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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

March 22, 2011 - 10:08 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 6
MORNING SESSION ONLY

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 (Presiding)	N.H. Public Utilities Comm.
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
Donald Kent, Administrator	Dept. of Resources & Econ. Dev.
Eric Steltzer	Office of Energy & Planning
Michael Harrington	N.H. Public Utilities Comm.

* * *

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

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ALSO PRESENT:

Counsel for the Applicant: (Groton Wind, LLC)	Susan S. Geiger, Esq. Douglas L. Patch, Esq. (Orr & Reno)
Counsel for the Public:	Peter Roth, Esq. (Sr. Asst. Atty. General) Evan Mulholland, Esq. (Asst. Atty. General)
Reptg. the Buttolph Group:	Cheryl Lewis, Intervenor
Reptg. the Town of Groton:	Miles Sinclair, Selectman

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15	App. 57	Letter from DHR to Dr. Luhman re: Survey clarification on 91 Groton Road and 12 Smith Bridge Road (02-10-11)	premarked
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19	App. 59	Supplemental Prefiled Testimony of John D. Hecklau (11-19-10)	premarked
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3	App. 62	Third Supplemental Prefiled Testimony of Edward Cherian (12-30-10)	premarked
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17	App. 69	Applicant's responses to Public Counsel's Fifth Data Requests 4-15 (01-21-11)	premarked
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19	App. 70	Applicant's response to TSF Data Request 12 (03-02-11)	premarked
20	App. 71	Project Area Form submitted to DHR in January 2011 (01/11/11)	premarked
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22	App. 72	Letter from C. Henderson (NHF&G) to M. Iacopino (SEC) (03-21-11)	Premarked
23	App. 73	Memo from M. Coppola (NHNHB) to Nancy Rendall (VHB) (12-20-10)	premarked
24			

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EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
PC 18	Fifth Data Requests of Counsel for the Public, with responses	premarked
PC 19	Applicant's Supp. Response to February 2011 Tech Session Data Requests	premarked
PC 20	First Set of Data Requests of the Town of Holderness, with responses	premarked
PC 21	Federal Register/Vol. 76, No. 34/Friday, Feb. 18, 2011/Notices (p. 9590) containing Fisheries and Habitat Conservation and Migratory Birds Programs, Draft Land-Based Wind Energy Guidelines	premarked
PC 22	U.S. Fish & Wildlife Service Draft Land-Based Wind Energy Guidelines	premarked
PC 23	Federal Register/Vol. 76, No. 34/Friday, Feb. 18, 2011/Notices (p. 9529) containing Migratory Birds: Draft Eagle Conservation Plan Guidance	premarked
PC 24	Draft Eagle Conservation Plan Guidance, U.S. Fish & Wildlife Service, January 2011	premarked
Buttolph 37	Memorandum to K. Atwood and E. Mark (USACE) from H. Luhman and S. Bedford (08-25-10)	premarked
Buttolph 38	NH RSA 4:31-1 regarding John Stark Day	premarked

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3 Buttolph 39 NHDHR web page: premarked
4 [http://www.nh.gov/nhdhr/
5 publications/warheroes/
6 starkj.html](http://www.nh.gov/nhdhr/publications/warheroes/starkj.html) Re: John Stark
7 (printed on March 19, 2011)

8 Buttolph 40 Barney, Jesse A., Rumney Then premarked
9 and Now, published by the
10 Town of Rumney 1967

11 Buttolph 41 Notes of H. Luhman re: field premarked
12 visit and contact with
13 K. Onnella

14 Buttolph 42 NHDHR web page: premarked
15 [http://www.nh.gov/nhdhr/review/
16 windfarm.html](http://www.nh.gov/nhdhr/review/windfarm.html) Guidelines for
17 Wind Farm Development Projects
18 (printed on March 17, 2011)

19 Buttolph 43 Web Article: Proposed Wind premarked
20 Farm Imperils Falcons, Other
21 Threatened Species, by
22 Cathy Taibbi (01-28-11)

23 Buttolph 44 Correspondence: Save the Eagles premarked
24 International to SEC

25 Buttolph 45 Applicant's Responses to 3-7-11 premarked
26 Technical Session Data Requests
27 (page 1 only) re: contacts with
28 Rumney Historical Society

29 Buttolph 46 E-mail from K. Atwood (USACE) to premarked
30 K. Goland re: Groton Wind
31 Mitigation Suggestion (08-31-10)

32 Buttolph 47 Web Article: Wicked Local premarked
33 Sandwich - NSTAR eschews Cape
34 Wind power - will buy elsewhere
35 (02-23-11)

1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll reopen the hearing in Site Evaluation
4 Committee Docket 2010-01. The focus of the hearing today
5 and Friday is testimony filed by the Applicant on
6 November 19th and December 30, as well as testimony of the
7 Town of Holderness filed on March 2nd.

8 Before I go into any other, you know,
9 through some preliminary matters, let's take appearances
10 for the record please.

11 MS. GEIGER: Yes. Good morning, Mr.
12 Chairman and members of the Subcommittee. I'm Susan
13 Geiger, from the law firm of Orr & Reno. I represent the
14 Applicant, Groton Wind, LLC. And, with me this morning at
15 counsel table is Attorney Douglas Patch, also from the
16 firm of Orr & Reno.

17 CHAIRMAN GETZ: Good morning. Other
18 appearances, parties?

19 MS. LEWIS: Hi. Cheryl Lewis, from
20 Rumney, intervenor from Rumney, representing the Buttolph
21 Group. And, I also want to, for the record, state that I
22 am also part of another party that is here. I'm now a
23 newly elected member of the Board of Selectmen in the Town
24 of Rumney. However, in this proceeding today, I am only

1 representing myself as an individual.

2 CHAIRMAN GETZ: Thank you.

3 MR. SINCLAIR: Miles Sinclair, Select
4 Board, Town of Groton.

5 CHAIRMAN GETZ: Good morning.

6 MR. ROTH: Good morning, Mr. Chairman.
7 Peter Roth, as Counsel for the Public, and with me today
8 Evan Mullholand, from the Attorney General's Office.

9 CHAIRMAN GETZ: Okay. Good morning.

10 And, let me also note, in addition to myself, present for
11 the Committee are Mr. Steltzer, Mr. Dupee, Mr. Harrington,
12 Mr. Perry, and Mr. Boisvert. So, we do have a quorum.

13 And, I also note for the record that the members who are
14 not here this morning will be reviewing the transcript
15 that will be prepared in anticipation of deliberations
16 that we have scheduled for April 7 and April 8.

17 Let me also note for the record that we
18 have filed on March 21 is a summary statement by the
19 Mazur/Wetterer Intervenor Group, which I am taking to be
20 their closing statement in this proceeding. I don't know
21 if that's a fair assumption on my part or not, but that's
22 what it appears to be, and as they are not present this
23 morning. I also note that there is a letter filed by the
24 Fish & Game Department, dated March 21, noting that "The

1 Department has agreed to the post construction studies
2 outlined in the Iberdrola Renewables Avian and Bat
3 Protection Plan protocols and concurs with the information
4 submitted by Iberdrola to the Committee, as a memorandum
5 dated December 22nd." And, the letter goes on to describe
6 highlights of the agreement.

7 And, with that, I see that there's quite
8 a bit of paper that's been submitted. Maybe we should
9 start with the Applicant to go through. Are there
10 exhibits that you seek to have identified?

11 MS. GEIGER: Yes, Mr. Chairman. If
12 you'd like, we could do that. The Applicant has submitted
13 a list, along with hard copies of -- two hard copies of
14 all of the documents that are listed on the exhibit list.
15 We gave one complete set to Attorney Iacopino and we gave
16 one complete set to Mr. Patnaude. For members of the
17 Subcommittee, we, in order to not bombard you with paper
18 that you already have, we did not submit to you this
19 morning in your package the prefilled testimony that you
20 should all have copies of.

21 CHAIRMAN GETZ: And, I think we're all
22 set with that. Okay. And, one thing I just wanted to
23 make sure I understand, and that's the order of witnesses.
24 As I have it, it's Ms. Luhman, Mr. Hecklau, Mr. Cherian,

1 and then the Rendall/Walker/Leo will be as panel?

2 MS. GEIGER: Yes. Please.

3 CHAIRMAN GETZ: And, then, Mr. Gravel,
4 and then Mr. O'Neal?

5 MS. GEIGER: That's correct, Mr.
6 Chairman. And, I think, for purposes of the panel
7 testimony from the VHB witnesses, I don't think Mr. Leo is
8 going to be testifying. It will just be Ms. Rendall and
9 Mr. Walker.

10 The other thing that I'd like to make
11 the Subcommittee members aware of is that originally we
12 had indicated that Mr. O'Neal could only be here on
13 Friday, and might be testifying via Skype. I was notified
14 yesterday that his plans have changed. And, if we're
15 lucky enough today to get -- to make some headway with all
16 the witnesses, there's a possibility that we could give
17 him a call and he could come up this afternoon, if we get
18 -- if we're that lucky and fortunate to get through the
19 witnesses in that time frame. The way I left it with
20 Mr. O'Neal is that I would give him a call at the lunch
21 break to let him know where we are. And, if it looked
22 feasible, he could be up here for late afternoon, if it's
23 the pleasure of the Committee to continue.

24 CHAIRMAN GETZ: Okay. And, let me just

1 address one with those administrative matters. What we
2 intend to do this morning is go to about 12:30, take the
3 lunch recess, about an hour, and then go to 5:00 or so,
4 depending on where we are, you know, how close we are to
5 finishing witnesses. We have a little flexibility around
6 that perhaps.

7 Okay. Is there anything else that needs
8 to be addressed before we turn to the first witness?

9 MR. ROTH: Mr. Chairman, we have also
10 submitted some additional exhibits this morning that are
11 -- I was not as prepared as Attorney Geiger, in terms of
12 having a list of them. But I have submitted Public
13 Counsel Exhibits Number 18 through 24. There's a copy for
14 each member of the Committee on the Bench and in the
15 penalty box, and Mr. Patnaude and Mr. Iacopino and other
16 parties in the room have a copy. When I was distributing
17 them, Mr. Sinclair was not here, so I didn't get him a
18 copy, but I'd be happy to provide him one at this point.

19 CHAIRMAN GETZ: And, this is the package
20 with, at least what I have, the top document is "Fifth
21 Data Requests of Counsel for the Public", is that --

22 MR. ROTH: That's correct.

23 CHAIRMAN GETZ: And, that would be
24 Exhibit Number 18?

1 MR. ROTH: That's number 18, and they go
2 in series down through number 24. I'm informed by my
3 capable administrative assistant here, Mr. Mullholand,
4 that there may have been a switching of the four exhibits
5 in the bottom of the pile in two, in the sets of two. So,
6 we'll get to that, if necessary, later and clarify when
7 they come up.

8 CHAIRMAN GETZ: And, I take it these
9 will play out through your cross-examination of witnesses?

10 MR. ROTH: I anticipate as such, yes.

11 CHAIRMAN GETZ: And, Ms. --

12 MS. LEWIS: I have also entered some
13 additional exhibits as well, 37 through 46 for the
14 Buttolph Group.

15 CHAIRMAN GETZ: Okay. Thank you. We
16 have those. All right. And, one other item, I guess is
17 there may have been some discussion about this, we don't
18 have to address this now, but we need to decide perhaps
19 sometime today, and that's with respect to the issue of
20 closing statements and/or briefs. I think some of that
21 may go to how long it takes to work our way through the
22 witnesses. So, let's just keep that in mind. I'm not
23 sure if the parties have come to firm positions on whether
24 they need or want briefs or whether we're going to do oral

1 closings or have opportunity for a quick turnaround on
2 written closings. But let's defer that issue. I just
3 wanted to raise it. And, of course, if there's some
4 conversation among the parties and some agreement during a
5 recess, then that would be useful as well, rather than go
6 through a discussion of it on the record.

7 So, if there's nothing else, then,
8 Ms. Geiger.

9 MS. GEIGER: Thank you, Mr. Chairman.
10 The Applicant would call its first witness, Dr. Hope
11 Luhman.

12 CHAIRMAN GETZ: And, I'll just note for
13 the record that Dr. Luhman has been sworn previously in
14 this proceeding and she is still under oath.

15 (Whereupon Hope E. Luhman was recalled
16 to the stand, having been previously
17 sworn.)

18 HOPE E. LUHMAN, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MS. GEIGER:

21 Q. Good morning, Dr. Luhman.

22 A. Good morning.

23 Q. Could us please state your name for the record again.

24 A. Hope Luhman.

1 Q. And, by whom are you employed and in what capacity?

2 A. I'm employed by the Louis Berger Group. I'm an
3 Assistant Director for Cultural Resources.

4 Q. Dr. Luhman, did you submit Second Supplemental Prefiled
5 Testimony dated November 19th in this docket, which has
6 been premarked for identification as "Applicant's
7 Exhibit 51"?

8 A. Yes.

9 CHAIRMAN GETZ: Dr. Luhman, if you could
10 get closer to the microphone.

11 WITNESS LUHMAN: Oh, I'm sorry.

12 BY THE WITNESS:

13 A. Yes.

14 BY MS. GEIGER:

15 Q. Did you also submit Third Supplemental Prefiled
16 Testimony dated December 30th, 2010 in this docket,
17 which has been premarked for identification as
18 "Applicant's Exhibit 52"?

19 A. Yes.

20 Q. Do you have any corrections or updates to either your
21 Second or Third Supplemental Prefiled Testimony?

22 A. There are no corrections, but there are some updates.

23 Q. Okay. What are they?

24 A. There have been several correspondences and items

1 submitted to the New Hampshire Division for Historic
2 Resources, and some correspondence received back from
3 them regarding those items. The DHR issued a letter on
4 November 24th regarding an end-of-field letter that we
5 had submitted on November 18th. I believe there's an
6 -- it's attached to the second prefiled testimony.
7 This particular end-of-field letter concerned our Phase
8 IB investigations, addendum investigations for the
9 alternate overhead electrical lines and additional
10 testing that was done.

