning, which would
19 allow for us to ensure that things are set up and
20 operating beforehand without delaying the Committee.
21 Looks like it should work. But tomorrow morning would
22 perhaps give us that insurance policy to make sure we
23 don't have any technical issues. We have had few
24 technical issues and worked through them, and it seems to

1 be working. But we think that would be better for
2 everyone.

3 CHAIRMAN GETZ: Okay. Any objection
4 to starting first thing tomorrow morning with Mr. McCann?

5 (No verbal response)

6 CHAIRMAN GETZ: All right. I think
7 that makes sense. Let's do that.

8 Did you -- well, I guess you could
9 probably do this off-line. Maybe you've already been
10 doing that, making sure that everything... okay. And
11 you're getting all the assistance you need from our staff?

12 MR. BUTTOLPH: Yes. They've been very
13 helpful. Thank you.

14 CHAIRMAN GETZ: Okay. Good.
15 Anything else we need to address
16 before we hear from Mr. Gravel? Dr. Mazur.

17 DR. MAZUR: Another intervenor,
18 Richard Wetterer, wants to be here when the intervenor
19 panel is interrogated. And do you know if that will be
20 this afternoon or tomorrow?

21 CHAIRMAN GETZ: Well, I would suggest
22 at the break this morning -- we'll take a recess around
23 10:30 -- that all the parties speak with our counsel and
24 see if we can get an agreement on what's the schedule for

1 the rest of the witnesses is. And if there's a meeting of
2 the minds among the parties, all the better.

3 MR. ROTH: Mr. Chairman, one other
4 issue left outstanding from yesterday was hearing argument
5 on how to deal with Exhibit 44 and related issues. And I
6 guess I'm not totally certain where that's going to fit in
7 today.

8 CHAIRMAN GETZ: Well, my understanding
9 was that the parties were discussing possible alternatives
10 and would come back with a recommendation. And I thought
11 you had said something about you needed today to be having
12 discussions with your office. So I guess I would -- I was
13 waiting to hear from the parties. If there is an
14 agreement, we can schedule argument for the end of the day
15 or sometime tomorrow. I'm open on how the best procedure
16 would be for dealing with those issues.

17 MR. ROTH: Well, I've done what I need
18 to do in my offers, and we had some discussions yesterday
19 about how to proceed. And I think it was left to the
20 Applicant to kind of decide how it needed to proceed. And
21 I'm not sure where they are at this point. I'm happy to
22 have further discussions with them about it, but I'm not
23 sure where that's going to lead.

24 MS. GEIGER: I think we need to do

1 that, Mr. Chairman. I had left a message for Mr. Roth
2 last night, a voicemail message. We just haven't had a
3 chance to catch up this morning.

4 MR. ROTH: Oh, okay. I'm sorry. I
5 haven't been keeping up with my voicemails.

6 CHAIRMAN GETZ: I guess I would
7 suggest, let's work through Mr. Gravel, Mr. Lloyd-Evans
8 and Chief Clogston. And why don't you let me know when we
9 return from the lunch recess if there's an agreement. If
10 there's not an agreement, then we'll determine how to --
11 what the next appropriate steps for procedure is.

12 MR. ROTH: Okay.

13 CHAIRMAN GETZ: Anybody else? Any
14 other issues? Ms. Lewis.

15 MS. LEWIS: I'm sorry. I just
16 wondered if I could get clarification on that. Is this
17 specific to the Appendix 44, or are you talking about the
18 overall motion that we were going to be discussing and
19 have arguments?

20 CHAIRMAN GETZ: Well, there's at least
21 two pieces to this: One, we have an outstanding motion
22 with respect to Exhibit 44. I had also pointed out at the
23 beginning, and more than once through this proceeding,
24 that we had some other issues that were relative to some

1 of the issues raised and the motion to suspend concerning
2 historic resources, concerning the alternative route,
3 concerning fish and game, which we have another letter
4 from them, but not their final report. So if there's
5 recommendation on those issues or arguments on those
6 issues, I'd be prepared to hear those as well.

7 MS. LEWIS: Okay. We would certainly
8 like to be involved in that part of it. So I didn't know
9 if it was just going to be one specific area where Mr.
10 Roth and Ms. Geiger were discussing --

11 CHAIRMAN GETZ: Well, at the end of
12 the day yesterday, Mr. Iacopino, I think, made it clear
13 that all the parties were -- should be involved in any
14 discussion about these issues.

15 MS. LEWIS: I understand. But Ms.
16 Geiger didn't call Jim or I last night. She called Mr.
17 Roth. So I'm suggesting that we have not been involved in
18 that whole process, and we'd like to make an argument --

19 CHAIRMAN GETZ: Okay. So you'll have
20 an opportunity, I guess at the recess this morning or
21 lunch recess, to see if there can be some agreement or
22 not.

23 MS. LEWIS: Thank you.

24 MR. IACOPINO: It doesn't look like

1 there's been any conversation yet, anyway, because they
2 didn't hook up. So...

3 MS. GEIGER: Right, we did not. We
4 have not reached agreement, and we'd be happy to speak to
5 Mr. Buttolph and Ms. Louis about this.

6 MS. LEWIS: Thank you.

7 CHAIRMAN GETZ: Okay. Anything else?
8 (No verbal response)

9 CHAIRMAN GETZ: Hearing nothing, then
10 Mr. Gravel.

11 (Whereupon, ADAM GRAVEL was recalled
12 to the stand, having been previously
13 sworn.)

14 ADAM GRAVEL, PREVIOUSLY SWORN

15 CHAIRMAN GETZ: I'll note for the
16 record that you're under still under oath.

17 Opportunity for questions from the
18 Subcommittee. Mr. Harrington.

19 INTERROGATORIES BY MR. HARRINGTON:

20 Q. Mr. Gravel, did you do any comparison for this, you
21 know, in anticipation of this project on Lempster?
22 Now that we have some actual data on Lempster up and
23 running for a while, how did the actual projections,
24 how did they compare to what actually was the

1 mortality rate of, you know, area species?

2 A. Yes, we did compare. At the Lempster project, we
3 didn't actually do a risk assessment. So it
4 wasn't -- it was a general prediction. But we did
5 compare -- in my prefiled testimony, we compared the
6 results, the pre-construction results observed at
7 Groton, to the pre-construction results observed at
8 Lempster. And what we found were that Lempster was
9 actually higher with nocturnal migration and bat
10 activity than the Groton project and was similar with
11 raptor migration counts. And then the
12 post-construction survey results at Lempster were
13 much lower than other sites in New England and
14 just -- I guess that was part of the point I was
15 trying to make yesterday, is that it's difficult to
16 correlate pre-construction rates. In fact, actually,
17 Lempster had one of the higher passage rates observed
18 at any site in New England for nocturnal radar
19 surveys, but then had one of the lowest mortality
20 rates.

21 Q. So, in effect, what you're saying is that the
22 pre-construction surveys are virtually meaningless,
23 as far as looking at what you're going to find out
24 post-construction?

1 A. Well, I wouldn't say meaningless. They're
2 meaningless, in term of quantifying post-construction
3 risk. But it's -- they are helpful for -- you know,
4 it allows for the opportunity to size up a proposed
5 project to operational projects using the
6 pre-construction survey results. So, not necessarily
7 meaningless, but they don't correlate that well.

8 Q. So they're not indicative of what you would expect
9 once the project went operational.

10 A. In terms of numbers.

11 Q. Yeah.

12 A. They are indicative of the range of mortality
13 expected.

14 Q. And as far as other things that would be useful, I'm
15 assuming part of that would be the identification of
16 endangered species. They seem to take different
17 actions based on the fact whether there are or are
18 not endangered species in the area. Without doing
19 that survey, there's really no way to know for sure.

20 A. That's correct.

21 Q. And as far as that goes, I think there was something
22 mentioned about checking with some government agency,
23 and then they tell you whether there's endangered
24 species believed to be in the area. What is the -- I

1 guess what's the definite thing there? The survey
2 that goes out and says we haven't found any, or the
3 government agency's projection that they believe
4 there's some in the area?

5 A. It's based on two things: One, habitat; and, two,
6 known occurrences. So, some of the work that state
7 and federal agencies have done have identified rare,
8 threatened or endangered species, or they'll indicate
9 whether or not they suspect habitat to occur on the
10 site for endangered and threatened species.

11 Q. Okay. So, either one of those would lead you to act
12 as if there were endangered species in the area?

13 A. Yeah. Yeah, that's where the peregrine surveys came
14 from. We consulted the state and federal agencies.
15 New Hampshire Fish and Game identified two nests --
16 one, 2 miles north of the project, and one 5 miles
17 south of the project -- and asked that we work with
18 New Hampshire Audubon, which are considered the state
19 experts on peregrines.

20 Q. And on Page 6 of your prefilled testimony, you said
21 that, accordingly, a work plan was developed for
22 submittal to state and federal agencies for
23 discussion and comment. And then I believe you went
24 on to say there were no comments received.

1 Now, the "no comments received," is that to be
2 implied that they reviewed it and said this is a good
3 job, this is a good plan, or they just stuck it in a
4 box someplace and never looked at it?

5 A. I didn't explain that well enough yesterday.

6 Specific to raptor nest surveys was where I --
7 was my response yesterday. So we didn't get any
8 comments requesting raptor nest surveys. However, we
9 did submit our work plans to the agencies and got
10 some comments back about, one was the peregrine
11 falcons. The New Hampshire Fish and Game recommended
12 that we work with New Hampshire Audubon on that, for
13 that species.

14 Q. Let's broaden that up, just so that we're clear what
15 we're speaking of.

16 In your prefiled testimony it says, "Because of
17 the lack of New Hampshire-specific guidelines,
18 Stantec and Groton Wind worked with state and federal
19 resource agencies to confirm that planned surveys
20 would address agency concerns." And then it says a
21 plan was developed and submitted. So I'm just trying
22 to determine -- it was submitted. And you said at
23 least in some cases there were no comments. Does
24 that imply that they reviewed your plans and found

1 them acceptable?

2 A. Yeah. I mean, that's how -- I mean, it took some
3 assumption on our part to get there. But we gave --
4 we provided the whole work plan that covered all
5 surveys that we proposed, and we received comments
6 back on select surveys within that work plan that
7 needed to be updated for further discussion. And
8 that's how it worked. So the comments we received
9 back from the agencies were for those studies that
10 they recommended changes to. And the other studies,
11 no comments were received on, so it was assumed that
12 was acceptable.

13 Q. Okay. That helps a little bit then.

14 More of a general question. There's a lot of
15 discussion of whether there's a need for second-year
16 studies to be performed post-construction. And it
17 was basically along the lines that you were going to
18 perform one, and if certain conditions happened, then
19 it would kind of kick into the Iberdrola protocol for
20 doing additional studies. And there was a lot of
21 talk about "biological impact" and "significant" and
22 all these sort of fuzzy terms. But the bottom line
23 is that somebody has to make that decision. So how
24 is the decision made, and who makes it, to determine

1 whether or not there's a second year of
2 post-construction surveys performed beyond the ones
3 that they do every day by walking around and just
4 observing? I'm talking about formal surveys.

5 A. Right. And if I may, I just want to explain the
6 second year of study a little bit more.

7 The first year of study is basically the formal
8 post-construction monitoring, where we walk,
9 transect, do the scavenger removal trials, searcher
10 efficiency trials, to try to get at the real number
11 of mortality, or the predicted number. And from that
12 information -- I mean, that's, I guess, what I'm
13 trying to say about the second year. I think that if
14 you just monitor the second year the same way you do
15 the first year, you're only getting the same
16 information. You're getting what the impacts are,
17 but you're not getting at what is causing the
18 impacts.

19 So, the proposal here by the Applicant is to
20 conduct one year of studies, formal studies, to
21 figure out what the impact is. And if that impact is
22 lower or within the range of other studies, then it
23 would -- that's when the Avian and Bat Protection
24 Plan protocol, proposed construction monitoring would

1 kick in, where on-site staff, operation staff
2 continue to monitor impacts. However, if that first
3 year of study showed mortality rates within -- higher
4 than the range of other developed wind projects in
5 the Northeast, then Iberdrola is committed to working
6 with the state and federal agencies to try and
7 identify what is causing those events. So it's not
8 necessarily going to be the same repeat survey of
9 year one. It's going to be more focused to try to
10 figure out what's causing that.

11 Q. Okay. That helps clarify the process. So, in other
12 words, you would develop a potentially new plan to
13 address the results of what was found during the
14 first year to target certain areas.

15 A. That's correct.

16 Q. But I guess my question then still remains, that
17 somebody, somehow, has to make a decision at the end
18 of that first year. You said "if it's more than
19 other areas" or "slightly more," "significantly more"
20 or whatever, a lot of kind of fuzzy terms. But the
21 bottom line is someone has to say yes or no to going
22 forward to developing that second-year plan to
23 address what happened.

24 How is the process for making that decision, and

1 who actually makes it?

2 A. Well, that's a good question. I mean, the results of
3 the year one studies would be submitted to the state
4 and federal agencies for review. I would expect that
5 there would be conversations about what the results
6 mean. But you're still left with that same gauge. I
7 mean, if you considered all factors of bird and bat
8 mortality, other than wind projects, and the fact
9 that we're trying to determine unreasonable versus
10 reasonable, we're looking at it in the light of
11 what's accepted at wind projects currently, because,
12 you know, the data's showing that there is still --
13 the mortality is still lower than other forms of bird
14 and bat mortality. So that's kind of the gauge we're
15 using.

16 Q. So would it be reasonable to say, then, that as a
17 potential condition then, that after the first year
18 studies was done, that there would be results,
19 conclusions, recommendations submitted to the federal
20 and state authorities, and that they would have the
21 option of then deciding whether a second year of
22 additional studies was required?

23 A. I think that it would take a discussion. And the
24 reason why I say this is that I think that there's a

1 lot of information out there that not everybody's
2 familiar with. So I think it would take a discussion
3 between the Applicant, their consultant that's, you
4 know, kind of doing this for a long time, and also
5 the agencies, to try to figure out what -- is this
6 really higher than other sites or higher than other
7 sources. Because I think it's important to have that
8 discussion just so that you can explain what else is
9 known about mortality.

10 Q. I'm not trying to under-emphasize the need for
11 discussion. But maybe it's too many years in nuclear
12 power. Someone has to make a decision. So who is
13 it, then, you're proposing to make that decision? I
14 mean, the state -- I mean, someone has to say, yes,
15 they're going to do it, or, no, we don't have to do
16 it.

17 A. I mean, I would expect that it's a state -- it's
18 going to be a decision made by the state and the
19 Applicant.

20 Q. So, putting that in as a condition, saying something
21 to the effect that that would be after mutual
22 discussions on the results of the first-year's
23 surveys, that the Fish and Game Department of New
24 Hampshire, for example, would make the decision as to

1 whether future studies were needed for a second year?

2 A. Yeah. I mean, that's how I would see the process.

3 Q. All right. Thank you.

4 MR. HARRINGTON: I think that's all I
5 have. Thanks.

6 CHAIRMAN GETZ: Mr. Scott.

7 INTERROGATORIES BY MR. SCOTT:

8 Q. Good morning. Following up on the same discussion,
9 can you give it a -- you're talking about the
10 second-year plan, and if there are more bird and bat
11 kills than expected, then there may be certain
12 actions in consultation with the state. Can you give
13 an example of what mitigation might be? I'm having
14 trouble understanding how do you mitigate that.

15 A. It depends on what species you're looking at. But
16 for birds, it's difficult to mitigate, at least
17 nocturnal songbirds. Appears to be more random-type
18 events. But there's other information out there that
19 show that, you know, you can -- for bat mortality,
20 especially, you can identify periods that might be
21 higher risk, where you -- you know, low wind speed
22 nights, for example, may be higher risk to bats. But
23 it's something that has to be studied. So that's why
24 the first year is very important. You're studying

1 mortality impacts and the variables that might cause
2 them, those impacts. But there's -- so there's
3 studies out there that show low wind speed nights you
4 can -- you know, if you have one problem turbine,
5 let's say, you can actually curtail operations at low
6 wind speed nights and -- to help reduce bat
7 mortality. That's been shown to work in open
8 agricultural areas. And, you know, it'd have to be
9 tested here. So...

10 Q. So if I understand right, potentially -- obviously, I
11 understand there's a lot of variables -- there could
12 be an instance of a problem turbine, operational
13 changes to be made for certain time frames, that type
14 of thing?

15 A. That's one consideration, yeah.

16 Q. Slightly different now. One of the things I'm
17 grappling with is we know the locations of the
18 turbines. There still seems to be an open question
19 of the interconnect lines. Is it your professional
20 judgment, for bird and bat mortality -- I assume that
21 the location of interconnect lines really is not a
22 concern. Is that a correct statement?

23 A. Yeah. I mean, I don't believe so. We're talking
24 about areas that are -- they're not rare habitats.

1 They're not habitats supporting rare species. So I
2 think it would be like any power line in New
3 Hampshire, power line project or even logging road
4 project or timber harvesting operation; you'll have
5 some impacts. But, you know, it would still be
6 usable habitat.

7 Q. Also, you seem to have some knowledge, obviously, at
8 least post-construction, of the Lempster Wind Farm?

9 A. Yes.

10 Q. Given what you've learned from that, do you have any
11 suggestion on how things should be done differently
12 if this were to be built?

13 A. Yeah. I guess the one thing I think is -- I really
14 like the approach here, because each year you're
15 going to try to get real answers rather than doing
16 the same survey for the sake of doing it. And
17 that's -- I guess that's what I like about the plan,
18 is that, you know, if you're identifying impacts in
19 year one that are higher, then you have the
20 opportunity to figure out what's going on with that
21 second year. So it's more focused surveys. But
22 then, the protocol that Iberdrola follows in their
23 Avian and Bat Protection Plan allows for the
24 variation or the documentation of events beyond, you

1 know, two, three years of study. I mean, every
2 project seems to get pinned with, you know, a set
3 number of years of study; whereas, I feel like this
4 is a bit -- because after that set number of years,
5 they're done. And it's usually for one, two and
6 three, or one, three and five. But with this plan, I
7 feel that you have -- there's a long-term monitoring.
8 You're going to have long-term trends. You'll
9 have -- you'll be able to identify those events if
10 they occur beyond the mandatory one-, two- or
11 three-year studies.

12 Q. Thank you.

13 CHAIRMAN GETZ: Mr. Perry.

14 MR. PERRY: Yes.

15 INTERROGATORIES BY MR. PERRY:

16 Q. Good morning. Just a question on the
17 pre-construction survey results. Are those reviewed
18 by the appropriate state and federal agencies to see
19 the species and the numbers that have been seen?

20 A. Yes. All of the reports were submitted to the state
21 and federal agencies for discussions. And we just
22 haven't had those discussions. We've had meetings to
23 go over, you know, the first-year results. We had
24 like a -- basically submitted the first-year results

1 of radar surveys on site, talked about those. And
2 kind of what it did was just identified future survey
3 needs, which ended up being peregrine falcons.

4 Q. And just as a follow-up, either on the Groton Wind or
5 another survey that you -- a pre-construction survey
6 that you may have been involved with, has a state or
7 federal agency ever indicated, based on the
8 pre-construction survey results, what would be
9 considered an unreasonable mortality of specific
10 species?

11 A. Not -- no. It's always been -- the letters that
12 we've received or discussions or comments that we've
13 received and discussions have not typically been in
14 relation to mortality numbers, because
15 pre-construction results aren't that great at
16 predicting numbers. But we have received comments
17 on -- you know, from the federal agencies on multiple
18 years of survey or -- not at this project, but other
19 projects. Or, you know, for the last project I
20 worked on in New Hampshire -- as everybody's
21 familiar, I'm sure, it was in a sensitive habitat.
22 So we did follow-up surveys at the recommendation of
23 state and federal agencies to that sensitive habitat.

24 Q. Thank you.

1 CHAIRMAN GETZ: Mr. Steltzer.

2 MR. STELTZER: Yes.

3 INTERROGATORIES BY MR. STELTZER:

4 Q. I'm glad you clarified a little bit more about the
5 APBB -- the acronym for that study, and how that
6 relates to long-term monitoring. Just wanted to
7 continue along with some of Mr. Harrington's comments
8 about this potential condition for state agencies to
9 be able to provide feedback and have some assurance
10 that they're being involved in the process.

11 What I'm curious about is in later years. Say
12 the scenario here: First year's studies happen and
13 everything's fine, provide it back to the agencies.
14 Not a problem there, so you don't do an additional
15 study year two as is being proposed, but then
16 monitoring will continue.

