

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

March 22, 2011 - 1:35 p.m.  
Public Utilities Commission  
21 South Fruit Street  
Suite 10  
Concord, New Hampshire

DAY 6  
AFTERNOON 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, Admin.	Dept. of Resources & Econ. Dev.
Eric Steltzer	Office of Energy & Planning
Michael Harrington	Public Utilities Commission

\* \* \*

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: Susan J. Robidas, LCR NO. 44

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

A P P E A R A N C E S (CONT'D)

ALSO PRESENT:

Counsel for the Applicant: Susan S. Geiger, Esq.  
(Groton Wind, LLC) 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 Town of Groton: Miles Sinclair, Selectman

Reptg. the Buttolph Group: Cheryl Lewis, Intervenor

1	I N D E X	
2		PAGE
3	WITNESS: EDWARD CHERIAN (resumed)	
4	Supplemental Cross-Examination by Ms. Lewis	4
5	Supplemental Cross-Examination by Mr. Roth	16
6	Examination by Mr. Iacopino	22
6	QUESTIONS FROM SUBCOMMITTEE MEMBER:	
7	By Mr. Steltzer	25
7	Examination by Mr. Iacopino	27
8	QUESTIONS FROM SUBCOMMITTEE MEMBER:	
8	By Dr. Kent	28
9		
10	WITNESS PANEL: PETER WALKER NANCY RENDALL	
11	Supplemental Direct Examination by Mr. Patch	29
12	Supplemental Cross-Examination by Ms. Lewis	32
13	Supplemental Cross-Examination by Mr. Roth	34
13	QUESTIONS FROM SUBCOMMITTEE MEMBER:	
14	By Mr. Kent	40
15	WITNESS: ADAM GRAVEL	
16	Supplemental Direct Examination by Mr. Patch	43
17	Supplemental Cross-Examination by Ms. Lewis	45
17	Supplemental Cross-Examination by Mr. Roth	59
18	QUESTIONS BY SUBCOMMITTEE MEMBER:	
18	By Dr. Kent	79
19	Examination by Mr. Iacopino	87
19	QUESTIONS BY SUBCOMMITTEE MEMBERS:	
20	By Mr. Dupee	89
20	By Mr. Steltzer	89
21	Supplemental Recross (cont'd) by Mr. Roth	91
21	Supplemental Redirect Examination by Mr. Patch	91
22		
23		
24		

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

(Hearing resumed at 1:35 p.m.)

CHAIRMAN GETZ: Good afternoon. We're back on the record in Site Evaluation Committee Docket 2010-01.

First, let me address the motion to strike by Counsel for the Public prior to the lunch recess with respect to updates provided by Mr. Cherian with respect to certain activities concerning the state fire marshal. I'm going to deny the motion to strike. It's not clear to me exactly what weight we would give those statements with respect to any decision we'd reach in deliberations. But I think, more importantly, we'll wait and see what, if anything, shows up from the state fire marshal and see how that affects any decision that needs to be made during our deliberations.

So, with that, I think we turn to Ms.

Lewis for cross-examination of Mr.

Cherian.

## SUPPLEMENTAL CROSS-EXAMINATION

BY MS. LEWIS:

Q. Good afternoon, Mr. Cherian.

A. Good afternoon.

1 Q. Has Groton Wind signed a contract yet to sell its  
2 power?

3 A. No, it hasn't.

4 Q. It has not?

5 A. No.

6 Q. Could you look at Appendix -- I'm sorry --  
7 Exhibit 47?

8 A. Do I have it up here?

9 Q. Yes.

10 MR. IACOPINO: Ms. Lewis, are you  
11 referring to Buttolph 47?

12 MS. LEWIS: Buttolph 47.

13 A. Yup. I see this article from the Wicked Local,  
14 Sandwich.

15 Q. Is that article incorrect, that NSTAR does not plan  
16 to purchase power from Groton Wind?

17 A. Well, it says NSTAR filed contracts last Friday with  
18 the State of Massachusetts Department of Utilities.  
19 Now, you asked whether there was signed purchase  
20 agreements. And the answer to that is, no, they have  
21 not been signed. That's the answer.

22 Q. Okay. But at this point, you certainly hope that  
23 they will be signed.

24 A. Yes.

1 Q. Okay. Will any of that power come to  
2 Massachusetts -- I'm sorry. Will it come to New  
3 Hampshire, or will it all go to Massachusetts?

4 A. I don't have the answer to that. That's probably a  
5 question to NSTAR, which they're involved in a merger  
6 with Northeast Utilities/PSNH. So it will be  
7 delivered through the 115 kV lines which take power  
8 in various parts of the state and around New England.  
9 But I don't know where the actual electronics will  
10 go.

11 Q. But as of right now, because that merger has not  
12 taken place, and we really don't know for sure if  
13 it's going to, NSTAR, in fact, is a Massachusetts  
14 company that provides power to Massachusetts  
15 residents; correct?

16 A. To my knowledge, yes.

17 Q. Okay. Could you then look at your prefiled testimony  
18 which was in the original application, going back to  
19 March 2010.

20 A. Yes.

21 Q. Okay. Page 15, if you look at Lines 9 through 14,  
22 you were asked the question: Is the project  
23 consistent with public policies relating to the  
24 renewable energy and climate change? And you

1 answered: "Yes, the project is consistent with and  
2 promotes several public policy goals, such as those  
3 reflected in R.S.A. 362-F, New Hampshire's renewable  
4 portfolio standard law, which requires 25 percent of  
5 the electricity sold by retail suppliers in New  
6 Hampshire come from renewable sources by 2025."

7 If that power is being sold to Massachusetts,  
8 how does this help in any way comply with the public  
9 policy and the policy of renewable energy in New  
10 Hampshire?

11 A. Well, I think there's a couple parts to that. One is  
12 that certainly it was our hope and wish to sell the  
13 power to in-state utilities. We did not find any  
14 in-state utilities that wanted to purchase the power,  
15 so we can't sell if there's not a buyer.

16 I think second is, yes, NSTAR and NU merger has  
17 not been completed. But if and when that occurs, the  
18 power will be used across the region. Northeast  
19 Utilities is a Connecticut-based company. They have  
20 customers in various New England states and power  
21 sources in different states. So we're in -- we live  
22 in a market in New England, an electricity market, in  
23 which power sources and demand cross state borders  
24 all the time.

1 Q. Okay. Would you agree that the reason why you  
2 weren't able to sell it to New Hampshire suppliers is  
3 because -- or New Hampshire electric companies is not  
4 enough demand, and, in fact, the demand has decreased  
5 in New Hampshire?

6 A. I can't speak on behalf of PSNH or other companies as  
7 to why they were not interested in a power purchase  
8 agreement for the output.

9 Q. If you could turn to Exhibit 41, please, Buttolph  
10 Exhibit.41.

11 A. Okay. I have it.

12 Q. Do you recognize these handwritten notes at all?

13 A. No, I don't.

14 Q. Okay. Well, just to help you out a bit, these are  
15 Hope Luhman's notes from when she went to the  
16 location of the new Holderness substation, proposed  
17 substation, and did her shovel test there. And if  
18 you look up in the left-hand corner, underneath where  
19 it says "Onnela Lumber Company," if you could read  
20 those notes that are handwritten on the left side?

21 A. You want me to read Hope's notes?

22 Q. Yes.

23 A. "Met Kevin and son in ROW. He was working on  
24 estimate for tree removal."



1 Q. Okay. Is this the same Kevin Onnela that owns the  
2 land that the Lempster turbines are leased on?

3 A. He's one of a number of owners on the Lempster  
4 project.

5 MS. GEIGER: Mr. Chairman, I'm going  
6 to object to this line of questioning. I'm not sure  
7 how this is relevant to the Groton Wind project.

8 MS. LEWIS: Well, it certainly is --  
9 can I answer that?

10 CHAIRMAN GETZ: Yes, if you can  
11 establish relevance.

12 BY MS. LEWIS:

13 Q. Okay. My question is: Why would you have somebody  
14 from Lempster come all the way down from Holderness  
15 to provide an estimate on tree removal when you have  
16 repeatedly stated publicly that you were going to be  
17 hiring local contractors? And this is an area we've  
18 been concerned about. So I'm just asking why you  
19 would have somebody that's so far away come all the  
20 way, when there are a ton of loggers in the  
21 Rumney-Holderness area.

22 A. Well, I can't speak for Hope, but I did not have --  
23 we did not have Mr. Onnela come to the Holderness  
24 site to provide an estimate on tree removal. Her

1 notes may say that, but that is incorrect. We did  
2 have Mr. Onnela look at the site to look at the sand  
3 banks in order to provide an estimate on the cubic  
4 yards of sand and the quality of sand. The reason  
5 for doing that is because he's in, among other lines  
6 of business, the sand business. And we wanted to get  
7 a feel for what the sand value of the property was  
8 compared to what the owner presented the sand value  
9 of the property was.

10 Q. Do you believe there's no local contractors that  
11 could handle that work?

12 A. I don't believe that. I found someone I knew that  
13 was familiar with the sand business and different  
14 grades of sand.

15 Q. Okay. As far as helping the overall local community,  
16 do you still believe that that is going to take place  
17 when you prefer to use people that you're familiar  
18 with?

19 A. Well, I'm not sure if that's a question or an  
20 assertion. But we've used a lot of local contractors  
21 already, including companies in Rumney, including  
22 Plymouth State University, and many other companies.  
23 So it depends on what is the task that's required,  
24 who's best qualified to do it, what the price is.

1           And I think the experience -- we brought Lempster  
2           into it. I think the experience in Lempster showed  
3           that we used many local contractors, again, when the  
4           price is competitive and the skills are -- match up  
5           correctly.

6           Q.    So you don't believe anybody was skilled in our area  
7           to perform --

8           A.    That's not what I said. That's not what I said.

9           Q.    Were you involved in any of the discussions regarding  
10          mitigation?

11          A.    Which discussion involving mitigation?

12          Q.    The mitigation options which wound up creating the  
13          memo which Hope Luhman had sent to the Army Corps.