11 The November 24th letter from DHR
12 basically states that no further work was necessary.
13 And, they were -- they were accepting the information
14 that was provided.

15 Q. And, is the document, which has been premarked for
16 identification as "Applicant's Exhibit 53", a copy of
17 the November 24th DHR letter to which you just
18 referred?

19 A. Yes, it is.

20 Q. Were there any other communications from the Division
21 of Historical Resources?

22 A. On January 3rd, Louis Berger submitted another Addendum
23 Phase IB end-of-field letter to the Division for
24 Historic Resources regarding the Phase IB archeological

1 survey that was done for the proposed substation in
2 Holderness.

3 Q. And, is the document, which has been premarked for
4 identification as "Applicant's Exhibit 54", a copy of
5 the January 3rd, 2011 end-of-field letter that you just
6 referred to?

7 A. Yes, it is.

8 Q. And, did the Project receive a response from the
9 Division of Historical Resources regarding that
10 end-of-field letter concerning the Holderness
11 Substation?

12 A. Yes, we did.

13 Q. And, could you identify the time frame in which you
14 received that response?

15 A. The DHR issued a letter on January 18th indicating
16 that, based on the information that was provided in the
17 end-of-field letter, there was no further work that was
18 necessary.

19 Q. Okay. And, is the document, which has been premarked
20 for identification as "Applicant's Exhibit 55", a copy
21 of the January 18th, 2011 DHR letter to which you just
22 referred?

23 A. Yes, it is.

24 Q. Now, did the Project resubmit its Project Area Form to

1 the Division of Historical Resources?

2 A. Yes, we did. On January 19th, the Project Area Form
3 was hand delivered to the DHR. And, it was provided to
4 all other requesting parties. I believe it was
5 uploaded to be downloaded from an FTP site so that it
6 could be accessed by everyone.

7 Q. And, is -- excuse me for the interruption.

8 A. Sure.

9 Q. Is what's been marked or premarked for identification
10 as "Applicant's Exhibit 71" a copy of that Project Area
11 Form which you submitted to DHR?

12 A. Just double-check. Yes, it is.

13 Q. And, did you receive a response from the Division
14 regarding that PAF?

15 A. Yes. On February 1st, 2001 [2011?], the New Hampshire
16 Division for Historic Resources issued a letter
17 basically accepting the Project Area Form, and stating
18 that it, as currently presented, lays forth the
19 framework for further work.

20 Q. Now, the letter that you just referred to from DHR --

21 A. Uh-huh.

22 Q. -- dated February 1st, is that the document that's been
23 premarked for identification as "Applicant's
24 Exhibit 56"?

1 A. Yes, it is.

2 Q. Have you received any further correspondence from the
3 Division of Historical Resources regarding the Groton
4 Wind Project?

5 A. Yes. Subsequent to that particular letter,
6 Architectural Historian Dr. Steven Bedford engaged in
7 correspondence with the DHR regarding two properties
8 that were noted on the February 1st letter.
9 Particularly, he was interested in 91 Groton Road and
10 12 Smith Bridge Road. He was requesting information
11 from DHR as to why they felt an intensive survey form
12 should be completed for those properties. As a result
13 of the subsequent correspondence and exchange of
14 information between Dr. Bedford and DHR, 91 Groton
15 Hollow -- Groton Road was removed from the list, but
16 they still wanted additional information on 12 Smith
17 Bridge Road.

18 Q. And, did DHR document these concerns or this
19 information in a letter?

20 A. Yes. There was a letter that was issued, a subsequent
21 letter that was issued.

22 Q. Is what's been marked as "Applicant's Exhibit 57" the
23 letter that you are referring to?

24 A. Yes. That's the letter dated February 10th.

1 Q. And, in that letter, am I correct that that letter
2 indicates that the 91 Groton Hollow Road property could
3 be removed from --

4 A. Correct.

5 Q. -- from the list to be submitted?

6 A. Correct.

7 Q. Now, Dr. Luhman, did you answer data requests from
8 Intervenor Cheryl Lewis and Counsel for the Public
9 regarding whether the Applicant has discussed with the
10 Division of Historical Resources whether the Project's
11 initially identified Area of Potential Effect, or the
12 APE, the A-P-E, has changed due to the Applicant's
13 revised interconnection route for the Holderness
14 Substation?

15 A. Yes, I did.

16 Q. Are the documents, which have been marked for
17 identification as "Applicant's Exhibit 58", the answers
18 to data requests that you just referred to?

19 A. Yes, it is.

20 Q. Okay. And, for the record, could you please state
21 whether the Division of Historical Resources has
22 indicated the need to change the APE, the Area of
23 Potential Effect, of the new interconnection line or
24 substation?

1 A. Based on conversations between Dr. Steven Bedford and
2 the DHR, there has been no need to change the APE.

3 Q. Okay. When you communicated with the Division or when
4 your group, Dr. Bedford or others at Louis Berger had
5 communicated with the Division of Historical Resources
6 regarding the Area of Potential Effect, were you aware
7 of the visual analysis that had been done for the
8 alternative link to Route 25?

9 A. Yes.

10 Q. Did you answer data requests regarding this issue?

11 A. Yes, I did.

12 Q. And, is the document, which has been premarked as
13 "Applicant's Exhibit 58", actually the third page of
14 58, --

15 A. Thank you.

16 Q. -- the data request response that you just referred to?

17 A. Yes.

18 Q. Okay. Now, Dr. Luhman, with all of the updates to your
19 prefiled testimonies, which you've just testified
20 about, if you were asked the same questions contained
21 in your Second and Third Supplemental Prefiled
22 Testimonies under oath, along with the information you
23 just provided, would your answers be the same as those
24 contained in your prefiled testimony?

1 A. Yes.

2 Q. In light of all of the developments that have
3 transpired since the last time you testified before
4 this Subcommittee on this Project, have your
5 conclusions about the Project's effects on historical
6 resources changed?

7 A. No. It is still the professional opinion of the Louis
8 Berger team that the Project will have no unreasonable
9 adverse effect on historic resources.

10 MS. GEIGER: Thank you, Dr. Luhman. The
11 witness is available for cross-examination.

12 CHAIRMAN GETZ: Okay. Thank you.

13 Mr. Sinclair?

14 MR. SINCLAIR: No questions. Thank you.

15 CHAIRMAN GETZ: Ms. Lewis?

16 MS. LEWIS: Thank you. Good morning,

17 Ms. Luhman.

18 WITNESS LUHMAN: Hi. How are you?

19 CROSS-EXAMINATION

20 BY MS. LEWIS:

21 Q. Just to start, based on what you had just testified a
22 moment ago, I notice that, on Exhibit Number 73 of the
23 Applicant, the New Hampshire Natural Heritage Bureau,
24 that the locations that are listed are only the Rumney

1 and Groton locations. Was this study not done for
2 Holderness and the new substation?

3 A. I'm sorry, I don't under -- which exhibit are you
4 referring to?

5 Q. Number 73.

6 A. And, Exhibit 73 is the PAF?

7 Q. Well, it had to do with the rare species.

8 A. I'm here to testify about historic resources. I'm
9 sorry, I don't have any information about rare species.

10 Q. Right. I understand that. I thought that this bureau
11 also handled some of the archeological. Am I not
12 correct on that aspect?

13 A. No. I'm sorry.

14 Q. Okay. My mistake.

15 MS. GEIGER: Mr. Chairman and Ms. Lewis,
16 Ms. Rendall and Mr. Walker will be testifying concerning
17 that particular exhibit. Dr. Luhman is not the appro-
18 priate witness to be talking about this particular one.

19 MS. LEWIS: Okay. I apologize.

20 WITNESS LUHMAN: That's okay. I'm sorry
21 for my confusion.

22 CHAIRMAN GETZ: Well, one person at a
23 time. Let's get that straight from the beginning, because
24 Mr. Patnaude is not going to be able to get this on the

1 transcript.

2 BY MS. LEWIS:

3 Q. Okay. If we could start with the Buttolph Exhibit
4 Number 37. And, this is a memo that was authored by
5 you and Mr. Bedford. And, I wondered if you'd be kind
6 enough to read the second paragraph of the memo for the
7 record.

8 A. "As the Section 106 regulations indicate, once there is
9 a determination of Adverse Effect and it is determined
10 that the effect cannot be avoided or minimized, the
11 Adverse Effect needs to be mitigated. Mitigation is
12 typically a negotiated element of the process. In
13 consultation with Groton Wind, LLC, Berger suggests
14 that the completion of a National Register Nomination
15 for Rumney (that area defined by our historic district
16 in the Project Area Form) would be an excellent choice
17 as it also provides an economic benefit for the Town in
18 tax incentives, increases real estate values, and
19 increases heritage tourism." End of paragraph.

20 Q. Okay. In your opinion, what would the definition of an
21 "unreasonable adverse effect" be?

22 A. I think an "unreasonable adverse effect" would be an
23 adverse effect for which there is no mitigation
24 options.

1 Q. Okay. So, basically, by the fact that this memo was
2 authored and sent to the Army Corps is basically
3 stating that discussions had taken place regarding the
4 fact that this Project would need to be mitigated, is
5 that correct?

6 A. There were wide-ranging discussions about a number of
7 issues. This was just the result of talking about
8 possible options down the road.

9 Q. Okay. Could you describe in more detail the conference
10 call that took place in July, that this memo and later
11 e-mails refer to? Because, in those e-mails, which is
12 -- which is also an exhibit of ours, the e-mails
13 respond to the fact that during that conference call
14 you felt that mitigation needed to be planned. I guess
15 I'd like more information on that phone call and how
16 you came about believing that that needed to take
17 place?

18 MS. GEIGER: Mr. Chairman, if I could
19 ask that Ms. Lewis refer the witness to the particular
20 language that she is either paraphrasing or quoting from
21 the e-mail that she just referenced. I think it will be
22 helpful.

23 MS. LEWIS: Okay.

24 BY MS. LEWIS:

1 Q. The Buttolph Exhibit Number 46.

2 A. Am I correct that you are referring to an e-mail from
3 the Army Corps of Engineers to Groton Wind?

4 Q. Well, if you look at Page 2 of that exhibit, this is
5 Kristen Goland, who is here today, and also was
6 involved with that conference call that you were
7 involved with, stated in her e-mail, "During that" --
8 this is the second paragraph down, "During that call we
9 discussed opportunities for mitigation with the Army
10 Corps and it suggested that a memo with a preferred
11 mitigation be developed which is what was recently
12 submitted to your office." So, I would like more
13 details on that conference call and the discussion that
14 took place regarding mitigation options.

15 A. In recalling that conference call, and I believe we
16 discussed this during the recent tech session, that
17 conference call was an impromptu discussion between
18 Erika Mark, Kate Atwood of the Army Corps, Kristen
19 Goland of Groton Wind, LLC, Steve Bedford and myself of
20 the Louis Berger Group. And, it wasn't a -- it was
21 more of a free-ranging discussion about the PAF and the
22 Project. It wasn't a conference call, if my
23 recollection is correct, that essentially had target
24 decision-making in mind. It was just a general

1 discussion about the Project. Because I believe, as I
2 had mentioned to you during the recent tech session, I
3 was actually in Philadelphia at the time and took the
4 call from a parking lot. So, it wasn't a -- it was
5 just a general project discussion, at which mitigation
6 came up, some options I believe were thrown out, and we
7 had been tasked with providing -- with basically
8 providing this memo.

9 Q. Could you tell me of other possible mitigation options
10 that were discussed at that time?

11 A. I honestly can't recall, to tell you the truth.
12 Because that wasn't the point of the conference call,
13 it was just a general project discussion with the lead
14 federal agency for the Project, to bring them up to
15 speed as to where we were.

16 Q. Did you discuss this mitigation option with DHR?

17 A. I don't believe we are in a position to discuss any
18 mitigation options with DHR. And, that would be not
19 between me and the DHR, but rather between the Army
20 Corps as the lead federal agency and DHR.

21 Q. But I was under the understanding that this is a
22 collaborative process between DHR, the Army Corps, and
23 the Applicant. Is that not correct?

24 A. No, that is -- that is true.

1 Q. So, wouldn't it be an important aspect to have DHR
2 involved in that process?

3 A. Well, that's what I meant when I said that it would be
4 a discussion between the Army Corps and DHR.

5 Q. And not you or not Iberdrola?

6 A. Well, Berger can put forth recommendations and
7 suggestions on behalf of the Applicant. The Applicant
8 can put forth recommendations or suggestions. But the
9 ultimate decision-maker here is the Army Corps of
10 Engineers as the lead federal agency, in consultation
11 with the State Historic Preservation Office, here the
12 Division for Historic Resources.

13 Q. But isn't the first step to go through the state, and
14 then the state cooperates with the federal agency as
15 well, but that the state is the first on the list to
16 grant their opinions on all of this?

17 A. I don't really think that you can talk about it in
18 terms of who is first, because it is a collaborative
19 process. And, ultimately, the decision-making is made
20 by the United States Army Corps of Engineers, in
21 consultation with the State Historic Preservation
22 Office. The State Historic Preservation Office, here
23 the DHR, and to use the Army Corps of Engineers' words,
24 is considered to be the local expert. And, so,

1 therefore, the Army Corps of Engineers takes the
2 position of the DHR very seriously in weighing their
3 final decision-making on what will happen next.

4 Q. So, you don't believe that it was important to have DHR
5 in that process when you were starting to discuss
6 possible mitigation?

7 A. This was essentially a free-ranging discussion about
8 the Project. This wasn't a discussion setting forth
9 what was going to happen for mitigation. We are
10 nowhere near that point right now. This was basically
11 a generalized discussion, and we were asked to
12 basically put an idea in memorandum format.