17 What happens in year five, then, if the
18 employees of Iberdrola find that there has been all
19 of a sudden a significant increase in bird or bat
20 kill? How would that information be conveyed to
21 state agencies to have them have a say as far as what
22 would be the next steps to mitigate that potential
23 impact?

24 A. As part of the ABPP, if that event occurs, it

1 would -- the report would be submitted to the state
2 and federal agencies. And I hope I get this right.
3 But I'm pretty sure that with Iberdrola's plan,
4 it's -- all mortalities or documented mortalities
5 observed by on-site staff are photographed and GPS'd.
6 And it's kind of like a live data base, essentially.
7 And I believe that data base will be shared with the
8 state and federal agencies. So, everything gets
9 input into a spreadsheet.

10 Q. And is that provided on an annual basis, or is that
11 just provided to state agencies when Iberdrola
12 determines that there has been a significant effect
13 of bat kill or bird kill?

14 A. That one I'm not sure. You'd have to ask the
15 Applicant on that one.

16 Q. Thank you.

17 CHAIRMAN GETZ: Mr. Harrington.

18 INTERROGATORIES BY MR. HARRINGTON:

19 Q. I just wanted to follow up on the... Buttolph 15,
20 which is the letter from the Chair of the Hawk
21 Migration Association of North America Board of
22 Directors. Do you have a copy of that?

23 A. Yes, I do.

24 Q. While you're getting that out, I'll summarize. What

1 it basically says is, according to this Gil Randall
2 from the, like I said, Hawk Migration Association of
3 North America, that there's a -- it says there's a
4 number of inadequacies in what you're proposing. And
5 it lists specifically one, two, three, four or so
6 bullets on the first page there. Would you just
7 comment on each of those briefly, as to whether you
8 think his criticism is valid or why you think it
9 isn't.

10 A. Well, the first comment, one year of studies is
11 insufficient for pre-construction studies; and his
12 reason is seasons are extremely variable from year to
13 year, and a one-year snapshot is inadequate. My
14 response to that is that HMANA posts their data from
15 hawk counts --

16 Q. I'm sorry. HMANA?

17 A. Hawk Migration Association of North America --

18 Q. Oh, okay.

19 A. -- posts their hawk count data on the Web, and it's
20 carried over for multiple years. We -- from that
21 data, I looked at trends from the past seven years at
22 Little Round Top, which is the closest one to the
23 site, and Pack Monadnock, which has just a larger
24 window of coverage. And what it showed was that it

1 doesn't vary extremely year to year. You know, it
2 may vary a few days on either end, but you have very
3 consistent trends year to year when birds are
4 migrating.

5 Q. And this would also, I guess, go along with -- I'm
6 not trying to put words in your mouth, but -- the
7 fact that you said pre-construction studies are not
8 maybe quite as valuable as people might think, that
9 they're really not indicative of post-construction
10 mortality.

11 A. That's correct. And it's especially true for
12 raptors. Many of these sites we're not finding any
13 raptor species. So, yeah, that's --

14 Q. So, without stretching this out, is there anything
15 specific on any of the other four bullets there where
16 he criticizes your study that you would care to
17 comment on?

18 A. Yeah. I mean, the -- I guess I have... to the
19 comment of not surveying long enough time in a day --
20 so, 9 a.m. to 5 p.m. -- could miss significant
21 occasions. Well, for one, you don't have that much
22 thermal development before 9 a.m. and after 5 p.m.,
23 which is how raptors migrate, basically. It's part
24 of how they, you know, reduce the energy consumption

1 and migrate long distances.

2 The other thing that I'd like to say about that
3 is that, in most cases, these HMANA hawk watch sites
4 only survey from 9 to 5. And there's very -- there's
5 many occasions where they only survey two or three
6 hours a day.

7 Q. All right. Thank you. Unless you had anything more
8 on that, or...

9 A. I have five pages of stuff here. But I don't need to
10 go through them all.

11 Q. Okay. Thank you.

12 CHAIRMAN GETZ: Mr. Perry.

13 MR. PERRY: Yeah, one last question I
14 have.

15 INTERROGATORIES BY MR. PERRY:

16 Q. Based on the pre- and post-construction mortality,
17 given -- I guess it's my understanding, from what
18 I've heard, that there's no relationship between pre-
19 and post-mortality, and that post-mortality is being
20 used as a criteria to determine the level of impact
21 from a new wind farm and post-construction surveys.
22 Does that mean in these other similar
23 post-construction mortality counts, that state and
24 federal agencies have determined that those are

1 reasonable levels of mortality?

2 A. Yeah. In most cases, yes, it's the state and federal
3 agencies have assisted with the development of the
4 monitoring guidelines. Nobody's actually, you know,
5 come up with a threshold, acceptable threshold for
6 mortality by any state or federal agency. But
7 these -- this stuff is -- everybody's kind of working
8 towards the same thing together. It's new, and it's
9 a -- I guess, I think the reason why it's been
10 acceptable is that, you know, everyone's aware of
11 other forms of mortality to birds and bats.

12 Q. But would you agree that some levels of mortality are
13 more controlled than others?

14 A. More restricted you mean?

15 Q. No. In some cases, the mortality, the cause of
16 mortality can be controlled to some degree, and in
17 other cases the mortality factor cannot be
18 controlled.

19 A. For wind projects or any --

20 Q. If you were looking at mortality as an additive
21 factor -- so, you know, there's natural mortality and
22 then there would be human-induced mortality.

23 A. Hmm-hmm.

24 Q. Would some be more likely to be controlled than

1 others?

2 A. I think that's very difficult to do. I mean -- and
3 the reason I say that is probably one of the two
4 biggest bird -- causes of bird mortality is house
5 cats and vehicles. And that's something that would
6 be hard to control, I think, versus -- you know, I
7 feel like this, for wind projects, it's the greatest
8 study impact on birds and bats. So I think that
9 there's options. The wind projects, you have options
10 to control it because it's being thought of ahead of
11 time. You're studying, you know, the site before
12 these things go up. You're adjusting locations, if
13 necessary. So I think that because of the process
14 for wind projects, you have more -- there's more
15 control on where you put them.

16 CHAIRMAN GETZ: I think you're
17 agreeing with Mr. Perry.

18 WITNESS GRAVEL: Okay. Sorry.

19 CHAIRMAN GETZ: Isn't he?

20 MR. PERRY: Yes. I have no further
21 questions. Thank you.

22 CHAIRMAN GETZ: All right. Thank you.

23 MR. IACOPINO: I have a couple
24 questions. Oh, I'm sorry. I didn't realize --

1 CHAIRMAN GETZ: Dr. Kent.

2 DR. KENT: I have a few.

3 MR. IACOPINO: Go ahead.

4 DR. KENT: Thank you.

5 INTERROGATORIES BY DR. KENT:

6 Q. I want to start with Lempster if we could first, with
7 the request for you to provide the Committee with a
8 post-construction survey report.

9 A. Hmm-hmm.

10 MS. GEIGER: It's in the record.
11 We've submitted it as an exhibit.

12 DR. KENT: Could you point out where
13 it is in the record, please?

14 MS. GEIGER: It's in the supplemental
15 volume which has been marked as Applicant's 5, I believe,
16 and --

17 MR. ROTH: Tab 53.

18 MS. GEIGER: -- I believe it is
19 Exhibit -- or Tab 53. It's at the very back of that
20 volume.

21 DR. KENT: Thank you.

22 BY DR. KENT:

23 Q. That post-survey was done by West --

24 A. Yes.

1 Q. -- not Stantec; right?

2 A. Yeah.

3 Q. So, is West the party that's talking with the Fish
4 and Game -- Fish and Wildlife Service?

5 A. Yes.

6 Q. So that's not really your responsibility.

7 A. No.

8 Q. Okay. So I don't ask you any questions about the
9 post-construction survey. Thank you. Nor are you
10 responsible for providing it. Thanks.

11 Question about the pre-construction. You said
12 that you were comparing pre-construction surveys
13 to -- between Lempster and Groton. And you said that
14 nocturnal passage -- and you didn't specify the
15 season -- but in general, the number of birds passing
16 by was much higher at Lempster than Groton?

17 A. Yeah, especially in the fall migration season.

18 Q. Could you try to quantify it a little bit? Like 10
19 times more or 2 times more? I won't hold you to a
20 specific number. If you give me a ballpark --

21 A. It's about double for the fall season.

22 Q. Okay. And since you didn't do the post-construction
23 survey, I shouldn't ask you questions about how many
24 birds were found and bats were found. I should read

1 the report; correct?

2 A. I do have that number somewhere, but finding it might
3 be difficult. I think it was 11 birds and 9 bats.

4 Q. Actually, now that you say that, I have read that.
5 And you're right. Thank you.

6 A. Is it 11 birds and 9 bats?

7 Q. Close enough. Thank you.

8 Does the phrase "cumulative impacts" ever come
9 up in these discussions about impacts from turbines?

10 A. It has, yeah.

11 Q. Is there any resolution to how to deal with
12 cumulative impacts?

13 A. I think it -- I mean, there hasn't been any
14 resolution, no. But I think that depends on where
15 we're talking. You know, some of the mid-Atlantic
16 states have seen higher bat mortality. So that
17 region might be -- you know, that might be where you
18 would have more cumulative impacts than, say, you
19 know, New England. At least with the three
20 operational projects that we have now in New England,
21 it doesn't seem that any one site is very high. So,
22 cumulatively it's still low.

23 Q. You speak with the Fish and Wildlife Service pretty
24 regularly about these issues?

1 A. Yeah.

2 Q. Is there any indication they're accepting
3 responsibility for addressing cumulative impacts?

4 A. There isn't any indication. I think that one
5 positive step is the revision of the 2003 guidelines.
6 So, you know, in 2010 -- we spoke about the
7 guidelines a bit yesterday. I think that's a step in
8 the right direction. I think that they're reaching
9 out to others as well: Industry consultants working
10 on this daily and academics as well, and from the
11 Wind Turbine Advisory Council. So I think it's
12 getting better. But they haven't taken
13 responsibility, no.

14 Q. Have you recommended any mitigation to your client to
15 minimize bat/bird -- bat and bird mortality?

16 A. At this project?

17 Q. Yes.

18 A. No, I haven't. And it's partly -- it's due to the
19 one-year study, basically, and monitoring. So it's
20 tough to mitigate without knowing what to mitigate
21 for.

22 Q. What's the status of agency comments on your survey
23 practices and findings? Did I hear a bit earlier
24 that the agencies have essentially agreed with how

1 you conducted pre-survey and how you proposed to do
2 the post-survey?

3 A. We haven't had discussions about post-construction
4 surveys. But the methods used for the
5 pre-construction survey, after a few discussions, you
6 know, without them saying it, I think was -- it was
7 acceptable.

8 Q. My understanding is that Fish and Game hasn't
9 commented on your findings.

10 A. That's correct.

11 Q. Has the Fish and Wildlife Service commented?

12 A. No.

13 Q. Do we know if that's just a delay in their response
14 or --

15 A. I think it's a delay.

16 Q. Nobody's indicated verbally to you that they have an
17 issue they're trying to resolve?

18 A. No.

19 Q. Did you do a 2010 fall bat survey?

20 A. Yes. No. Excuse me. Sorry. No. 2010 was just
21 spring and summer. And the fall survey occurred in
22 2009.

23 Q. And do you plan to update your bird and bat
24 risk-assessment survey?

1 A. We didn't. We didn't intend to because, like we were
2 saying earlier, the results were very similar between
3 years: Similar species composition and activity. So
4 it, you know, wouldn't change the risk assessment.

5 Q. In that 2009 survey -- and I'm sorry, but I don't
6 know what exhibit that is -- you talk about impacts
7 to bats as largely collision mortality. Sorry.
8 Talking about your Bird and Bat Risk Assessment
9 Weight of Evidence Approach to Assessing Risk to
10 Birds and Bats.

11 A. Do you happen to know what page you're looking at,
12 just so I --

13 Q. Yeah, I was looking in the executive summary, at
14 page -- oh, no. Actually, I'm looking at... let's
15 see. E.2., third paragraph.

16 A. Yeah.

17 Q. Results of the risk assessment suggest that potential
18 impacts to bats consists largely of collision
19 mortality, particularly during the fall migration
20 season.

21 A. Yes.

22 Q. My reading of the literature talks about barotrauma
23 mortality. Why did you cite barotrauma was not a
24 significant type of mortality here?

1 A. Well, that one, it's definitely been studied, but
2 still little is known about it. But we considered it
3 as the same thing: It's caused by being within the
4 rotor zone.

5 CHAIRMAN GETZ: Do we need to spell
6 that for the record, barotrauma?

7 DR. KENT: Yes. B-A-R-O-T-R-A-U-M-A.

8 BY DR. KENT:

9 Q. As a correlation issue, I think I want to probe this
10 just a little bit, because you used that in a fairly
11 broad sense.

12 You spoke of a lack of correlation between
13 pre-construction activity and post-construction
14 mortality. Could you be a little more specific?
15 What type of correlation was attempted that we failed
16 to find?

17 A. Well, it's -- and forgive me, because I'm not a
18 statistician. But what -- basically when you have
19 zero on most days, it's difficult to correlate with.
20 So we're looking at correlating pre-construction data
21 to post-construction mortality. We're getting better
22 at correlating mortality with the variables that may
23 cause that, whether it's wind speed, cloud -- fog,
24 wind direction. That kind of stuff is, I think,

1 more -- we're going to have better luck correlating
2 that with -- but that's just post-construction.

3 Pre-construction data, we're trying to correlate
4 the metrics of our data: Passage rates, flight
5 heights. And we've been doing some studies in Maine,
6 where we've tried -- we've even tried having -- using
7 pre-construction methods on site during the
8 operational phase, followed by post-construction
9 counts in the morning. And the difficulty is that
10 we're getting pre-construction -- or we're getting
11 results using pre-construction methods at that site,
12 but not finding anything in the morning. So that's
13 where the challenge is, is in correlating.

14 Q. Yeah, we won't get into a complex statistical
15 discussion.

16 Have you tried to perhaps simplify the analysis
17 by -- I'm trying to understand how specifically you
18 might have attacked this, because it strikes me that
19 there's got to be some kind of relationship here
20 between pre and post, if we approach it right.

21 Have you tried a very simple approach, by
22 looking at your predictions of how many birds we get
23 passing through or are observed in the area versus
24 mortality later?

1 A. Yeah. That was the main goal of using the
2 pre-construction methods, post-construction. We
3 did -- for a full week within the peak period of
4 migration at Mars Hill, and actually also at Stetson,
5 we did nocturnal radar surveys at night, followed by
6 mortality counts or searches, and also raptor surveys
7 during the day, just to watch, basically, raptor
8 behavior around turbines. And the challenge -- the
9 same difficulty came back, is that after that full
10 week-long nightly and hourly observations of numbers
11 of migrants passing through the project site on a
12 given night, we didn't find anything the next day.

13 Q. Are you trying it just within one site, or are you
14 looking at all the sites you have access to data
15 for --

16 A. Just two sites.

17 Q. Do you know of anybody who's tried to take all the
18 existing data out there and use sites as a single
19 value before and after --

20 A. Yes.

21 Q. -- to try to piece that together?

22 A. Yes. Yes, there's been a couple studies. And I
23 think that you can ask anybody in this scientific
24 community studying these impacts, and they're going

1 to say the same thing. There's been -- Internet is
2 one that's investigated this. And nobody's finding
3 that relationship.

4 Q. Okay. Thank you. I think we've discussed what
5 constitutes a significant impact, in terms of
6 responsibility for making that decision. Maybe we
7 could probe this a little bit more and maybe talk
8 about significant impact and biologically significant
9 impacts at the same time. What would be your
10 interpretation of "biological significance"?

11 A. Well, we went through this a little bit yesterday.
12 It depends on what scale you're talking about. Are
13 you talking about to the project site, you know, the
14 population of birds at the project site, or the
15 population of birds in New Hampshire, or the
16 population of birds that migrate through the East
17 Coast? That's where -- so that's the challenge. I
18 can answer all three of those if you want.

19 Q. Well, yeah. I think I want to start with your
20 interpretation of that, because you are making a
21 decision in your reports about significance. So I
22 want to know what your thinking was when you were
23 making that decision.

24 A. Well, we weren't -- I'd like to -- if you have a

1 reference to our report where we are making
2 conclusions to significance, I'd like to see it,
3 because that'd be an error.

4 Q. I can cull your reports. But I believe between
5 testimony and your reporting, you've talked numerous
6 times about we're not having a significant adverse
7 impact with this wind farm on birds and bats.

8 A. I was being asked that by Public Counsel yesterday in
9 regards to Paul Kerlinger's report, where he stated
10 that in his report. Our risk assessment weighs all
11 variables: What we found, what we know of local
12 populations of birds and species present. And we
13 assess a potential magnitude of impact. So we don't
14 say -- and that potential magnitude of impact is with
15 respect to what's known for post-construction
16 impacts. So it's a low -- so if it's low potential
17 impact, we're predicting low end of the range of
18 known mortality at wind projects in the Northeast;
19 moderate's in the middle of the range; high is above
20 the range.

21 Q. So correct me if I'm wrong. But your standard is
22 comparison to other wind projects in New England, I
23 believe.

24 A. Northeast.

1 Q. In the Northeast.

2 A. Yes.

3 Q. All right. So if -- that would seem to have some
4 flaw built into it. If we're just comparing to other
5 wind projects, then we're not really understanding
6 what the impact is to a local population. We're just
7 saying, well, it's no worse than any other wind
8 project. So that presumes that what's going on at
9 another wind project is okay.

10 A. Well, that's kind of the only standard, though,
11 because there's no studies assessing vehicle
12 collisions on birds or house cat mortality or --
13 communication tower's one data set we have available.
14 But nobody's studying lighting issues with bird
15 mortality and tall skyscrapers. So that's -- so, for
16 me to answer biologically significant, it's
17 difficult. It's more of a -- I think it would be a
18 better question for the state and federal agencies
19 because I don't know populations.

20 Q. All right. I'm not going away from that, but I do
21 want to address this reference to cats and cars. I'm
22 not getting the relevance. Our job is to determine
23 the impact to natural resources at this site, not to
24 consider whether cats are killing more birds than

1 what the wind turbines would be. I mean, one, the
2 cats are killing different species, and they're not
3 coming before our Committee. Our concern is what
4 happens on this ridge with the wind turbines, not
5 whether that's more or less than any other type of
6 mortality.

7 A. Well, and I agree. But that's where it's challenging
8 for me to answer cumulative impact questions or
9 biologically significant questions, because I'm being
10 asked to determine whether this project is going to
11 pose an unreasonable adverse impact. So that's -- I
12 mean, I'm kind of in the same awkward position there.

13 Q. Okay. I can agree with you on the cumulative. And
14 that's why I asked you if Fish and Wildlife Service
15 has given you anything, because cumulative goes
16 beyond an individual project. So it cannot be the
17 responsibility of an individual project to determine
18 whether they're having too great an impact on a
19 cumulative basis. Somebody has to tell them.
20 Somebody who's looking at all the projects has to
21 tell your project whether they're having cumulative
22 impact or reaching a tipping point which is not
23 acceptable.

24 A. Well, the same thing goes for house cats and other

1 forms. You just can't evaluate cumulative impacts,
2 unless the question is cumulative impacts of wind
3 projects. Then that's one thing.

4 Q. Right. That's what I'm saying.

5 A. Okay.

6 Q. So I'm not -- I'm letting you off the hook on the
7 cumulative thing.

8 But the local, I think we do have
9 responsibility. We can determine if we're having an
10 impact on the local population of birds. You
11 conducted a breeding birds survey?

12 A. Yes, that's correct.

13 Q. So there's a baseline. We know how many birds we
14 have breeding out there. Post-construction breeding
15 bird survey WOULD show us if we have less.

16 A. Well, I mean, it would -- I don't -- it won't show
17 you have less, because it would show that you have
18 different species. I mean, you're going to have an
19 impact because of the project. So it changes
20 species' composition of breeding in that immediate
21 area. However, we won't know what happens or where
22 they go, whether they're displaced a hundred feet
23 back into the interior forest or off site.

24 Q. Well, let's separate data from interpretation. If we

1 have data about what species of birds and how many
2 are breeding there before and we collect the same
3 information afterwards, we will know whether the data
4 are different. We will know whether birds, as you
5 suggested, might move further into the woods, new
6 species are now occupying. And then it becomes a
7 matter of interpretation of is that an impact or not
8 an impact; do we mind that birds have shifted farther
9 in the woods or that we have different species now
10 living along the edge of that opening.