14          A.    I was not on the -- I was not involved in that call  
15          or drafting that memo.

16          Q.    Were you involved in discussing options for  
17          mitigation?

18          A.    I think early on there was discussion on that. I  
19          think that Hope described Army Corps wanted some  
20          potential options put out there. And my involvement  
21          was to provide direction, same as I did on other  
22          projects, which my belief is that, if there is any  
23          mitigation required, it should be focused on the  
24          local area and benefit the local area, as opposed to

1 a check written to a fund or something like that.

2 Q. Did you discuss any of that with the previous Rumney  
3 Board of Selectmen regarding mitigation  
4 possibilities?

5 A. Mitigation with the Army Corps of Engineers?

6 Q. Did you discuss mitigation options or mitigation  
7 possibilities in any way with the Rumney Board of  
8 Selectmen?

9 A. I'm sorry. You're asking if I discussed with the  
10 Rumney Board of Selectmen mitigation options that the  
11 Army Corps of Engineers would consider?

12 Q. Yes.

13 A. No, I did not.

14 Q. Can you tell me what other options you had considered  
15 besides the one which was submitted to the Army  
16 Corps?

17 A. I'm not aware of any others. I didn't consider any  
18 others. I think, as Ms. Luhman testified, these were  
19 ideas that were thrown out early on at the request of  
20 the Army Corps.

21 Q. Well, we've heard ideas. But the only one that's --  
22 there's only one on the memo. So that's why I'm  
23 curious as to what else was discussed.

24 A. Well, I was not on the phone call. Maybe they had

1 other things discussed on the phone call.

2 Q. When you hire your consultants to do various studies  
3 for you, such as Hope or any of the other consultants  
4 that we'll see here today, who actually owns the  
5 study itself? Do you own that, or does the company  
6 that represents you?

7 MS. GEIGER: Mr. Chairman, I'm going  
8 to object to this question. I don't think it is  
9 relevant directly to the two issues that we're here  
10 to discuss this morning: The interconnection line  
11 and the substation. I think we're running far afield  
12 of your general scoping remarks this morning. I know  
13 there's been some latitude allowed to some on the  
14 record. But these are general questions that I think  
15 could have been asked in November, and weren't. So  
16 I'm going to object to this question at this time.

17 CHAIRMAN GETZ: Ms. Lewis, where are  
18 you going with this line of questioning?

19 MS. LEWIS: Well, some of the exhibits  
20 that are going to be brought up a little bit later do  
21 have some information that suggests that there's an  
22 issue with some studies that have been done. And in  
23 regards -- it also brings up the possibility that --  
24 who is the actual owner of the studies.

1 CHAIRMAN GETZ: I'm having trouble  
2 making the connection. But let's -- I'll permit you  
3 to continue with this line of questioning. I would  
4 assume what you're trying to get to, though, is  
5 exhibits that were appended to the November 19th and  
6 December 30th testimony? Is that where you're  
7 headed?

8 MS. LEWIS: Yeah, any of the  
9 consultant studies that have been done. I'm just  
10 asking the general -- the question in general, but  
11 certainly pertaining to studies that were recently  
12 done.

13 CHAIRMAN GETZ: Well, I'll permit the  
14 question, but I'm still having a tough time seeing  
15 what the relevance is.

16 A. In general, although not exclusively, work product  
17 that we contract for, once it's delivered to Groton  
18 Wind, becomes the property of Groton Wind. There are  
19 exceptions to that, as companies have proprietary  
20 software or methods or things like that, that  
21 restrict that.

22 Q. Okay. So if you own the work in progress, is it  
23 edited sometimes by your company, or are things  
24 deleted that you don't agree with?

1 A. Typically for any work product, there is a draft  
2 provided, or multiple drafts, and finals that are  
3 maybe reviewed by us, sometimes reviewed by agencies.  
4 That's standard.

5 Q. Okay. So, basically, the studies that we're seeing  
6 are -- potentially have been edited or changed by you  
7 and aren't truly a final copy of your consultant?

8 A. What study in particular are you referring to?

9 Q. I'm just asking a general question as far as the  
10 studies.

11 A. I guess I can't answer that question, as far as all  
12 of the studies that have been done.

13 Q. Are there any studies where something has been edited  
14 because you did not agree with a consultant?

15 A. I don't know. That's pretty broad. You know, there  
16 are drafts of studies that are reviewed as a work  
17 product to Groton Wind. Some go directly to the  
18 agencies. The PAF is -- came to us in basically the  
19 same form it went to the agencies. So, I guess if  
20 you have a specific example or a question, I can try  
21 to answer it better.

22 MS. LEWIS: That's all I have. Thank  
23 you.

24 CHAIRMAN GETZ: Mr. Roth.

1 MR. ROTH: Thank you, Mr. Chairman.

2 SUPPLEMENTAL CROSS-EXAMINATION

3 BY MR. ROTH:

4 Q. Mr. Cherian, how many years have you worked for  
5 Iberdrola?

6 A. About four years.

7 Q. Four years?

8 A. Yes, sir.

9 Q. And in that time, have you had occasion to visit  
10 Iberdrola headquarters in Oregon?

11 A. Yes, I have.

12 Q. And on your trips to Oregon -- how many times have  
13 you gone to Oregon?

14 A. Just a couple times.

15 Q. How much time would you estimate you spent out there?

16 A. How many days?

17 Q. Yeah.

18 A. I don't know. Maybe a week, total.

19 Q. Okay. And have you had occasion to visit any of  
20 their other projects out in Oregon?

21 A. Any of the wind farms or --

22 Q. Correct.

23 A. No, I have not.

24 Q. So you didn't go to Helix or Klondike?



1 A. I have not been to those wind farms.

2 Q. Do you have any familiarity with the way those  
3 projects were certificated by the State of Oregon?

4 A. No. I work in New England. I really don't know.

5 Q. So if I were to tell you that the Oregon Energy  
6 Facility Siting Council has specific findings and  
7 conclusions and conditions regarding electromagnetic  
8 field and other public safety issues regarding  
9 substations, you wouldn't -- that wouldn't ring any  
10 bells with you?

11 A. No, it would not.

12 Q. Okay. Now, do you have any experience in electrical  
13 engineering?

14 A. I don't have degrees in electrical engineering, no.

15 Q. Okay. Do you have practical, on-the-job experience  
16 working as an electrical engineer?

17 A. I'm not a licensed electric engineer, no.

18 Q. Do you have any specific training in electrical  
19 engineering?

20 A. No, I don't.

21 Q. Do you consider yourself an expert on electrical  
22 engineering?

23 A. No, I do not.

24 Q. Okay. Now turning your attention to Public Counsel

1 Exhibits 18 and 19, which are there on the table in  
2 front of you, and in particular, Question No. 6.

3 A. In 18?

4 Q. Yeah, in No. 18.

5 A. Yes.

6 Q. Did you assist in writing the answer to No. 6?

7 A. Yes.

8 Q. Okay. Corona discharge and the noise made by circuit  
9 breakers --

10 A. Well, there's a number of pieces. Corona discharge,  
11 circuit breakers and construction activities.

12 Q. Okay. Did you -- in terms of the answer to No. 6,  
13 the first bullet, corona discharge, did you write  
14 that answer?

15 A. No, I did not.

16 Q. Who wrote that answer?

17 A. Don Hammond, who is a director of our technical  
18 engineering services for Eastern U.S.

19 Q. Didn't you tell me at the technical session that you  
20 wrote that answer after consulting with Mr. Hammond?

21 A. I told you that I worked with Mr. Hammond to draft  
22 these answers.

23 Q. Okay. I misunderstood you.

24 With respect to the second bullet point, the

1 impact sound, electric motor noise, did you write  
2 that answer?

3 A. I worked with Mr. Hammond on that one as well.

4 Q. Including all the way to the end of it, the end of  
5 that bullet?

6 A. Yes.

7 Q. Okay. And turning to Question No. 10, the predicted  
8 maximum magnetic field strength and maximum electric  
9 field strength --

10 A. Yes.

11 Q. -- did you write that answer?

12 A. I worked with Mr. Hammond on that answer as well.

13 Q. Okay. And No. 11, induced current?

14 A. Worked with Mr. Hammond on that answer as well.

15 Q. And No. 12?

16 A. I'd have to go back and check as to whether  
17 Mr. O'Neal worked on that answer or not.

18 Q. But to your memory, did you draft that answer?

19 A. I'd have to go back and check.

20 Q. Okay. And No. 15? Did you answer No. 15?

21 A. This is an answer I worked with Mr. Hammond on as  
22 well.

23 Q. All right. Now turning to No. 19. Do you remember  
24 at the technical session when we were discussing the

1           electromagnetic field issue -- the electric field, we  
2           asked you to look into getting us information about  
3           Beebe River and Ashland and Hardscrabble? And did  
4           you write the supplemental response here? Is that  
5           your work?

6           A.    Mr. Hammond and I wrote this together.

7           Q.    Okay. You needed Mr. Hammond to tell us that  
8           Northeast Utilities has said they don't have any data  
9           to give you?

10          A.    He's the primary contact working with Northeast  
11          Utilities, so I thought it was appropriate that he  
12          contact them rather than me.

13          Q.    Okay. And then with respect to Hardscrabble, you  
14          didn't answer that at all, with respect to  
15          Hardscrabble, did you?

16          A.    I believe we provided supplemental on Hardscrabble.

17          Q.    I don't recall seeing it. You did? It's possible I  
18          missed it, but I don't remember seeing it.

19                    Do you remember what your answer was with  
20                    respect to Hardscrabble?

21          A.    I believe -- and I'm speculating, not having it in  
22          front of me -- that we did not have specific data for  
23          the Hardscrabble substation.

24          Q.    Okay. And is that because you didn't do any modeling

1 or study of Hardscrabble?

2 A. Two different things. There's modeling as part of  
3 the manufacturing specs. But we did not take  
4 measurements after it was constructed, if that's what  
5 you're asking.