13 Q. I'd just like to call your attention to that same
14 e-mail, a little bit further down, that last full
15 paragraph. If you could just read that last sentence,
16 where it starts with "we remain".

17 A. This is the e-mail written by Kristen Goland, of Groton
18 Wind, LLC, to the Army Corps of Engineers?

19 Q. Correct.

20 A. So, I'm reading -- I'm reading Kristen's words,
21 correct?

22 Q. Yes.

23 A. "We remain committed to coordinating with DHR, however,
24 because USACE is the lead agency with ultimate

1 responsibility for determination of adverse effect and
2 potential mitigation, we must work through USACE."

3 Q. So, in your opinion, this wasn't in any way
4 circumventing DHR?

5 A. Oh, heavens, no.

6 Q. So, now, I'd like to turn you to the Page 1 of that
7 e-mail, where the Army Corps is responding to that
8 e-mail. And, I guess, would you, based on the reaction
9 of your mitigation memo that was sent, was the Army in
10 agreement with your belief that this is what they
11 requested? That they requested a memo be sent on
12 mitigation, on the preferred mitigation?

13 A. I'm -- could you please rephrase your question.

14 Q. Sure.

15 A. I'm sorry, but I'm confused.

16 Q. You had just stated that the Army Corps had requested,
17 in that conference call, that you and the Applicant put
18 together a mitigation offer or option, preferred
19 mitigation option, if I'm understanding what you had
20 just stated --

21 A. Correct.

22 Q. -- a few minutes ago. And, based on the e-mails that I
23 read, which are here, it seems that the Army wasn't in
24 agreement with the belief that they requested a

1 mitigation option. In fact, they have stated that it's
2 much too early for that, that the adverse effects
3 aren't even known yet, so how could mitigation be
4 discussed at that point. Do you recall any type of
5 reaction like that from the Army Corps that they were
6 surprised?

7 A. I have to read through this e-mail again. But all I
8 can state is I participated in that conference call.
9 We were asked to put a memo together as an option,
10 which we did. What reaction was to that, I cannot
11 respond to what USACE's reaction was or why that
12 reaction was. I can only state to you my participation
13 in that conference call, and what I experienced in that
14 conference call, and the gist of that conference call,
15 which was a general project discussion, overarching
16 general project discussion, at which mitigation was
17 brought to the table. I don't think that the intent of
18 the memo -- I know that the intent of the memo was not
19 to basically set forth what would happen, but, rather,
20 merely to just put an idea out there. What USACE's
21 reaction was, that's their reaction. But I know what
22 the intent of the memo was, and it was just basically
23 to put an option on the table.

24 Q. Generally speaking, when mitigation takes place in

1 projects, is it a collaborative effort, that involves
2 the town historical districts that may be involved, as
3 well as the state agency, which here is DHR, obviously,
4 and the Army Corps? Is it, generally speaking, an
5 overall collaborative effort?

6 A. There will be a lot of options that will be considered.
7 This was just one option.

8 Q. If you could just go to Page 1 of that e-mail. About
9 halfway down, the Army Corps states: "So, at this
10 point, it is premature to discuss mitigation. In fact,
11 we need to go through whether there are ways to avoid
12 or minimize an adverse effect before we look at the
13 preparation of a Memorandum of Agreement, which will
14 include mitigation." Now, if they're stating "there
15 needs to be ways to look at how to avoid or minimize an
16 adverse effect", what does that mean, as far as you and
17 your work mean? Like, what does that statement mean to
18 you?

19 A. Well, it's part of the process. Once an adverse effect
20 has been determined, at that point in time you look at
21 that adverse effect and you consider ways to avoid or
22 minimize that particular effect or, in fact, to
23 mitigate. You look at a wide number of options.
24 That's a general part of the process.

1 Q. Okay. Concerning Groton Wind and the entire village
2 area of Groton, are there any options to avoid an
3 adverse impact on those properties specifically?

4 A. I think that it would be premature at this point to
5 even talk about that, just as --

6 Q. Well, my question is, how is that premature, if the
7 first choice is to avoid the effect in the beginning?
8 I mean, correct me if I'm wrong, but, if you're
9 speaking of "avoiding an effect", then it makes more
10 sense that this possibly should have been done before,
11 so that you could determine which turbines in
12 particular are going to have the most impact on those
13 historical homes, and, therefore, steps may be made at
14 the planning stage to either move the turbines to a
15 different area or remove some altogether. But, if the
16 first process in this is to find ways to avoid the
17 adverse effect, it seems that that's paramount in the
18 whole process. Am I missing something in that aspect?

19 A. Well, I mean, there has to be a determination of
20 adverse effect. We don't have any -- we don't have an
21 adverse effect. We have a universe of properties that
22 potentially could be affected by the Project. And,
23 when you talk about "effects" here, you're not talking
24 about any sort of physical impact to any of these

1 resources. When you talk about the constellation of
2 historic properties, historic resources, cultural
3 resources, however you want to refer to them, there's
4 going to be no direct effect, no adverse effect to any
5 archeological resources by the Project.

6 As far as effect to historic properties,
7 there has been no adverse effect that has been
8 determined. And, again, that effect is not going to be
9 physical. There's going to be no physical alteration,
10 destruction or damage to any historic properties, if
11 they are identified within the Project's viewshed.
12 And, all we're really talking about here is an
13 introduction of a new element on the landscape. So, it
14 is not a physical or direct effect.

15 Q. But, under both the federal and state guidelines,
16 that's still considered an "adverse effect".

17 A. It depends on the property and the decision of the DHR,
18 the Army Corps of Engineers, in consultation with the
19 State Historic Preservation Office. It's discussed in
20 terms of the property and how its significance is
21 determined.

22 Q. But, if the setting is impacted by the introduction of
23 physical -- I'm sorry, of visual or sound that in some
24 way detracts from that setting of a historical

1 property, and, of course, I'm paraphrasing, but this is
2 my understanding --

3 A. Uh-huh.

4 Q. -- of the federal law. If it detracts from that
5 historical setting, then that constitutes an "adverse
6 effect"?

7 A. If the setting is a key component of the National
8 Register eligibility of that particular property. And,
9 that basically will be decided upon during the
10 "Determination of Effect" portion.

11 Q. I guess that brings me to two paragraphs further down
12 on that same e-mail. Where the Army Corps is
13 recollecting a conversation that you all had over the
14 phone. And, her feeling was that there was a problem
15 with the original and the second submission of the
16 PAFs, because she wanted to see -- the DHR wanted to
17 see more context for the Baker River Valley as it was a
18 unique settlement area. And, those are her words, "a
19 unique settlement area." Wouldn't the fact that there
20 is a -- what's constituting "a unique settlement area"
21 lend itself to the fact that there is a strong chance
22 that these historical properties and their settings
23 potentially will have an adverse effect by this
24 Project?

1 A. I don't know if I'm able to make the jump from that
2 statement in this e-mail to concluding as you have in
3 your statement. I think -- I think here that
4 essentially what they're referring to is that the --
5 the historical development of that particular location.

6 Q. Okay. Given the fact that there has been a number of
7 issues with DHR and the Applicant and yourself
8 throughout this process, and DHR has repeatedly come
9 back and stated that they needed more history, that
10 this was an area that requires more information on the
11 overall history, again, doesn't that lend itself to the
12 fact that we're not talking about Granite Reliable and
13 the PAF you did for them, or Lempster, or the other
14 PAFs that were handled by your company and yourself,
15 that, you know, you have stated that you had submitted
16 them just like or very similar to how you had handled
17 those other projects. And, that's where the problem
18 was, because, in handling it the same --

19 MS. GEIGER: Excuse me, Mr. Chairman.
20 I'm going to object. I haven't heard a question yet.
21 I've heard Ms. Lewis characterize some information that's
22 been put in the record and mischaracterize other.

23 So, I would respectfully ask that, if
24 she has a question that it be asked. And, right now, she

1 is just rehashing old information --

2 MS. LEWIS: Well, then, --

3 CHAIRMAN GETZ: Well, wait a second.

4 Let me just say this, Ms. Lewis. I think you're trying to
5 lay the foundation for a question, but I'm getting lost,
6 and there's a lot in what you're saying. So, you may need
7 to break your question into some pieces so we can follow
8 it.

9 MS. LEWIS: Okay. I apologize.

10 BY MS. LEWIS:

11 Q. In past testimony that you've provided, you've stated
12 that you did the PAF for Groton Wind very similar to
13 the PAF you did for both Lempster and Coos County, is
14 that correct?

15 A. The PAF for the original PAF.

16 Q. Correct. That's what I meant.

17 A. The original PAF for Groton Wind was submitted in a
18 format comparable to that that was submitted for Groton
19 Wind. I was not involved in the original submittal for
20 Lempster. Lempster is a different process. Both Coos
21 and Groton are a federal process; Lempster was not.
22 There was no federal nexus for Lempster. I came into
23 the Lempster Project at the tail end, if you will. But
24 the Groton Wind PAF, the original Groton Wind PAF was

1 modeled after the Coos/Granite Reliable PAF, yes.

2 Q. Okay. Given that, in hindsight, do you believe that
3 some of the issues that took place with DHR and
4 yourself had to do with the fact that the Town of
5 Rumney, in particular, has a strong history and has a
6 strong historical significance to the Baker River
7 Valley? And, given that, there was more expected from
8 DHR, as far as the historical component. Would you
9 agree with that?

10 A. Respectfully, no, I wouldn't agree with that. I think
11 that the issue with DHR's review of the original PAF,
12 and then the revised text of the second submitted PAF,
13 had to do primarily with formatting and the way in
14 which they wanted to have the information presented.
15 The third and successful PAF that was accepted by DHR,
16 the information provided was essentially the same as
17 that in the previous two submittals, but it was
18 presented in a different format. And, Dr. Steven
19 Bedford worked very closely with DHR staff to ensure
20 that the way in which the information was presented
21 would be in keeping with their guidelines and what it
22 is that they wanted to see, so that they felt that they
23 could make a well-reasoned determination that it was,
24 in fact, complete. So, that's my understanding of the

1 process and how it moved forward.

2 Q. Okay. If we could go back to the memo which you wrote,
3 which is Exhibit Number 37.

4 CHAIRMAN GETZ: Could I get clear, when
5 we're talking about this memo that is Exhibit 37, is this
6 the memo that's referred to in Page 2 of Exhibit 46 that
7 Ms. Lewis was initially inquiring about and what would
8 have been the e-mail from Kristen Goland on August 30? Is
9 that indeed the same memo?

10 WITNESS LUHMAN: I believe so, yes.

11 CHAIRMAN GETZ: Okay. Thank you.

12 BY MS. LEWIS:

13 Q. In this memo, you have suggested that you believe that
14 it "would be an excellent choice because [it] provides
15 an economic benefit to the Town." Did you provide
16 details on what those tax incentives would be for the
17 Town?

18 A. No, we did not. Dr. Steven Bedford is a well-respected
19 architectural historian, and that was based on his
20 expertise.

21 Q. So, you don't know for sure if there's any real tax
22 benefit to the Town?

23 A. Oh, no. There was no study that was done. This was
24 just -- this is merely a suggestion.

1 Q. Okay. What about the increase in real estate values?

2 A. I believe, again, based on Dr. Bedford's experience and
3 expertise, that that statement was based on his
4 understanding of the various positives that can come
5 out of this, such a nomination.

6 Q. Do you know if he took into account the fact that those
7 property values may very well decrease first, based on
8 the turbines being within the viewshed?

9 A. I can't answer that question. I'm sorry.

10 Q. And, as far as "increasing the heritage tourism", are
11 you talking specifically about individual homes that
12 people would want to see?

13 A. No. "Heritage tourism" refers to -- people like to
14 visit historic sites. They like to visit historic
15 areas. They like to visit parks. And, "heritage
16 tourism" is -- focuses on looking at how to increase
17 the communities' and visitors' involvement in history.
18 That's what it's all about.

19 Q. But, as far as the mitigation itself, if your
20 suggestion -- if your suggestion is nominating these
21 homes for the National Register, it's going to increase
22 the number of people to look at these homes. Am I
23 correct?

24 A. I think that -- my concern here is that, when the idea

1 was put forth on this memo, it was merely an option.
2 It was not something that is set in stone, it is merely
3 an option. It is not something that we compared or
4 contrasted against other options. It was just
5 something that we put in a memo. And, so, I appreciate
6 your questions, but it wasn't given as much thought.
7 It was just an option that came out of the
8 conversations.

9 Q. Okay. But, back to the question that I had asked
10 regarding the "heritage tourism". You know, I guess my
11 question, the bottom line of my question is, were the
12 homeowners asked if they have an interest in their
13 homes being part of the National Register? And,
14 secondly, that do they have an interest with more
15 people coming to their area and specifically wanting to
16 see their homes?

17 A. Well, taking this step-by-step, this particular portion
18 of the Project Area is one of those areas that has been
19 listed as want for us to do a Historic Area Form, which
20 we're working on now. So, quite honestly, we don't
21 even know yet whether or not we have a historic
22 district, and whether or not it would be eligible for
23 the National Register. So, we're kind of getting --
24 putting the cart before the horse a little bit here, in

1 talking about, you know, National Register Nominations
2 and asking these homeowners.

3 Hypothetically, should there be the
4 determination that there is an historic district there
5 and that it is National Register Eligible, that
6 determination of National Register Eligibility is
7 merely for the compliance process. And, it allows,
8 during the compliance process, the lead federal agency,
9 in consultation with the State Historic Preservation
10 Office, to give the same weight of National Register
11 Listing to a property that's determined to be eligible.

12 If a mitigation option would be
13 considered to put this particular historic district, if
14 it's determined to be National Register Eligible, on
15 the National Register, there is a whole process that
16 needs to be gone through. And, of course, property
17 owners would be involved at that point. But that is
18 really putting the cart before the horse, because we
19 don't even know yet whether we have a historic
20 district, and then we don't even know whether or not
21 it's National Register Eligible.