11 A. I think that can be said without studying it. I
12 mean, I think you can say that right now, that you're
13 not going to have. And so at the same points where
14 the turbine locations are proposed, if constructed,
15 you can say you're going to have a change without
16 even studying it. But what that change is, is a
17 different story. So it would be -- it would have to
18 be a very well-thought-out study design, I guess,
19 because you're not --

20 Q. Well, I think the problem becomes interpretation and
21 whether that's an adverse effect or not. And that
22 gets back to early discussions, where none of us are
23 clear on what constitutes an adverse effect. And
24 that's the job of the Committee, to figure out if

1 that's adverse or not, based on the information
2 provided.

3 Give me a minute here. The post-construction
4 survey that first year, it's not a breeding survey;
5 is that correct?

6 A. That's correct.

7 Q. It's just a mortality survey?

8 A. But it occurs throughout the season.

9 Q. Right.

10 A. Well, some studies, Mars Hill and Stetson, for
11 example, are carried out through spring, summer and
12 fall.

13 Q. So we'll know if local birds are being whacked by the
14 blades, and bats, and we'll know if migratory
15 species --

16 A. Yeah. And that brings up a good point. You know,
17 with a number of these studies being conducted,
18 there's definitely mortality throughout each season,
19 but the greatest proportion at any project has been
20 occurring in the fall.

21 Q. Is there a mechanism that, if we started to come up
22 earlier, that mitigation -- let me pose the context
23 this way: We have 1.65 acres, if I remember, of
24 wetland impacts, and we're mitigating that. We have

1 \$150,000 going to the armed fund. We have some other
2 contribution here. And we're going to have bird and
3 bat mortality, but we treat it differently. You
4 know, we get all worked up over 1.65 acres of
5 wetlands. But some roughly indeterminate number of
6 birds and bats are going to die, and we say no big
7 deal.

8 A. I don't believe that's what we're saying. I believe
9 that what we're challenged with is that with wetland
10 impacts, you're so accurate that you can say
11 1.65 acres of impact. You know what to mitigate for
12 before you even impact it. That's what I'm trying to
13 say, is that you don't -- we don't know what to
14 mitigate for. Yeah, there's likely going to be some
15 collisions. But if it's any indication of what --
16 you know, if the post-construction studies in New
17 England are any indication of what we might expect,
18 then it's pretty low. Mortality is low.

19 Q. Yeah. I don't... I won't drag us through a
20 philosophical discussion all day here. But I would
21 ask you: Is relying on comparison to other wind
22 projects a valid way of determining significant
23 impact?

24 A. I think it's a valid way of determining whether it's

1 unreasonable or reasonable.

2 Q. And so we're reasonable if we're not impacting more
3 than other projects and unreasonable if we're
4 impacting more than other projects --

5 A. I mean --

6 Q. -- that's the basis?

7 A. I think that's the basis of having to make decisions
8 based on this project, I feel. The significance
9 issue, I think that you would need to account for all
10 forms of mortality and not just wind projects,
11 because you're talking about significance to a
12 population.

13 Q. Okay. Have peregrine falcons been killed at any wind
14 turbine sites?

15 A. I believe there's one at a wetlands site in New
16 Jersey.

17 Q. How about eagles?

18 A. There is rumor that there's been one or two eagles,
19 bald eagles. But I haven't seen -- it's personal
20 communication. I haven't seen any data or reports.

21 Q. Conversely, are there any birds that experts have
22 identified as avoiding turbines completely, just
23 never get --

24 A. It's not never. But, yeah, raptors have definitely

1 been studied and have shown avoidance behaviors.

2 Q. Do eagles migrate at a height that puts them at risk
3 from the towers proposed for this project?

4 A. They certainly could. Any raptors, the way they use
5 thermal air currents, they start from a lower height
6 until they reach a higher height, and then they head
7 in their direction.

8 Q. In your experience, have you noticed that the wind
9 towers actually attract birds? The clearing, change
10 in habitat, for example, rabbits moving in that
11 attract raptor diving down to trap prey, increase in
12 insect activity because of the disturbed nature of
13 the earth concerning these towers? Have we seen more
14 wildlife activity?

15 A. We haven't seen that at New England projects. But,
16 you know, the -- one of the bad examples is the
17 project on the West Coast, Altamont Pass, which has
18 definitely attracted raptors because of prey. But it
19 was -- it's undetermined whether it was sited
20 improperly and already had the prey and raptor
21 species or it was a result of the project.

22 Q. That project, did they just switch out the turbines?

23 A. Yes, I believe so.

24 Q. And do we have any indication that it made a

1 difference?

2 A. It's sounding like it hasn't made a difference.

3 MR. IACOPINO: Has or hasn't?

4 WITNESS GRAVEL: Hasn't.

5 Q. Thank you.

6 A. Thank you.

7 CHAIRMAN GETZ: Okay. Other
8 questions? Mr. Perry.

9 MR. PERRY: Yeah, just one follow-up.

10 INTERROGATORIES BY MR. PERRY:

11 Q. Did I understand one of your responses correctly,
12 that the construction of the wind farm is going to
13 change the type of breeding habitat that's going to
14 be available at this site?

15 A. At the immediate footprint, yes. I mean, it's
16 forested now. And so the bird species composition
17 detected at the points along the ridgeline
18 pre-construction will certainly change
19 post-construction when there's roads through and
20 turbines through at those specific locations.

21 Q. So you do have acreage that's available to determine
22 how much of that breeding habitat is being disrupted
23 or changed?

24 A. I believe that that's a question for the Applicant.

1 But I believe that number is the -- the biggest
2 impact has been calculated.

3 Q. And has it been determined that it's not a adverse
4 impact because there's a ready supply of unoccupied
5 breeding habitat that can accommodate what will be
6 displaced?

7 A. That's a good question. There's definitely
8 opportunity to inhabit habitat elsewhere in the same
9 project area. But I can't say whether it's occupied
10 or unoccupied. But it's a -- it goes along the lines
11 of -- I try to think of it similar in terms of what
12 the habitat is now, you know, in lands owned by
13 timber companies. It's a landscape that's constantly
14 changing; whereas, you know, I can't say all timber
15 harvesting is a permanent impact like gravel roads
16 and pads. But, you know, we're talking about a
17 20-year project. That's considered the life of the
18 project.

19 And I look at the similar effects of timber
20 harvesting. If you cut a second growth or a mature
21 forest, it's going to be 20-plus years before that
22 forest is back to its original state for those same
23 species of birds to breed there. So you're going to
24 have a change of species composition as a result of

1 the disturbance from maybe interior breeding species
2 to more edge-associated species. But the same
3 effects occur at the site from timber harvesting with
4 the altering of habitat through cutting.

5 Q. Okay. Thank you.

6 CHAIRMAN GETZ: Mr. Harrington.

7 MR. HARRINGTON: Thank you.

8 INTERROGATORIES BY MR. HARRINGTON:

9 Q. Just going ahead to -- I don't know if you've seen
10 the testimony of Trevor Lloyd-Evans.

11 A. Yeah, I have.

12 Q. See if we can address a couple concerns he raised. I
13 think we've gone over the one-year and two-year
14 things sufficiently. But he talks about the
15 Applicant has not yet provided complete data to
16 surveys conducted in 2009 and 2010. Is that
17 information available now or --

18 A. Yeah, that was -- the 2009 data was -- so everything
19 was available, except for the spring and summer 2010
20 bat survey that was just referenced in the
21 supplemental application.

22 Q. And he talks also of going back to the two-year
23 post-construction study. And I think you would stick
24 with what we discussed earlier, that whether or not

1 that was needed, it would be based on the results of
2 the first-year post-construction analysis?

3 A. Yeah. And I guess, just to not lose sight of
4 what's -- of whether it's needed or not, I think
5 it's -- I mean, I just don't want to forget about the
6 commitment that Iberdrola's proposing in the Avian
7 and Bat Protection Plan. It's not a one-year study
8 and then it just stops. You know, it's going to be
9 continued monitoring throughout the project. So,
10 that, I think, in my opinion, is more valuable than
11 just studying for the sake of studying.

12 Q. So I guess if we can maybe put it in this term: What
13 you're saying is, rather than just say you're going
14 to do two years of studies in accordance with the
15 following conditions, it would be better to do one
16 year, evaluate the results, and if it is determined
17 that a second year was needed, then base the
18 parameters of the second-year study on the results of
19 the first year.

20 A. Yes, that's correct, with consultation with the state
21 and federal agencies.

22 Q. All right. Thank you.

23 MR. HARRINGTON: That's all I have.

24 CHAIRMAN GETZ: Mr. Iacopino.

1 INTERROGATORIES BY MR. IACOPINO:

2 Q. Mr. Gravel, first in your testimony. A couple times
3 you've referenced the Altamont Pass project in
4 Alameda County, California, I believe it is. And
5 could you just please tell the Committee, for the
6 record, exactly how big that project is and what type
7 of terrain it is on.

8 A. I haven't been there myself. I can't say for sure
9 how many turbines, but it's -- my estimate, it would
10 be three times the size of any project we see in New
11 England. And it's an open, rolling-hill type of
12 habitat, unforested ridgeline.

13 Q. Because at the beginning of your testimony you had
14 some discussion with Mr. Buttolph and with counsel
15 for the Public regarding the East Coast versus the
16 West Coast, and when you were referring to the "West
17 Coast projects," are they projects like Altamont Pass
18 you're referring to?

19 A. Yes.

20 Q. And the fact that they're not in forest areas or on
21 ridgelines such as we have in New England, is that
22 what makes the difference between the two, when you
23 consider that?

24 A. In part, yes. You also have different species that

1 reside on the West Coast than we have here on the
2 East Coast. And you also have different migration
3 routes on the West Coast than you have on the East
4 Coast.

5 Q. The other thing -- I just want to clear this up for
6 the record, because you were asked by Mr. Buttolph
7 and by counsel for the Public about the statement
8 made at Line 17 of Page 9 of your supplemental
9 prefiled testimony, which is contained within
10 Applicant's Exhibit 5.

11 A. Page 9?

12 Q. Page 9, Line 17. And there is a sentence that
13 starts, "However, if after that first year of
14 post-construction survey the project's bird or bat
15 mortality rates are within or lower than known ranges
16 of mortality at other projects in the Northeast, then
17 Groton Wind will implement its yearly monitoring
18 using on-site operations personnel for the life of
19 the project, as described in Iberdrola's corporate
20 Avian and Bat Protection Plan." Do you see that
21 there?

22 A. Yes.

23 Q. In putting that in your supplemental prefiled
24 testimony, did you mean to suggest that the Avian and

1 Bat Protection Plan that's contained within the
2 application would not otherwise be used?

3 A. No, I didn't. That's kind of a poorly written
4 sentence. The way the Avian and Bat Protection Plan
5 works is it's activated, it's followed. Iberdrola
6 follows it from the start of the -- the very concept
7 of a project. It starts with a Phase 1 risk
8 assessment; so, an early assessment of the site, you
9 know, not conducting field surveys, but trying to
10 identify some of the key issues that might be on
11 site. Agency consultations is the next step, and
12 then field surveys based on agency discussions and
13 issues found during the Phase 1.

14 So, Iberdrola has been following the Avian and
15 Bat Protection Plan right from the start of this
16 project. So what I was trying to say there is if --
17 so they've been following it. But the protocols
18 outlined in monitoring of that Avian and Bat
19 Protection Plan would be implemented once --

20 Q. When you -- if you get higher mortality rates.

21 A. Well, no. Even still, regardless.

22 CHAIRMAN GETZ: Let me jump in on
23 this, because I've had this question from the beginning
24 about the AB -- the ABPP.

1 The way I think you're expressing it
2 is the plan always applies. It's the different measures
3 that are followed depending on different circumstances?
4 Is that a fair way of characterizing it?

5 WITNESS GRAVEL: Yeah. I mean, it's a
6 process of due diligence for Iberdrola. So I think the
7 protocol for monitoring, which is part of the Avian and
8 Bat Protection Plan, occurs -- will occur regardless of
9 what's required for formal monitoring.

10 So, the difference between this
11 proposal and the plan is that this proposal will conduct
12 formal monitoring studies year one to determine what the
13 impacts are, and if more detailed investigations other
14 than what's in the Avian and Bat Protection Plan are
15 needed. But the Avian and Bat Protection Plan would take
16 effect -- I mean the monitoring. Monitoring within the
17 plan would take effect as soon as operation commences. So
18 that part of -- regardless of the year one or two formal
19 monitoring, the plan -- the protocol in the plan basically
20 makes a commitment to monitor throughout the project using
21 on-site staff.

22 BY MR. IACOPINO:

23 Q. Were you involved in drafting Iberdrola's Avian and
24 Bat Protection Plan?

1 A. No, I was not.

2 Q. Was your company?

3 A. No.

4 Q. Have you reviewed it completely?

5 A. As complete as I can.

6 Q. All right. We also have the PC Exhibit 14, which is
7 the Wind Turbine Guidelines Advisory Committee
8 Recommendations from March 4, 2010. And you
9 indicated you're familiar with those as well.

10 A. Yes.

11 Q. Do you see any inconsistencies between the Fish and
12 Wildlife recommendations contained in PC 14 and the
13 Avian and Bat Protection Plan?

14 A. There's some very small inconsistencies I think, but
15 basically the plan follows this tiered approach
16 outlined in this document.

17 Q. Would it be inconsistent if this Committee were to
18 make both of those documents a condition of this
19 certificate -- in other words, that the Applicant
20 comply with the recommendations in the Wind Turbine
21 Guideline Advisory, as well as the ABPP?

22 A. Well, I mean, for the most part, the concept, yes. I
23 think that's part of the -- that's what I'm trying to
24 say, is that these -- and this document, actually,

1 like the ABPP, requires and encourages discussion.
2 It's not black and white, you do this. It's a
3 process of discussing. So, yes, that's...

4 Q. So it would be consistent conditions if they were
5 both made a condition of the certificate.

6 A. I believe so.

7 Q. Okay. Now, based on your risk assessment for this
8 project, as I understand it, what you give is you
9 give sort of a characterization of the risk as low,
10 moderate and high with respect to different species;
11 is that correct?

12 A. Yes, that's correct.

13 Q. You don't make a prediction of so many songbirds are
14 going to be killed per turbine; is that --

15 A. No.

16 Q. All right. But when you do the mortality studies
17 after the fact, after construction, that's where you
18 come up with the 11 birds that you discussed before.

19 A. Yeah, that's when you can actually quantify impacts.
20 And, you know, of course, using those -- the searcher
21 efficiency trials and scavenger removal trials --
22 variables that might influence those numbers.

23 MR. IACOPINO: I don't have any
24 further questions.

1 CHAIRMAN GETZ: Dr. Kent.

2 INTERROGATORIES BY DR. KENT:

3 Q. The raptor migration issue, you testified yesterday
4 that there was no need to do more studies because we
5 didn't have variability. I wanted to give you a
6 chance to clarify that. When you say -- what factor
7 is not variable?

8 A. I didn't say that in terms of our studies. I was
9 speaking about raptor migration in general in New
10 Hampshire, in the --

11 Q. What factor are you talking about that doesn't vary
12 from year to year?

13 A. I'm talking total numbers. Total numbers of birds
14 and even, really, species typing.

15 Q. Thank you.

16 CHAIRMAN GETZ: Anything further?

17 MR. ROTH: Mr. Chairman, I know this a
18 little bit out of order. But there were a couple of
19 issues that were raised during the questioning by the
20 Commission -- the Committee that, in my view, raised
21 somewhat confusing or misleading answers, and I'd like the
22 opportunity to ask perhaps three questions to delve into
23 those a little bit.

24 CHAIRMAN GETZ: Well, I see hands

1 raising behind you that are looking -- and another hand
2 raising.

3 Ms. Lewis, what is --

4 MS. LEWIS: Yes, I have three separate
5 questions that I'd like to follow up on that were raised
6 by the Committee.

7 CHAIRMAN GETZ: Ms. Geiger.

8 MS. GEIGER: Thank you, Mr. Chairman.
9 Seems to me that in the normal order of things, the
10 Applicant would be given an opportunity to do redirect.
11 And it may be that after I do my redirect, the parties
12 that just indicated they have further questions may not
13 have them. So I would suggest that I be given the
14 opportunity to stay in order and do my redirect now.

15 CHAIRMAN GETZ: All right. Let's go
16 to redirect, and then we'll give an opportunity for
17 recross. But before we do that, I want to hear just a
18 brief mention of the topics that you're hoping to ask
19 questions on.

20 MR. ROTH: Okay. And with respect to
21 doing recross, I understand that the typical rule is that
22 it's limited to redirect. But I have questions that may
23 not necessarily be touched on on redirect. But I will --
24 the topics are in response to question by Mr. Harrington

1 about the HMANA data. The witness said that he used
2 Little Round Top, seven years of data. And I wanted to
3 point out that the Little Round Top data was collected
4 only in August and September. And that was a little
5 unclear and, I think, misleading.

6 In response to a question from Mr.
7 Perry, who inquired about whether any agency has
8 determined whether there was an acceptable level of
9 mortality, I think that the question -- the witness gave a
10 somewhat misleading answer by suggesting the studies had
11 been approved by -- the study methodologies had been
12 approved by agencies suggesting, I think improperly, that
13 the agencies had similarly approved the mortality rates
14 that were discovered.

15 And then I wanted to get some clarity
16 about, in response to a question by Mr. Kent, about the
17 Lempster results, whether he was speaking about the actual
18 number of birds killed or the calculated number based on
19 the searcher efficiency and scavenger results.

20 And then the last area is with respect
21 to Mr. Harrington's question about the Avian and Bat
22 Protection Plan. And I wanted to inquire whether in the
23 witness's opinion that ongoing pick up and observation --
24 the opportunistic pick up and observation by Iberdrola

1 employees would be considered a statistically and
2 scientifically valid approach.

3 CHAIRMAN GETZ: Ms. Lewis.

4 MS. LEWIS: I also had a question
5 regarding a follow-up on HMANA data. I know that
6 Mr. Gravel had suggested they had done analysis with that
7 data in comparison to their own data, and I wondered if
8 they had received a written release from HMANA, as our
9 Appendix No. 21 states that if there's to be any further
10 analysis on the data, they are -- any agency is required
11 or any company is required to get a written request, as
12 they have major concerns of their data being misused and
13 mis-analyzed. And so I wondered if they had received that
14 release on that data.

15 My second question was a follow-up on
16 Dr. Kent's regarding mitigation. I was just wondering
17 what his suggestion would be if a peregrine falcon or a
18 bald eagle was found to be killed by a turbine, if in that
19 instance he would suggest mitigation take place.

20 And my final question was in follow-up
21 on Mr. Harrington's question regarding Mr. Lloyd-Evans and
22 the reports that had been provided to him. And I had a
23 question regarding that, because Appendix 46 was just
24 submitted to all the parties in October, and that report

1 is dated back from 2008. And it's the overall avian risk
2 assessment for the Groton Wind Farm. And I believe, in my
3 opinion, that's quite an important piece of information
4 for all of us to be able to see in this whole process in
5 order to make a proper vetting of the whole avian picture.
6 And I guess --

7 CHAIRMAN GETZ: The last part doesn't
8 sound like a question. It sounds like an argument.

9 MS. LEWIS: Well, I wanted to ask him
10 why he did not respond that that report was just released,
11 because the question had been concerning whether
12 Mr. Lloyd-Evans had time to be able to see the reports in
13 his testimony. And my question is he neglected to mention
14 that Mr. Lloyd-Evans did not have all the reports in order
15 to follow up on any supplemental, because that report --

16 CHAIRMAN GETZ: Well, again, that
17 sounds more like something for Mr. Lloyd-Evans. So
18 let's -- so those are the three areas that you were
19 interested in the opportunity for redirect?

20 MS. GEIGER: Well, I'm going to object
21 to the questions that Ms. Lewis just posted. She could
22 have asked all of those questions when she had her
23 opportunity for cross-examination. I think it's highly
24 improper for her to be asking. No. 1, he's already asked

1 [sic] the questions. I think it's prejudiced my client.
2 I think it's totally improper for others who had their
3 opportunity for cross-examination to do so at this point.
4 Clearly, after I do my redirect, if there are questions on
5 my redirect that elicit a need to do responses or
6 additional questions on recross, then that's fine. The
7 bell, unfortunately, has already been rung, and it's hard
8 to unring, Mr. Chairman. So I'll go forward with
9 redirect, if I can have a minute to consult.

10 (Discussion off the record between Ms.
11 Geiger and the Witness.)