6 Q. So the modeling is done before the facility is put in  
7 operation; correct --

8 A. Yes.

9 Q. -- to predict?

10 A. Yes.

11 Q. And have you done any such modeling for this  
12 substation on this facility?

13 A. For Groton?

14 Q. For Groton.

15 A. No. And again, it's done by the manufacturer. They  
16 provide the values of a given piece of equipment.

17 Q. Would it surprise you to learn that in Oregon, the  
18 Klondike and Montague and Helix are models --  
19 modeling done by consultants hired by the Applicant  
20 with respect to 34.5 kV lines?

21 A. That is not something I'm aware of.

22 Q. Okay. Now, with respect to the Fish and Game  
23 letters, as I understand it, there was a -- was it a  
24 telephone conference call or a meeting at Fish and

1 Game?

2 A. There was a couple of discussions with Fish and Game.

3 Q. After the close of the last hearing?

4 A. The last hearing being in November?

5 Q. In October, November, whenever that was.

6 A. Yes.

7 Q. Were you present during those discussions?

8 A. I was not.

9 Q. Through none of them?

10 A. That's correct.

11 Q. Okay. Thank you.

12 MR. ROTH: That's all the questions I  
13 have.

14 CHAIRMAN GETZ: Thank you. Questions  
15 from the Committee?

16 MR. IACOPINO: I have a couple.

17 CHAIRMAN GETZ: Mr. Iacopino.

18 INTERROGATORIES BY MR. IACOPINO:

19 Q. Can you update the Committee, please, on the status  
20 of your interconnection process with the ISO?

21 A. The feasibility study that ISO New England's doing is  
22 scheduled to be completed by the end of February or  
23 early March. They informed us recently that it is  
24 being delayed because of the backup of other studies,

1 various other interconnection requests. We followed  
2 up to find out when a new projected date is, and they  
3 declined to provide one at this time.

4 Q. During your cross-examination, you were asked about  
5 statements made in your original prefiled testimony  
6 pertaining to the energy policy of the State of New  
7 Hampshire, and you were asked about the first part of  
8 your answer that applied to the RPS standards.

9 Out of fairness, I want to give you an  
10 opportunity to address the second part of your answer  
11 on Page 16 of your first prefiled testimony. There,  
12 you also addressed the Regional Greenhouse Gas  
13 Initiative set forth in R.S.A. 125-O. Would you say  
14 that your answer with respect to that particular  
15 initiative still applies?

16 A. Yes, it does.

17 Q. The NSTAR information that you provided to the  
18 Committee today is that -- as I understand, that's  
19 going to occur in Massachusetts; is that correct?

20 A. NSTAR is based in Massachusetts. Is that the  
21 question?

22 Q. And they've sought to have the power purchase  
23 agreements with Groton Wind approved by the  
24 Massachusetts Department of Public Utilities; is that

1 correct?

2 A. Yes, sir.

3 Q. And Massachusetts is part of the Regional Greenhouse  
4 Gas Initiative; is that correct?

5 A. Yes.

6 Q. That contract that has been submitted to the DPU,  
7 does that require that NSTAR purchase all of your  
8 output?

9 A. To my knowledge, yes, it does.

10 Q. Okay. Are you the person who's involved in  
11 negotiating that?

12 A. No, I am not.

13 Q. You were also questioned about the use of Kevin  
14 Onnela, and you explained that you had -- that you  
15 didn't hire him to do site work, but you had hired  
16 him to, I've got, basically give you an appraisal.  
17 Is that a fair --

18 A. Yeah. We have a purchase and sales agreement with  
19 Mr. Prescott, who owns approximately 25 acres in  
20 Holderness. Our purchase and sales agreement is for  
21 a portion of that. In negotiating the price, the  
22 owner made statements about what he felt the sand  
23 value of the property was worth, how much sand was  
24 there. And that was his basis for negotiating the



1 price. So we sought to get someone to provide an  
2 independent estimate of the amount of sand, the  
3 quality of sand and what the going price per ton is.

4 Q. Under that type of scenario, would it make business  
5 sense to hire somebody from outside the area who may  
6 not be familiar with the seller?

7 A. Sometimes it does make sense to do that.

8 MR. IACOPINO: I have no further  
9 questions.

10 CHAIRMAN GETZ: Redirect, Ms. Geiger?

11 MS. GEIGER: May we have an  
12 opportunity to confer with the witness, please?  
13 Thank you.

14 (Discussion between counsel and  
15 witness off the record)

16 MS. GEIGER: Thank you, Mr. Chairman.  
17 We have no further questions.

18 CHAIRMAN GETZ: Mr. Steltzer, did you  
19 have a question?

20 MR. STELTZER: Just a couple questions  
21 along the lines of the power purchase agreement.

22 INTERROGATORIES BY MR. STELTZER:

23 Q. That power purchase agreement is for -- is it for the  
24 electricity only, or does it include the RECs

1 associated with it as well?

2 A. My understanding, it's electricity and RECs.

3 Q. And is it your understanding that New Hampshire is  
4 part of the ISO New England; and so, as such, it is a  
5 regional market for the price of electricity, as well  
6 as renewable energy credits?

7 A. Yes. Part of the market prices are interrelated.  
8 The REC prices are interrelated for at least Class I  
9 RECs.

10 Q. Regarding -- I had some questions earlier for Mr.  
11 Hecklau about the lighting for the substation.

12 Are you familiar with any sort of light  
13 infiltration studies that have been done to show  
14 the -- or has there been any concern by the Town of  
15 Holderness about the impact of lighting on  
16 surrounding properties?

17 A. I have not heard of a concern from the Town or  
18 abutters. The abutters were at the meeting with the  
19 board of selectmen on light infiltration. The "Dark  
20 Skies" ordinance, which I believe is designed to  
21 address that for caption coverage over lights, show  
22 that instead of having uplighting and broadcast  
23 lighting, lighting is focused in a particular spot.  
24 Those types of measures would limit those problems,

1 light pollution in general.

2 Q. And moving -- if the project were to move forward,  
3 how would it -- how would the project be assured to  
4 be -- meaning, would you be working -- I don't know  
5 if the Town has a building inspector there to ensure  
6 that the systems that are being installed would be in  
7 compliance.

8 A. Typically what we would do, what I would expect we  
9 would do, is we would include a copy of the Town's  
10 "Dark Skies" ordinance with the bidding documents.  
11 So it would be bid out to the contractor that way.  
12 If they came back and said, well, here's our design,  
13 but the electrical code requires a light of a certain  
14 type that does not agree with the "Dark Skies"  
15 ordinance, then we would have to inform the Town of  
16 that. But the way we would enforce that, if that's  
17 your question, is to include it in the bid documents.

18 Q. Okay. Great. Thank you.

19 MR. IACOPINO: Mr. Chairman, I just  
20 have one other question I forgot to ask.

21 INTERROGATORIES BY MR. IACOPINO:

22 Q. When you say you told us in your cross-examination  
23 that you had -- or in your -- actually, in your  
24 updates to your direct examination -- that you had

1 secured all the easements for the alternative power  
2 line from the private property owners, are those all  
3 signed, sealed and delivered and been recorded or --

4 A. Yes, I think we filed supplementals with both of  
5 those for the memorandums. It's just Langford and  
6 Sheehan were the two properties. I know one Ms.  
7 Lewis asked about at the -- at one of the tech  
8 sessions, and it came in a week after that. I think  
9 the other one is, yes, signed, sealed. They're  
10 completed. I believe they've both been recorded with  
11 the county as well.

12 MR. IACOPINO: Thank you. No other  
13 questions.

14 DR. KENT: Just one question.

15 INTERROGATORIES BY DR. KENT:

16 Q. For this project, have you or your team modified any  
17 final reports submitted to you by a consultant?

18 A. Not that I know of. Now, I think Ms. Lewis's  
19 question was, have we ever edited a report. If we do  
20 get draft reports sent to us, and the language is  
21 poor, it's unclear. That's part of reviewing work  
22 product.

23 Q. Right. I understand that. My question's about the  
24 final report. If a consultant submits a final report

1 to you, is it, in fact, final, or is -- does you or  
2 someone in your group modify that report at that  
3 point?

4 A. As far as I know, a final report, it goes into the  
5 record, it goes to the agencies. So the answer to  
6 that is we don't modify it.

7 DR. KENT: Thank you.

8 CHAIRMAN GETZ: Anything further, Ms.  
9 Geiger?

10 MS. GEIGER: Nothing further.

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

13 MR. PATCH: The Applicant would like  
14 to call Ms. Rendall and Mr. Walker.

15 (Whereupon PETER WALKER and NANCY  
16 RENDALL were recalled to the stand, having  
17 been previously sworn and cautioned.)

18 PETER WALKER, PREVIOUSLY SWORN

19 NANCY RENDALL, PREVIOUSLY SWORN

20 SUPPLEMENTAL DIRECT EXAMINATION

21 BY MR. PATCH:

22 Q. I'd just like to remind you both that you're still  
23 under oath from the prior proceeding.

24 If you could start by stating your name and

1 spelling your last name.

2 A. (By Mr. Walker) My name's Peter Walker, W-A-L-K-E-R.

3 A. (By Ms. Rendall) Nancy Rendall, R-E-N-D-A-L-L.

4 Q. And by whom are you both employed, and in what  
5 capacities? Mr. Walker?

6 A. (By Mr. Walker) I'm employed by Vanasse, Hangen,  
7 Brustlin, a consulting firm in Bedford, New  
8 Hampshire. I am the director of environmental  
9 services.

10 A. (By Ms. Rendall) I'm also employed by Vanasse,  
11 Hangen, Brustlin; senior environmental scientist.

12 Q. And are you the same Peter Walker and Nancy Rendall  
13 who jointly submitted second supplemental prefiled  
14 testimony, dated November 19th, 2010, that's been  
15 marked as Applicant's Exhibit 64, as well as a third  
16 supplemental prefiled testimony, dated December 30th,  
17 2010, which has been premarked as Applicant's  
18 Exhibit 65?