22 Q. Well, with all due respect, I think "putting the cart
23 before the horse" is, you know, began with this memo.
24 So, I understand your frustration with my questioning,

1 but I have a major concern, when a memorandum like this
2 is put out back in August --

3 MS. GEIGER: Mr. Chairman, I'm going to
4 object. This is an argument, this isn't a question of the
5 witness. And, I think we've been over, Ms. Luhman has
6 explained several times that this memo was the product of
7 conceptual conversations that were broad-ranging in scope
8 and that were not devoted particularly to the issue of
9 mitigation. So, I would object to this question.

10 MS. LEWIS: Can I respond to that?

11 CHAIRMAN GETZ: Well, you may. But I
12 would just observe, what you've said so far certainly
13 sounds like an argument, and it was hard to see where a
14 question was going to come out of that, but --

15 MS. LEWIS: Well, I just felt that the
16 statement that I was "putting the cart before the horse"
17 in trying to ask questions about all this, I believe is
18 legitimate, because this was the beginning of the "cart
19 before the horse", is this memo that was sent by the
20 Applicant.

21 CHAIRMAN GETZ: Well, certainly, you can
22 ask questions about it, and you have been asking questions
23 about it.

24 MS. LEWIS: Right.

1 CHAIRMAN GETZ: And, you may continue to
2 ask questions. But we can save the arguments for a
3 closing statement.

4 MS. LEWIS: Okay. Thank you.

5 BY MS. LEWIS:

6 Q. My next questions have a little bit more to do with the
7 PAF. I wondered if you were familiar with John Stark
8 and how he -- his significance in the Town of Rumney?

9 A. Personally, no, I am not familiar with it. But that
10 doesn't necessarily mean that Dr. Bedford, who is the
11 author of the PAF, the primary author of the PAF was
12 not familiar with.

13 Q. Well, do you believe, if he did feel that John Stark
14 was a significant part of Rumney history, that it would
15 have been included in the PAF form?

16 A. If it was something that was important to building a
17 historic context for the purpose of being able to
18 interpret the architectural resources within the APE?
19 Yes, I do believe that he would have done so.

20 Q. Okay. Could I have you take a look at Exhibit 38. Do
21 you have any idea why the Governor would proclaim a day
22 in memory of John Stark?

23 A. Personally, no.

24 Q. Okay. Well, if you could look at Exhibit Number 39.

1 The bottom of the page, I'm sorry, bottom of Page 1,
2 and then it goes onto Page 2, the top of Page 2. If
3 you could just read, you don't need to read it out
4 loud, but --

5 (Short pause.)

6 BY MS. LEWIS:

7 Q. All set? And, the next one, this one is just real
8 quick, on Exhibit Number 40.

9 (Short pause.)

10 BY MS. LEWIS:

11 Q. Would you agree at this point that John Stark did
12 contribute a significant amount of history to the Town
13 of Rumney?

14 A. Based on this information from this publication, which
15 I believe is also included in the PAF bibliography,
16 that, yes, Mr. Stark -- these events are certainly a
17 part of history.

18 Q. Okay. And, would you agree that Stinson Brook and the
19 area which this took place is right in the village
20 area? I don't know if you recall where Stinson Brook
21 was, but it's right out -- right at the village area,
22 comes right down from Stinson Lake.

23 A. Okay.

24 Q. So, this all took place right within the APE. And,

1 because of the history, to the Town of Rumney, in
2 particular, but to New Hampshire, would you agree that
3 this is an important part of the village history?

4 A. As part of history? Yes. It's part of history.

5 Q. Okay. But would this help explain the development of
6 the village area as well?

7 A. Well, I think that it's important to understand the
8 purpose behind the Project Area Form. A Project Area
9 Form is designed to set the framework for consideration
10 of the architectural resources within a particular Area
11 of Potential Effect. So, essentially, the historical
12 context or historical background that is developed is
13 essentially designed to lay the foundation and
14 framework within which one can evaluate the built
15 environment. And, by "built environment", I'm
16 referring to the above-ground resources, the
17 structures.

18 So, taking a look at the trends and the
19 themes and the evolution of a particular area through
20 that historic context allows the researcher and then
21 the surveyor and the architectural historians to make
22 statements of what they might expect to find within the
23 Area of Potential Effects, and then to set about
24 basically using that framework and identifying

1 properties. That's the purpose of a PAF. It's primary
2 focus is built environment.

3 Q. Given the history of the Native Americans in that
4 particular area, as well as in the Polar Caves, we know
5 that there's history of the Native Americans being in
6 Polar Caves, which is right below the Project Area. I
7 know you had mentioned in previous testimony that the
8 Army -- the federal government needs to talk government
9 to government with any of the Native Americans. Is
10 that correct?

11 A. If there are federally recognized tribes, yes, that is
12 correct.

13 Q. Okay. As far as the PAF and any information, is it the
14 Applicant's obligation to provide that information to
15 the government that there has been Native Americans
16 history in that area?

17 A. Not within the context of the PAF.

18 Q. In any context, is that the obligation of the Applicant
19 or is the federal government just supposed to figure
20 that out on their own that there may be history there?

21 A. The Phase IA Archeological Survey and subsequent
22 archeological survey reports provide both pre-contact
23 and historic background sections.

24 Q. Okay. Did any of that information provide -- was any

1 of that provided?

2 A. I would expect that that would be in the documents that
3 were provided to DHR. And, if DHR and the Army Corps
4 of Engineers felt that we were remiss in our
5 responsibilities, they would have brought it to our
6 attention in the review of those reports.

7 Q. So, you don't feel that that was your responsibility to
8 look into this further, as far as the Native American
9 history?

10 A. The pre-contact context was included in the Phase IA
11 Archeological Survey. That's a requirement of a Phase
12 IA Archeological Survey, to provide historic and
13 pre-contact context, much like the PAF sets forward a
14 historic context and framework within which the
15 surveyor then evaluates the built environment. The
16 Phase IA Archeological Survey provides not only a
17 pre-contact or pre-historical context and historical
18 context, within which then the archeologist, along with
19 an understanding of the known and recorded sites within
20 the vicinity, the archeologist then sets forth a
21 sensitivity assessment. It's only for those portions
22 of the Project Area where there is anticipated to be
23 ground disturbance. The archeological survey APE is
24 confined to ground disturbance only. Whereas, the APE

1 for the PAF, for the built environment, is that which
2 is contained within the viewshed, because the
3 above-ground resources, the architectural resources,
4 the built environment will not be suffering any sort of
5 direct or physical impact as a result of the Project.
6 The only impact from the Project to any of that built
7 environment is only potentially visual.

8 Q. Okay. But doesn't the context of the fact that there
9 were Native Americans in that area important with the
10 whole information that is provided with the
11 archeological aspect, because in knowing that there
12 were Native Americans right there, that there very well
13 may be more archeological things that -- that
14 potentially could be there?

15 A. The consideration of the presence of previous
16 occupation was taken into consideration in the
17 development of the sensitive areas. Those sensitive
18 areas were provided both to the DHR and the Army Corps
19 of Engineers for review and approval prior to the
20 undertaking of any subsequent archeological survey.
21 That was all considered in the Phase IA Archeological
22 Survey, which set forth the scope of work for all
23 subsequent studies.

24 Q. Okay. If I could have you take a look at Exhibit

1 Number 42. This is the actual website from New
2 Hampshire DHR.

3 A. Uh-huh.

4 Q. And their "Guidelines for Wind Farm Development
5 Projects".

6 A. Uh-huh.

7 Q. And, if I could just read one sentence: "Preparation
8 of a NHDHR Project Area Form to provide", and then it
9 goes on to say some things, and then it says "in
10 collaboration with the town the project is located and
11 [within] adjacent towns."

12 A. Uh-huh.

13 Q. And, my question is, could you describe in detail the
14 collaboration you did with the Town of Rumney
15 specifically in doing the PAF?

16 A. I believe those consultations with the Rumney
17 Historical Society are noted in our responses to the
18 last tech session data requests. And, those
19 consultations would have been conducted by the lead
20 archeologist, or Dr. Bedford, in that case.

21 Q. Well, my understanding of that was that the first time
22 he went the Historical Society was closed. He then did
23 -- I believe he spoke to Mr. Daniels by phone, and he
24 now set up an appointment in -- or he contacted him in

1 January, or he last stated that in January he was
2 planning to contact him again, but this was after the
3 final PAF had been submitted. So that -- my question
4 goes back again to the real amount of, you know, how
5 much collaboration did he really have with the Town of
6 Rumney?

7 A. I don't think that you can just focus on that
8 particular aspect of the survey work that was done.
9 Because, in addition to reaching out to the historical
10 societies, there's also research that's done at local
11 libraries and their historical collections and
12 elsewhere. I think it's also important to remember
13 that, unless my memory is incorrect, but I believe
14 there have been well over two dozen public hearings or
15 meetings that Groton Wind has held with the towns and
16 local communities within the Project Area, at which
17 each of those meetings, it's my understanding that
18 historical and cultural issues are basically brought up
19 and raised. And, so, there is ample -- has been ample
20 opportunity for a conversation with the local
21 communities.

22 As far as, you know, Dr. Bedford is
23 going to be in continuing discussion with the local
24 communities as we move forward with the Individual

1 Survey Forms and the Historic Area Forms. This is an
2 ongoing process as those forms are completed.

3 Q. Do you believe that there was any request by the
4 Applicant to ask the Town of Rumney to get the
5 Historical Society involved in this process?

6 A. I would have -- I'm not aware of that request or --

7 Q. Okay. But you had just spoken about "public meetings".
8 And, my understanding is, I believe there were two in
9 Rumney. And, at neither time did the -- was the
10 question raised by the Applicant of the Town helping
11 with or collaborating with this whole process.

12 A. I think that, by "collaboration", it's not meant that
13 they would assist in the preparation of, but rather
14 that they would be consulted. And, that has been the
15 case and will continue to be the case.

16 Q. Okay. Do you believe that, in other situations that
17 you've worked with, if there is some type of
18 collaboration or at least discussion with the towns,
19 does this, generally speaking, bring forth more
20 information on what is important to that town, as far
21 as what they feel their historical significance is?

22 A. I think it really depends on the situation and the
23 community and the project.

24 Q. And, how is that determined? Whether it's --

1 A. I just think it's on a case-by-case basis, is what I
2 was meaning by that. It really -- you've got a number
3 of variables in that that could play either way. It
4 just really depends on the situation.

5 MS. LEWIS: I believe that's all I have.

6 Thank you.

7 WITNESS LUHMAN: Thank you.

8 CHAIRMAN GETZ: Mr. Roth.

9 MR. MULLHOLAND: Mr. Chairman, --

10 CHAIRMAN GETZ: Mr. Mullholand.

11 MR. MULLHOLAND: -- I'll be questioning
12 Dr. Luhman, if that's okay with everyone. Dr. Luhman, hi.

13 WITNESS LUHMAN: Hi. How are you?

14 MR. MULLHOLAND: Evan Mullholand, Public
15 Counsel. Dr. Luhman, I've got some pretty easy questions.
16 It won't take very long.

17 WITNESS LUHMAN: Okay.

18 BY MR. MULLHOLAND:

19 Q. What you've been describing is the Section 106 process,
20 correct?

21 A. That is correct.

22 Q. And, that's a federal law, federal process?

23 A. Correct.

24 Q. Okay. I just want to ask some sort of lead-up

1 questions, to make sure we're on the same page as to
2 what that is. So, the first thing you have to do as a
3 consultant is determine the Project Area, right? And,
4 I'm going to focus only on the architectural resources,
5 not the archeology.

6 A. That's okay. You have to determine the Area of
7 Potential Effect.

8 Q. Okay.

9 A. It's not -- it's not the Project Area. The regulations
10 state that you have to determine the Area of Potential
11 Effect. And, the Area of Potential Effect actually
12 should be determined not by me, as the consultant, but
13 by the lead federal agency, in consultation with the
14 State Historic Preservation Office and others.

15 Q. Okay. In this case, though, there is a Project Area
16 though that's three miles around the turbines, right?

17 A. The Project Area is defined by DHR. DHR uses the
18 Project Area, in their Wind Farm Guidance, they
19 basically use that 3-mile limitation. And, so, for the
20 purpose of the PAF, we worked within that 3-mile
21 Project Area, and contained within that is the Area of
22 Potential Effect, which is defined by the viewshed.

23 Q. And, did the Army Corps do the analysis to determine
24 what the APE is or was that Berger?

1 A. To determine the Area of Potential Effect?

2 Q. Uh-huh.

3 A. The Area of Potential Effect was determined by the
4 Applicant's viewshed consultant.

5 Q. Not Berger?

6 A. Correct.

7 Q. So, Berger didn't do any modeling, correct?

8 A. Correct.

9 Q. Okay. Do you know, though, if the modeling was done
10 just topography or vegetation and topography?

11 A. My understanding is, is that we, for the purposes of
12 this PAF, after some exhaustive discussions and
13 meetings between the Army Corps, the DHR, my firm, as
14 well as my consultation with the Advisory Council on
15 Historic Preservation, it was determined that we would
16 use the vegetation viewshed.

17 Q. Do you know, if you did just topography, whether it
18 would be larger, or do you not know?

19 A. I'm trying to remember, and I don't want to misstate.
20 I believe there might have been more areas that have
21 been included. But my recollection, and, again, it's
22 fuzzy, I don't believe that it was impacting any areas
23 where there were communities. But I may be
24 misrepresenting that.

1 Q. Okay. I don't want you to guess. Do you know if this
2 modeling program was rerun for the new alternative
3 route power line and the substation?

4 A. There was a viewshed that was done for that alternative
5 line, yes.

6 Q. Was that the same modeling that was done to do the APE
7 or you don't know?

8 A. I can't answer that question.

9 Q. Okay. All right. Back to the Section 106 process.

10 A. Right.

11 Q. Once you set the APE, one of the things you have to do
12 is identify the structures or districts that are
13 already listed in the National Register, correct?