12 CHAIRMAN GETZ: Okay. Ms. Geiger.

13 MS. GEIGER: Thank you, Mr. Chairman.

14

15 REDIRECT EXAMINATION

16 BY MS. GEIGER:

17 Q. Mr. Gravel, I think we've heard some conversation
18 from Ms. Lewis about Appendix 28.

19 A. Yes.

20 Q. What is that?

21 A. That's the Avian and Bat Risk Assessment.

22 Q. Is it your -- to your knowledge, was that provided
23 to, or did Mr. Lloyd-Evans have access to that
24 information prior to the time that he submitted his

1 prefiled testimony?

2 A. Yeah. It was submitted as part of the project's
3 application.

4 Q. All right. Now, do you recall the questions
5 yesterday, I believe on cross-examination from Mr.
6 Roth, about certificate conditions that were imposed
7 on the Granite Reliable project --

8 A. Yes.

9 Q. -- in terms of post-construction avian studies. Do
10 you remember that?

11 A. Yes.

12 Q. Okay. Now, do you know whether Granite Reliable has
13 an Avian and Bat Protection Plan?

14 A. They do not.

15 Q. Has Granite Reliable Power committed to study avian
16 and bat impacts for the life of their project?

17 A. No, they have not.

18 Q. Now, do you know whether New Hampshire Fish and Game
19 had approved the protocols for the Lempster Wind
20 post-construction avian and bat surveys?

21 A. Yes, I believe they did.

22 Q. Now, in your opinion, will the Groton project
23 proposed post-construction surveys produce more or
24 less data than the post-construction surveys that

1 have been required at Lempster?

2 A. Could you repeat that, please?

3 Q. Do you think there will be more data that will result
4 from the commitments that Groton Wind has made to do,
5 in terms of post-construction surveys, more data
6 produced there than what will be produced at
7 Lempster?

8 A. Yes, I do.

9 Q. And why is that your opinion?

10 A. Just the protocols in the Avian and Bat Protection
11 Plan provide long-term monitoring.

12 Q. And how about the Granite Reliable project? Do you
13 believe there will be more post-construction
14 mortality data derived at that project or at the
15 proposed Groton project?

16 A. In terms of the length of time surveys occur, more
17 data would be coming available from the Groton
18 project.

19 Q. Okay. Now, do you recall a question on
20 cross-examination about whether you studied raptors'
21 nests specifically at the project site?

22 A. Yes, I do.

23 Q. And what was your response?

24 A. My response was that we didn't, and it was in part

1 because we didn't get comments specifically
2 requesting nest surveys.

3 Q. From whom?

4 A. From New Hampshire Fish and Game or Fish and Wildlife
5 Service.

6 Q. Okay. Now, if during the course of all of the
7 surveys that you had conducted, or you did conduct at
8 the Groton Wind site, you observed a raptor nest,
9 would you have documented that?

10 A. Yes.

11 Q. And did you observe any such occurrence there?

12 A. We did not observe nests while doing the breeding
13 bird surveys during the breeding season, or during
14 summer peregrine use surveys, which involved
15 observers on site for many hours.

16 Q. And do you recall some questioning yesterday about
17 the timing of your raptor migration surveys? I
18 believe Mr. Roth may have asked you questions about
19 specifically within the migration period, whether you
20 felt -- or whether you conducted days at the
21 beginning, at the end or in the middle. Do you
22 remember those questions?

23 A. Yes.

24 Q. And could you refresh my memory? Exactly why did you

1 select the period that you did to study raptor
2 migration?

3 A. Based on several years of publicly available data
4 from other projects and the HMANA Web site, as well
5 as just known characteristics of the species we're
6 looking at. It's been, you know -- the time period
7 we surveyed is the peak migration period for raptors
8 in New Hampshire.

9 Q. I believe you also had some questions on
10 cross-examination about listed species. Did you
11 observe any listed species during any of your surveys
12 at the project site?

13 A. Yes, we did during migration seasons.

14 Q. Okay. And is it your opinion that, based on those
15 observations, that those species, those listed
16 species actually reside within the project site?

17 A. No, I don't think that they -- they don't reside in
18 the project site, from anything that we found. But
19 as I said earlier, during migration they do occur
20 traveling through the area.

21 Q. And why don't you think they reside on the project
22 site?

23 A. The habitat is not present for them.

24 Q. Okay. Now, I believe in some questioning from the

1 Committee there was some testimony about the clearing
2 associated with the project and the impact that might
3 have on breeding bird habitat. Do you recall those
4 questions?

5 A. Yes.

6 Q. Do you know whether there are any activities
7 currently going on at the project site that are
8 unrelated to this project that might have the same
9 impact on breeding birds?

10 A. Yes.

11 Q. And what are those activities?

12 A. Timber harvesting.

13 Q. Okay. Now, I believe you also testified this morning
14 in response to questions from the Committee that, in
15 implementing the Avian and Bat Protection Plan, that
16 reports by Iberdrola employees of species that they
17 have found during post-construction mortality surveys
18 or during monitoring will be reported. Do you
19 remember that?

20 A. Yes.

21 Q. And to whom is that information reported?

22 A. Fish and Wildlife Service.

23 Q. And what does Fish and Wildlife do with that
24 information?

1 A. I think they document long-term trends or... I'm not
2 really sure.

3 Q. So you don't know whether they make that data
4 available to others who want it, for example?

5 A. Oh, yes. Yeah.

6 Q. I think you got some questions from Attorney Iacopino
7 about your opinion, your personal opinion about
8 permit conditions that might relate to either what's
9 been marked as Public Counsel 14 and/or the Avian and
10 Bat Protection Plans. Do you remember those
11 questions?

12 A. Yes.

13 Q. Are you authorized to speak on behalf of the
14 Applicant --

15 A. No.

16 Q. -- with respect to making permit condition
17 commitments?

18 A. No, I'm not.

19 Q. Now, I think you were also asked by Dr. Kent about
20 the Lempster project and who discussed the project
21 with the state agencies. Do you remember that
22 question? Maybe I'm not remembering correctly. I
23 guess I'm getting at the report, the
24 post-construction report that was submitted by West.

1 A. Yes.

2 Q. Okay. Now, was it your understanding that after West
3 did that report, that they communicated with any
4 state agencies, or did the project do that?

5 A. I think that both the project and West communicated
6 with the state agencies.

7 Q. Now, with respect to any -- getting back to questions
8 about breeding birds and their habitat, or any
9 potential effect that clearing during this project
10 might have on breeding bird habitat. Are you aware
11 of any other activities -- again, other than wind
12 farms -- that are required by any state or federal
13 agencies to impose or conduct any mitigation for
14 impacts that their activities might have on breeding
15 birds or breeding bird habitat?

16 A. No, I'm not.

17 Q. So, for example, if a subdivision were going to be,
18 or any housing developments were going to be
19 installed or built around the project site, would
20 they have to do any mitigation for their impacts on
21 breeding birds?

22 A. They would not.

23 Q. Okay. Thank you. I don't have any further
24 questions.

1 CHAIRMAN GETZ: Okay. Thank you. Let
2 me address the --

3 MR. ROTH: Mr. Chairman, I actually
4 have recross based on the redirect as well as this point.

5 CHAIRMAN GETZ: In addition to the --

6 MR. ROTH: In addition to the other
7 questions I offered.

8 CHAIRMAN GETZ: Before we address the
9 question of recross, let me address this question of the
10 procedural stance of the additional questions that are
11 sought by Mr. Roth and Ms. Lewis. And I think it goes, to
12 my mind, to the basic distinction between a trial court
13 and an administrative body. Rules of evidence under
14 R.S.A. 541-A that apply in a trial court do not apply to
15 an administrative body. On the other hand, under case
16 law, we are required to observe the notions of due process
17 and endeavor to make sure that fundamental fairness is
18 open to the Applicant and the parties. And I think,
19 ultimately, in setting up order of cross, order of
20 witnesses, we're trying to observe due process. And it
21 is, certainly in the order of cross, it's not a
22 free-for-all. Just because you got -- you didn't think of
23 a question and want to ask it later, that opportunity is
24 not a right. And certainly if there's questions that

1 could easily have been asked beforehand, there's no right
2 to just take a different opportunity later in the process.
3 Having said that, I think the determining factor is --
4 goes to the obligations of the Subcommittee. And I think
5 there's a fair argument that the obligations of the
6 Subcommittee in this type of proceeding are different from
7 what would be the normal duties of a judge in a trial
8 court. So, ultimately it comes down to, I think, as
9 presiding officer, whether I think it would be helpful to
10 the record and helpful to our decisions to have the
11 questions, these additional questions asked by Mr.
12 Lewis -- Ms. Lewis and Mr. Roth.

13 So, to that specific respect, the four
14 questions that Mr. Roth would like to get on the record,
15 I'm going to permit him to ask those four questions. I'm
16 going to permit Ms. Lewis to ask the two questions with
17 respect to peregrine fatality mitigation. And I'm
18 actually not quite sure what the question is about the
19 HMANA data release issue, but -- or what relevance that
20 may have to anything. But I think since that document has
21 been referred to, I'd like to get that question out there.
22 I'd like to get an answer to that.

23 So we'll start with you, Ms. Lewis.
24 Ask your two questions.

1 MS. LEWIS: Okay. Thank you very
2 much.

3 RECROSS EXAMINATION

4 BY MS. LEWIS:

5 Q. Mr. Gravel, if a peregrine falcon or a bald eagle was
6 killed by a turbine, would you at that point
7 recommend some mitigation be conducted?

8 A. I would recommend consulting with state and federal
9 agencies to figure out what mitigation might work.

10 Q. In your personal opinion, do you believe that
11 mitigation is appropriate?

12 A. I believe it's appropriate if it could work. And
13 that's the part that I don't know. I would have
14 to -- I think it would be a discussion with the state
15 and federal agencies.

16 Q. What type of mitigation would normally take place in
17 a situation like that?

18 A. A lot of times there's no options except for
19 incidental take permits.

20 Q. And my next question is regarding Appendix -- I'm
21 sorry Exhibit No. 21. And I believe you should have
22 a copy right in your stack there. This is the HMANA
23 data release policy.

24 MR. IACOPINO: Is this Buttolph 21?

1 It's underneath your -- it's in that stack.

2 BY MS. LEWIS:

3 Q. If you look at Page 2 --

4 A. I'm not there yet.

5 Q. Okay. It's actually Page 3 at the bottom, but it's
6 the second page of the exhibit, the page that states
7 "HMANA Data Release Policy."

8 A. Yes, I'm there.

9 Q. Okay. The very first part of that suggests that they
10 do encourage people to use the data. However, I'd
11 like you to go down to the second paragraph, where
12 the sentence starts, "Regardless..." And I wondered
13 if you could just read that.

14 (Witness reviews document.)

15 A. "Regardless of viewing status, all other users of
16 hawk watch data, especially anyone having an interest
17 in publication or reproduction of raptor migration
18 data, or analysis derived from these data" --

19 (Court Reporter interjects.)

20 A. Sorry -- "must always seek and receive explicit
21 written permission for use of these data."

22 Q. And did you receive written permission to use that
23 data?

24 A. We've attempted and have not even heard back with

1 even a "Yes" or "No" answer.

2 And I would like to justify this a little bit by
3 saying that the HMANA data release policy lives on
4 HMANA dot org. And the hawk data that's obtained
5 from -- that we've obtained for our work is located
6 on hawkcount dot org. Two different web sites. And
7 the policy does not exist on hawkcount dot org.

8 And the other part of it is that there's some
9 question whether it is really -- there's some
10 question over the protection, due to the fact that
11 anybody can go on and get this data. It's a publicly
12 available Web site, don't require any passwords to
13 get it. And the other part is that we're not using
14 this data to site a project. We're using this data
15 to put our data into perspective.

16 CHAIRMAN GETZ: Well, Ms. Lewis, let
17 me understand what -- I'm trying to figure out what your
18 position is. I take it that you were asked a question --
19 your question was, the intent was to follow up on a
20 question that Mr. Harrington asked the witness about his
21 view of the HMANA letter. Is that -- am I recalling this
22 all correctly?

23 MS. LEWIS: Yes. The witness had
24 stated, further, that based on his analysis of their data,

1 as well as the HMANA data, and then he went on further to
2 explain.

3 CHAIRMAN GETZ: Yeah, but seems to me
4 he was responding to a question of Mr. Harrington about
5 his opinion of the position that HMANA was taking. And
6 that seems to me, for him to -- his response today was --
7 you're saying his response then was a violation of some
8 position that HMANA takes about the use of its data, even
9 when it's expressing an opinion that's been filed in this
10 proceeding?

11 MS. LEWIS: No. I guess I was under
12 the impression that, based on data they had used, in
13 addition to the data provided by HMANA, he had then come
14 up with his own analysis that there wouldn't be an issue
15 with the overall raptor mortality within the project area.
16 And my feeling is, if he's using that data and coming
17 before this hearing to say that that data is relevant,
18 that there should be an issue there regarding his ability
19 to use that data in forming that analysis without getting
20 the written permission by HMANA.

21 CHAIRMAN GETZ: Well, I'm not sure
22 that that's an issue for this body. But Mr. Roth, did you
23 have something?

24 MR. ROTH: I would just point out that

1 in Buttolph Exhibit 15, which is a letter dated
2 October 25th, 2010 from Gil Randall, Chair of the Board of
3 Directors of HMANA, he made a number of criticisms and
4 comments about the way the data was used, but he did not
5 make any objection or complaint that the data was somehow
6 improperly accessed and used without permission.

7 CHAIRMAN GETZ: Okay. Thank you. I
8 think I've heard enough on that issue.

9 Mr. Roth, your questions.

10 RECROSS-EXAMINATION

11 BY MR. ROTH:

12 Q. Mr. Gravel, in response to a question from Mr.
13 Harrington, you said that you looked at the HMANA
14 data for Little Round Top for seven years and Pack
15 Monadnock. And I just want to make sure that the
16 Little Round Top data for seven years is only August
17 and September; is that correct?

18 A. That's correct. But it was used to -- basically, if
19 you put Little Round Top data next to Pack Monadnock,
20 which has --

21 Q. I would --

22 A. -- it shows the same trends which occurs in
23 September.

24 Q. So, but Little Round Top is only August and

1 September, not October or November.

2 A. That's correct.

3 Q. Okay. And the point that I made yesterday is that
4 there are species that tend to migrate in the period
5 of time not observed by the people at Little Round
6 Top; is that correct?

7 A. That's correct. But low numbers.

8 Q. Okay. And Pack Monadnock is how far away from the
9 project site?

10 A. About 60 miles.

11 Q. Okay. Thank you. And then, finally, with respect to
12 the HMANA issue, HMANA people are -- who do the
13 counts are whom?

14 A. Are volunteers, special interest or biologists or
15 academics.

16 Q. So they're not professional people like yourself paid
17 by a project.

18 A. No, I wouldn't say -- they're not paid. But I
19 wouldn't say that they're not professionals, either.

20 Q. Okay. Now, in response to a question from Mr. Perry
21 about whether any agency has ever determined an
22 acceptable mortality count, you answered -- I think
23 what I heard you say is that the agencies have
24 approved the methodology; correct?

1 A. Yes, that's correct.

2 Q. But you did not say that any agency has ever approved
3 a count; correct?

4 A. The methods of a count, yes.

5 Q. But actually looked at -- for example: At Lempster,
6 you reference some figures about how many birds and
7 bats were killed. Has any agency ever approved the
8 count at the end and said, yes, that's a satisfactory
9 number or not a satisfactory number? Has any agency
10 ever --

11 A. Not that I'm aware of.

12 Q. So, neither the Fish and Wildlife Service or Fish and
13 Game Service has looked at a mortality result and
14 said that's acceptable.

15 A. They haven't looked at it and said it's unacceptable.

16 Q. Okay. That's fine.

17 Now, in terms of Mr. Kent asked you -- Dr. Kent
18 asked you a question about number of kills at
19 Lempster, and you gave some figures. And I know this
20 isn't your study, but I just want to understand
21 whether the figures you gave were the actual numbers
22 or whether it was the statistically calculated figure
23 of a per-turbine mortality.

24 A. They were the actual numbers.

1 Q. Okay. And what was the -- do you recall what the
2 per-turbine calculated mortality was?

3 A. I don't recall.

4 Q. Okay. Just from your memory, if you will, if you
5 took the per-turbine figure, would it be
6 significantly higher than the actual number?

7 A. It's quite a bit higher. But I do -- the one thing I
8 recall from that report, it was low, lower or within
9 range of other studies.

10 Q. Okay.

11 A. I don't remember the actual numbers.

12 Q. All right. But the statistical calculation of
13 per-turbine mortality was significantly higher than
14 the actual kill.

15 A. Well, actually, it doesn't quite relate that way.
16 Because if you're using the real number, it's --
17 you're talking a project as a whole. So the raw
18 numbers, all turbines combined, which will likely be
19 higher than the adjusted count because that -- we're
20 talking two different metrics is what I'm trying to
21 say. The adjusted is the per turbine, and the raw
22 number I gave is the project as a whole.

23 Q. Okay. Now, my last question along this line, before
24 I get to my recross, is you've alluded to and

1 suggested that the Avian and Bat Protection Plan is
2 really a good thing because it keeps up -- it keeps
3 the project counting the birds and bats that they
4 find that have been killed by the turbine, at least
5 on an opportunistic basis; is that correct?

6 A. That's correct.

7 Q. Okay. Now, would you consider that opportunistic
8 monitoring, if you will, a statistically or
9 scientifically valid approach?

10 A. It's not -- it depends on the analysis. I mean, for
11 long-term data, yes.

12 Q. Okay. Now I have some questions on recross.

13 CHAIRMAN GETZ: Well, let's explore.
14 What are the questions you seek to ask --

15 MR. ROTH: Okay.

16 CHAIRMAN GETZ: -- on recross?

17 MR. ROTH: Well, I wrote them all down
18 in response to specific questions that were asked by
19 Attorney Geiger.

20 CHAIRMAN GETZ: And so what are -- I
21 want to make sure we're in the scope of appropriate
22 recross. What are the --

23 MR. ROTH: Okay. She asked whether
24 there would be more data from Groton than Granite

1 Reliable, and he said that there would be, and I had a
2 question about that.

3 CHAIRMAN GETZ: Okay.

4 MR. ROTH: She asked whether there
5 were listed species residing at the property, and he gave
6 an answer to that which I wanted to explore further.

7 CHAIRMAN GETZ: Okay.

8 MR. ROTH: She asked him about a
9 commitment to permit conditions in response to Attorney
10 Iacopino's inquiry about the compatibility of the two, of
11 the ABPP and the Fish and Wildlife Guidelines, and I
12 wanted to ask about that.

13 CHAIRMAN GETZ: My understanding of
14 her question was, is he authorized to commit to the
15 conditions.

16 MR. ROTH: Right. And the question I
17 have is -- Mr. Iacopino didn't ask him to commit to a
18 condition. He simply asked whether they were compatible.
19 And, you know, that's really just a point --

20 CHAIRMAN GETZ: Seems more like an
21 argument than a question, but --

22 MR. ROTH: Right. And the last one
23 was she asked whether there were any other activities that
24 required breeding bird surveys, and I have a question and

1 a follow-up on that.

2 CHAIRMAN GETZ: Okay. I think the
3 question about the data, the comparative data at Groton
4 and Lempster, and the species listing and then the last
5 question, you can ask that. But I don't think we need to
6 follow up on the permit condition issue. And then, of
7 course, you get opportunities for one last round.

8 MS. GEIGER: Yeah, I think my question
9 about the breeding birds really went to whether Mr. Gravel
10 was aware of any activities required to mitigation further
11 impacts on breeding birds, not other activities that
12 required breeding bird studies. So --

13 MR. ROTH: Okay. Fair enough. I'll
14 keep it in that context.

15 CHAIRMAN GETZ: Okay. Thank you.

16 BY MR. ROTH:

17 Q. In response to Attorney Geiger's question about
18 whether you're going to get more data from Groton
19 than Granite Reliable, you remember my question a
20 moment ago about whether sort of the opportunistic
21 pick-up data from -- or information, I'll call it,
22 from Groton was scientifically valid?

23 Now, you've seen the condition imposed on
24 Granite Reliable requiring surveys, and including

1 three years of actual post-mortality studies. Do you
2 consider that the quality of the data coming out of
3 Granite Reliable will be significantly better on a
4 scientific basis than the pick-up data, or the
5 opportunistic pick-up data collected by Granite -- by
6 Groton in the future?

7 MS. GEIGER: Excuse me, Mr. Chairman.
8 I'm going to object to the form of that question. I don't
9 know that anybody other than Mr. Roth has characterized
10 what will happen under the ABPP if Iberdrola has this
11 "opportunistic pick-up data." Those are his words, not
12 the witness's. And I would object to him characterizing
13 the plan in that way. If he wants to ask a question about
14 the results or the information that people at Iberdrola
15 acquire when they implement their ABPP, that's fine. But
16 to characterize it as "opportunistic pick-up," in my
17 opinion, is inappropriate.