19 A. (By Ms. Rendall) Yes.

20 A. (By Mr. Walker) Yes.

21 Q. Do you have any corrections or updates to either the  
22 second or third supplemental prefiled testimonies  
23 that you'd like to make at this time?

24 A. (By Mr. Walker) There's no substantive change or

1 correction to the prefiled testimony. We do have one  
2 additional piece of correspondence that we'd like to  
3 submit.

4 In our second supplemental prefiled testimony,  
5 we had referenced the New Hampshire Natural Heritage  
6 Bureau's data check tool as a way of looking to see  
7 if there are any rare species associated with the  
8 interconnect, the alternative interconnect power  
9 line. And we reported that.

10 Subsequent to our testimony being submitted, we  
11 did receive a written report from the Heritage  
12 Bureau. The report does not change any of the  
13 conclusions in our testimony, though. But we thought  
14 it would be wise to submit this letter to the record.

15 Q. And do you know if that's been premarked for today's  
16 hearing as Exhibit 73?

17 A. (By Mr. Walker) Yes, it has.

18 Q. Is there anything further? Either of you?

19 A. (By Ms. Rendall) No.

20 A. (By Mr. Walker) No.

21 MR. PATCH: Thank you. The witnesses  
22 are available for cross.

23 CHAIRMAN GETZ: Thank. Mr. Sinclair.

24 MR. SINCLAIR: No questions. Thank

1           you.

2                               CHAIRMAN GETZ:   Ms. Lewis.

3                               SUPPLEMENTAL CROSS-EXAMINATION

4   BY MS. LEWIS:

5   Q.    Good afternoon.

6   A.    (By Ms. Rendall) Good afternoon.

7   Q.    Regarding Exhibit 73, do you know if that request was  
8           submitted for the Holderness location as well?

9           Because I don't see the written report referring to  
10          Holderness --

11   A.    (By Mr. Walker) It's --

12   A.    (By Ms. Rendall) It's part of our -- it was  
13          attached -- it's within my report that was attached  
14          to our testimony, December 30th. It's -- the letter  
15          is in there.

16   Q.    It just came sooner, in other words?

17   A.    (By Ms. Rendall) That was December --

18   A.    (By Mr. Walker) To clarify, the letter that's  
19          Exhibit 73 related to the alternate interconnect  
20          route. That came in after we were -- we submitted  
21          our testimony; whereas, on the Holderness site, we  
22          had the letter at the time that we submitted our  
23          testimony. So it was submitted as part of our  
24          prefiled testimony.



1 Q. Okay. Thank you.

2 My other question just had to do with the last  
3 set of hearings. The issue of the aquifer running  
4 under the alternate route came up, and I wondered if  
5 you had done any further research on that. I know on  
6 your map you felt the aquifer did not. And when I  
7 brought out the Rumney map, which is owned by the  
8 Town of Rumney, it clearly looked as if the aquifer  
9 went right by the alternate route. So I wondered if  
10 you had done any further research on that.

11 A. (By Mr. Walker) I'm not sure if I recall exactly the  
12 question that you're referring to. We really haven't  
13 done any additional research on that. Again, the  
14 interconnect route, the potential impact to an  
15 aquifer from that interconnect route is negligible.  
16 It consists of essentially putting wooden poles in  
17 place to support the wires. And generally, an  
18 aquifer impact would be related to the creation of  
19 new impervious surface over an aquifer, which the  
20 interconnect route won't do, or the introduction of a  
21 chemical spill, which the interconnect line wouldn't  
22 do.

23 Q. That's all I have. Thank you.

24 CHAIRMAN GETZ: Mr. Roth.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SUPPLEMENTAL CROSS-EXAMINATION

BY MR. ROTH:

Q. Ms. Rendall, when you did the survey of the proposed route from the site down to Route 25, did you spend a particular amount of time in the relatively undisturbed area towards the bottom?

A. (By Ms. Rendall) I canvassed the entire area within my hundred-foot swath that I reviewed for as long as it took for me to go through there. And because the first part was disturbed and more or less wide open, there is less to see. So I spent more time in the second part, which is the relatively undisturbed part of that area.

Q. So didn't you tell us at the technical session that you spent approximately half a day in the relatively undisturbed part?

A. (By Ms. Rendall) Yes.

Q. And didn't you tell us at that technical session that you spent that much time there because it was more interesting to you?

A. (By Ms. Rendall) Yes, and that's because there was more to see.

Q. Okay. And during that time you spent in the relatively undisturbed area -- it sounds like

1 Area 51, right -- I'm sorry -- did you observe  
2 anything, in terms of interestingness? Did you  
3 observe any features that you think ought to be left  
4 undisturbed or protected from project activity?

5 A. (By Ms. Rendall) Yes. My report recommended shifting  
6 the alignment to the south to avoid impacts to three  
7 of the wetlands along that corridor.

8 Q. Okay. And have you provided the Committee and the  
9 Applicant a map showing the location of those  
10 wetlands and any other features that should be  
11 avoided?

12 A. (By Ms. Rendall) Yes, I have. That was -- there were  
13 maps that were provided with my testimony.

14 Q. Okay. And would you recommend that the Committee, as  
15 part of its order, condition the placement of lines  
16 through there, that those things be avoided?

17 A. (By Ms. Rendall) It's my recommendation as part of  
18 the public record. It was my report that was to the  
19 Applicant, and it has been made available to the  
20 Committee. So that is my recommendation.

21 Q. Okay. When you did your survey of that relatively  
22 undisturbed area, was there snow cover?

23 A. (By Ms. Rendall) No.

24 Q. Okay. When you did that survey, was vegetation

1 essentially in winter condition -- that is, leaves  
2 down, plants dead, that kind of thing?

3 A. (By Ms. Rendall) It was October 29th, so they're --  
4 it was well into fall. There were leaves on the  
5 trees still, but they were turned. And there was a  
6 lot of leaves on the ground, yes.

7 Q. So it's possible that, in your survey of that area,  
8 there were -- there could have been rare plants or  
9 other features that would have been visible in summer  
10 or spring conditions that you might have missed?

11 A. (By Ms. Rendall) Generally, visibility was much  
12 greater than it would be at the thick of summer  
13 because you can see all of the hydrology. We'd had a  
14 lot of rain, so there was a lot of hydrology. So,  
15 you know, we didn't -- we do not have a set list of  
16 specific rare plants that we are looking for, unless  
17 there's something that's been noted as of a  
18 particular concern by the Natural Heritage Bureau.

19 Q. But if there had been a rare plant right on your path  
20 killed by an early frost, is it possible you would  
21 have missed it because it was dead and covered with  
22 leaves?

23 A. (By Ms. Rendall) The leaf cover was not an issue.  
24 And I am not aware of any plants that would have been

1 growing in that area. As we've discussed before,  
2 approximately 80 percent of the route is already  
3 disturbed and has been subjected to extensive  
4 logging.

5 Q. So I'll -- you didn't really answer the question, and  
6 I'll take from your evasion that the answer is, yes,  
7 you might have missed something because it was dead.  
8 Is that fair to say?

9 MS. GEIGER: Excuse me. I'm going to  
10 object to that question, Mr. Chairman. I think it's  
11 unfair of Mr. Roth to conjecture about what the  
12 witness would or would not testify.

13 CHAIRMAN GETZ: Would you like to  
14 rephrase?

15 BY MR. ROTH:

16 Q. Perhaps you can answer my question directly. Is it  
17 possible that you missed something because it had  
18 been killed by an early frost?

19 (Witnesses conferring.)

20 A. (By Ms. Rendall) It's possible that there could be  
21 rare species growing along that route; however, I  
22 consider it highly unlikely, in my professional  
23 opinion.

24 Q. I'd ask that you answer the question. Is it possible

1 that there's something you missed because it had been  
2 killed by an early frost?

3 MR. PATCH: Mr. Chairman, I think  
4 she's already answered the question.

5 CHAIRMAN GETZ: It sounded like she  
6 just answered your question.

7 MR. ROTH: She did not.

8 CHAIRMAN GETZ: Well, let's have it  
9 reread. It sounded to me like she said it was  
10 possible, but she thought it was unlikely that there  
11 was anything there, given her professional  
12 experience.

13 MR. ROTH: But the question was that  
14 it -- was: "Is it possible that you missed something  
15 because it had been killed by early frost?" That's a  
16 particular question.

17 MR. PATCH: And I think she answered  
18 it, Mr. Chairman.

19 MR. ROTH: Could she answer it "Yes"  
20 or "No"?

21 CHAIRMAN GETZ: I think this is really  
22 unnecessary.

23 But can you just answer that "Yes" or  
24 "No"?

1 A. (By Ms. Rendall) Yes, it is possible.

2 Q. Thank you.

3 CHAIRMAN GETZ: Now, was that too many  
4 words or...

5 Q. Can you tell us what Mr. Walker told you?

6 A. (By Mr. Walker) I can provide a response.

7 MR. ROTH: I just wanted to know what  
8 he told her.

9 CHAIRMAN GETZ: I think that's fair,  
10 Ms. Rendall.

11 A. (By Ms. Rendall) He just said that we typically look  
12 for, you know, communities and that we're not looking  
13 for specific species while we're out there.

14 Q. Okay. That's fine.

15 A. (By Mr. Walker) If I could? The premise of your  
16 question is that there's an individual plant species  
17 out there that could be missed. In fact, rare plant  
18 species don't typically occur in isolation; they  
19 occur in special habitats. That isn't something that  
20 gets obscured by seasonality. A trained biologist  
21 like Nancy is going to recognize a rare environment  
22 under most conditions. And certainly October is late  
23 in the year, so it is possible that some plants had  
24 senesced at that time of the year. But Nancy would

1 not have missed a rare plant community -- an  
2 assemblage or a rare plant community, which is really  
3 what you're looking for.