14 A. Correct.

15 Q. Okay. Are there any listed?

16 A. Yes.

17 Q. And, that's the Hebron Historic District?

18 A. Correct.

19 Q. And, you also have to check to see if any have been
20 previously found eligible within the APE, correct?

21 A. Correct.

22 Q. And, that's the Braley -- the Braley Road Bridge?

23 A. I'm not sure. I'd have to look.

24 Q. Okay.

1 A. I'm trusting you here.

2 Q. And, whether other historic districts are eligible
3 previously?

4 A. Correct.

5 Q. And, then, you have to determine which other structures
6 or historic districts may potentially be eligible,
7 right?

8 A. Well, the first step is actually to determine whether
9 or not there's been any previous survey, where, as you
10 note, there are National Register listed and/or
11 eligible properties. The second step is then to build
12 that historic context, that historic background.
13 Because, in order to evaluate a structure, you have to
14 do it within that framework. So, I don't want to give
15 the impression that we just immediately then went out
16 and started surveying. But, rather, we have to
17 understand what it is that we're looking at. So, in
18 order to do that, you basically have to have an
19 understanding of the historical context or background.
20 But, then, yes, after that step, we basically do a
21 survey of the Project Area APE.

22 Q. Okay. And, the DHR decided that there were ten
23 structures that had to undergo further survey, is that
24 right? That's the February 1st letter?

1 A. Yes. Let me see where that one is. It's in here.

2 I'll take your word for it. I think it was ten.

3 Q. It's Applicant 56.

4 A. Thank you. Yes.

5 Q. Okay. And, then, through, as you testified, through
6 correspondence, you cut that down to nine?

7 A. Correct.

8 Q. Dr. Bedford did. You reduced that to nine buildings.

9 And, the reason these specific buildings were singled
10 out for further studies was because of their setting,
11 correct?

12 A. No.

13 Q. No. Okay.

14 A. It has nothing to do with their setting.

15 Q. All right. Well, could you just look at Applicant 56.

16 A. Yes.

17 Q. First page, the last paragraph. I just want to read
18 this to you: "These recommendations include primarily
19 properties whose setting may be identified as a
20 significant criteria under which they may be eligible
21 for listing in the Register." Do you want to re-answer
22 my question?

23 A. Well, that's the opinion of the DHR.

24 Q. Do you have a different opinion?

1 A. Well, I can't speak for Dr. Bedford. But, essentially,
2 his survey of the properties was based on all of those
3 properties that he would consider to be worthy of
4 further survey.

5 Q. But you would agree that the setting of them, meaning
6 the context in which these different properties exist
7 in these towns, is a part of the reason why they're
8 identified by DHR, right?

9 A. If that's DHR's opinion, then that's DHR's opinion.

10 Q. Have you ever done a National Register Eligibility
11 determination for buildings like these?

12 A. I have not personally. I'm not an architectural
13 historian, but Dr. Bedford has. The reason for my
14 hesitation is that the DHR has asked us to survey some
15 additional or resurvey some additional properties that
16 have already been surveyed. Forms have already been
17 done and are present in the DHR's files. But, because
18 of the time that has elapsed since their previous
19 survey, three of them I believe were done in the 1980s,
20 one I believe was done in 2008 or 2009, and DHR
21 requested some additional information.

22 When I spoke with the Advisory Council
23 on Historic Preservation in April of last year
24 regarding the Area of Potential Effect, one of the

1 things that John Eddins of the Advisory Council
2 encouraged us to do was to take into consideration
3 whether or not the property could view the Project when
4 we were doing our survey work. And, so, some of the
5 properties with which we did not include in the list we
6 felt did not view the Project. Some of these
7 properties, DHR is looking at them from the perspective
8 of the property itself and where it's physically
9 located. We have done some additional work that is not
10 included within the PAF, and that could be the
11 difference in where we're going here.

12 Q. Okay. A simple question now.

13 A. Sorry.

14 Q. No, that's okay. So, for these nine buildings, farms,
15 I guess, some are farms, some are buildings, you're
16 going to submit Inventory Forms, right?

17 A. Correct. Intensive Level Inventory Forms.

18 Q. And, that's going to involve photo simulations?

19 A. No.

20 Q. Okay. Might it in the future? Might that be required?

21 A. That would be for discussions between the Applicant,
22 the Army Corps, and DHR to determine. That would be
23 something that would be at the effects stage.

24 Q. Okay.

1 A. Whereas --

2 Q. So, once --

3 A. Go ahead.

4 Q. Sorry. Once you submit these Inventory Forms, what DHR
5 does is then determine eligibility, right?

6 A. That is correct.

7 Q. And, that's a DHR responsibility?

8 A. That is basically the DHR -- ultimately, determinations
9 of eligibility for properties, because this is a
10 federal process, is the responsibility of the lead
11 federal agency.

12 Q. The Army Corps?

13 A. Correct.

14 Q. But the Army Corps relies on the DHR's --

15 A. Correct.

16 Q. -- input.

17 A. Correct. So, in consultation, the two agencies will be
18 in consultation to make determinations of eligibility.

19 Q. And, in addition to these nine properties, Berger Group
20 is going to do District Forms for three historic
21 districts, correct?

22 A. Three Historic Area Forms.

23 Q. Historic Area Forms.

24 A. Correct.

1 Q. And, that's Rumney Village, Rumney Depot, and a portion
2 of Quincy Road, correct?

3 A. Correct.

4 Q. Okay. So, right now, we don't know if these nine
5 properties in these three districts are going to be
6 eligible?

7 A. We don't know whether or not they're going to be
8 eligible, that is correct.

9 Q. In your experience -- I won't ask that question.
10 Sorry. So, assume for the next question that all nine
11 and all three are determined to be eligible by DHR.
12 That the next step then is to determine whether or not
13 there's going to be any impact on them by the Project,
14 correct?

15 A. The next step would be the completion of Criteria of
16 Effect Forms for each of these locations.

17 Q. Who fills out the Criteria of Effect Forms?

18 A. We would fill out the Criteria of Effects Forms and
19 submit them to the DHR, who -- that then begins the
20 discussion of the determinations of effect that will
21 happen between the Army Corps of Engineers and the DHR.
22 It is my understanding that the DHR, as well as the
23 Army Corps, would like to see a field visit at that
24 time to make the final determinations of whether or not

1 there would be any effect. And, again, that effect is
2 going to be confined to the introduction of a visual
3 element on the landscape, which may or may not have any
4 bearing on the historicity of the property.

5 Q. But these were specifically culled out because of their
6 settings, right? Because of their context, because of
7 their historical interaction with the landscape, isn't
8 that right? I mean, it's not true that they're just
9 architecturally interesting, meaning like the type of
10 building or the type of building material?

11 A. We would have to have discussions with DHR as to what
12 went into the determination. I believe that, in
13 several of these cases, Dr. Bedford might have a
14 disagreement with the DHR. But that will follow
15 through in the consultative process as we move forward
16 with the Intensive Survey Forms, the Criteria of Effect
17 Forms.

18 Q. All right. So, assuming that all these nine and all
19 these three are eligible. And, then, let's also assume
20 for the next step that there is -- that the AC -- that
21 the Army Corps finds that there's an adverse effect on
22 these, on their setting, because of the introduction of
23 the visual turbines. The next step is to try to figure
24 out how the Applicant can avoid these adverse impacts,

1 correct?

2 A. To look at the options for avoidance minimization
3 and/or mitigation.

4 Q. I understand "avoidance" would be not having it, I
5 guess. How would you minimize something like this?

6 A. Minimization, if there is a visual element,
7 minimization may be dealt with in terms of vegetative
8 screening.

9 Q. And, then, mitigation is some sort of payment or other
10 work, sort of in exchange for this bad thing that's
11 happening to these historical properties, right?

12 A. It compensates, yes.

13 Q. Compensates. And, your testimony is that, for purposes
14 of this proceeding, that there won't be an unreasonable
15 adverse effect, because, if there is any adverse
16 effect, it's going to be mitigated anyway?

17 A. If there is an adverse effect, it will be mitigated.
18 But, again, the adverse effect is not going to be any
19 sort of physical impact to any of the properties.

20 Q. Right. We established that. So, they're not going to
21 build the turbines on the farm.

22 A. Right.

23 Q. Okay. And, typically, this is done through a
24 Memorandum of Agreement between the Army Corps, DHR,

1 and the Applicant?

2 A. There will probably be a Memorandum of Agreement that
3 would set forth the mitigation.

4 Q. But it's true, though, that the decision on what
5 mitigation is required is the Army Corps' as the final,
6 it's their decision?

7 A. Ultimately, yes. But I think that there will be
8 extensive consultation with DHR and others on this.

9 Q. But they get to decide. They're the bottom line?

10 A. They're the bottom line.

11 Q. So, they could say "we want you to" -- for instance,
12 you know, your memo, "we want you to complete a
13 Nomination Form for Rumney." They may choose that?

14 A. It's possible. However, given the way this process has
15 gone, and given the collaboration and consultation
16 between the Army Corps and the DHR, I would not see the
17 Army Corps of Engineers using a heavy hand at all.

18 Q. When you say "heavy hand", you mean that they would
19 just defer the decision to someone else?

20 A. No. In terms of the fact that there would be no
21 consultation. I can't envision the Army Corps
22 basically making a decision on "this is going to be the
23 mitigation", while not taking into consideration anyone
24 else's feelings on the matter. There would be a very

1 substantive consultative process that would go into the
2 decision-making.

3 Q. But you just said it's Army Corps' decision?

4 A. Ultimately, it is their responsibility. But it is
5 their responsibility also to consult with the State
6 Historic Preservation Office.

7 Q. Right. And, ultimately, it's also the Army Corps'
8 decision on whether to require mitigation, if there is
9 an adverse effect?

10 A. Correct.

11 Q. So, it's possible that everyone decides, "everyone", I
12 mean, Army Corps and DHR and the Applicant, that there
13 is an adverse effect, and the Army Corps could say "you
14 know what, we don't want to mitigate this. We think
15 that this is too important for society and the public
16 good, and we don't think mitigation is necessary. Go
17 ahead and build it without mitigation."

18 A. Hypothetically, I suppose that's an option. But,
19 again, given the consultative process that has happened
20 so far, I think that they would take into serious
21 consideration the DHR's and others' opinions.

22 Q. And, that's because mitigation isn't mandatory under
23 federal law under Section 106?

24 A. I think that everybody generally agrees that, in

1 projects, it's really important to take into
2 consideration everybody's viewpoints, and that --

3 Q. Just answer the question. Mitigation is not required
4 under federal law?

5 A. I believe it is not.

6 Q. Now, have you visited the visitnewhampshire.gov site
7 and the various driving tours that are listed on that
8 site?

9 A. Recently, no.

10 Q. Ever?

11 A. Perhaps.

12 Q. Are you aware of the River Heritage Tour that the
13 government of New Hampshire suggests that tourists
14 take?

15 A. No. But, now that you've made the suggestion, I will
16 most certainly take a look at it. What is it again?

17 Q. It's the visitnewhampshire.gov site, "Scenic Drives".
18 And, their "River Heritage Tour" includes driving from
19 Plymouth on Route 25, up through Warren, then over to
20 Piermont, through the Baker River Valley. And, it
21 discusses period architecture and agricultural heritage
22 that you could view on that website.

23 A. I may not have looked at it, but it is quite possible
24 that Dr. Bedford has.

1 Q. Are you also aware that Route 25 is a New Hampshire
2 Department of Transportation Scenic and Cultural Byway?

3 A. I believe Dr. Bedford is aware of that as well.

4 MR. MULLHOLAND: Thank you, Doctor.

5 CHAIRMAN GETZ: Questions from the
6 Committee? Mr. Harrington.

7 BY MR. HARRINGTON:

8 Q. Good morning. I'll try to make this so I don't ask you
9 to repeat a lot of stuff that you already said. I'm
10 just trying to get the process a little bit straight.
11 It's clear that this process is not complete, it's
12 ongoing, is that correct?

13 A. The process is ongoing, that's correct.

14 Q. And, it appears then that there's a series of
15 properties, some different numbers there, that need to
16 be further evaluated as to whether they would be
17 considered eligible. Is that the first step?

18 A. That is correct.

19 Q. And, then, if they are eligible, then they would be --
20 you would have to determine if there was an adverse
21 effect, which, in this case, would be limited most
22 likely to just some being able to see the turbines?

23 A. That is correct.

24 Q. Okay. And, if it is determined then that there is an

1 adverse effect, then, for each of those properties,
2 they would have to determine what the fix or possible
3 fixes were?

4 A. Or compensation, correct.

5 Q. Or compensation. Okay. So, you said there was -- you
6 could eliminate it, which would mean "don't build at
7 least that turbine that they could see from that
8 property." That would be one possibility?

9 A. It's always an option.

10 Q. Another one you mentioned was minimizing it by
11 vegetative screening?

12 A. Correct.

13 Q. Okay. And, then, you said "mitigation", and I'm just
14 trying to follow up a little bit on this, you say "it
15 compensates". Referring to the memorandum here that
16 we've been talking about, it talks about making it a
17 "National Register Nomination for Rumney", and it talks
18 about the "economic benefit" and so forth and
19 "increased real estate values". So, is the idea here
20 that somehow you're still going to be able to see the
21 windmills from the Project, but will basically pay
22 somebody or someone will get a financial gain somewhere
23 else and that will "mitigate" the fact that whoever is
24 looking from this historical piece of land will still

1 be able to see windmills? I'm trying to get the
2 connection between the two.