18 MR. ROTH: I guess I'm afraid that
19 Attorney Geiger interprets "opportunistic" as somehow a
20 derogatory expression. It's really only a descriptive
21 term that Iberdrola employees, when they have the
22 opportunity to observe mortality, they will observe it.
23 But they don't have, as I understand their plan, a
24 systematic approach to going up and regularly checking for

1 avian mortality; it's simply if they're up there and they
2 find something, they have to log it. So that's what I
3 mean by "opportunistic." It's not intended to be a
4 derogatory or a negative expression. I think it's widely
5 understood in the industry, not necessarily the wind
6 industry, but certainly in other industries of scientific
7 analysis, that opportunistic --

8 CHAIRMAN GETZ: But it's not language
9 that they use, and it's your characterization of their
10 process. Is that correct?

11 MR. ROTH: Yes, but it's not intended
12 to be a derogatory characterization in any respect.

13 CHAIRMAN GETZ: Well, I think the --
14 Mr. Gravel, you understand the
15 question?

16 WITNESS GRAVEL: Yes, I understand the
17 question.

18 CHAIRMAN GETZ: I think we've got the
19 position of counsel for the Applicant and their position
20 of Mr. Roth's characterization. So just answer the
21 question.

22 A. First, to clarify the way it works. The Avian and
23 Bat Protection Plan has a wildlife lead on the
24 project that actually is out there looking for that.

1 That's his job. That's part of his job, or her job.
2 But it goes back to my point. To answer your
3 question, it goes back to my point about studying for
4 the sake of studying. I feel that even with three
5 years of data collection, post-construction data
6 collection, if you're just studying the same way
7 every time, I don't believe that it's any stronger
8 than having long-term trend data with somebody on
9 staff looking for stuff.

10 BY MR. ROTH:

11 Q. Going to Mr. Iacopino's suggestion, wouldn't it be
12 even better to have good, solid scientific data as a
13 baseline at the beginning and then follow it up with
14 the Iberdrola program of having their people look for
15 and account for mortality?

16 A. That's the purpose of year one post-construction.

17 Q. But do you think that one data point of year one is
18 necessarily completely sufficient?

19 A. Yes, I do.

20 Q. Okay. Going back to the question about listed
21 species, you were asked about whether you found any
22 nesting there. And you said that you don't -- you
23 didn't find any residing there, but that they pass
24 over it, and I think you said only during migration.

1 That's not true with respect to the peregrine
2 falcons, is it?

3 A. No.

4 Q. They live nearby.

5 A. I meant to say, yeah, they live nearby. And birds
6 infrequently -- threatened or endangered species
7 observed on site were infrequently observed.

8 Q. So, but peregrine falcons do use the site throughout
9 the year that they live in nearby mountains; correct?

10 A. I would say pass through the site, but not use the
11 site.

12 Q. Okay. You were asked by Attorney Geiger whether
13 there were any other kinds of activities that require
14 breeding bird mitigation. Do those activities -- are
15 they required to come to the Site Evaluation
16 Committee and establish that they won't have an
17 unreasonable impact on the environment?

18 A. I'm not sure.

19 Q. Thank you.

20 MR. ROTH: That's all.

21 CHAIRMAN GETZ: Ms. Geiger.

22 MS. GEIGER: Nothing further. Thank
23 you.

24 CHAIRMAN GETZ: Okay. This witness is

1 excused. Thank you.

2 (Whereupon the Witness was excused.)

3 CHAIRMAN GETZ: Okay. I think it's
4 time for a recess, and I guess we will be -- we'll take 15
5 minutes. Is Chief Clogston here?

6 MR. IACOPINO: I saw Mr. McGowan, but
7 I haven't seen --

8 MR. SINCLAIR: I just saw him in the
9 hallway.

10 CHAIRMAN GETZ: Well, let's -- I guess
11 the intention had been to turn to Mr. Lloyd-Evans after
12 the -- as the next witness. If there's some agreement
13 among the parties to do something different, let me know,
14 because I think we'd like to go to Mr. Lloyd-Evans, Chief
15 Clogston.

16 And it appears that all the Mazur
17 witnesses are here today. Would it make sense for the
18 Mazurs to follow Chief Clogston?

19 MR. ROTH: If that could be worked in,
20 that sounds good.

21 DR. MAZUR: If it's your intention to
22 put the Mazur group on, could you suggest a time, and I'll
23 call Richard Wetterer who wants to be here for that? He
24 has to drive down from Rumney. Do you want to propose

1 that for the afternoon sometime?

2 CHAIRMAN GETZ: I guess my expectation
3 is it's going to take some -- an hour or two for Mr.
4 Lloyd-Evans and then some time for Chief Clogston. So,
5 probably be mid to late afternoon, in any event. Does
6 anybody have a better prediction on --

7 MS. GEIGER: I just have a question as
8 to whether the Mazurs and Mr. Wetterer are going to go on
9 as a panel or whether they were going to testify
10 separately.

11 CHAIRMAN GETZ: What I've -- the memo
12 that was given to me was that it sounds like it's going to
13 be a panel.

14 MR. ROTH: Three o'clock?

15 CHAIRMAN GETZ: That sounds like a
16 pretty good estimate.

17 MS. GEIGER: And then we will end with
18 that panel this afternoon?

19 CHAIRMAN GETZ: Right, and then take
20 up with Mr. McCann first thing tomorrow morning and then
21 go to Mr. Buttolph, Ms. Lewis and Mr. Spring, which my
22 understanding was that it was going to be individually and
23 not as a panel.

24 MR. ROTH: Mr. Chairman, you also have

1 scheduled in there 2 p.m. for public comment.

2 CHAIRMAN GETZ: That was just pointed
3 out to me. I guess at 2:00 we'll see who's here and allow
4 for the opportunity for public comment from any members of
5 the public who show.

6 Okay. So, anything else before we
7 take a 15-minute recess?

8 (No verbal response)

9 CHAIRMAN GETZ: Hearing nothing, we're
10 recessed.

11 (Whereupon a recess was taken at 11:04
12 a.m., and the hearing resumed at 11:26
13 a.m.)

14 (Mazur Exhibits 13, 14, 15 marked.)

15 (Buttolph Exhibit 33 marked.)

16 CHAIRMAN GETZ: We're back on the
17 record in Site Evaluation Committee Docket 2010-01 in the
18 Groton application. And I believe we're turning to Public
19 Counsel and witness, Mr. Lloyd-Evans.

20 Mr. Roth.

21 MR. ROTH: Okay.

22 MR. MCGOWAN: Chair Getz.

23 CHAIRMAN GETZ: Mr. McGowan.

24 MR. MCGOWAN: John McGowan for the

1 Town of Plymouth. I'd like to make a partially assented
2 to motion to have Chief Clogston take the stand so that we
3 can have his testimony. I believe I have the assent of
4 the Applicant, the intervenors, but not the AG.

5 CHAIRMAN GETZ: And I take it you
6 would like to have him testify first because he has other
7 scheduling commitments or --

8 MR. MCGOWAN: He's a -- as the
9 scheduling has been -- I know we've all had to be
10 flexible. He's a fire chief. He's our only witness. And
11 I think that it's a -- all things considered, we're asking
12 that he be able to get in and get out so that he can carry
13 on with his duties as the town's fire chief.

14 CHAIRMAN GETZ: Mr. Roth.

15 MR. ROTH: You know, I don't like to
16 be difficult about this kind of thing. But I asked
17 Mr. Lloyd-Evans to be here Tuesday so that he could see
18 Mr. Gravel testify, which didn't happen. And we expected
19 perhaps that Mr. Lloyd-Evans would testify on Wednesday,
20 which didn't happen. And so Mr. Lloyd-Evans, who's been
21 here since Tuesday, expecting to go home on Wednesday, is
22 still here. And I'd like him to testify and be on his
23 way. He is being paid to be here by the Applicant. He's
24 been waiting patiently in this process for now going on a

1 third day. And I don't think it's going to be too much
2 inconvenience for the chief to wait a little while, while
3 Mr. Lloyd-Evans is allowed to be cross-examined. And I
4 think there's also some value to having Mr. Lloyd-Evans's
5 testimony follow immediately upon that of Mr. Gravel,
6 given that it's similar subject matter, in terms of
7 informing the Committee about the issues and assisting in
8 that process.

9 CHAIRMAN GETZ: Well, let me get a
10 little more information to help me make an informed
11 decision here.

12 From the memorandum on the order of
13 witnesses, it shows from the parties potential cross for
14 the Chief: 15 minutes from Mr. Buttolph, 30 minutes from
15 Mr. Roth, and an hour and 15 minutes from the Applicant.
16 How accurate are those numbers?

17 MS. GEIGER: I expect to be less than
18 that amount, Mr. Chairman. I don't think I would have
19 much more than probably 20 minutes.

20 CHAIRMAN GETZ: And Mr. Roth, what are
21 you thinking in terms of cross?

22 MR. ROTH: I am likely to be less than
23 my original estimate as well.

24 CHAIRMAN GETZ: Okay. And then for

1 Mr. Lloyd-Evans, I'm seeing Mr. Mazur with 30 minutes, Mr.
2 Buttolph with 30 minutes, and the Applicant with an hour
3 for Mr. Lloyd-Evans.

4 MS. GEIGER: Correct.

5 CHAIRMAN GETZ: And I suspect there
6 would quite a bit of questioning from the panel. So, I
7 think under the circumstances, it doesn't seem to me that
8 moving the Chief up is going to make it impossible to
9 finish with Mr. Lloyd-Evans today. If I thought he had to
10 stay another day, I think I might go in a different
11 direction. But I'm going to let the Chief testify first,
12 and relying on the parties' indication of what appears to
13 be less than extensive time for questioning. So let's
14 turn to the Chief.

15 MR. MCGOWAN: Thank you. Can I ask
16 that he be sworn in, please.

17 (WHEREUPON, CASINO CLOGSTON was duly
18 sworn and cautioned by the Court Reporter.)

19 CASINO CLOGSTON, SWORN

20 DIRECT EXAMINATION

21 BY MR. MCGOWAN:

22 Q. Please state your name.

23 A. My name's Casino Clogston.

24 Q. By whom are you employed and in what capacity?

1 A. The Town of Plymouth as their fire chief.

2 Q. Chief Clogston, are you the same Casino Clogston who
3 filed with the Site Evaluation Committee prefiled
4 direct testimony on August 30th, 2010; answers to the
5 intervenor data requests on September 22nd, 2010; and
6 answer to the Applicant's data requests on
7 September 22nd, 2010?

8 A. Yes, I am.

9 Q. And have there been any developments or changes in
10 circumstances that would prompt you to update any of
11 those filings?

12 A. Yes, there has been.

13 Q. Could you tell me what those are.

14 A. One of them is that I received a copy of an agreement
15 between Groton windmill and the Town of Rumney for
16 some training for the windmills up there, as far as
17 some emergency-type responses.

18 Secondly, there was a -- I received an e-mail
19 from the state fire marshal's office, a letter that I
20 believe was submitted to this panel, about they would
21 be taking the lead in the building of them and
22 overseeing the fire-suppression systems and the
23 reporting systems if there was an emergency up there.

24 Q. Did you also have a conversation with the Town of

1 Rumney Fire Chief?

2 A. Yes, I did. I have had several conversations. The
3 latest one was this morning. I --

4 Q. Okay. Before we talk about those developments in
5 detail, I'd like to go over some other things.

6 Could you just tell the Committee about your
7 education and your training and any certifications
8 you have relative to your job as fire chief.

9 A. I started with the fire department back when I was 15
10 as an Explorer. When I was 16 years old, I received
11 training from the State of New Hampshire to be able
12 to fight forest fires within the state. From that
13 point on, I moved up and received training to become
14 a Level I firefighter within the state and was hired
15 as a call firefighter with the Town of Plymouth Fire
16 Department. After that, I received medical training
17 to become an EMT to be able to respond on ambulance
18 calls. In 1990 I was hired full-time as a
19 firefighter with the Town of Plymouth. And in that
20 time I took multiple fire classes, took some special
21 forestry classes, which I am now currently a special
22 deputy warden with the state of New Hampshire. I'm
23 also the town's fire warden for them. And in 2001 I
24 became a line officer, rank of lieutenant. And three

1 years after that I became a captain. And then three
2 years ago I became the fire chief for the Town of
3 Plymouth. And in that time I have received multiple
4 trainings and certificates within that field. To go
5 through them all, the file is about, yeah thick, and
6 I don't remember them all.

7 Q. Thank you, Chief.

8 MR. MCGOWAN: Chair Getz, if this were
9 court, I would move to have the Committee recognize Chief
10 Clogston as an expert in firefighting and emergency
11 response.

12 CHAIRMAN GETZ: Is there any objection
13 to identifying and recognizing him as an expert?

14 (No verbal response)

15 CHAIRMAN GETZ: Then we recognize he
16 has expertise in this field to testify on these issues.

17 MR. MCGOWAN: Thank you.

18 BY MR. MCGOWAN:

19 Q. Chief Clogston, if there were a -- I take it you're
20 familiar generally with the site plan for the Groton
21 Wind facility?

22 CHAIRMAN GETZ: Well, Mr. McGowan, we
23 have the prefiled direct testimony. I guess, how far are
24 you planning to go before making the chief available for

1 cross?

2 MR. McGOWAN: Another 15 minutes, your
3 Honor.

4 CHAIRMAN GETZ: Well, and why is that
5 necessary, given the prefiled direct?

6 MR. McGOWAN: Because there have been
7 some developments, as Chief Clogston indicated. And I
8 just want to have him demonstrate to the Committee how
9 those developments do or do not change his opinion as
10 to -- what we're talking about here is his request for
11 certain vehicles and equipment to enhance his department's
12 ability to fight fires.

13 CHAIRMAN GETZ: So I guess he's
14 indicated two things: One, so far, is the Rumney
15 agreement, and the fire marshal's letter. And I guess we
16 haven't gotten so far as to say whether that's changed his
17 opinion how. Is that what you're planning to explore?

18 MR. McGOWAN: Yeah. It was my plan to
19 have him explain in greater detail why he -- the basis of
20 his request, for why he feels those particular vehicles
21 and equipment are necessary.

22 CHAIRMAN GETZ: Well, I think we have
23 the prefiled direct. And I'm not seeing that it's
24 necessary to have additional direct at this point. And to

1 the extent that questions are raised in cross, I think he
2 should have adequate opportunity to explain the basis for
3 his position. Unless you think there's -- I mean, that's
4 not likely or there's some prejudice?

5 MR. MCGOWAN: No, no. No prejudice.
6 No. Then I would just like to ask him a few more
7 questions then before we go on to cross.

8 CHAIRMAN GETZ: Okay. Well, in terms
9 of qualifying the witness?

10 MR. MCGOWAN: No. In terms of his
11 conversations with the Applicant and who he has spoken
12 with and who he hasn't spoken with relative to these
13 fire-safety issues.

14 CHAIRMAN GETZ: Ms. Geiger.

15 MS. GEIGER: Mr. Chairman, I guess I
16 need clarification. I won't object if the testimony is in
17 the form of providing all of us with an update to any
18 information that's in the prefiled. But if it's an
19 attempt to orally supplement with information that would
20 have been available when the prefiled was submitted, then
21 I think I would object to direct testimony in that form.

22 MR. ROTH: Mr. Chairman, if I may,
23 maybe this helps. I don't know. But it sounds like he's
24 describing events that have occurred after the prefiled

1 testimony. And I would be willing to make on cross some
2 questions about whether, and the extent to which the
3 agreement with Rumney, the fire marshal's letter, and the
4 conversations with the Rumney Chief have in any way
5 influenced or, in fact, supported this decision to make
6 the demand that he has placed in his original testimony.

7 CHAIRMAN GETZ: Sounds like that will
8 get us down the path of getting the information on the
9 record. So why don't we finish up with qualifying the
10 witness and turn to cross.

11 MR. MCGOWAN: Fair enough.

12 BY MR. MCGOWAN:

13 Q. Chief Clogston, before we move on to cross, I just
14 wanted to ask: It was stated -- I'm going to strike
15 that because I understand that --

16 MR. MCGOWAN: I want to bring out that
17 he has not been engaged with the Applicant's fire and
18 safety expert and that there had been a Lempster Wind work
19 session which he was not invited to. But if we could just
20 stipulate to that, then we can move on to cross.

21 CHAIRMAN GETZ: Ms. Geiger, can you
22 stipulate to that?

23 MR. ROTH: Mr. Chairman, I'll ask
24 about that stuff.

1 MS. GEIGER: Mr. Cherian does not know
2 whether or not -- who was asked to attend that session.
3 So, I mean, to stipulate to -- I think we'll stipulate
4 that he did not attend. But I don't know that he was not
5 asked.

6 CHAIRMAN GETZ: All right. Well, I
7 believe Public Counsel will get that on the record.

8 MR. MCGOWAN: Okay. Then I have no
9 further questions for the witness, and we can move on to
10 cross.

11 CHAIRMAN GETZ: Okay. Thank you.

12 MR. MCGOWAN: Thank you.

13 CHAIRMAN GETZ: Mr. Buttolph or Ms.
14 Lewis.

15 CROSS-EXAMINATION

16 BY MS. LEWIS:

17 Q. Good morning, Mr. Casino [sic].

18 A. Good morning.

19 Q. You mentioned this morning that you had a discussion
20 with the fire chief in Rumney. Could you tell us a
21 little further what that -- or explain what that
22 discussion was.

23 A. I contacted the Chief, Ken Ward, and told him I had
24 received the agreement that was in place. And I

1 asked him if that agreement changes anything for the
2 meetings that we've had in the past, as far as access
3 and the equipment needing to go up there. He said
4 what they received is part of it and it helps. He
5 said that a brush truck like we spoke about earlier
6 is still a big need, because nobody can guarantee
7 these roads the way that they are going to be
8 maintained and all that. Fire trucks, typically, you
9 don't take 9 miles up to a wildland fire because
10 they're cumbersome. They don't move around that
11 good. And if you have to evacuate the area due to
12 wind change or anything else like that, chances are
13 you're going to have to abandon that vehicle. That's
14 why, pretty much statewide, we utilize one-ton pickup
15 trucks with a small amount of water on the back.
16 It's a safety thing. You know, usually we need
17 four-wheel drive and off-road vehicles like that.
18 Fire trucks are not designed to go off-roading. My
19 truck that I send out on a typical building fire is a
20 30-ton vehicle that's 38 feet long. It does not turn
21 around in very small areas. And so, as indicated,
22 you know, the brush truck is still a need to get up
23 there for first responses.

24 He did, however, say that, as far as forestry

1 pumps, he said he believes that he has one or two,
2 and he would omit to the pumps, the other three
3 pumps. The water source on the Tenney Mountain Ski
4 Area side. We have a good supply of year-round water
5 there. So if anything was coming down that slope,
6 that's where we would set up water supply to battle
7 any type of fire that may be caused from the top of
8 the mountain.

9 Q. So, basically, if I understand this correctly, your
10 discussion with the Rumney Fire Chief, in your
11 opinion, he is in full agreement with your request?

12 A. Yes. And there is some room to downplay. But the
13 ATV and the brush truck he indicated is top on his
14 priority list.

15 Q. Okay. I guess if we could back up a little bit.

16 Could you tell us, as far as the Groton Wind
17 Farm, who would be the first responder in case of a
18 fire?

19 A. The Rumney Fire Department would be.

20 Q. And if Rumney was not able to handle it, then who?

21 A. The Plymouth Fire Department would be second if they
22 couldn't get anything else.

23 Q. Is Rumney a full-time, paid fire department?

24 A. No, they're not.

1 Q. Are you?

2 A. Yes, we are.

3 Q. And you stated a little earlier that it would be very
4 difficult for you to get your current equipment up
5 there. Have you ever been in a situation where
6 you've had to drive one of your fire trucks during
7 mud season within a situation like what's going to be
8 at the Groton Wind project?

9 A. If we have a road of question like that, as opposed
10 to getting stuck in the middle of the road and not
11 allowing any piece of apparatus to go through, we
12 choose not to send that vehicle down roads like that.
13 We've had cases in the past where soft shoulders have
14 given way and fire trucks have actually rolled on
15 their side. So it's a firefighter safety thing.
16 During mud season, we do not send trucks down muddy
17 roads.

18 Q. So, is it your opinion that there is a certain level
19 of risk that any fire which took place up there,
20 there absolutely might not be an ability to get
21 equipment up there?