4 Q. That wasn't my question, but thank you for the  
5 explanation.

6 When you were there in October, were there any  
7 vernal pools evident?

8 A. (By Ms. Rendall) I mentioned at the last tech session  
9 that my report indicated potential vernal pools.

10 Q. Okay. And have those been noted for the maps, so  
11 that if the Committee were to make a condition to  
12 avoid putting poles in them, that that could be  
13 followed?

14 A. (By Ms. Rendall) Yes, they are in my report.

15 Q. All right. Thank you.

16 MR. ROTH: That's all I have.

17 CHAIRMAN GETZ: Questions from the  
18 Committee? Dr. Kent.

19 DR. KENT: Yeah, maybe we can clear up  
20 some of the confusion about endangered plants.

21 INTERROGATORIES BY DR. KENT:

22 Q. Do you know how many endangered plants there are in  
23 the state, roughly? Order of magnitude?

24 A. (By Ms. Rendall) Thirty?



1 Q. Hundreds?

2 A. (By Ms. Rendall) Hundreds.

3 Q. Hundreds.

4 And do you have any idea how many people in the  
5 state are capable of identifying all of those plants?

6 A. (By Ms. Rendall) A handful.

7 Q. Probably less.

8 So, typically, how does it work when you're  
9 trying to determine if there are endangered plants,  
10 for example, communities at a site? What would be  
11 your first --

12 A. (By Ms. Rendall) Well, we usually rely heavily on  
13 records from the Natural Heritage Bureau. So we're  
14 going to look for, in particular, if there's a known  
15 or thought to be known, like something in the  
16 vicinity. Then we'll go look for those particular  
17 species and learn the habitat types, the communities  
18 where they would occur, and look specifically for  
19 those.

20 Q. So you would rely on the specialized experience of  
21 the Natural Heritage Bureau to focus you.

22 A. (By Ms. Rendall) Yes.

23 Q. And when you've contacted the Natural Heritage in  
24 this instance, what did they tell you?

1 A. (By Ms. Rendall) Only the wood turtle and the  
2 peregrine falcon were the only species of concern for  
3 that project area.

4 However, previous to that, for the bigger  
5 project area, I had spent a day in the field with two  
6 people from your staff, the Natural Heritage Bureau  
7 staff, looking for other plants. And so we visited,  
8 you know, plant community types which were not  
9 present along the interconnect route.

10 Q. So you've talked to Natural Heritage for the -- when  
11 we first talked to you about the large project site,  
12 and then you went back and contacted Natural Heritage  
13 again about the interconnection.

14 A. (By Ms. Rendall) Yes.

15 Q. About the interconnection specifically --

16 A. (By Ms. Rendall) Yes.

17 Q. -- Natural Heritage gave guidance to you?

18 A. (By Ms. Rendall) Yes.

19 Q. I'm sorry. What guidance did Natural Heritage give  
20 you about the interconnection?

21 A. (By Ms. Rendall) That is 73.

22 Q. And the conclusion was?

23 A. (By Mr. Walker) The conclusion in the data review  
24 that was issued by Melissa Coppola, there were no

1 rare plants in the vicinity.

2 Q. Thank you.

3 CHAIRMAN GETZ: Other questions from  
4 the Committee? Mr. Iacopino?

5 Any redirect?

6 MR. PATCH: No further questions.

7 Thank you.

8 CHAIRMAN GETZ: Okay. Hearing nothing  
9 else, then the witnesses are excused. Thank you.

10 MR. PATCH: Mr. Chairman, could we  
11 just have a minute to talk to the next witness?

12 (Discussion held off the record.)

13 CHAIRMAN GETZ: Let's go back on the  
14 record, and let's turn to the direct of Mr. Gravel.

15 (Whereupon ADAM GRAVEL was recalled to  
16 the stand, having been previously duly  
17 sworn and cautioned.)

18 ADAM GRAVEL, PREVIOUSLY SWORN

19 SUPPLEMENTAL DIRECT EXAMINATION

20 BY MR. PATCH:

21 Q. Mr. Gravel, I'd just like to remind you that you're  
22 still under oath from the prior proceeding.

23 Could you please state your name and spell your  
24 last name for the record.

1 A. My name is Adam Gravel. My last name is spelled  
2 G-R-A-V-E-L.

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

4 A. I'm employed by Stantec Consulting as a project  
5 manager.

6 Q. And you're the same Adam Gravel who submitted  
7 supplemental prefiled testimony, dated November 19th,  
8 premarked as Applicant's Exhibit 66, as well as a  
9 second supplemental prefiled testimony, dated  
10 December 30th, which has been premarked as  
11 Exhibit 67?

12 A. Yes, that's correct.

13 Q. Do you have any corrections or updates to your  
14 prefiled testimony?

15 A. I have one correction to make to my third  
16 supplemental testimony. I incorrectly have the date  
17 in the title as December 22nd, when in fact it's  
18 December 30th.

19 Q. And it's identified in the upper right-hand corner as  
20 December 30th; correct?

21 A. Yes, that's correct.

22 Q. With that correction, if you were asked the same  
23 questions today under oath as those contained in both  
24 your second and third supplemental prefiled

1 testimonies, would your answers be the same?

2 A. Yes, that's correct.

3 MR. PATCH: The witness is available  
4 for cross.

5 CHAIRMAN GETZ: Mr. Sinclair?

6 MR. SINCLAIR: No questions. Thank  
7 you.

8 CHAIRMAN GETZ: Ms. Lewis.

9 SUPPLEMENTAL CROSS-EXAMINATION

10 BY MS. LEWIS:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. First question: Do you consider yourself a peregrine  
14 falcon expert?

15 A. No, I don't.

16 Q. Are you familiar with any that are?

17 A. Yes. Any experts?

18 Q. Yes.

19 A. Yes.

20 Q. I mean, in other words, there are people out there  
21 that are considered peregrine falcon experts?

22 A. Yes. We work with the State's peregrine expert.

23 Q. Are you familiar with a man named Jim Wiegand?

24 A. No, I'm not.

1 Q. Would it surprise you to learn that he has been very  
2 involved with the peregrines throughout his career  
3 with avian studies?

4 A. No, it wouldn't surprise me.

5 Q. Okay. Could I have you look at Exhibit 43.

6 MR. IACOPINO: That would be  
7 Buttolph 43?

8 MS. LEWIS: Buttolph 43. Sorry.

9 BY MS. LEWIS:

10 Q. Have you had a chance to read --

11 MR. PATCH: Mr. Chairman, I would just  
12 ask that Ms. Lewis be required to explain how this  
13 particular exhibit relates to the limited scope of  
14 the proceeding here today. I hope she's not going to  
15 be reopening issues that were addressed back in the  
16 November hearings.

17 MS. LEWIS: This information has  
18 stated that peregrine falcons are -- what's the  
19 word -- not encouraged, but their territory to hunt  
20 is increased by cleared areas. And with the  
21 alternative route, we're having a new area now that's  
22 going to be cleared 35 feet wide, going from the  
23 project site all the way down to Route 25; and  
24 therefore, it's opening a whole other area for these

1 peregrine falcons to hunt, and therefore, to be --  
2 for even more of them to be potentially coming to  
3 this area; and therefore, I believe this is very  
4 pertinent to today's testimony.

5 CHAIRMAN GETZ: We'll permit to you  
6 inquire along this line.

7 BY MS. LEWIS:

8 Q. Have you had a chance to read over this exhibit  
9 today?

10 A. I did briefly skim it, yes.

11 Q. Could you read the real short paragraph which tells a  
12 little bit about Mr. Wiegand's history with peregrine  
13 falcons?

14 A. Which page is that on?

15 Q. The first page. It starts with "Jim" --

16 A. "Jim Wiegand has a long history with the peregrine  
17 falcon. Decades ago, his falcons were used as  
18 breeding stock to help replenish this endangered  
19 species in the Western U.S. Offspring were released  
20 through the supervision of U.S. Santa" -- "U.C. Santa  
21 Cruz."

22 Q. In your opinion, somebody that has actually had their  
23 own falcons, do you believe they would have a pretty  
24 good insight as to their behavior?

1 A. I guess it depends on how they're using their  
2 falcons. I mean, what kind of behavior?

3 Q. I mean, they're using their behavior as far as  
4 hunting and what types of territory they have and  
5 that type of thing.

6 A. I would say that this man is very familiar with  
7 peregrine falcons in the Western United States.

8 Q. And if you look at the next paragraph, could you read  
9 that paragraph for us, please.

10 A. "Threatened peregrine falcons hunt, roost and nest in  
11 areas around the proposed Groton Wind Farm  
12 construction site. Soaring birds, bats and other  
13 flying species are at grave risk from the  
14 guillotine-like action the of rotating blades...  
15 Birds of prey are unfortunately drawn to such farms  
16 due to large, clear, disrupted areas because of the  
17 hunting opportunities presented there, as well as the  
18 placement of many wind farms precisely along  
19 migratory flight paths of cranes, geese and other  
20 wildlife."

21 CHAIRMAN GETZ: Before we go much  
22 further, can we -- I want to understand what this  
23 exhibit actually is. Where does this come from, and  
24 what's the source of this?



1 MS. LEWIS: It comes from Allvoices  
2 dot com, which is a news-related web source, in  
3 particular for conservation. They have a lot based  
4 on conservation. The person that actually wrote this  
5 is a biologist, a conservationist. And Mr. Wiegand  
6 was interviewed for this; so a lot of these quotes  
7 are his, and the words are his. And Mr. Wiegand also  
8 wrote to the SEC and submitted some information, I  
9 believe yesterday as well, on this from the web site.

10 CHAIRMAN GETZ: Thank you.

11 MR. PATCH: Mr. Chairman, it looks to  
12 me like it's an attempt to try to get late-filed  
13 testimony. And we haven't had a chance to see this  
14 until today. I mean, it's very specific to the  
15 project. We don't anything about this, other than,  
16 again, it was presented to us at some point today.  
17 And we would object to the introduction of this as an  
18 exhibit. We think it's inappropriate to  
19 cross-examine Mr. Gravel about it. He hasn't really  
20 had a chance to look at it. I just don't see that it  
21 provides any benefit, and I think it's prejudicial to  
22 the outcome.