3 A. It basically is a way to give back to the community in
4 some regards. And, it's not necessarily something
5 that's financial or monetary. But, rather, it's --
6 you're compensating in some sort of way by giving back.
7 Other suggested mitigation options that have been used
8 elsewhere, where there's community -- there's brochures
9 that are disseminated throughout the community about
10 the history of the area. Evan just mentioned driving
11 tours, which is another brochure which could be
12 distributed throughout the community. There have been
13 websites, there have been popular reports. Some
14 projects have developed curriculum sections for the
15 school districts about the history of the area.
16 There's a whole range of options. Some people have --
17 there's a project I'm working on right now or one of
18 the things that we're looking at is developing wayside
19 exhibits, where there's a plaque somewhere. There's a
20 whole range of options that could be developed.

21 Q. Okay. So, it's -- I guess some of the mitigation we've
22 seen in the past on other projects, where you fill in
23 so many acres of wetland over here, so you create a new
24 wetland someplace else or preserve new wetlands.

1 Obviously, views, it doesn't quite work that way. So,
2 I guess the mitigation would be a best attempt at
3 coming up with something?

4 A. To give back to the community, correct.

5 Q. And, that's the thing that would be decided by -- the
6 final say on that is the Army Corps of Engineers?

7 A. Army Corps of Engineers, that's correct.

8 Q. And, I'm assuming that cost gets borne by the
9 Applicant?

10 A. That is correct.

11 Q. Okay. And, then, when is it anticipated that this
12 process that we just discussed would finalize?

13 A. We're hoping early summer.

14 Q. And, that's this year?

15 A. That is correct.

16 Q. Okay. I just had a couple quick questions that I
17 haven't seen I guess in some of the submittals before
18 more of this work was completed by the time it got to
19 this Committee. And, looking at the -- referring to is
20 the PAF, is it the "Project Evaluation Form" or -- oh,
21 the "Project Area Form". There's a lot of information
22 in there. How is that developed? Is this what your
23 company gets hired to do, to go out and do all this
24 research?

1 A. That is correct.

2 Q. And, you know, this may sound a little funny, but some
3 of this stuff sort of jumped out at me as "why?" I
4 mean, knowing the amount of cheese produced in some
5 town in 1800, how does that affect the historical
6 buildings that are there today and their view? There's
7 so much information in here.

8 A. Well, this is basically all built into the guidance
9 that the DHR has developed for the Project Area Form,
10 and understanding the industries that have been in a
11 community historically. That may result in the fact
12 that there may be buildings associated with those
13 industries that are still extant. And, so, going
14 through this exhaustive research and looking through
15 the agricultural censuses and develop these historical
16 themes and trends gives you an idea of what you might
17 expect to find out there when doing survey. And, so,
18 because there was a lot of cheese that was produced is
19 a function of the agricultural produce and how in which
20 agricultural played a role in this particular
21 community.

22 Q. Okay. If you say so. It just strikes me, and I'm not
23 criticizing your work here, there's an incredible
24 amount of information in here, going onto, you know,

1 someone who was in Lewis and Clark, and how he moved to
2 Missouri and died as a pauper as a result of the New
3 Madrid earthquake. And, just some of this stuff it
4 just strikes me as I can see it to be of no value, but
5 I'll leave that though to you as far as how it's --

6 A. The PAF -- the PAF was designed in response to and in
7 close coordination with the DHR to meet their
8 expectations for a document of this sort.

9 Q. Okay. That answers my question then. Thank you. And,
10 you had said this to an earlier question, I want to
11 make sure I got it straight. You kept talking about, I
12 think you used the term like "above-ground structures".
13 So, the intent of this, of this whole review, I guess,
14 is to determine if there are any historical
15 above-ground structures in the affected area, and then
16 if they're impacted by the Project?

17 A. That is correct.

18 MR. HARRINGTON: Okay. So, that's just
19 so I get that straight. Thank you.

20 WITNESS LUHMAN: Uh-huh.

21 CHAIRMAN GETZ: Other questions?

22 Mr. Steltzer.

23 BY MR. STELTZER:

24 Q. Building off of what Mr. Harrington was bringing up

1 regarding the timeline, when you, and I just want to
2 make sure I'm understanding this right, when you said
3 "early summer", that is when a determination would be
4 made of whether there has been or would be an adverse
5 impact?

6 A. That is correct. It may actually be earlier than that.
7 In our discussions with the DHR, because we will be
8 completing nine Intensive Inventory Forms, and it's
9 important to understand the amount of work that goes
10 into an Inventory Form. I did have a copy of one, but
11 I believe I gave it to Cheryl at the last tech session.
12 There's a lot of information that needs to be pulled
13 together. Those nine Inventory Forms and three
14 Historic Area Forms, the DHR has suggested, and we
15 think it's an excellent idea, to submit them as we
16 complete them. So, that there will be -- there won't
17 be one set review of all the forms, but, rather, the
18 review process will be ongoing. So, we may have
19 determinations of eligibility happening while others
20 are being submitted. So, the process is in process
21 right now, in preparation of all of those forms. And,
22 we hope to be submitting some of those forms within the
23 next couple of weeks. So, essentially, we've got --
24 you've got that universe, basically, if you look at

1 that letter from DHR, which outlines those nine
2 properties that need to have the Intensive Survey Forms
3 and the three Historic Area Forms, that constitutes the
4 universe from which any sort of effect determination
5 will come.

6 Q. And, when would the mitigative options be presented?

7 A. Oh, goodness. I would suspect that DHR would not be
8 willing to -- well, I can't speak for them. I would
9 suspect that DHR would want to defer any discussion on
10 mitigative options until we've determined those
11 properties, if any, on which there's an adverse effect.
12 So, we still don't know yet whether or not there will
13 be an adverse effect.

14 Q. Correct. And, what I'm trying to understand is, in the
15 timeline of construction of the Project, and could the
16 Project be moving forward prior to mitigative options
17 being considered?

18 A. Absolutely. That's the whole point of the Section 106
19 process, any sort of Memorandum of Agreement would
20 basically set forth the procedure to be followed. So
21 that, in fact, the Applicant is able to move forward
22 with the Project while, in fact, these items are being
23 taken care of is the Memorandum of Agreement basically
24 sets forth the requirements and the responsibilities.

1 Q. Maybe I'll jump, I'm trying to also get an
2 understanding of the spectrum of options that might be
3 offered for mitigative consideration.

4 A. Uh-huh.

5 Q. And, as Mr. Mullholand said, you know, the federal
6 government isn't required, and you agreed, the federal
7 government isn't required to do mitigative options.
8 So, that might be one extreme?

9 A. That's an extreme.

10 Q. Extreme.

11 A. Extreme of happening.

12 Q. On the other extreme could be that the turbine could be
13 suggested to be not erected or to be removed, if it has
14 already been constructed. Is that the other kind of
15 terminus?

16 A. (Witness nodding in the affirmative).

17 Q. Are you aware of a time where the U.S. Army Corps of
18 Engineer has determined an adverse impact has occurred
19 or would occur and no mitigative action has been taken?

20 A. Not in my experience.

21 MR. STELTZER: Thank you.

22 CHAIRMAN GETZ: Other questions? Dr.
23 Kent.

24 DR. KENT: Good morning.

1 WITNESS LUHMAN: Hi.

2 BY DR. KENT:

3 Q. A follow-up on this discussion we've been having. So,
4 we don't know if the Project can accommodate potential
5 mitigation, because we don't know what that mitigation
6 will be, is that correct?

7 A. I don't understand what you mean by "accommodate".

8 Q. Well, we're waiting -- let me back up then. I've heard
9 you say a couple times that you haven't had discussions
10 with DHR or the Corps of Engineers that tells you, in
11 the worst case scenario, what the mitigation might be?
12 At this point, you have no idea what mitigation will
13 be?

14 A. That is correct. I have -- I have my own -- we've had
15 our own discussions about options, and that's what the
16 memo was about was options.

17 Q. When you say "we", "we" is who?

18 A. That discussion about options took place in that
19 conference call in July that led to the memo. So,
20 options have been discussed. There has been no
21 discussion that I am aware of between the Army Corps of
22 Engineers and DHR. It is possible that they have
23 talked about it, but I am unaware of those discussions.

24 Q. Okay. I'm sorry, but, when I asked the "we", you

1 didn't really tell me who "we" was. You lost me on
2 that.

3 A. Oh, I'm sorry. The "we" as in the discussion that --
4 the conference call that led to the issuance of this
5 memorandum that we discussed this morning in the
6 beginning of my testimony. I believe you were not
7 here, sir. I'm sorry, you might have come in late?

8 Q. Yes.

9 A. In Exhibit Buttolph 37, there was extensive discussions
10 about the conference call that led to this memorandum.
11 And, in July, we had a conference call that consisted
12 of Erika Mark, Kate Atwood of the Army Corps of
13 Engineers, Kristen Goland of Groton Wind, LLC,
14 Dr. Steven Bedford and myself from Berger. We were
15 discussing the Project as a whole, where the Project
16 was, where we were with the PAF. And, we also talked
17 about possibilities and eventualities down the road.
18 And, one of the items that was brought up during that
19 discussion was mitigation options. And, during that
20 discussion, it was suggested that we put an option in a
21 memorandum, which we did.

22 So, yes, "we", as in the Army Corps, the
23 Applicant, and Berger have had discussions about
24 mitigation, but not in terms of -- they were just

1 options, discussions of options. Whether or not the
2 Army Corps has had discussions with DHR about those
3 options, and where we might see the Project going, I am
4 unaware of those discussions, if any, have happened.

5 Q. Okay. Thank you. Maybe this is best saved for the
6 Applicant directly. But, given those range of options
7 that were discussed, all of those options are -- can be
8 accommodated by the Project?

9 A. I believe so, yes.

10 DR. KENT: Thank you.

11 CHAIRMAN GETZ: Mr. Boisvert.

12 DR. BOISVERT: Thank you.

13 BY DR. BOISVERT:

14 Q. Going back to your timeline, you said you "hoped to be
15 completed by early summer." Would you elaborate on
16 what do you mean by "be completed"? Determination of
17 Effect? Memorandum of Agreement? Execution of the
18 Memorandum of Agreement? Were all of those included in
19 your estimate?

20 A. I would think, by early summer, we would have
21 determinations of eligibility and effects
22 determinations.

23 Q. Okay.

24 A. Depending on how smoothly the review process goes, it

1 might be possible to have a Memorandum of Agreement
2 drafted. Execution sometimes takes a little time.

3 Q. But you don't expect that you will be much beyond the
4 Determination of Effect and possibly negotiation of the
5 Memorandum of Agreement before the end of June?

6 A. Right now --

7 Q. I'm just picking, you said "early summer", I'll pick
8 June.

9 A. It's possible.

10 Q. Okay. But that would be ambitious?

11 A. We're eager.

12 Q. And, this takes into account that you may need to wait
13 on the review from the Army Corps of Engineers and DHR?

14 A. The Army Corps of Engineers has been relatively prompt.
15 I know that DHR has set times for review, although they
16 have been very accommodating, and I think will continue
17 to be so.

18 Q. Okay. Do you see a problem with developing mitigation
19 plans after the Project has been approved and
20 construction begins?

21 A. No, not necessarily, as long as they're discussed prior
22 to that.

23 Q. So, you anticipate that your client will be moving
24 forward with the mitigation plans as recommended -- or,

1 as specified, excuse me, by Army Corps of Engineers?

2 A. I have had no indication from the Applicant that they
3 have any intention of -- they have every intention of
4 proceeding with any sort of mitigation plans as put
5 forth.

6 Q. Are you aware of situations where the federal agencies,
7 such as Army Corps of Engineers, have stipulated
8 mitigation plans and the Applicant has objected
9 strongly or refused to do it?

10 A. I have never had an experience where there has been a
11 mitigation plan that's been put forward and the
12 Applicant has refused to do it.

13 DR. BOISVERT: That's it.

14 CHAIRMAN GETZ: Other questions?

15 Mr. Iacopino.

16 MR. IACOPINO: I have a couple few
17 questions.

18 BY MR. IACOPINO:

19 Q. I just want to make sure that the record is clear about
20 a couple of things, Dr. Luhman. First of all, you
21 were, on cross-examination, you were asked about
22 Buttolph Exhibit Number 37 and Buttolph Exhibit Number
23 46 by Ms. Lewis. Is my understanding correct that both
24 of those documents were generated before the filing of

1 Exhibit Number 71, which I think is the third Project
2 Area Form?

3 A. Okay. That is correct.

4 Q. Okay. So that the discussion in here about the rewrite
5 of the Project Area Form and things like that have sort
6 of been resolved by the filing of Exhibit 71?

7 A. That is correct.

8 Q. The determination that's used by the Army Corps of
9 Engineers, is it "significant adverse effect" or just
10 "adverse effect"?

11 A. Just "adverse effect".

12 Q. And, when you provided your opinion with respect to
13 whether or not there would be any "unreasonable adverse
14 effects", for our purposes here at the Site Evaluation
15 Committee, is it my understanding that that opinion is
16 primarily based upon the fact that the effects, from an
17 historical resource focus, is mainly visual?

18 A. Mainly visual -- well, is only visual. And, it's not
19 that it's "mainly", it's only a visual element, new
20 element on the landscape, if any, and there is no
21 direct physical effect. And, there will be mitigation.

22 Q. In determining your opinion, did you consider at all
23 whether there might not be any auditory effects, in
24 other words, things that people can hear from these

1 turbines?

2 A. I think, given the distance, that auditory is not an
3 issue.

4 Q. Okay. Is that something that's normally considered in
5 the Army Corps process?

6 A. It can be.

7 MR. IACOPINO: No further questions.

8 Thank you.

9 CHAIRMAN GETZ: Anything further from
10 the Committee?

11 (No verbal response)

12 CHAIRMAN GETZ: Opportunity for
13 redirect?

14 MS. GEIGER: The Applicant has no
15 redirect examination.

16 CHAIRMAN GETZ: Okay. Then, the witness
17 is excused.

18 WITNESS LUHMAN: Thank you.

19 CHAIRMAN GETZ: Thank you, Dr. Luhman.
20 Let's take about a five minute recess, and then I take it
21 we'll resume with Mr. Hecklau?