22 A. That is correct.

23 Q. Could you tell me who the first responder for medical
24 care is at the Groton Wind Farm?

1 A. At the Groton Wind Farm, it is in Groton, and they
2 have a contract with the Hebron Fire Department.

3 Q. Okay. And could you explain why Groton does not have
4 the ability to handle either their fire or their
5 medical on their own?

6 A. I really don't want to speak for the Town of Groton.
7 I do know that they have a fire chief, and that's
8 about as far as my knowledge. They do not have a
9 station. They do not have any apparatus; so,
10 therefore, they contract their first response from
11 outside communities.

12 Q. So, given that situation, do you believe it's
13 appropriate that Groton has the final say in how the
14 medical and the fire situation takes place, given
15 that they're not even going to be the ones handling
16 any of this?

17 A. Statutorily, it is up to the towns to come up with
18 that however they deem necessary. They could legally
19 get an ambulance from Meredith if they choose to. It
20 is the taxpayers of that community that's going to
21 have to wait that long for the response. So...

22 Q. Okay. I understand legally that may be the case.
23 But from a personal and from a safety point of view,
24 do you feel that's appropriate, given the

1 circumstance and the fact that Rumney residents,
2 potentially Plymouth residents, and lastly, Groton
3 residents, because, for the most part, their homes
4 are the furthest from the site, that these people
5 could be at risk?

6 A. I really don't want to comment on what the thought
7 process is with the Town of Groton and how they
8 provide their emergency services.

9 Q. Okay. All right. Are you aware if any discussions
10 have taken place with Hebron regarding their medical
11 response to the Groton Wind Farm?

12 A. I had a conversation a few days ago with Chief
13 Fisher. He's the chief of the Hebron Fire
14 Department. And he has indicated that he has had no
15 contact or communication with this whole process.
16 And he indicated to me that, until he saw something
17 on those roads, he may not even send his ambulance up
18 those roads due to, you know, potential damage to it.

19 Q. Okay. Did you receive an e-mail from the Rumney town
20 attorney?

21 A. I personally did not receive the e-mail, but I was
22 copied on the e-mail indicating that... I don't think
23 I have it with me. I can reflect on it if you want.
24 But Reader's Digest version was the fact that I don't

1 speak for the Town of Rumney, which is correct. He
2 indicated that the Rumney Fire Chief did not agree
3 with the testimony, which that was a false statement.
4 I believe that e-mail went directly to Mr. Gowan's
5 [sic] office.

6 Q. Were you present during any select board meetings
7 that discussed this whole issue regarding your
8 testimony that had been submitted and Ken Ward's
9 opinion of your testimony?

10 A. Are you talking about Rumney Select Board meetings?

11 Q. Yes.

12 A. No, I was not in attendance of any Rumney Select
13 Board meeting.

14 Q. Would you be surprised to hear I was in attendance of
15 the select board meeting in which your testimony, as
16 well as Fire Chief Ken Ward, his opinion on that --
17 would you be surprised that I was attending that
18 meeting?

19 A. No, I would not.

20 CHAIRMAN GETZ: I'm losing track of
21 names. Ken Ward, Ken Woods?

22 MS. LEWIS: I'm sorry. Ken Ward is
23 the fire chief in Rumney.

24 CHAIRMAN GETZ: I thought earlier you

1 mentioned a Ken Woods.

2 MS. LEWIS: I misspoke then. It's Ken
3 Ward. Sorry about that.

4 BY MS. LEWIS:

5 Q. After you received the letter from the town attorney,
6 have you -- you mentioned that you had a conversation
7 with Ken Ward this morning. Have you had other
8 conversations as well, not just this morning, giving
9 you the absolute impression that he was still in full
10 agreement with what the Town of Plymouth's requests
11 were?

12 A. Yes. Every conversation I've had, even at the
13 meetings, Ken Ward has supported that testimony and
14 the equipment list to the full.

15 Q. Do you have any personal opinion of why the board of
16 selectmen would potentially, I don't want to say
17 misrepresent, but state something different than what
18 the fire chief has told you?

19 A. On a hearing such as this, I don't think my personal
20 feelings are -- could be levied into evidence. I
21 would like to go on fact only. And I have no idea
22 why they do it the way that they do.

23 Q. In your discussion with the fire chief in Hebron, did
24 you discuss any possibility of further equipment

1 being needed for their medical response team?

2 A. No, I did not.

3 Q. So, at this point, it's difficult to know whether
4 they would be able to respond to any type of medical
5 emergency up there because you haven't had any
6 discussions, and they personally haven't had any
7 discussions with Iberdrola.

8 A. If it's a standard medical emergency where someone is
9 on the ground, they handle those situations, you
10 know, on a regular basis. But if it's a rescue
11 situation inside the tower itself, I do not know the
12 extent of their training in high-angle rescues.

13 Q. You stated a little earlier that -- or your attorney
14 did, I'm not sure which it was -- that there was a
15 recent training that took place in Lempster?

16 A. There could have been. I was not aware of any
17 training session.

18 Q. Okay. So, in no way were you notified that the Town
19 of Rumney was going to be involved in training, and
20 that potentially it would be helpful for your -- you
21 or your department to be there as well?

22 A. Correct. I was not aware of any training that took
23 place in the town of Lempster.

24 Q. Okay. And the last thing I would like to do is to

1 have you take a look at the prefiled direct testimony
2 of Mr. Devlin, which is on Page 14.

3 CHAIRMAN GETZ: I think you'll need to
4 provide it to him.

5 MR. IACOPINO: I'll give him my copy.

6
7 MS. LEWIS: Thank you, Mr. Iacopino.

8 BY MS. LEWIS:

9 Q. If you could look at Page 14, down at the bottom.
10 Just to clarify, Mr. Kevin Devlin is in charge of
11 operations and safety for the corporate -- the
12 corporation of Iberdrola. And in his prefiled
13 testimony, look at the very bottom line, No. 20.

14 A. Yes, I see it.

15 Q. Okay. If you can read the very last sentence which
16 starts at No. 21, where it starts with "Groton
17 Wind..."

18 A. "Groton Wind will work with local fire departments
19 and safety officials to develop a fire protection and
20 emergency response plan for the project. Groton will
21 notify local fire departments and emergency
22 responders of construction plans and will provide..."
23 on the next page?

24 Q. Yeah.

1 A. Is that as far as you wanted me to go, or keep
2 reading?

3 Q. Just to the end of that sentence.

4 MR. IACOPINO: Slowly.

5 A. Okay. ...them with site visits, reviews and
6 locations of points access through the project
7 facilities.

8 Q. Would you consider your department a local fire
9 department of this project?

10 A. Yes, I would.

11 Q. Thank you. No further questions.

12 CHAIRMAN GETZ: Dr. Mazur.

13 DR. MAZUR: Thank you.

14 CROSS-EXAMINATION

15 BY DR. MAZUR:

16 Q. Hello, Chief Clogston.

17 A. Hello.

18 Q. Were one or more of the turbines which are proposed
19 for location up on Mounts Fletcher or Tenney to catch
20 fire, would the presence of petroleum lubricants in
21 the turbines cause a complication of the fire?

22 A. Flammable liquids always pose a difficulty when
23 extinguishing fires. I believe the cell holds around
24 100 to 150 gallons of hydraulic fluid, which is

1 flammable and which would pose some difficulties as
2 far as extinguishment.

3 Q. When Mr. Kevin Devlin, chief of operations, I
4 believe, testified in this hearing room two days ago,
5 he gave this listener the impression that his opinion
6 would be that, were a turbine to go on fire, the
7 process would be contained to that one turbine. And
8 my question is: Do you agree that there is very
9 little probability that any fire in one turbine might
10 or might not spread to other turbines?

11 A. By looking at the plans, if one was to catch fire and
12 the oils was coming out of it, with the distance
13 between the two, and as long as they maintain the
14 fire barrier around the base, then I would have to
15 say with the heighth of it, it's very unlikely that
16 some -- that fire on the ground would actually
17 communicate to another turbine and go up the distance
18 to that center of it and catch that on fire also.
19 So, yes, it's highly unlikely.

20 Q. What is your opinion of one turbine being on fire
21 possibly igniting a forest fire up there in the
22 mountains?

23 A. As far as the practicality of it doing that?

24 Q. Yes.

1 A. From what we've seen just -- all we're going on here,
2 we're Googling windmill fires. Marshal Degnan sent us
3 some photos of windmills that have caught fire. And
4 they're like anything that has a potential to catch
5 fire. Once they do -- and it's like, there again, if
6 the maintenance of the grounds thereof, or it's a
7 very dry season, very windy -- which I believe it's
8 256 feet up to the center of it -- if that oil is
9 burning and blowing, it catches the leaf liter on
10 fire, it could spread with the wind relatively quick.

11 What we would do to go up there is to,
12 obviously, with the heighth of it, we would get a
13 perimeter set up so that none of this burning oil
14 could actually harm any of the firefighters, and try
15 to extinguish whatever is out in the woodland area
16 adjacent to it and basically let the mill -- you
17 know, the turbine burn until it burns itself out.

18 Q. So I'm a little bit confused between your last few
19 answers. If the wind were to cause a fire to spread,
20 is it possible, in your opinion, that it might cause
21 the ignition of an adjacent turbine?

22 A. No.

23 Q. Okay. Thank you for clarifying that.

24 Also when Mr. Devlin testified, it was the

1 opinion of this listener that he felt that the local
2 firefighting capability at present would be
3 sufficient to deal with any fires that might break
4 out on the mountain ridges. And I would ask whether
5 that is your opinion.

6 A. You're asking me to speak on behalf of what the
7 capabilities of the Rumney Fire Department are?

8 Q. No. I'm asking you to say whether you would be in
9 agreement that the present community firefighting
10 capabilities is sufficient to put out any potential
11 fires that might break out up on those mountain
12 ridges.

13 A. Well, there again, if it would start up there, Rumney
14 would be the first arriving companies. And depending
15 on the size of it, they would either handle it, or
16 they would have to go to an additional alarm if it
17 was large enough and bring in other communities.

18 So my question stands. You know, to speak on
19 behalf of what the Rumney Fire Department can or
20 cannot handle, I really would not want to speak on
21 behalf of them.

22 Q. So when you make proposals for additional
23 firefighting equipment, are you making those
24 proposals on a worst possible anticipatory scenario

1 or the likely scenario that could be dealt with?

2 A. We look at what is going in -- what is the likelihood
3 and what is the worst-case scenario. But we don't
4 look at it as something that probably would never,
5 ever happen. We look at the most probable worst-case
6 scenario that could happen, as far as fire-related,
7 and then we take a look at training and equipment
8 that we'd need to suppress that and keep it as small
9 as possible.

10 Q. I think I have one last question. For this proposed
11 project, Groton Hollow Road is the access road. If
12 for any reason Groton Hollow Road was not accessible
13 or was blocked, is there any other access road for
14 firefighting equipment to get up there in the event
15 of a fire?

16 A. No.

17 Q. Is it important to consider having a Plan B access
18 road up to the ridge?

19 A. As it stands right now, Plan B would be the Tenney
20 Mountain Ski Area. Access is by foot or ATV.

21 Q. Those are all the questions for our group. Thank
22 you.

23 CHAIRMAN GETZ: Thank you. Mr. Roth.

24 MR. ROTH: Thank you.

1 MR. SINCLAIR: Mr. Chairman, if I may,
2 the Town of Groton would like to ask questions.

3 CHAIRMAN GETZ: Okay. Mr. Sinclair.

4 MR. SINCLAIR: Thank you.

5 CROSS-EXAMINATION

6 BY MR. SINCLAIR:

7 Q. Good morning, Mr. Clogston.

8 A. Good morning.

9 Q. Are you aware of the position I hold with the Town of
10 Groton?

11 A. I believe you are a town selectman with the Town of
12 Groton.

13 Q. And you had mentioned that you had had some
14 conversation with the Rumney Fire Chief about the
15 agreement they had signed with the Applicant?

16 A. That's correct.

17 Q. Did you read that agreement?

18 A. I read through it on the e-mail a couple days ago,
19 yes.

20 Q. Did you understand it?

21 A. I understand that they are going to receive some
22 training, and that's about the end of my knowledge of
23 it.

24 Q. To your recollection, does it include a provision

1 that would allow them to request certain equipment to
2 be provided by the Applicant?

3 A. I could pull it up and take a look at it. But like I
4 said, I didn't read it. I skum through it and...

5 Q. And you've had discussions with the Rumney Fire Chief
6 you indicated?

7 A. Yes.

8 Q. Did those discussions include anything regarding a
9 letter the Board of Selectmen of Rumney sent to the
10 Board of Selectmen of Groton with respect to this
11 issue?

12 A. No.

13 Q. So if I was to tell you that it's understood that
14 there is no provision in the Rumney agreement for
15 them to request the Applicant to provide any
16 equipment, would that surprise you?

17 A. No.

18 Q. Would it surprise you if I was to tell you that the
19 letter they sent to the Town of Groton indicated they
20 were deferring that issue to the Town of Groton to
21 include in their agreement?

22 A. I have no knowledge on that.

23 Q. And have you had any conversations with the Groton
24 Fire Chief regarding the Rumney agreement?

1 A. He attended both meetings that we had. After that, I
2 have not had any communications with him. There has
3 been attempt to call him, but he is -- you know, he
4 works Monday through Friday, so he's kind of hard to
5 get a hold of.

6 Q. And who is the Groton Fire Chief?

7 A. Roger Thompson.

8 Q. And when is the last time you talked to him?

9 A. He was at the last meeting we had at the Rumney Fire
10 Station.

11 Q. Which was when?

12 A. I'd have to look in my files, but it was probably
13 about a month ago.

14 Q. And is it your testimony today that he is -- that he
15 remains onboard, if he ever was, that he remains
16 onboard with you with this, with respect to your
17 equipment request?

18 A. He was onboard during the meetings. I have not
19 received any word from him indicating that he is not
20 onboard with the equipment wish list.

21 Q. Would it surprise you if I told you he is not onboard
22 with that?

23 A. Like I said, I haven't had any communications with
24 him.

1 Q. And would it surprise you if I was to tell you that
2 his position is that he feels you're just looking for
3 something for free?

4 A. I've heard that comment before from other people.
5 And that is not the reason why we're asking for this
6 equipment.

7 Q. Would it surprise you, then, if I was to tell you
8 that he believes that, though it would be
9 advantageous to have a four-wheel truck --

10 MR. ROTH: Mr. Chairman, I
11 respectfully must object to this line of questioning. I
12 mean, obviously, we don't have the rules of evidence here.
13 But you do have due process and fair play. And this is a
14 line of hearsay questioning that I think is inappropriate.

15 MR. MCGOWAN: I would object as well.
16 He's had an opportunity to have his witness here if he
17 wanted to.

18 CHAIRMAN GETZ: Okay. I think at this
19 point we've gone far enough down this line that we need
20 for our purposes. I mean, we've been giving some latitude
21 throughout the proceeding to the pro se examiners to pose
22 questions in the form of what are hypotheticals. But I
23 think we're beyond the kind of the normal realm of what
24 would be appropriate cross-examination. I think so far

1 you've established that the chief is unaware of any
2 position that your fire chief may have taken in the past
3 month. So I think at this point it's beyond fair
4 cross-examination. You'll have the opportunity in
5 closings or in briefs to make your position about what
6 weight we should give to the chief's testimony and whether
7 we should grant it as a condition or not. And certainly,
8 I guess at some point we'll see an agreement, it sounds
9 like, between the town and the Applicant that may address
10 some of these issues.

11 So that's a long way of getting around
12 to do you have other questions that don't rely on
13 essentially your testimony of what happened elsewhere?

14 MR. SINCLAIR: I do not. And that
15 would have been my last question.

16 CHAIRMAN GETZ: All right. I think
17 we've got enough in the record on this issue, in any
18 event.

19 MR. SINCLAIR: Thank you.

20 CHAIRMAN GETZ: Mr. Roth.

21 MR. ROTH: Thank you.

22 CROSS-EXAMINATION

23 BY MR. ROTH:

24 Q. Chief Clogston, you spoke at the beginning of your

1 testimony about an agreement with the Town of Rumney,
2 a letter from the fire marshal's office, and
3 conversations that you've had with the Rumney Fire
4 Chief. Do any of those things that you have read or
5 experienced cause you to change your testimony or
6 reconsider your decision that you want there to be
7 additional resources provided to the Town of Rumney
8 and the Town of Plymouth?

9 A. Speaking with the Rumney Fire Chief, Ken Ward, his
10 thing, his biggest thing was being able to get a
11 vehicle to access those roads. He said he thought
12 that he had enough pumps on that side, but he
13 indicated to me the brush truck was his No. 1 need.
14 And that's -- you know, he would be extremely happy
15 if he could get that.

16 From the Plymouth side, like I indicated, the
17 access points is by foot or ATV only. And the pumps
18 would be to establish a water supply on that side of
19 the mountain if anything should occur while these
20 things are in operation.

21 Q. Okay. So, to answer my question, have you --

22 A. There is some leeway for some movement on the exact
23 number of pieces of equipment, yes.

24 Q. Okay. Now, you were just asked a moment ago about

1 the Town of Groton's agreement. The Town of Groton
2 doesn't have a fire department; is that correct?

3 A. Correct.

4 Q. Would the acquisition of equipment by a fire
5 department that doesn't exist be all that helpful, in
6 your mind?

7 A. To the best of my knowledge, if there's a fire in the
8 town of Groton, they get response, they see fire
9 apparatus and firefighters from surrounding
10 communities by contract. If they choose to get some
11 equipment, I'm not sure where they're going to house
12 it or what they're going to do with it,
13 realistically. That is out of my control.

14 Q. Now, you mentioned at the beginning of your testimony
15 that you had forest fire training at the age of 16.

16 A. Correct.

17 Q. Are you still qualified as a forest firefighter?

18 A. Yes.

19 Q. Okay. Now, you were asked, again, I believe at the
20 beginning of your testimony, about an engagement with
21 the Applicant and an invitation to Lempster. Forgive
22 me if Ms. Lewis already asked you about this. But
23 would you have expected to have been invited to the
24 Lempster event?

1 A. As we were an abutting town and we could be backing
2 other -- you know, either the ambulance crew up if
3 Hebron cannot get the ambulance out. By mutual aid
4 agreement, it's either my department or another
5 neighboring department that may have to go up there
6 and provide emergency services and for the
7 fire-related stuff. So it would be beneficial for
8 the members of the Plymouth Fire Department and other
9 surrounding towns that would go there to receive
10 trainings, which is a special, you know, response
11 when you're dealing with high-powered -- high towers
12 and whether or not someone's caught inside one of
13 those windmills and have to lower them down to the
14 ground.

15 Q. Okay. Now, you mentioned the mutual aid agreement.
16 Do you recall being present at a tech session here, I
17 believe in this room, if I'm not mistaken -- no, in
18 the other room back there, where we talked about your
19 testimony and a little bit about the mutual aid
20 agreement? Do you remember that, that day?

21 A. Yes, I do.

22 Q. And do you recall being asked who, if anybody, in the
23 area had the kind of brush equipment that you think
24 that the project ought to be providing?

1 A. I do remember that, yeah.

2 Q. Who has that stuff?

3 A. The State of New Hampshire Forest Service has some
4 brush trucks placed in certain areas within the
5 state. There's some neighboring communities that do
6 have some ATVs, and they do have brush trucks like
7 that.

8 Q. Okay. And did you mention that the Campton/Thornton
9 Fire Department had that equipment and would respond?

10 A. Yes, they do.

11 Q. And the Campton/Thornton Fire Department, is that a
12 volunteer fire department?

13 A. That is full-time during the day, and they're on call
14 during the night.

15 Q. Okay. And how far away are they from the project
16 site?

17 A. Twenty, 25 miles.

18 Q. Okay. And in these days of economic difficulties, to
19 put it mildly, are fire departments such as, in
20 particular, Campton/Thornton -- or you can speak
21 generally if you'd rather not address a particular
22 department's needs -- are they getting all the budget
23 they need to do the work that they're expected to
24 perform, or do they have to -- are they being

1 required to sort of tighten the belt and make
2 adjustments like everybody else?

3 A. Every year the local chiefs, you know, we meet at
4 meetings. And every budget season it's a cut. We're
5 always asked to cut. We're always asked if we
6 actually need that stuff if you only use it once in a
7 while. But when the call goes out, we're always
8 required to be able to act and extinguish fires
9 accordingly, even though for budgetary purposes we
10 get cut down on quite a bit.

11 Q. So, do you think it's reasonable that
12 Campton/Thornton should be the first response to a
13 brush fire in the Rumney/Groton area?