23 CHAIRMAN GETZ: Well, I'm going to  
24 permit its use for cross-examination. I am concerned

1 about how the witness can make any conclusion about  
2 the expertise of this Mr. Wygan, who's not here  
3 and -- but in terms of asking -- as a foundation for  
4 asking questions of Mr. Gravel, I'll permit it. But  
5 we'll see where it goes.

6 BY MS. LEWIS:

7 Q. Have you read these particular comments before?

8 A. I hadn't, no.

9 Q. Today was the first you had seen this? Okay.

10 Because it was mentioned earlier, as far as how  
11 the alternative route ties into all this, with the  
12 avian studies that you conducted, did you ask about  
13 any type of banding or transmitters to be used so  
14 that you could see how -- if they came into that  
15 alternative route or if they in any way went beyond  
16 the radius?

17 A. We already know they travel through or near that  
18 route to begin with. Much of the information that  
19 New Hampshire Audubon has provided shows that they do  
20 a lot of their foraging in downtown Plymouth and  
21 Baker River Valley.

22 Q. But was it ever a discussion, that potentially  
23 transmitters could be put on these to see exactly  
24 their behavior within the project area or the

1 alternate route area?

2 A. It wasn't -- no discussions were had regarding the  
3 interconnection route or the substation location.

4 Q. What about the project itself, to show how they  
5 behave basically?

6 MR. PATCH: Mr. Chairman, I object.  
7 She's back to the project now, not the  
8 interconnection route. That was the exact language  
9 of the question she asked.

10 MS. LEWIS: But the project itself is  
11 dependent -- if we can show where the peregrine  
12 falcons are hunting, and they have the ability to do  
13 that, then they can show that they are going to go to  
14 that alternative route as well.

15 MR. PATCH: That wasn't her question.  
16 Her question was asking a question about the project,  
17 not the alternative route.

18 CHAIRMAN GETZ: Well, let's focus the  
19 questions on the alternative route, because I think  
20 we can -- that can cover this line, I think. So  
21 let's focus your questions to the route. And I  
22 guess, to the extent that you're saying "project"  
23 generally, are you talking about the effect on the  
24 route or -- you know, what's your intent?

1 MS. LEWIS: Well, my personal belief  
2 is that by opening up the route, it's going to create  
3 a much greater risk to the falcons, because that's  
4 where they're going to start hunting. By hunting  
5 this route, then they're going to be more apt to  
6 travel right up to the project area where they'll be  
7 killed by the turbines.

8 CHAIRMAN GETZ: Well, let's focus on  
9 what may happen with the route.

10 BY MS. LEWIS:

11 Q. Would it be helpful to put transmitters on them to  
12 determine if they came to that area?

13 A. We already know that they travel over that area in  
14 the Baker River Valley, so...

15 Q. So by clearing even more of an area, that area is  
16 then going to put a greater risk; is that correct?

17 A. Well, from what I understand, you know, over  
18 80 percent of the route covers alongside an existing  
19 road corridor, already open areas. You know, if you  
20 look at Plymouth, Groton, and what we know of where  
21 those birds do the majority of their hunting, it is  
22 already open space in town and roadways. So I don't  
23 know -- I don't see any additional benefit that  
24 transmitters would provide to what is known about



1                   CHAIRMAN GETZ: Well, I think she's  
2 established the connection. I'm going to permit the  
3 inquiry. Again, it's -- this is a report from a web  
4 site by a reporter who's -- who apparently has  
5 interviewed this gentleman, who is not here for  
6 cross-examination. And we'll give it what weight  
7 it's due. But I think it's a fair area of inquiry,  
8 and the witness can respond.

9 BY MS. LEWIS:

10 Q. Could you continue reading that?

11 A. "Somebody should sue to stop the project and force  
12 them to do a new independent study."

13 Q. I'm sorry. Then just one more sentence.

14 A. "Somebody needs to look very close at the nearby  
15 cleared areas of the ski trails on Tenney Mountain  
16 and transmission line paths."

17 Q. So, is your testimony today that you don't agree that  
18 this alternative route puts the peregrines at greater  
19 risk?

20 A. Yeah. I mean, I don't agree with this, this  
21 conclusion. I mean, this guy here, I don't believe  
22 has spent nearly as much time and energy as we have  
23 on the project site. And I'd really be interested to  
24 see what information he has actually read to make

1           these statements. They seem pretty bias and  
2           opinionated to me, and not necessarily based on  
3           science or data.

4       Q.    Would you be surprised to learn that he's very  
5           involved with the California wind projects, including  
6           Altamont Pass and a lot of wind farms up there?

7       A.    I work and live on the East Coast, so I'm not  
8           familiar with this man or his work.

9       Q.    If you could turn to Page 3, and just the fourth  
10          paragraph down, the two sentences where it's in  
11          quotes, if you could just read that.

12      A.    "Will the turbines in the project kill off individual  
13          birds until there are none left to kill or count? It  
14          is very possible."

15      Q.    Do you agree with that statement?

16      A.    No.

17      Q.    How many falcons did you find that were close to the  
18          project site?

19      A.    There are two area locations: One on Rattlesnake  
20          Mountain and one on Bear Mountain.

21      Q.    And they're each in pairs; is that correct?

22      A.    Yes, that's correct.

23      Q.    So that's four peregrine falcons. So in your  
24          opinion, it is not likely that four falcons can be

1 killed?

2 A. My opinion is that it's very unlikely.

3 Q. Have you ever heard of Mr. Mark Duchamp?

4 A. No, I haven't.

5 Q. If you could look at Exhibit 44. Are you familiar  
6 with his organization?

7 A. No, I'm not.

8 Q. Could you just take a look at the very last page, and  
9 could you just read the last paragraph, please.

10 A. "Back to the falcons: Once the resident pair has  
11 been killed, their territory will become vacant.  
12 Transient birds... young peregrine falcons yet  
13 unattached, will attempt to claim it as their own.  
14 They will get killed, in turn, which will cause other  
15 falcons to claim the territory and so on. As  
16 elsewhere in the world, the Groton Wind Farm will  
17 have become an ecological trap for falcons and other  
18 birds."

19 Q. Do you agree with that statement?

20 A. No. Again, this is a -- seems to be a personal  
21 opinion based on very little data.

22 Q. Could you tell me if your study in any way was edited  
23 by the Applicant?

24 A. I don't recall if it -- I don't recall. It was



1           likely edited, yes, between the draft and final  
2           stage.

3       Q.    Was there any changes in the data, or any data  
4           omitted from what you had presented?

5       A.    No.  I work for Stantec, and Stantec has its own  
6           company policy about data and what we report.  That  
7           doesn't change.  What we find is what we report.

8       Q.    So if it was edited, what types of edits do you  
9           believe were made?

10      A.    It always has to do with grammar or sentence  
11           structure.  But it's mainly due to project  
12           descriptions that we may have inaccurately described;  
13           you know, where turbines are or how many may have  
14           changed since we initially started the project.

15      Q.    Okay.  And how much leeway are you allowed to have in  
16           the studies if you feel strongly that a study should  
17           be done a certain way and the Applicant disagrees?  
18           Do you have the ability to continue the way you would  
19           like to perform that study?

20      A.    It's not -- I mean, it's never about how I would like  
21           to perform a study.  It's always about how the state  
22           wildlife agencies would like us -- the state and  
23           federal wildlife agencies would like us to perform  
24           that study.  That's the sole purpose of meeting early

1 on, negotiating and discussing a work plan, and then  
2 following that work plan based on agency feedback.

3 Q. Have you ever seen any situations where the State  
4 would like it done a certain way, but the Applicant  
5 will not do it that way?

6 A. No. There's definitely compromise. I mean,  
7 everything costs money. And after all, it's that  
8 middle ground or middle road where you're trying --  
9 you have to ask yourself: What question are we  
10 trying to answer? So there's a balance, but it's  
11 always a negotiation. And it's always agreed upon by  
12 both parties.

13 Q. Do transmitters in surveys cost a lot of money?

14 A. They're probably similar in cost to labor.

15 Q. But it would be a significant added expense to a  
16 study?

17 A. No.

18 Q. No?

19 A. No, it wouldn't be. It just has its limitation, like  
20 any study method. I mean, it's important to know, in  
21 addition to where, but how high things are moving.  
22 And that's some -- that's a limitation of the  
23 technology.

24 Q. Are you prevented in any way from disclosing

1 information that you've gathered during your study?

2 A. No.

3 MS. LEWIS: No further questions.

4 Thank you.

5 CHAIRMAN GETZ: Mr. Roth.

6 SUPPLEMENTAL CROSS-EXAMINATION

7 BY MR. ROTH:

8 Q. Good afternoon, Mr. Gravel.

9 A. Good afternoon.

10 Q. When you were here last time, there was some concern  
11 about a Fish and Game letter that had come late in  
12 the game, so to speak. Do you remember that?

13 A. Yes, I do.

14 Q. And apparently there were some meetings with -- or  
15 telephone conferences with Fish and Game after that  
16 hearing. Were you part of those meetings?

17 A. Yes, I was.

18 Q. Telephone conferences?

19 A. In-person meetings.

20 Q. In-person meetings?

21 A. Yeah.

22 Q. Were there telephone conferences as well?

23 A. I think there was one telephone conference.

24 Q. And were you involved in that as well?

1 A. Yes.

2 Q. And was Public Counsel involved in any of those  
3 meetings or telephone conferences?

4 A. No.

5 Q. Was Mr. Lloyd-Evans part of those meetings and  
6 telephone conferences?

7 A. No.

8 Q. Okay. Do you recall whether anybody in the group  
9 discussed inviting Public Counsel or Mr. Lloyd-Evans.  
10 to participate in any of those meetings or telephone  
11 conferences?

12 A. I don't recall.

13 Q. Do you remember anybody talking about not inviting  
14 us?

15 A. I definitely don't remember that, no.

16 Q. Okay. But it's clear to you that we weren't -- we  
17 didn't participate in any of those conferences or  
18 meetings; correct?