22 MS. GEIGER: Correct. Thank you.

23 (Whereupon a recess was taken at
24 11:56 a.m. and the hearing resumed at

1 12:08 p.m.)

2 CHAIRMAN GETZ: Okay. We're back on the
3 record. And, we're turning to the direct examination of
4 Mr. Hecklau.

5 MS. GEIGER: Yes. Thank you, Mr.
6 Chairman. I believe Mr. Hecklau was previously sworn at
7 the last session, and so he remains under oath.

8 (Whereupon John D. Hecklau was recalled
9 to the stand, having been previously
10 sworn.)

11 JOHN D. HECKLAU, PREVIOUSLY SWORN

12 SUPPLEMENTAL DIRECT EXAMINATION

13 BY MS. GEIGER:

14 Q. Mr. Hecklau, please state your name and spell your last
15 name for the record.

16 A. My name is John Hecklau. It's H-e-c-k-l-a-u.

17 Q. And, by whom are you employed and in what capacity are
18 you employed?

19 A. I'm employed by the EDR Companies, and there I serve as
20 Executive Vice President.

21 Q. And, are you the same the John Hecklau who submitted
22 Supplemental Prefiled Testimony dated November 19th,
23 2010 in this docket and Second Supplemental Prefiled
24 Testimony dated December 30th, 2010 in this docket?

1 A. Yes, I am.

2 MS. GEIGER: And, just for the record,
3 these two prefiled testimonies from Mr. Hecklau have been
4 marked as "Applicant's Exhibit 59" and "60", respectively.

5 BY MS. GEIGER:

6 Q. Mr. Hecklau, do you have any corrections or updates to
7 either of your prefiled testimonies?

8 A. No, I don't.

9 Q. And, if you were asked the same questions today under
10 oath as the questions that have been posed in both of
11 your prefiled testimonies that you just referenced,
12 would your answers be the same as those contained in
13 those documents?

14 A. Yes, they would.

15 MS. GEIGER: Thank you, Mr. Chairman.
16 The witness is available for cross-examination.

17 CHAIRMAN GETZ: Okay. Thank you.

18 Mr. Sinclair?

19 MR. SINCLAIR: No questions. Thank you.

20 CHAIRMAN GETZ: Ms. Lewis.

21 MS. LEWIS: Hi, Mr. Hecklau.

22 WITNESS HECKLAU: Hi, Ms. Lewis.

23 MS. LEWIS: Will be very quick.

24 SUPPLEMENTAL CROSS-EXAMINATION

1 BY MS. LEWIS:

2 Q. Ms. Luhman testified earlier this morning that you were
3 the one that made the actual decision regarding the
4 3-mile radius for the APE, is that correct.

5 A. No, that's not correct.

6 Q. That's not correct. Were you involved in that
7 decision-making?

8 A. No, ma'am. I believe that was entirely related to
9 Historic Resources.

10 Q. I'm sorry, as far as the viewshed, the viewshed which
11 constituted, in the end, the APE, and the PAF that was
12 --

13 A. We prepared the viewshed maps, yes, ma'am.

14 Q. Okay. And, what -- what made you decide on the 3-mile
15 radius?

16 A. Our study looked at a 10-mile radius, not a 3-mile
17 radius.

18 Q. Okay. So, that wasn't involved at all?

19 A. No, ma'am.

20 MS. LEWIS: Okay. That's all I had for
21 you today. Thank you.

22 WITNESS HECKLAU: Thank you.

23 CHAIRMAN GETZ: Thank you. Mr. Roth.

24 MR. ROTH: Good morning, Mr. Hecklau.

1 WITNESS HECKLAU: Good morning.

2 MR. ROTH: Good to see you again.

3 WITNESS HECKLAU: You, too.

4 BY MR. ROTH:

5 Q. In front of you there's a stack of documents there. I
6 will only trouble you with one of them, and that is
7 Public Counsel Number 18.

8 A. I have it.

9 Q. Okay. Do you recall our discussion about these
10 information requests at the technical session?

11 A. I do.

12 Q. Okay. And, could you, for the benefit of the
13 Committee, identify which of the questions in here you
14 provided the answers for?

15 A. I believe I provided assistance with the answers to
16 Questions 4 and 5.

17 Q. Okay. And, that was all?

18 A. Yes, sir.

19 Q. Okay. Now, with respect to the substation site on
20 Route 175, were you -- you testified and I believe your
21 remarks here suggest that there is a vegetative
22 screening along Route 175?

23 A. That is correct.

24 Q. And, that that vegetative screen blocks, at least in

1 part, the view of the substation site from people
2 passing by on Route 175?

3 A. Partially screens the view, yes, sir.

4 Q. Okay. And, would you agree that, if that vegetative
5 screen were removed, that the view of the substation
6 facility would be greater from people passing by?

7 A. I believe that was stated in --

8 Q. I'm just asking you to --

9 A. -- in my discovery response. Yes, sir.

10 Q. Okay. So, you agree that it would increase the
11 exposure of the site?

12 A. Yes. The response I gave to that discovery request was
13 "Without the vegetative screen along Route 175, the
14 proposed substation [site] would be more visible from
15 the location where a partially screened view is now
16 available."

17 Q. Okay. And, is that also true for the residences along
18 Route 175 on the other side of the road?

19 A. Maybe to a certain extent. But the residences on the
20 other side of the road are -- have more substantial
21 screening right in their immediate foreground. The
22 trailer park is densely populated with trailers, and
23 it's got an abundance of white pines. So, there's more
24 significant screening actually there than across the

1 road.

2 Q. Doesn't your answer to Number 5 say "It would also be
3 likely visible from additional viewpoints along Route
4 75 [175?] and properties on the opposite side of the
5 road"? Are you changing your answer?

6 A. No. I was just trying to address the question you
7 posed.

8 Q. Okay. Now, would it be possible -- or, let me ask it
9 this way. If the vegetative screening along Route 175
10 were maintained or, in fact, enhanced, would that
11 improve the view of the Project, either from people
12 passing by Route 175 or from residences on the other
13 side of the road?

14 A. It certainly could block more of the view. Although
15 the view is already very distant, and has other
16 features in the view that are already distracting
17 features or man-made features.

18 Q. But, with respect solely to the substation facility,
19 try to focus there, if the vegetative screen along 175
20 were to be maintained or enhanced, that would provide a
21 good -- do you agree that that would provide a good
22 visual barrier to the substation from 175 and the
23 houses on the other side?

24 A. It would further screen the available view, yes.

1 Q. Okay. And, would it also be true, if the Applicant
2 were to construct or maintain a vegetative screen along
3 its boundary inside that greater property along 175?

4 A. Harder to say, just because of the distance, whether
5 some perimeter plantings would really make a difference
6 or not, since it's the taller features of the
7 substation that I think will be visible from the road.
8 But it's possible.

9 Q. Okay. When you speak of the "taller features of the
10 substation", isn't it true that the bulk of the
11 substation is sort of a typical low-level building and
12 structure, you know, within the first story or so?

13 A. That's true. But the substation site is on an elevated
14 bench, higher than Route 75 [175?]. So, the line of
15 sight actually I think will go over some of that low --
16 low mechanical equipment, even though -- even without a
17 screen.

18 Q. Wouldn't that actually make it, a vegetative screen
19 sort of at the perimeter of the site itself more
20 effective because of the angle of sight?

21 A. Again, in terms of blocking what you can see, the low
22 components, yes. The taller ones, you know, not
23 certain about that.

24 Q. Okay. When you were doing your -- making your

1 testimony and answering the questions, you indicated in
2 your answer to Number 5 that "the visual impact...would
3 be mitigated by its distance from the road", which is
4 understandable, "and its occurrence in an area that
5 generally lacks sensitive public resources and already
6 characterized by commercial and industrial land use."
7 How does that mitigate, how does the fact that there
8 are no "sensitive public resources" and that it's
9 "commercial and industrial land use", how does that
10 mitigate the visual impact of another, let's just, for
11 the sake of argument, assume that a substation is
12 unsightly, how does that mitigate the unsightly nature
13 of a substation?

14 A. Well, in terms of the "public resources", most visual
15 studies, that's the focus of the analysis is public
16 resources that are visited by and available to the
17 public for their enjoyment. So that, in that regard,
18 the lack of those resources in a visual study area
19 tends to reduce the significance of the impact. In
20 terms of the "commercial and industrial land use", it's
21 a matter of context. Adding a substation to a total
22 greenfield site or a farm field changes the context, it
23 creates a contrast that doesn't really exist there
24 under current conditions. In a site like this, where

1 you have an operating gravel pit and you have
2 industrial buildings, there is an incremental effect,
3 but it doesn't -- it's not a drastic change in
4 landscape context.

5 Q. Have you ever heard of the expression "adding insult to
6 injury"?

7 A. Yes.

8 Q. Okay. Is it possible that a substation in a -- you
9 call it a "gravel pit and industrial buildings", could
10 be akin to adding insult to injury?

11 A. I mean, there's an additive effect. But, again, the
12 distance from the road and the other features that are
13 in the foreground, like the operating pit, I think are
14 more significant.

15 Q. Okay. When you did your viewshed analysis, were you
16 aware that the New Hampshire Department of
17 Transportation and I believe the New Hampshire Tourism
18 Bureau have a number of routes in the area, which could
19 include this route, as among a scenic drive, and they
20 call it the "River Heritage Tour"?

21 A. I don't -- I don't believe Route 175 is on that tour.

22 Q. Okay.

23 A. But I was -- I was aware there are two scenic byways
24 within our larger regional study area.

1 Q. Okay. And, did you account for the tourism traffic of
2 people who may be taking the alternative route through
3 the -- to access the scenic byway when you considered
4 whether there were sensitive public resources?

5 A. Well, normally, when I refer to a "sensitive public
6 resource", I would -- it would be in reference to
7 something that enjoyed a formal designation. So, there
8 was no consideration of tourists outside of this
9 designated scenic byway when I was referring to "no
10 resources in this area".

11 Q. Okay. Is it your understanding that scenic byways, in
12 general, are pristine and have no industrial
13 facilities, car repair shops, McDonald's restaurants?

14 A. No. Those elements are often present.

15 MR. ROTH: Okay. That's all I have.

16 Thank you.

17 WITNESS HECKLAU: Thank you.

18 MR. ROTH: Wait.

19 (Short pause.)

20 MR. ROTH: Thank you. That's all.

21 CHAIRMAN GETZ: Questions from the
22 Committee? Mr. Harrington.

23 MR. HARRINGTON: Yes.

24 BY MR. HARRINGTON:

1 Q. Just getting back to the view here from Route 175.
2 Now, you said that the facility, the new proposed
3 facility would be about a thousand feet away from the
4 road?

5 A. Yes, sir.

6 Q. And, what, besides this vegetative screening that's
7 there now, is in that 1,000 feet?

8 A. It's, basically, it looks like an old field where the
9 forest vegetation has been cleared, and then there's an
10 active sand pit, sand and gravel pit, pretty much in
11 the line of sight.

12 Q. So, when you say "active", that means there's large
13 machinery out there digging holes, and is there one of
14 those things that you see sort of that stomps the big
15 rocks into little rocks, that type of stuff?

16 A. No. I mean, when I was up there, there was no crusher,
17 but there was a big front-end loader moving sand and
18 gravel around, and there were dump trucks on-site.

19 Q. Okay. So, I assume that then there's some dust and
20 stuff associated with that as well?

21 A. Perhaps. I don't know.

22 Q. And, is there another industrial facility in the area?
23 I thought I read something about some kind of a metal
24 processing plant or something?

1 A. Yes. Immediately to the north, there's a couple
2 additional sort of metal, you know, industrial-type
3 buildings, which I think one of them is a metal plating
4 or fabrication facility or something like that.

5 Q. And, sizewise, how do they compare to the proposed
6 substation?

7 A. Oh. I'm not certain. They're certainly much closer to
8 the road. From a footprint standpoint, they may be
9 smaller. But they are definitely more solid, you know,
10 less transparent, less -- I'm trying to think of the
11 right word. A substation is, you know, a bunch of
12 independent pieces with a lot of air around them. So,
13 I think the buildings may be smaller, but have more
14 mass.

15 Q. And, when say "much closer to the road", are they half
16 the distance or are they basically right on the road?

17 A. They step back from the road, but the nearest buildings
18 are essentially right on the road.

19 Q. So, I guess, if you're looking at this area, if you
20 were to drive by that now, with or without the
21 substation, no one would be looking over and saying
22 "what a lovely view there is"?

23 A. That's correct.

24 MR. HARRINGTON: All right. Thank you.

1 CHAIRMAN GETZ: Mr. Steltzer.

2 BY MR. STELTZER:

3 Q. Your viewshed analysis, was it limited to daytime?

4 A. We didn't actually do a viewshed analysis, per se, on
5 the substation site.

6 Q. Or, where I guess I'm going at, is there is, from the
7 testimony provided from the Town of Holderness, they
8 have identified a concern with Dark Sky Initiatives and
9 the type of lighting that's been done. I'm curious
10 whether there is -- you have any -- have done any sort
11 of work to identify the visual, how significant the
12 visual impact would be from the lights on the Project?

13 A. You're referring to the substation?

14 Q. Correct.

15 A. We did not look at that. But it's something that often
16 comes up and can usually be mitigated through the use
17 of timers or switches, things of that nature.

18 Q. Are you aware of whether there's been light
19 infiltration, I believe it studies the light
20 infiltration, study done, it's normally on-site plans
21 that are being done for projects, they can monitor the
22 -- how far out and how the light does emit to show the
23 impact based off the topography and the vegetation of
24 the area?

1 A. I've seen analyses like that. We didn't do one.

2 MR. STELTZER: You didn't do one. Thank
3 you.

4 CHAIRMAN GETZ: Other questions from the
5 Committee?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. Does not look
8 like there's any further questions from the Committee.
9 Any redirect?