14 A. If that was the case, they would have to enter into a
15 municipal agreement, because by virtue of the Lakes
16 Region by-laws, each town has got to be able to
17 provide primary either first aid or fire response
18 adequate for their community. Once it goes beyond
19 that, then we require mutual aid companies to come
20 in, and we will do so underneath the agreement. But
21 to have another town or agency come in to provide
22 primary coverage for a certain, whether it be a
23 ladder truck or brush truck or something like that
24 that's outside the scope, they would have to enter

1 into a town agreement or a...

2 Q. Do you have an estimate about how much it would cost
3 for the Applicant to respond to your request and
4 provide the equipment that you suggested is
5 necessary?

6 A. The prices that I was told by the forest ranger, who
7 they have bought these pieces before, you're talking
8 right around \$150,000. And that's a ballpark figure.

9 Q. For all of it?

10 A. Correct.

11 Q. Okay. Now I'm going to turn to some responses to
12 data requests that were filed by your attorney as
13 exhibits. And I'm looking at Plymouth Exhibit 2 and
14 Plymouth Exhibit 3.

15 MR. ROTH: John, can you give him
16 those?

17 MR. MCGOWAN: He should have them up
18 there.

19 BY MR. ROTH:

20 Q. Okay. Could you look at those for me, please. Are
21 they on the table?

22 Okay. Chief, turning first to Plymouth Exhibit
23 No. 2. These are your answers to the
24 Buttolph/Lewis/Spring group of intervenors' data

1 requests. I want to call your attention to Question
2 No. 6 at the bottom of the first page and your answer
3 on the top of the second page. I guess I would ask
4 you to clarify this for me.

5 The question is: "Is it your professional
6 opinion that turbine fires can be suppressed with
7 water only? Do you anticipate needing additional
8 specialized firefighting chemical products, including
9 foams and other materials?"

10 And your answer was, "No. The Town of Plymouth
11 would need no additional firefighting products, but
12 Rumney would, as it lacks that capability."

13 Your answer strikes me as a little bit
14 ambiguous, or maybe it's just me. Can you help me
15 understand this? Does the "No," the first "No,"
16 respond to whether turbine fires can be suppressed
17 with water only?

18 A. Correct. The turbine fire, if it had -- you know, if
19 the oil was involved with it, you would need a foam
20 application to put it out. Water would just spread
21 it around.

22 Q. Okay. And so your answer, the second part of your
23 answer, suggests that Rumney doesn't have that
24 ability.

1 A. Correct. The conversations I've had with Rumney is
2 that they don't have the foam capabilities that we do
3 in Plymouth.

4 Q. Okay. And you do. Okay. So that helps me. Now I
5 understand that.

6 Now turning to Plymouth Exhibit 3, which is your
7 responses to data requests propounded by the
8 Applicant. And on the second page there was a
9 Question 1-8. And they asked -- the Applicant asked
10 whether you -- what equipment and resources Plymouth
11 had to respond to brush and forest fires, and you
12 described structural firefighting apparatus. What is
13 that?

14 A. Basically, it's the big red trucks you see,
15 predominantly.

16 Q. Okay. So, the traditional fire truck.

17 A. Right.

18 Q. And then a 4-by-4 one-ton pickup truck. Is that a
19 brush firefighting truck?

20 A. That is just a F350 pickup truck with a plow on it
21 that's -- and a light bar. There's nothing special
22 about it. You can buy one at your local dealer.

23 Q. Okay. Is that kind of -- is that the kind of thing
24 you want the Applicant to get, another one of those,

1 or is the --

2 A. It's the equipment on the back of the truck that
3 make -- that turns it into a brush truck, and the
4 protection underneath the running gear.

5 Q. So that particular apparatus that you describe here
6 in your answer is not one of those. It's not a brush
7 truck.

8 A. No.

9 Q. Okay.

10 A. I do not have a brush truck.

11 Q. Okay. And then a DRED-owned trailer with forestry
12 equipment. What is that exactly?

13 A. Basically, it's a small military-type trailer that we
14 have converted, and we've put hand tools and a small
15 forestry pump on it and some hose, so that when we
16 have wildland fires in the town, we back this 4-by-4
17 pickup to it and haul that equipment to the scene.

18 Q. Okay. And why don't you think that those pieces of
19 equipment, the pickup truck and the DRED trailer with
20 forestry equipment, why don't you think that that's
21 sufficient with the addition of the Applicant's
22 project?

23 A. The pickup truck, just as I indicated before, is just
24 that. The truck would get us up the hill to a

1 certain point. The ATV would allow us to get all the
2 way to the top. We have used this truck on that
3 mountain before. And the mud and whatnot, because it
4 was springtime and that's predominantly when we see
5 wildland fires, we couldn't get that up there. We
6 actually had to walk. And then, like an hour and a
7 half into the event, we started to receive some ATVs,
8 which we were able to get more equipment up to the
9 top of the mountain to the scene of the fire.

10 Q. And then my last question is, is there anybody that
11 you know in the mutual aid district that has
12 experience with a wind turbine fire or a tower
13 collapse?

14 A. To the best of my knowledge, I have not spoken with
15 anybody that's been involved in any of that.

16 Q. Okay. Thank you. That's all the questions I have.

17 CHAIRMAN GETZ: Thank you. Ms.
18 Geiger.

19 MS. GEIGER: Thank you, Mr. Chairman.

20 CROSS-EXAMINATION

21 BY MS. GEIGER:

22 Q. Good afternoon, Chief Clogston.

23 A. Good afternoon.

24 Q. I'm going to follow up on I think the last question

1 Attorney Roth just asked you, about fighting fire at
2 the project site.

3 I believe, if you turn to the data requests that
4 the Applicant -- that you answered for the Applicant,
5 Question 1-7 -- do you have that?

6 A. That's Exhibit 3?

7 Q. I believe it's your Exhibit 3. We've also marked it
8 as well.

9 In that question you were asked, "During the
10 past 10 years, how many brush and forest fires has
11 the Plymouth Fire Department responded to on the
12 property where the project is proposed to be built?"
13 And you said "None"; is that right?

14 A. That is correct.

15 Q. And I'm just confused, because I thought I just heard
16 you say in response to Mr. Roth's question that you
17 had to go on top of the mountain to fight fire?

18 A. In the past 20 years, we have had a couple of fires
19 relatively close to the top of the mountain.

20 Q. I see. So the incident you just described where
21 there was a truck that got stuck happened more than
22 10 years ago; is that right?

23 A. That is correct.

24 Q. Okay. And, again, the Town of Plymouth, the fire

1 department, does not have primary responsibility for
2 fighting fire at this project site; correct?

3 A. We do not have the responsibility for that. Correct.

4 Q. Now turning to your prefiled testimony. Do you have
5 that?

6 A. Which one?

7 Q. This is... it's your prefiled testimony, bottom of
8 Pages 3 and 4.

9 A. I have it, yeah.

10 Q. In there, I believe you stated that you've met with
11 neighboring fire chiefs, Mr. Thompson, who's the
12 Groton Chief --

13 A. Yeah.

14 Q. -- and Mr. Ken Ward, the Rumney Chief, and with the
15 forest ranger, Mr. Van Dohrmann, to discuss the
16 potential wildland public safety issues that may be
17 presented by the project; correct?

18 A. Correct.

19 Q. Okay. And on Page 4 of your prefiled testimony, you
20 state that you and other fire chiefs and the forest
21 ranger, who we just mentioned, believe certain
22 trucks, ATVs and pumps would be needed for a response
23 to land fires in that remote area; correct?

24 A. Correct.

1 Q. Now, we've had some conversations this morning -- or
2 at least you've had some testimony this morning that
3 indicates that Rumney Fire Chief, Ken Ward, supports
4 you in your effort, at least as far as some of the
5 requests that you've made in your prefiled testimony;
6 is that correct?

7 A. Correct.

8 Q. But would it surprise you to learn that the Rumney
9 Fire Chief, Mr. Ken Ward, has indicated to the Rumney
10 Board of Selectmen that the Rumney Fire Department
11 does not need any additional equipment?

12 A. I would be extremely surprised if that's the words he
13 actually used.

14 Q. Okay. So could you turn to what's been marked as
15 Exhibit 16. And I have that on the table next to you
16 as Applicant's Exhibit 16.

17 A. Okay.

18 Q. And would you agree that this appears to be minutes
19 from the Town of Rumney Selectmen's meeting work
20 session, dated October 8th, 2010?

21 A. It does indicate that at the top, yes.

22 Q. Okay. And could you -- I'm going to show you my copy
23 because it might be faster to do this. Could you
24 please read into the record, in the middle paragraph

1 of those minutes, the highlighted sentence that I
2 have here.

3 A. The highlighted sentence says: "Rumney Fire Chief,
4 Ken Ward, has told the selectmen that the Rumney Fire
5 Department does not need any additional equipment."

6 Q. Okay. So, how do you reconcile Mr. Ward, or Chief
7 Ward's statement to the Rumney Board of Selectmen
8 with your position that he is in support of the
9 request that you're making in your prefiled
10 testimony?

11 A. Well, like I said, the conversations I've had with
12 him still indicate the need for a brush truck.

13 Q. Now, did you -- do you recall at the technical
14 session that we had here in this building awhile ago
15 making a statement that you would go along with the
16 Town of Rumney if they decided they did not need the
17 equipment listed at the bottom of your -- of Page 4
18 of your prefiled testimony?

19 A. If they chose not to want anything for their end of a
20 response, that is totally up to them. But for the
21 Town of Plymouth to make a response from our side up
22 that mountain, we would need additional equipment.

23 Q. Okay. So maybe I misunderstood you at the tech
24 session. Is it your testimony that, if Rumney

1 doesn't want it, that's their position, but you still
2 want it nonetheless?

3 A. We would need some additional equipment to make a
4 response up over the ski area.

5 Q. How do you currently fight fire on Tenney or Fletcher
6 Mountain?

7 A. We walk.

8 Q. Okay. So right now, if there were a harvesting
9 machine or a microwave tower that caught fire, you
10 would have to walk up Tenney Mountain to get there?

11 A. That is correct.

12 Q. But to fight fire on the Groton project site, you are
13 requesting ATVs and other equipment and vehicles; is
14 that correct?

15 A. That is correct.

16 Q. Okay. Now, does Plymouth have a mutual aid agreement
17 with approximately 37 other towns?

18 A. We're part of the mutual aid system. That is
19 correct.

20 Q. Okay. And I think you answered in response to
21 Attorney Roth's question that, at least one of those
22 communities, or maybe two, Campton/Thornton, have
23 some of the equipment that you are asking for in this
24 case; is that correct?

1 A. That is correct.

2 Q. I believe you also said that the State of New
3 Hampshire and the Forest Service also has that
4 equipment.

5 A. That is correct.

6 Q. Would the Town of Plymouth be able to access that
7 equipment if it needed it to fight fire?

8 A. If it is available. And sometimes the request, when
9 it goes out, either personnel or -- it takes
10 typically about half to three quarters of an hour to
11 get that additional equipment from out of town.

12 Q. Now, I think -- do you know where the Forest Service
13 keeps that equipment?

14 A. They at times will spread it around in different
15 parts of the state where they have a high probability
16 of wildland fires.

17 Q. And do you know specifically where any -- if any of
18 the Forest Service or State of New Hampshire
19 equipment that you believe you need is located
20 anywhere near the town of Plymouth or Rumney?

21 A. Sometimes they'll take a truck and actually put it on
22 patrol. There's some station, I believe, up at the
23 Lancaster site. And I believe that there's some down
24 in this town, Concord.

1 Q. Okay. Now, you're aware that the Applicant reached
2 agreement with the Town of Rumney on the issues of
3 emergency response; correct?

4 A. That was -- I did see that agreement, yes.

5 Q. Okay. Does that agreement affect your position in
6 this docket in any way?

7 A. No. I mean, if we still had to go up, we're still
8 going to need equipment to be able to get up there in
9 a timely fashion.

10 Q. Does Plymouth Fire Department respond to any fires on
11 gravel or dirt roads, or do you only allow your fire
12 trucks to go on paved roads?

13 A. No, we respond to gravel and dirt roads for house
14 fires.

15 Q. So you do that now?

16 A. Correct.

17 Q. So if there were a fire to break out on the public
18 part of Groton Hollow Road right now, and if Plymouth
19 were called upon to respond to that fire, would you
20 respond with the equipment that you currently have?

21 A. Yes, we would.

22 Q. Okay. Now, do you consider traveling -- well, first
23 of all, are you aware of the specifications or the
24 engineering plans for the access roads for this

1 project?

2 A. I have seen some of the specifications for the access
3 roads.

4 Q. Okay. So would you consider traveling on an
5 18-foot-wide road, a graded gravel road, would you
6 consider that to be off-roading, such that it would
7 necessitate an ATV?

8 A. I would have to take a look at when the road was
9 actually constructed, because in the past we have
10 been told about access roads that anything could go
11 up. And to take a 30-ton truck and not have
12 guardrails or any protection like that, we have opted
13 not to send that piece of apparatus up certain roads.

14 Q. And are you aware of how -- I believe testimony -- or
15 excuse me -- questioning earlier this morning of you
16 was regarding prefiled testimony of Mr. Kevin Devlin.
17 Did you review Mr. Devlin's prefiled testimony?

18 A. The section that I read off, yes, I've seen that
19 before.

20 Q. Okay. But you weren't here when Mr. Devlin testified
21 about how he would, or what the standard operating
22 procedure is for fighting a wind turbine, were you?

23 A. No, I was not.

24 Q. So do you have any idea of how that occurs?

1 A. From what I understand, in practicality, if it's
2 standing and it's burning, you stand around and keep
3 it from spreading and allow it to burn out. Or in
4 some cases I've heard where they call in helicopters
5 to try to suppress it.

6 Q. Do you have any problem with that approach?

7 A. No. That's about the only approach you have.

8 Q. Okay. Would you need the vehicles and equipment
9 you're requesting here for that?

10 A. There again, if the fire stays contained to the
11 windmill itself and the Rumney Fire Department can
12 get up there and stand by while this thing is burning
13 and they can handle it, then they would have no need
14 to contact us or anybody else to help them out with
15 that.

16 Q. Okay. Are you aware that the Applicant reached
17 agreement in principal with the Town of Groton on the
18 issue of emergency response, which, among other
19 things, requires the Applicant to cooperate with the
20 town's emergency services to develop and coordinate
21 an emergency response plan for the wind farm, and
22 coordinate with the Town of Rumney?

23 A. I'm not aware of any agreement of that. I'm not
24 surprised that there is one, because there should be.

1 Q. So you're not aware of the Town of Groton
2 agreement -- at least it's an agreement in principal
3 and a draft has been provided with the application --
4 that indicates that the Applicant would purchase any
5 specialized equipment for storage at the project site
6 if, again, in consultation with Groton and Rumney, it
7 was determined that it was needed?

8 A. Like I said, I'm not aware of it.

9 Q. Now, I think you spoke a little bit about, I think it
10 came up in conversation this morning that you had
11 with others here on the record about some photographs
12 that you submitted as exhibits to your prefiled
13 testimony. Do you remember that?

14 A. Yes, I do.

15 Q. But you haven't confirmed that those images are, in
16 fact, photographs that authentically depict actual
17 events, have you?

18 A. No, there's...

19 Q. And you don't know the make or model of the wind
20 turbines that are shown in those photos, do you?

21 A. No, I don't.

22 Q. And you don't know if they're owned by Iberdrola?

23 A. No, I don't.

24 Q. And you don't know where those photos were taken, do

1 you?

2 A. There was a pickup truck that had one of the blades
3 right down through the roof, and I believe the plate
4 was from New York. So...

5 Q. Okay. Have you personally ever requested to meet
6 with anyone from the Groton Wind Farm?

7 A. I sent an e-mail out, back when this was first coming
8 up. And I was told that it was the wrong channel. I
9 had to go through, I believe, the lawyer or the
10 intervenors to get that meeting. And we never did
11 have a meeting with them. We had a town planner that
12 was trying to make some contacts. She has taken
13 another job, so she's not even in town anymore.

14 Q. Who did you send the e-mail to?

15 A. I believe the first e-mail, I attempted to contact
16 Mr. Cherian. To be honest with you, I don't even
17 know if the e-mail reached him. So...

18 Q. Okay. Now, has the Plymouth Board of Selectmen asked
19 you to request a meeting with the Applicant?

20 A. I believe the Plymouth Board of Selectmen asked me to
21 do just what I'm doing: Making sure that the best
22 interests of the town and the surrounding people's
23 property are protected.

24 Q. Are you aware that Mr. Cherian has met with the Town

1 of Plymouth Board of Selectmen?

2 A. Yes, I am.

3 Q. Okay. But it's still your position that the
4 Applicant has not contacted anyone within the Town of
5 Plymouth to discuss issues such as fire safety or
6 issues of concern to you? Is that your position?

7 A. To the best of my knowledge, there has been no
8 contact made to my office or the selectmen about
9 this.

10 Q. Thank you very much. I have nothing further.

11 CHAIRMAN GETZ: Okay. Questions from
12 the Subcommittee. Mr. Scott.

13 INTERROGATORIES BY MR. SCOTT:

14 Q. Good afternoon, Chief. If this project were not to
15 be built, do you feel you'd need the additional
16 equipment?

17 A. Correct. If we're not going to build the project,
18 then, in the past 20 years, like the testimony has
19 stated, we haven't been up there for fire-related
20 emergencies only but a couple times.

21 Q. Are you -- you may not be aware of this. But are you
22 aware that the Committee has received a letter from
23 the state fire marshal concerning authority for
24 building code and suggesting we add certain

1 conditions for the building of the turbines?

2 A. I am aware of that, yes.

3 Q. And one of the conditions they're suggesting is that
4 a monitored fire-suppression system be installed on
5 each of the cell and generator housing?

6 A. Yes, I'm aware of that.

7 Q. If that's done, do you still think there would be a
8 need for the extra equipment?

9 A. If that is done to the specifications of the fire
10 marshal's office, that is going to greatly reduce the
11 risk or chance of an incident happening up there.
12 But I still look at, you know, worst-case scenario.
13 A fire-alarm suppression system is a mechanical
14 device. It is subject to failure. And then, once
15 it's in place, is there going to be someone that is
16 going to maintain it and make sure that it is
17 inspected and tested on a yearly basis, as those
18 units usually are supposed to be?

19 Q. Thank you.

20 CHAIRMAN GETZ: Other questions? Mr.
21 Harrington.

22 MR. HARRINGTON: Yeah.

23 INTERROGATORIES BY MR. HARRINGTON:

24 Q. Good afternoon, Chief. Just a few questions. First

1 on the strategy. I just want to make sure that I did
2 get what you said correctly.

3 There was a strategy presented by Mr. Devlin on
4 how one fights fires on these. And I guess to
5 summarize it: You let them burn out, and you make
6 sure that the fire doesn't spread by either the
7 dropping off of flammable liquids or the collapse of
8 the tower or whatever, such that it caught someplace
9 else. So it's just basically wait and see and
10 containment. Would you agree with that?

11 A. Correct.

12 Q. So the mountain exists there today, and obviously so
13 do things that would burn where we would worry about
14 the fire spreading, whether it's dead trees or leaves
15 or whatever. And certainly there's at least a real
16 possibility, may not be very high based on
17 discussions we've had here, that there could be fires
18 started in that area by lightening or, I think in one
19 case he was talking about a bear eating something or
20 clawing something.

21 A. Chewed through a power line is what he did.

22 Q. Chewed through a power line.

23 If there was logging in the area, that also
24 brings in the, you know, chainsaws with fuel in them

1 and people filling up with gasoline and trucks and
2 skidders and all that type of equipment that could
3 all add to the possibly of starting a fire. So,
4 right now, you're saying you have adequate equipment
5 to address that risk from fires, let's assume that
6 the turbines -- you know, without the turbines being
7 there.

8 A. Correct.

9 Q. And that's done, and you access that by foot or by
10 ATV?

11 A. We access that by foot. When the mountain itself was
12 actually a ski resort, they had all-terrain vehicles
13 there. And we got a memorandum of understanding
14 that, if there was an event up there, we could
15 utilize some of their equipment to gain access to the
16 top, because it was protecting their investment, as
17 far as the ski towers and so forth. But any -- it's
18 not just the wind turbines. It's the vehicles, the
19 personnel. All those contribute to the potential for
20 a fire, whether it be a vehicle fire or someone
21 smoking and discarding their cigarette just on the
22 ground and it doesn't get extinguished and it creates
23 a fire on top of the mountain.

24 Q. But just going along with that, this is an active

1 logging area, and all those things would apply to
2 loggers as well.