19 A. Yes, that's correct.

20 Q. Okay. Now I'm going to call your attention to Public  
21 Counsel Exhibit 21, 22, 23 and 24, which are on the  
22 table in front of you. Now, if I got the order  
23 right, 21 is a Federal Register page from  
24 February 18th, 2011?

1 A. Which? Sorry. Which exhibit numbers?

2 Q. Twenty-one.

3 A. Okay.

4 Q. Okay. I'm just going to go through these four  
5 exhibits and just briefly identify them to make sure  
6 everybody's looking at the same thing here.

7 So, 21 is a Federal Register page from  
8 February 18th, 2011; is that correct?

9 A. That's correct.

10 Q. And it's -- up in the upper left-hand corner, the  
11 number 9590 appears?

12 A. Yes.

13 Q. And the second document, PC 22, is identified as  
14 "U.S. Fish and Wildlife Service Draft Land-Based Wind  
15 Energy Guidelines"?

16 A. Yes.

17 Q. And 23 is another Federal Register page, dated  
18 February 18th, with the number in the right-hand  
19 corner, 9529; correct?

20 A. That's correct.

21 Q. And then the last one is called "Draft Eagle  
22 Conservation Plan Guidance," and that's PC 24.

23 A. Yes.

24 Q. Okay. Good.

1           Have you seen these documents before?

2   A.   Yes, I have.

3   Q.   Okay.  And have you read the Federal Register  
4       notices, for example?

5   A.   Yes, I have.

6   Q.   You have before today?

7   A.   Yeah.  We plan on -- we've reviewed these.  And as an  
8       industry of wildlife professionals, we plan on  
9       commenting on these draft voluntary guidelines.

10  Q.   So you plan on commenting on them before the May 19th  
11       deadline?

12  A.   Yes, that's correct.

13  Q.   Turning to No. 21, looking at Page 9591, at the  
14       bottom of the first column it says -- the last  
15       paragraph says the draft voluntary guidelines  
16       describe the information needed to identify, assess,  
17       etc., using a consistent and predictable approach,  
18       while providing flexibility to accommodate the unique  
19       circumstances of each project.  Do you agree that's  
20       what it says?

21  A.   I'm sorry.  I'm trying to locate that.

22  Q.   It's the second page of PC 21, the first column at  
23       the bottom and onto the beginning of the second  
24       column.

1 (Witness reviews document.)

2 A. Yes.

3 Q. Okay. And do you agree that that's -- setting aside  
4 whether you agree that these documents accomplish  
5 that, do you agree that that's an important goal, to  
6 have guidelines to assess the potential adverse  
7 effects of wind projects and provide a predictable  
8 approach and provide flexibility? Do you agree that  
9 those are important objectives?

10 A. Yes.

11 Q. And you see at the top of the second column there's a  
12 sentence there that says, "The framework within the  
13 draft guidelines is intended to standardize methods  
14 and metrics, resulting in greater consistency of  
15 information." Now, whether you agree or not that  
16 these actually accomplish that, would you also --  
17 would you agree, again, that that's a good intent, to  
18 have standardized methods and metrics and greater  
19 consistency of information?

20 A. It depends on the setting. I mean, I think it's hard  
21 to standardize surveys and methods based on varying  
22 communities, natural communities or environments.

23 Q. I'm sorry?

24 A. Or environments.

1 Q. Okay.

2 MR. PATCH: Mr. Chairman, I just am  
3 curious about where Mr. Roth is headed with this.  
4 Obviously, there's a limited scope, as we pointed out  
5 before. We understand that the Fish and Game letter  
6 and the follow-up to that has been opened up, and  
7 that's certainly a subject of the proceeding. But  
8 I'm not sure what the relevance is of the Federal  
9 Register to those issues.

10 MR. ROTH: Well, when we were here  
11 last, there was quite a bit of discussion about  
12 whether the project followed the guidelines that had  
13 come from the Association of Fish and Wildlife  
14 Officials Committee that had drafted guidelines. And  
15 we walked through a great deal of testimony with Mr.  
16 Gravel about those guidelines and about the Iberdrola  
17 avian and bat protection policy, and how it differed  
18 from those guidelines. Since that time, the U.S.  
19 Fish and Wildlife Service has produced, and only  
20 recently, these two documents, Public Counsel Exhibit  
21 22 and Public Counsel Exhibit 24, which are -- the  
22 first one is general guidelines for all species, and  
23 then the second is a guideline specific to eagles,  
24 Golden eagles and bald eagles. And I think it's



1 appropriate to discuss them, in light of Fish and  
2 Game's letter, and in light of simply a new and  
3 important development in this area, and with respect  
4 to testimony that -- and cross-examination that was  
5 conducted back in October and November.

6 CHAIRMAN GETZ: Well, I think it's  
7 still relevant to the testimony that's put in today,  
8 so I'm going to permit the inquiry.

9 BY MR. ROTH:

10 Q. Okay. Now, from your understanding and -- well, let  
11 me ask you this: Have you reviewed the actual draft  
12 land-based wind energy guidelines that Fish and  
13 Wildlife produced, No. 22?

14 A. Yes, I have.

15 Q. And I take it you're not in complete accord with the  
16 recommendations that they make in there. And I  
17 understand that.

18 A. We're very close. But, you know, it's hard to follow  
19 guidance that's not yet available to you and also  
20 that is still in draft and voluntary form.

21 Q. So, is it fair to say that, in conducting your  
22 surveys of this project, you didn't follow these  
23 guidelines because they didn't -- for the large part,  
24 they didn't exist; correct?

1 A. They didn't exist.

2 Q. Right. Now, as they were in the committee form, you  
3 didn't follow those exactly either; correct?

4 A. They didn't exist at the time of the --

5 Q. They didn't exist. Okay.

6 Is it your understanding that in the Fish and  
7 Wildlife Service, Public Counsel No. 22, that these  
8 guidelines require three years of post-construction  
9 mortality survey?

10 A. Can you tell me a page number?

11 Q. Looking at Page 38 and 39. In particular, let's look  
12 at Page 39, the first full paragraph.

13 MR. PATCH: I don't have page numbers  
14 on my Exhibit 22. Maybe you do, but I don't.

15 MR. ROTH: Are you're looking at --  
16 oh, you're looking at the eagle one. That's 24.  
17 That's the mix-up. I was hoping to clarify that when  
18 we went through --

19 MR. PATCH: So it's the U.S. Fish and  
20 Wildlife Service draft --

21 MR. ROTH: That's correct.

22 MR. PATCH: Thank you.

23 BY MR. ROTH:

24 Q. So, on Page 39, the first full paragraph in the

1 middle begins, says, "Therefore, additional years of  
2 post-construction monitoring may be warranted when  
3 negative effects are expected to occur intermittently  
4 and/or over long time periods. The three-year  
5 recommendation could be re-evaluated to a minimum of  
6 two years in situations where the level of risk is  
7 considered to be low." That's what they're  
8 recommending; is that correct?

9 A. Yes.

10 Q. Okay. And back on the previous page, under the  
11 letter D -- this is on page 38 -- there's two  
12 paragraphs -- three paragraphs there under letter D.  
13 The second paragraph says, "To address this need, and  
14 in light of development timelines, three years of  
15 preconstruction studies may be appropriate in many  
16 circumstances"; correct?

17 (Witness reviews document.)

18 A. Yes.

19 Q. Okay. And I call your attention to Page 44, where  
20 they talk about the Tier IV, which is similar to the  
21 Tier IV in the committee's report; correct?

22 A. You're saying Page 44?

23 Q. Page 44.

24 (Witness reviews document.)

1 Q. At the top there, the first full paragraph which  
2 begins, "The duration of fatality..." in the middle.  
3 "The service recommends multiple years of fatality  
4 monitoring to adequately evaluate all sources of  
5 variation. Multiple years of surveys will be needed  
6 to properly characterize species use of a proposed  
7 site and its area of influence as part of Tier 3, et  
8 cetera.

9 A. Yes, that's what it says.

10 Q. And on Page 46, you may recall this matrix, the  
11 decision matrix. Is this similar to what was present  
12 in the committee guidelines?

13 A. I haven't had a chance to match it up evenly. But  
14 from this glance, yes, it looks similar.

15 Q. Now, turning your attention to Public Counsel  
16 Exhibit 23, which is the Federal Register with 9529.  
17 This is -- this announces the eagle guidelines;  
18 correct?

19 (Witness reviews document.)

20 A. That's correct.

21 Q. And then the Eagle Conservation Plan Guidance is  
22 Public Counsel 24.

23 Now, are you familiar with the Draft Eagle  
24 Conservation Plan Guidance? Have you read that

1 document?

2 A. Yes, I have.

3 Q. And are you aware that in it, it recommends that wind  
4 energy projects identify the location and type of all  
5 important eagle use areas on and within a 10-mile  
6 perimeter of the project footprint?

7 A. Yes, we did, and we found that eagle nest locations  
8 are 15 and 17 miles from the project.

9 Q. Okay. So you're saying --

10 A. And we did that before this voluntary draft guidance  
11 was issued.

12 Q. Good. Good. Glad to hear that.

13 And on Page 21, it's up in the upper left-hand  
14 corner on my copy, and Page 22 -- now, is it your  
15 understanding that page -- that site categorization  
16 based on mortality risk is what's described here on  
17 Page 21 and 22? Correct?

18 (Witness reviews document.)

19 A. Yes, that's correct.

20 Q. And Category 1 is high risk to eagles; potential to  
21 avoid or mitigate impacts is low. And then  
22 Category 2 is high to moderate risk and so on;  
23 correct?

24 A. Yes.

1 Q. Now, with respect to Category 1, high risk to eagles,  
2 would you read numbered Paragraph 2, which is at the  
3 top of Page 22?

4 A. "For non-breeding eagles, the project footprint  
5 includes the roost locations or a primary foraging  
6 area associated with an eagle concentration or a  
7 migration corridor or a stopover area."