10 MS. GEIGER: No thank you, Mr. Chairman.

11 CHAIRMAN GETZ: Okay. Then, the witness
12 is excused. Thank you, Mr. Hecklau.

13 WITNESS HECKLAU: Thank you.

14 CHAIRMAN GETZ: Ms. Geiger, the next
15 witness is Mr. Cherian?

16 MS. GEIGER: Yes, that's correct.

17 CHAIRMAN GETZ: All right. Let's at
18 least get the direct testimony on the record.

19 MS. GEIGER: Sure.

20 CHAIRMAN GETZ: And, I'll note that
21 Mr. Cherian is also still under oath.

22 MS. GEIGER: Mr. Chairman, I need a
23 minute please.

24 (Short pause.)

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

2 (Whereupon Edward Cherian was recalled
3 to the stand, having been previously
4 sworn.)

5 MS. GEIGER: Mr. Cherian, I'd remind you
6 that you're still under oath as you were in the last set
7 of hearings that were recessed in November.

8 EDWARD CHERIAN, PREVIOUSLY SWORN

9 SUPPLEMENTAL DIRECT EXAMINATION

10 BY MS. GEIGER:

11 Q. Could you please state your name and spell your last
12 name for the record.

13 A. My name is Edward Cherian. Last name, C-h-e-r-i-a-n.

14 Q. And, Mr. Cherian, by whom are you employed and in what
15 capacity are you employed?

16 A. I'm employed by Iberdrola Renewables, Incorporated, as
17 New England Development Director. And, in that
18 capacity, I'm responsible for Groton Wind development
19 activities.

20 Q. And, are you the same Edward Cherian who submitted
21 Second Supplemental Prefiled Direct Testimony dated
22 November 11th, 2010 and Third Supplemental Prefiled
23 Direct Testimony dated December 20th, 2010 in this
24 docket?

1 A. Yes. Although, I have dates, Second Supplemental was
2 November 19th.

3 Q. Correct.

4 A. And, the third as December 30th.

5 Q. Oh, that's correct. December 30th. And, were these
6 documents premarked for identification in this docket
7 as "Applicant's Exhibit 61" and "62", respectively?

8 A. Yes, I believe they were.

9 Q. Mr. Cherian, do you have any corrections or updates to
10 either your Second Supplemental Prefiled Direct
11 Testimony or your Third Supplemental Prefiled
12 Testimony?

13 A. Yes, I have a couple of them. On my Second
14 Supplemental, Page 2, I provide a description of the
15 location of components of the alternative power line.
16 And, so, on Line 8, I'd like to add a reference to the
17 maps that were contained in Applicant's Exhibit 44,
18 which show in greater detail the precise location of
19 the alternative power line. So, I would like to add
20 the words "As shown on maps contained in Exhibit App.
21 44 and", that would be on Line 8, added between the
22 word "route" and the word "is".

23 Q. Okay. Do you have any other, either corrections or
24 updates, to your testimony?

1 A. I would like to add an update to this testimony that,
2 since the last time I testified, the Project has
3 secured the necessary easements for the alternative
4 power line from private property owners.

5 Q. And, do you have any further updates or information
6 relating to your prefiled testimony, your Second
7 Supplemental Prefiled Testimony, as it relates to the
8 alternative line from the Project site, down to Route
9 25?

10 A. I have no other updates on that.

11 Q. Do you have any updates or corrections to your Third
12 Prefiled Direct Testimony dated December 30th, 2010?

13 A. Yes. On Page 3, I've described some of the discussions
14 that the Project has had with the Town of Holderness
15 regarding the proposed voltage step-up facilities. I
16 would like to update my testimony to reflect that, on
17 February 17th, 2011, I met with the Town of Holderness
18 Board of Selectmen and Holderness Planning Board to
19 discuss the Project, present information about the
20 voltage step-up facilities, and to answer questions.
21 I'd like to update to reflect that.

22 Page 4, Line 2, is a question regarding
23 the steps taken to ensure that the step-up facilities
24 will not have an unreasonable adverse effect on public

1 health and safety. I would like to update that to
2 reflect discussions I've had with the Town of
3 Holderness, regarding the Town's concerns over the
4 compliance with the Town of Holderness Dark Skies
5 Ordinance. We've indicated to the Town of Holderness
6 that the substation will be compliant with the Town's
7 Dark Skies Ordinance, unless and except if there are
8 specific lighting requirements that are mandated by
9 Safety Code, electrical utility requirements, or ISO
10 New England requirements that require us to deviate
11 from the Town's Dark Skies Ordinance.

12 Q. Mr. Cherian, do you have any further updates to your
13 Third Supplemental Prefiled Testimony?

14 A. Yes. I would like to, on the same page, Page 4, I
15 would like to update my testimony to also add
16 information I provided in response to data requests
17 from the Town of Holderness regarding the substation's
18 emergency response plans and security to prevent
19 unauthorized access. The facility will have, as
20 required by the federal regulations, a U.S.
21 Environmental Protection Agency Spill Prevention
22 Control & Countermeasures Plan, SPCC. This is a
23 federally required plan that details facility design
24 response plans. The facility will also be remotely

1 monitored via a data link to the Groton Wind operations
2 and maintenance building. A federal SPCC plan will be
3 provided to state and local emergency response
4 personnel as a standard practice.

5 In terms of substation security, this
6 was a question raised by the Town of Holderness as
7 well. And, we provided an answer to that. I'd like to
8 add to my testimony to include that. Substation will
9 be secured from unauthorized access in a manner similar
10 to that of other New Hampshire substations. Mainly, it
11 will be enclosed by a chain-link fence, topped by
12 barbed wire, which is in accordance with the National
13 Electric Safety Code. Signs will be posted on the
14 fence to inform of dangers and that unauthorized
15 admission is not allowed. Gates will be secured by
16 locks.

17 Q. And, Mr. Cherian, were the two -- those two answers to
18 data requests that you just read into the record, are
19 those contained in Applicant's Exhibit 63?

20 A. Yes, I believe they are.

21 Q. Okay. Mr. Cherian, do you have any other updates for
22 the Subcommittee regarding the status of the Project's
23 communications with the New Hampshire Fish & Game
24 Department?

1 A. Yes. Applicant's Exhibit 72 is a letter from New
2 Hampshire Fish & Game to Mr. Iacopino, that indicates
3 Fish & Game's concurrence with the -- with the Groton
4 Wind's proposed Avian & Bat Protection Plan Post
5 Construction Surveys.

6 Q. And, are there any other matters that you would like to
7 update the Subcommittee on, in terms of events that
8 have transpired since the last time you testified here
9 in November?

10 A. I have two other issues I want to update on. One is in
11 regards to the State Fire Marshal's letter, which was
12 submitted to the Committee I believe on October the
13 19th. Subsequent to that, a tour of the Lempster Wind
14 facility was provided for the Fire Marshal's Office by
15 --

16 MR. ROTH: Mr. Chairman, at this point
17 I'm going to object. Because, unless this happened like
18 last week, and maybe that's where it's going here, we've
19 heard a number of things of updates to testimony. But we
20 had a whole process in place here for discovery and for
21 technical sessions. It would have been nice to have had
22 testimony like this prior to those sessions, in a timely
23 fashion, so we could have asked him questions about it, be
24 prepared to cross-examine. Unfortunately, we don't have

1 that. And, so, now we're getting a lot of information
2 that was not made available to the parties in a timely
3 fashion before that. And, I'm going to object to it being
4 introduce at this time.

5 CHAIRMAN GETZ: Well, I'm going to
6 overrule the objection at this point. I want to get the
7 updates on the record, and then we'll figure out what to
8 do about them, once we get a little more context about
9 what he's actually saying.

10 Complete the updates, and then we'll
11 figure out where to go from there.

12 WITNESS CHERIAN: Thank you.

13 BY THE WITNESS:

14 A. So, representatives from the New Hampshire State Fire
15 Marshal's Office were hosted at the Lempster Wind
16 facility for a review of safety and fire control
17 systems in place there. We also arranged for a tour of
18 a project called "Hardscrabble, New York", which is
19 under construction. We've been coordinating with the
20 Fire Marshal's Office, and they have indicated that a
21 clarifying letter may be forthcoming. Their intent was
22 to impose the intent of the codes, not the actual
23 specifications. That's a work in progress, I guess.

24 Lastly is, I believe the last time we

1 met, the agreement between Groton Wind and the Town of
2 Groton had not been finalized and signed. That is
3 completed. It was submitted as "Exhibit 32" some time
4 ago, and addresses decommissioning and other issues
5 with the Town of Groton.

6 BY MS. GEIGER:

7 Q. Thank you, Mr. Cherian. With the corrections and
8 updates that you've just given to your filed
9 supplemental testimony, if you were asked the same
10 questions that were posed in your Second and Third
11 Supplemental Prefiled Testimonies today under oath,
12 would your answers be the same as those provided,
13 subject to the updates that you just gave?

14 A. Yes, they would.

15 MS. GEIGER: Thank you. The witness is
16 available for cross-examination.

17 CHAIRMAN GETZ: Okay. Thank you. I
18 want to get an idea of how much cross there is for
19 Mr. Cherian. Mr. Sinclair, do you have any questions?

20 MR. SINCLAIR: None. Thank you.

21 CHAIRMAN GETZ: Ms. Lewis, do you have
22 cross?

23 MS. LEWIS: Yes, I do.

24 CHAIRMAN GETZ: Do you have any estimate

1 of how much?

2 MS. LEWIS: Not as much as Ms. Luhman,
3 but I do have a good amount.

4 CHAIRMAN GETZ: And, are we talking a
5 half hour? An hour?

6 MS. LEWIS: Maybe a half hour.

7 CHAIRMAN GETZ: Mr. Roth?

8 MR. ROTH: Maybe 15, 20 minutes.

9 CHAIRMAN GETZ: Well, then, I say let's
10 take the lunch recess at this point, and then we'll pick
11 up with Ms. Lewis. And, it's 12:35. Let's resume at
12 1:30.

13 MR. ROTH: Mr. Chairman, before we do,
14 if I may, I'd like to move to strike Mr. Cherian's
15 testimony about the Fire Marshal contact. Because he did
16 not provide any context on when that occurred and why it
17 was left out of prefiled testimony and left to this date.
18 So, that's my motion to strike.

19 MS. GEIGER: Yes, Mr. Chairman. And, in
20 response to that, I went back and reviewed the transcripts
21 from the hearings in November, in an effort to make sure
22 that we came here today prepared to supplement the record
23 and provide the Committee with answers to questions that
24 were outstanding at that time, again, in an effort to

1 round out the record. And, I understand what Mr. Roth is
2 saying, that the information about the Fire Marshal's
3 interactions with the Applicant is not contained in the
4 prefiled testimony. But, I thought, as a courtesy to the
5 Committee today, it would be a good idea for Mr. Cherian
6 to give you an idea of where things stood, just in case
7 the Committee was interested in that.

8 If Mr. Roth wants it stricken from the
9 record, then so be it. But I think it's important
10 information for the Committee to have. And, as
11 Mr. Cherian has testified, we expect that the Fire
12 Marshal's Office will be submitting something to the
13 Committee to clarify what its current understanding and
14 position is in this docket.

15 CHAIRMAN GETZ: Well, then, we'll take
16 the matter under advisement during the lunch recess.

17 MS. GEIGER: Mr. Chairman, before we
18 break, I would just want to ask and get some advice from
19 the bench. Mr. O'Neal is willing to come up this
20 afternoon to testify, if we think we might be able to
21 reach him. He is the last witness on our list. I have no
22 idea, you know, how much cross-examination will be
23 required for the witnesses that precede him. So, I don't
24 know whether we should contact him to come up this

1 afternoon or whether we should just wait till Friday?

2 CHAIRMAN GETZ: Well, I'm presuming
3 there's a fair amount of cross-examination for the other
4 witnesses. Are you suggesting taking him out of order?

5 MS. GEIGER: No. I was suggesting
6 whether, you know, if we're ambitious today, whether he
7 could actually come up and testify and then finish up.
8 But --

9 CHAIRMAN GETZ: And, how far away is he?

10 MS. GEIGER: An hour and a half.

11 CHAIRMAN GETZ: An hour and a half. It
12 seems unlikely, given the way things have gone already.
13 But let's just -- let me ask this question primarily to
14 Ms. Lewis and Mr. Roth. Ms. Lewis, cross-examination for
15 Rendall/Walker and Gravel, do you have significant cross?

16 MS. LEWIS: I would say less than half
17 an hour.

18 CHAIRMAN GETZ: Mr. Roth?

19 MR. ROTH: I have only a very little for
20 Ms. Rendall. And, it's difficult to measure how much I
21 will ask of Mr. Gravel. But that could be half an hour,
22 an hour.

23 MS. GEIGER: Friday?

24 CHAIRMAN GETZ: I would like to move

1 through the witnesses and, you know, I'm not sure how late
2 we can stay today, but I'm really not in a position to
3 give you a --

4 MS. GEIGER: Okay.

5 CHAIRMAN GETZ: -- a strong call on
6 whether we would reach him or not. So, I think that's
7 going to have to be your call.

8 MS. GEIGER: Okay. I guess the other
9 question is, I'll check off line with Attorney Iacopino
10 about the Town of Holderness. They had a witness that
11 prefiled testimony. But I don't see them here today, and
12 I don't know whether Mr. Johnson plans on coming up in
13 person to --

14 MR. IACOPINO: I have no idea. I
15 assumed they would be here today. I will give them a
16 call, though.

17 MS. GEIGER: Okay. Thank you.

18 CHAIRMAN GETZ: All right. Let's take
19 the lunch recess. Thank you.

20 MS. GEIGER: Thank you.

21 (Whereupon the Day 6 Morning Session
22 recessed for lunch at 12:40 p.m. The
23 Day 1 Afternoon Session to resume
24 under separate cover so designated.)