3 A. Correct.

4 Q. In fact, it's probably -- with logging, there's
5 probably going to be more people -- you probably
6 weren't here for testimony that the windmill wind
7 project would employ three people full time. And so
8 I'm assuming that a good portion of time there will
9 be one or two, or maybe no people on the site. So it
10 probably isn't a very large hazard from them creating
11 fires.

12 So I guess the question then comes down to how
13 much of an increased threat of fire in this area is
14 there with the presence of the fire turbines? Do you
15 have -- have you done any analysis of any studies or
16 whatever to say it increases the risk by 2 percent or
17 50 percent or whatever?

18 A. No, we haven't done that. We do know that that
19 mountain is very prone to lightening strike. Now,
20 you know, with the towers being up, it's another
21 conductor for the lightening to hit. I have made
22 contact with some departments that have windmills and
23 asked, you know, what type of fires or emergencies
24 that have gone on to the likelihood -- from Lempster

1 itself, I understand that in four years they've gone
2 mainly on medical emergencies up there, injured
3 workers, you know, and so forth like that. So as far
4 as a percentage, I couldn't put a percentage on it.
5 But once you put that up there, you're going to have
6 more human interaction up there and more of a chance.
7 I mean...

8 Q. So, safe to say -- so you're saying the risk of fire
9 up there would be increased by the presence of the
10 wind turbine project.

11 A. Correct.

12 Q. Okay. The access to there, you had mentioned that
13 your side of the mountain, the access is basically up
14 the Tenney Mountain Ski Area. Now, you just said --
15 is that place not open anymore?

16 A. It's not going to be open this year, no.

17 Q. Oh, okay. So with the wind project, I'm assuming the
18 access to a lot of the areas on the top of the
19 mountain would improve quite a bit because they're
20 putting in roads that are going to be capable of
21 handling very, very large trucks to move all that
22 equipment up there. So, I mean, we went up there
23 briefly and looked at the roads. And they were in
24 pretty tough shape once you got to the private area

1 of the road. You could go a little ways in
2 four-wheel drive in some areas, but I imagine a lot
3 of it would be limited to skidders or something like
4 that.

5 So is it safe to say that the access to the
6 areas where the turbines are is going to be quite a
7 bit better than it is now for emergency vehicles?

8 A. You would have to say yes.

9 Q. And I'm just a little curious about this. You had
10 mentioned that the town of Groton doesn't have a fire
11 department.

12 A. Correct.

13 Q. But they seem to have a fire chief.

14 A. Correct.

15 Q. So they have a chief but no Indians, I mean for lack
16 of a better term?

17 A. Correct.

18 Q. Okay. And there was some discussion in exhibit --
19 the Applicant's Exhibit 16, which I think was given
20 to you to read. This was the minutes from the
21 meeting.

22 A. Yes.

23 Q. And there was discussion of a draft agreement with
24 Groton. And basically, the words are directly out of

1 the Lempster agreement, almost word for word, I
2 think. It talks about the owner shall cooperate with
3 the town's emergency services to determine the need
4 for the purchase of any equipment required to provide
5 an adequate response to emergency. And this was in
6 the Rumney's discussion of the Groton agreement. And
7 it says they checked to make sure it was still in the
8 agreement, but they learned that the Groton Selectmen
9 had taken it out. They thought because Rumney
10 handles the fire protection, this section should be
11 addressed by Rumney. This subject has not been part
12 of the town's negotiations when the agreement was
13 brought. Rumney Fire Chief told the selectmen that
14 Rumney Fire does not need any additional equipment.
15 However, the need for additional forest fire
16 equipment had been raised several times by the
17 Plymouth Chief. Selectmen felt that up until now,
18 should the need arise, it would be handled through
19 this provision with Groton. After some discussion,
20 the board agreed they would like to see this
21 provision included in Groton's agreement.

22 So what would be your understanding, if that was
23 included in the Groton's agreement, having that they
24 don't have a fire department? Would they simply have

1 a building that other fire departments could access
2 if there was equipment that was indeed reached in
3 agreement with them? I'm trying to figure how this
4 works.

5 A. To be honest with you, I don't know how they would do
6 that. And to have equipment in a remote location
7 that we would have to go further out to go get and
8 bring it back does not make any sense to me. Like to
9 keep things, you know, where the personnel are going
10 to go and grab the appropriate equipment to respond
11 to the call.

12 Q. But if it was -- let's say it was in situ on the area
13 of the turbines or on the access road to the turbines
14 themselves in a building, so the equipment could be
15 accessed from that point. Would that seem to be
16 something that at least possibly could be worked out?

17 A. That's a possibility that could be worked out.

18 Q. And the cost of the equipment, you mentioned
19 approximately \$150,000. There was some discussion as
20 well on some of the pumps. Did that include those
21 additional pumps, or was it just for vehicles?

22 A. No. From what the forest ranger indicated to me, the
23 cost of these brush trucks is relatively small
24 because you're not building an entire fire truck.

1 And he indicated the prices that they have gotten
2 from the state before is down around the \$30- to
3 \$40,000 range. The pumps aren't that expensive by
4 themselves. And those ATVs are running around the
5 \$10,000 range. He estimated, you know, right around
6 that.

7 Q. And the use of the ATVs would be to access the site
8 from the Tenney Mountain side up what was the ski
9 area?

10 A. Well, that's part of it. But once you have a
11 wildland fire, it's one thing to get to the center of
12 it, but then the fire travels; so, therefore, you've
13 got to get personnel and equipment out to the edges
14 of fire itself. So you're not just right on the
15 gravel road, you're --

16 Q. So you would envision putting these ATVs in the back
17 of a truck or something and driving up the roads?

18 A. Usually you have them on a trailer, and you would
19 trailer them to the staging area, and then they would
20 be deployed to be utilized for personnel to get to
21 the scene. Because if you walk up for half an hour
22 up a mountain, then once they get to the top they're
23 going to have to rest. And then you still got to get
24 food, water and the appropriate equipment up to them

1 to be able to do their jobs. And that's what those
2 units are used for.

3 Q. But given the new and improved road situation,
4 whatever equipment you brought up, whether it was
5 ATVs or pumps or whatever, it probably -- I'm making
6 a guess here. The fastest way to get up there would
7 be to go Groton Hollow Road, or would it be to ATV up
8 the existing ski slope?

9 A. It all depends on what is going on in there. Because
10 if you're trying to build an attack and put a fire
11 line and let the fire burn to it, then you would come
12 up from the unburned section. If you're doing it
13 just the opposite, then you'd go from the burning
14 section down to the fire itself.

15 Q. Okay. Thank you.

16 CHAIRMAN GETZ: Mr. Steltzer.

17 MR. STELTZER: Yeah, two quick
18 questions.

19 INTERROGATORIES BY MR. STELTZER:

20 Q. Are you familiar with the safety measures that are in
21 place on the Gamesa turbines for lightening strikes?

22 A. I've done some reading on that, and they do indicate
23 that they have some protection for lightening on
24 them, yes.

1 Q. And then the second question is, the Town of Groton
2 will be receiving some bucks for this project. Is it
3 possible that the Town of Groton, if they so choose,
4 could enter into an agreement with Plymouth to use
5 the funds that they are receiving to purchase
6 equipment, if equipment is needed?

7 A. I suppose if they so desired they could do that, yes.

8 Q. Great. Thank you.

9 CHAIRMAN GETZ: Other questions? Mr.
10 Iacopino.

11 MR. IACOPINO: Thank you.

12 INTERROGATORIES BY MR. IACOPINO:

13 Q. Good morning -- good afternoon, Chief. First thing I
14 just wanted to ask you is just to go over this
15 situation where Groton has a fire chief but not a
16 fire department.

17 It's my understanding -- and please correct me
18 if I'm wrong. The fire chief, as I understand, is
19 responsible for essentially administering a contract
20 with another town or another agency to provide
21 fire-suppression services to the town of Groton; is
22 that right?

23 A. I believe that's within his scope of his duties, yes.

24 Q. And that contract, as I understand right now, is with

1 Rumney; is that right?

2 A. Rumney and Hebron.

3 Q. Hebron does the medical and Rumney does the fire?

4 A. Hebron does -- they basically broke the town up
5 because there's certain areas that Hebron's quicker
6 and it's on their side. So it's -- they divided the
7 town.

8 Q. Okay. Do you have any idea currently how many pieces
9 of logging equipment, industrial equipment, that is
10 used on a daily basis in the vicinity of this site
11 presently?

12 A. Presently, I'm not sure of any logging operation up
13 in that area. That doesn't mean that there isn't
14 some going on.

15 Q. Is that something that you normally keep track of in
16 your duties as fire chief?

17 A. Duties as the forest fire warden. Each logger has to
18 file an intent to cut with the town, if they're going
19 to do a logging operation within the town. The state
20 forest ranger, they monitor that. We do keep track
21 of it so that we know that it's going on there, for
22 one. Fire-related stuff and medical emergencies in
23 case, you know, one of the loggers gets injured, we
24 know access points and how their roads are

1 maintained, so that we can get in there if we need
2 to.

3 Q. So, then, as the fire warden, you actually have a
4 pretty good idea how much -- how many pieces of
5 logging equipment are up there at any given time as
6 it's going on?

7 A. If it's on the Plymouth side, yes.

8 Q. Okay. So your jurisdiction as fire warden only goes
9 to the Plymouth line?

10 A. Correct.

11 Q. Okay. This project would have 24 turbines, which
12 means 24 new cells, which I assume is the place that
13 a fire, if one were to be ignited, is most likely to
14 ignite.

15 Is that a substantial number of additional
16 pieces of heavy equipment in the area of the site
17 over what's normally what's up there?

18 A. It's spread out. But, yes, I would say. I talk with
19 people that have logged up there, and they do it
20 piecemeal, but...

21 Q. You had mentioned that, I guess, it was more than 10
22 years ago you had gotten your one-ton truck stuck in
23 responding to --

24 A. I'm sorry. The one-ton truck we have now is four to

1 five years old. We had another vehicle stuck back in
2 that time.

3 Q. Okay. And you indicated that on that occasion you
4 had to wait to get some ATVs.

5 A. The initial response was we took a small crew and we
6 hiked up in. And it took about half, three quarters
7 of an hour carrying tools and backpack pumps, which
8 holds five gallons of water, up to the top.

9 Q. Did you eventually get some ATVs in there?

10 A. We eventually got a couple of ATVs. And then we also
11 contracted a helicopter to fly personnel up to the
12 top and do water drops.

13 Q. Where did you get the ATVs from?

14 A. The ATVs came from some of the members that actually
15 privately owned them. And they were recreational
16 ones, so you could have a driver and then -- they
17 actually put people on the baskets, which is not a
18 safe thing to do. And we do not advocate that
19 anymore.

20 Q. But those were all just personally owned by your
21 firefighters.

22 A. Correct.

23 Q. They were not owned by another town or the state or
24 anything like that.

1 A. Correct.

2 Q. If I understand it correctly, if you are called out
3 to this site for an emergency, that means, under the
4 mutual aid contract, that it was something that
5 Rumney determined that they could not handle on their
6 own; is that correct?

7 A. Correct.

8 Q. All right. And then, finally, you've looked -- I
9 take it you've looked at the type of machinery that
10 the wind turbine actually is, and you looked at some
11 of the specs; is that right?

12 A. Yes.

13 Q. You told us, I believe it's 150 gallons or so of
14 petroleum oil being held.

15 Have you looked at whether these wind turbines
16 actually have fire-suppression systems in them?

17 A. I do know that they can have fire-suppression systems
18 in with them. That's one thing that the fire
19 marshal's office -- when I communicated with them, he
20 said that they do have suppression systems designed
21 for them, and that's one thing that he was going to
22 advocate for.

23 Q. Are you -- you're probably not aware because you
24 weren't here. But we heard previously from Mr.

1 Devlin that the wind turbines, in general, generally
2 don't come with fire-suppression systems. Are you
3 aware of that?

4 A. They probably don't generally come with them.
5 Doesn't surprise me.

6 Q. You were asked previously about Rumney Exhibit 1. Do
7 you still have that in front of you? It's the
8 agreement with the Town of Rumney.

9 A. I don't have Rumney Exhibit 1.

10 Q. Let me give you my copy. I'll draw your attention to
11 Section 6.3. I think you were asked about that
12 previously and whether that changed your opinion at
13 all. But the section says the owner -- meaning
14 Iberdrola, shall maintain fire alarm systems, sensor
15 systems and fire-suppression equipment that is
16 installed in all wind turbines and facilities. In
17 your -- well --

18 A. I believe the fire marshal is concurring with that.

19 Q. Okay. But to the best of your knowledge and your
20 study of wind turbines, do all wind turbines contain
21 suppression systems?

22 A. No.

23 Q. I don't have anything further.

24 CHAIRMAN GETZ: Dr. Kent?

1 INTERROGATORIES BY DR. KENT:

2 Q. If a fire were to start today up on that project
3 site, who would respond?

4 A. Town of Rumney Fire Department would.

5 Q. Only the Town of Rumney?

6 A. Upon the initial call, yes.

7 Q. And if Rumney feels -- they make an assessment if --
8 whether they can handle it or not?

9 A. Correct.

10 Q. Okay. And if they decide they can't, who do they
11 call?

12 A. They would, by radio, contact the dispatch center,
13 Lakes Region Fire and Mutual Aid, and they would
14 request an additional alarm, whether it be a first,
15 second or third. And each time he indicates -- like
16 a first, it brings in, like, three of the surrounding
17 towns for support. And then each additional alarm
18 would bring in more and more equipment from other
19 departments.

20 Q. This is for a wildland fire.

21 A. Yeah. Same as a building fire.

22 Q. And how does the state get involved?

23 A. The state gets involved when -- upon request. They
24 don't come in and take over. They will -- if they

1 hear about it, they will respond and go to the
2 incident commander, which would be the fire chief,
3 and say, Jeez, do you need anything from my agency?
4 And he'd either indicate yes or no.

5 Q. Does the fire chief, the first responder, always
6 remain in charge of the scene?

7 A. He does until such time that he wants to hand it off
8 to someone else.

9 Q. Is that -- does that occur, that a fire chief hands
10 off --

11 A. It's a -- I haven't seen it happen unless there's
12 another event going on in town. He may delegate one
13 of his deputies or something like that to take his
14 spot on that call and then go to another one.

15 Q. How does the forest service get involved?

16 A. The forest -- like I said, my appointment as town
17 warden comes through the State Forest Division in
18 Lands. And either by -- we would have Lakes Region
19 contact them to have a representative show up. Or if
20 they're in the area and they have the same radio
21 frequency, they may swing by to see if they can be of
22 assistance to us.

23 Q. And the State is -- has a compact with other states
24 and -- actually, other provinces, including Canada?

1 A. That may be.

2 Q. Are you familiar with that?

3 A. That may get more into the federal forest and lands
4 aspect of it. But as far as the State, I'm not sure.
5 I couldn't comment whether or not they do or do not.

6 Q. But it's your understanding that the chief of the
7 first responders maintains control of the scene
8 unless he gives it up?

9 A. Correct.

10 Q. Okay. Thank you.

11 CHAIRMAN GETZ: Other questions from
12 the Subcommittee?

13 (No verbal response)

14 CHAIRMAN GETZ: Hearing nothing,
15 redirect. Mr. McGowan?

16 REDIRECT EXAMINATION

17 BY MR. MCGOWAN:

18 Q. Back to the photographs. If you had not seen those
19 photos, would your opinion as to the equipment you
20 would need be the same today?

21 A. If you're asking if I had no knowledge that these
22 wind turbines do catch fire? Is that what --

23 Q. If you -- you know that they do and they can. But
24 you were provided photos from, I believe, the state

1 fire marshal's office allegedly depicting these
2 fires. And we haven't had a chance to verify. So if
3 you found out, for instance, that those photos had
4 been doctored or edited in some way, but you still
5 knew fires occurred, would you still have the same
6 opinion as to the need for this certain equipment?

7 A. Knowing that these units do catch fire and they do
8 create certain emergencies, the need to get up there
9 and mitigate these emergencies still exist.

10 Q. Okay. Chief Clogston, in your opinion, do you think
11 that the Site Evaluation Committee should condition
12 any permit or certification for the Groton Wind
13 facility on providing the Town of Plymouth and any
14 other interested towns with the equipment you have
15 requested -- namely, two Type 6 brush trucks, two
16 6-person ATVs, and at least three forestry
17 high-pressure portable pumps?

18 A. That is the desire of the local fire chiefs I have
19 met with, is that we sit down and be able to get the
20 equipment that we perceive necessary to potentially
21 mitigate any -- we look at worst-case scenario.
22 Fire-suppression equipment, tools and training for
23 the --

24 Q. And if there were -- and would you accept less than

1 that full list if it was -- if it came to that, would
2 you accept one Type 6 brush truck and one 6-person
3 ATV, as opposed to two of each?

4 A. Yes, we're more than willing to work with the amount.

5 Q. Okay. Thank you, Chief. No further questions.

6 MR. McGOWAN: Thank you, Mr. Chair.

7 CHAIRMAN GETZ: Okay. Then --

8 MS. GEIGER: Could I have one question
9 on recross, please, limited to redirect?

10 RE CROSS-EXAMINATION

11 BY MS. GEIGER:

12 Q. Chief, you just indicated to your attorney on
13 redirect that you were still asking the Committee --
14 you're basically asking the Committee to order the
15 Applicant, as a condition of the certificate, to
16 purchase some equipment for the Town of Plymouth to
17 assist you with the potential need to fight fire at
18 the project site; is that correct?

19 A. Correct.

20 Q. But isn't it also true that if you were to receive
21 this equipment, it would not be limited solely to use
22 at the project site? You would use this equipment to
23 help you fight fire elsewhere; is that correct?

24 A. Correct.

1 Q. Thank you. I don't have anything further.

2 CHAIRMAN GETZ: Do you have recross,
3 Ms. Lewis?

4 MS. LEWIS: Redirect, I believe.

5 CHAIRMAN GETZ: No, you don't get
6 redirect. That's only for the --

7 MS. LEWIS: Sorry. It's related to
8 the Committee's questions.

9 CHAIRMAN GETZ: You've had adequate
10 opportunity to ask questions of Chief Clogston. Unless
11 you have something that qualifies as recross, I'm not
12 going to permit other questions.

13 MS. LEWIS: Okay. Thank you.

14 CHAIRMAN GETZ: Anything from the
15 Subcommittee for the Chief?

16 (No verbal response)

17 CHAIRMAN GETZ: Hearing nothing, then
18 you're excused. Thank you, Chief.

19 WITNESS CLOGSTON: Thank you.

20 CHAIRMAN GETZ: Well, it's well past
21 time for the lunch recess. But let's take stock of where
22 we are.

23 The next order of business would be to
24 turn to Mr. Lloyd-Evans, which I represented we will

1 exercise all best efforts to make sure that he completes
2 his testimony and cross-examination today. And then my
3 intention after that would be to turn to the Mazur group,
4 pending the arrival of Mr. Wetterer, who I understand is
5 on the way.

6 Is that correct, Dr. Mazur?

7 DR. MAZUR: Yeah, that's what he told
8 me.

9 CHAIRMAN GETZ: Okay. And then we
10 still have these other activities that are going on
11 parallel to this. And perhaps, I guess, we would try to
12 address at the very end of the day where we are in terms
13 of is there any agreement among the parties on how to
14 proceed with Exhibit 44 and other related matters to
15 complete the record.

16 And then I guess there's a couple of
17 other things. And part of that would be, depending on how
18 that's all resolved, we have the panel that's on hold.
19 And then we also have the issue of any recall of Mr.
20 Cherian with respect to questions that have been deferred
21 to him along the way. But what I wanted to do with that,
22 as I think I mentioned that yesterday, was to the extent
23 that the Applicant would like to put Mr. Cherian back on
24 to address some of these particular questions -- and let's

1 make sure that there's a discussion among the parties
2 ahead of time, and hopefully agreement, so there's one
3 less dispute that I have to resolve.

4 So, with that, is there anything we
5 need to address before recessing? And it's just a couple
6 minutes before 1:00. We'll come back at 2:00, because
7 that's the time we'd held open for public comments, to the
8 extent members of the public appear and wish to make
9 comment.

10 Anything at this juncture then?

11 (No verbal response)

12 CHAIRMAN GETZ: Okay. Then, hearing
13 nothing, we'll recess for lunch and resume at 2:00.

14 (WHEREUPON, the Day 4 AM Session
15 recessed for lunch at 12:58 p.m. Day 4
16 Afternoon Session to resume under separate
17 cover so designated.)
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19
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24

C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public of
the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic notes
of these proceedings taken at the place and
on the date hereinbefore set forth, to the
best of my skill and ability under the
conditions present at the time.

I further certify that I am neither
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