8 Q. Is it your understanding that there was -- that the  
9 project site includes a migration corridor?

10 A. That would be difficult to determine without knowing  
11 the definition of a migration corridor.

12 Q. Well, when you were doing your surveys, didn't you  
13 observe eagles migrating over the site during your  
14 surveys?

15 A. Yeah. I see eagles migrating over the highway, over  
16 my house, over --

17 Q. Okay. But we're talking about the site.

18 A. I know. But are we talking -- we're talking about a  
19 corridor. And that's what I'm asking: How was that  
20 corridor defined?

21 Q. Well, I'm ask -- I'm not here to answer questions.  
22 I'm here to ask questions. And my question for you  
23 is: When you were doing your observation, didn't you  
24 see eagles migrating over the site?

1 A. Yes.

2 Q. Okay. And were they all migrating in a common  
3 direction while they were traveling north to south or  
4 south to north, or whatever the direction was?

5 A. They were variable. I mean, I can't remember if all  
6 of them were north or south or south to north.

7 Q. So when the eagle -- when eagles migrate, they tend  
8 to go all together in a common direction; correct?

9 A. No, that's not corrects.

10 Q. Don't they -- I mean, what is migration if -- it's  
11 not just flying all over the place, is it?

12 A. Yes, it is, depending on where their breeding  
13 territory is or their breeding range. They don't all  
14 meet up in one location before they decide to head  
15 south or north.

16 Q. So when they're flying over -- I think you said, and  
17 maybe I'm wrong -- I think your reports identified  
18 that when you observed them flying over the site,  
19 there was a -- it was a migration season, and it was  
20 migratory behavior; right?

21 A. Yes.

22 Q. Okay. And when you were observing that, you saw a  
23 number of them. You saw -- what did you see? Tell  
24 us what you saw.

1 A. I don't have the exact number without referencing my  
2 report. But we did see eagles over the project area,  
3 but not in high numbers.

4 Q. But you did see them migrating over the project area.

5 A. Or adjacent to the project area.

6 Q. Okay. Now I'm going to turn to Page 58 of the eagle  
7 report, and now I'm going to ask a general question.  
8 If -- and accept this hypothesis for the moment.

9 If the site was categorized as Category 1, is it  
10 true that this document requires Stage 2 and 3  
11 analysis if a site is categorized as Category 1?

12 A. Can you tell me where you're --

13 Q. I'm asking you from your understanding of the  
14 document --

15 A. I don't have the document memorized. So if you could  
16 help me with --

17 MR. PATCH: Mr. Chairman, I think the  
18 premise of his question is incorrect, too. These are  
19 draft guidelines. He says -- I think his question  
20 was, does it require. It's actually a draft, so it  
21 doesn't require anything. It's just a draft. I  
22 think they're voluntary.

23 BY MR. ROTH:

24 Q. Well, let me modify my question. Does the document



1 recommend that, if there is a Category 1, then it is  
2 recommended that Stage 2 and 3 analyses be conducted?

3 A. Are you referring to the table that you looked at,  
4 that you cited in the beginning?

5 Q. No, that table was in the other document. This is  
6 with respect to the draft eagle conservation plan.  
7 If you don't know the answer, then I'll --

8 A. I don't know the answer.

9 Q. Okay. Let's look at Figure 1 which is on Page 24.  
10 It's a flow chart. And if you start in the upper  
11 left-hand corner, it says, draw a 10-mile radius  
12 around a project, and if it overlaps any known or  
13 suspected important eagle-use area, the answer is  
14 yes. And I think that's fair to say about this  
15 project; correct?

16 A. I think the answer was "No."

17 Q. The 10-mile radius doesn't overlap any important  
18 eagle-use area?

19 A. I mean, in terms of nests, which is one of the ways  
20 that you can identify an important eagle-use area, I  
21 just testified to the fact that the closest is  
22 15 miles away from the project area.

23 Q. And you didn't find any eagle nests or roosts or --

24 A. No, I didn't.

1 Q. -- migration?

2 A. Not within 10 miles.

3 Q. Stopover areas, foraging areas?

4 A. No. There's no open water over the -- in the project  
5 area.

6 Q. So the migration corridor, you don't think -- let's  
7 assume for the moment that there is -- the path over  
8 the project area is a migration corridor. And I know  
9 you don't agree with my assessment there. But if it  
10 is a migration corridor, would you consider that to  
11 be an important eagle-use area?

12 A. Yeah.

13 Q. Okay.

14 A. I mean, according to your hypothetical.

15 Q. Yeah. So, following along with my hypothetical, if  
16 it's yes, then we go to: Does the project footprint  
17 overlap any known or suspected important eagle-use  
18 areas? Yes? Then you go down to the next part down  
19 there which says, "Your project should be tentatively  
20 assigned to Risk Category 1." And can it be re-sited  
21 -- and then the question is: Can it be re-sited or  
22 significantly designed, such as Risk Category 2  
23 criteria are met?

24 See, what I'm trying to do is, I'm trying to

1 show that you get to Risk Category 2, and it says  
2 Stage 2 and 3 analysis is necessary. Under either  
3 conclusion from that question, Stage 2 and 3 analysis  
4 is either necessary or recommended. And in this  
5 case, whether they say it's necessary or not doesn't  
6 really matter, because these are recommended  
7 guidelines; correct?

8 A. Yes.

9 Q. So, whether the answer is yes or no to the question  
10 in that box, can it be re-sited or redesigned?

11 A. I think, based on our analysis and our early due  
12 diligence with trying to identify known eagle areas  
13 and use areas, it in fact goes the opposite of your  
14 hypothetical, and probably ends up in Category 3.

15 Q. But that's not my question. What I'm trying to do  
16 is, I'm trying to help us and you understand when you  
17 get to Stage 2 and 3 analysis under this document.  
18 And you weren't familiar enough with it to do that,  
19 so I'm trying to walk you through how you get to  
20 Stage 2 and 3 analysis. Okay?

21 A. Okay.

22 Q. Are you familiar with what Stage 2 and 3 analyses  
23 are, based on what's in this document?

24 A. I am vaguely familiar, yes.

1 Q. Okay. Isn't it true that under Stage 3 analysis,  
2 you're supposed to do some fairly complex, high-level  
3 mathematics -- and mind you, it may be simple for  
4 you, but -- to determine a rate of eagle fatality and  
5 mortality?

6 A. Yes.

7 Q. Okay. And with a Stage 2 analysis -- and let's go  
8 now to Page 58, eagle migration and conservation area  
9 surveys, which is the methodology, I believe, that  
10 Fish and Wildlife recommends for eagle analysis and  
11 Stage 2 analysis.

12 A. Is that... I'm trying to figure out if that's  
13 analysis or assessment, because it is a survey, so it  
14 seems like an assessment to me.

15 Q. Okay. I'm sorry. I'm being loose with my terms.  
16 But thank you for that correction.

17 The survey methodology that you're supposed to  
18 employ when you're doing Stage 2 work is described  
19 here; correct?

20 (Witness reviews document.)

21 A. Yes, that's correct.

22 Q. Okay. Now I want to go back again to Public Counsel  
23 No. 19, which is the Federal Register notice, I  
24 believe, if I'm not -- yeah.

1 A. Nineteen or 21?

2 Q. Twenty-one. Sorry.

3 CHAIRMAN GETZ: Or 23.

4 MR. ROTH: Yeah, let me make sure I  
5 get the right one here. Twenty-three. The one with  
6 9529 up in the upper right-hand corner.

7 BY MR. ROTH:

8 Q. Now, below the series of horizontal lines there are  
9 three columns there. And looking at the third  
10 column, about in the middle of that column it says,  
11 "The draft guidance calls for scientifically rigorous  
12 surveys, monitoring, risk assessment, and research  
13 designs, proportionate to the risk to eagles."

14 And do you agree that surveys should be  
15 scientifically rigorous?

16 A. Yes.

17 Q. Thank you.

18 Do you know whether the Applicant has an  
19 eagle-take permit for this project?

20 A. They don't.

21 Q. Do you know whether they intend to get an eagle-take  
22 permit?

23 A. I don't know. I know that the program -- or a take  
24 program or a permit program is not yet available.

1 Q. It's not yet available? Okay. Would you think it  
2 would be beneficial to them to get an eagle-take  
3 permit?

4 A. I think the risk is low, so I don't see that it's  
5 necessary, especially based on agency feedback and  
6 concerns expressed from agencies. No.

7 Q. So you wouldn't recommend to Iberdrola that, for this  
8 project, they get an eagle-take permit?

9 A. It's not -- it's not just something that you can get.  
10 So if -- it's only if you -- it's only if the project  
11 is predicted to be a high risk that I would recommend  
12 that, yes.

13 Q. Okay. So if I can ask you, to sort of straighten  
14 your answer out a little bit, you would not recommend  
15 that Iberdrola obtain a eagle-take permit for this  
16 project?

17 A. Not for the sake of obtaining a permit. I mean, in  
18 the country there has been zero eagle, bald eagle  
19 fatalities at wind projects, and then low numbers of  
20 eagles that were observed, along with the fact that  
21 there does not appear to be high concentration, eagle  
22 concentration areas. I would recommend that they  
23 don't.

24 Q. Do you know whether Iberdrola has eagle-take permits

1 anywhere else?

2 A. I don't know.

3 Q. Are you aware that the wind industry in general is  
4 seeking what the Department of the Interior would  
5 describe as a "large" number or a "significant"  
6 number of eagle-take permits?

7 A. Maybe for Golden Eagles?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. That's all the questions that I have. Thank  
11 you very much, Adam.

12 CHAIRMAN GETZ: Thank you. Questions  
13 from the Committee? Dr. Kent.

14 INTERROGATORIES BY DR. KENT:

15 Q. I'm afraid I'm going to pursue the bird and bat stuff  
16 that came up in the letters in December, and the  
17 letter that came from Fish and Game yesterday.

18 So you interpret the letter from Fish and Game  
19 yesterday -- you've read that?

20 A. Yes, I have.

21 Q. So you interpret that as concurrence with your plans  
22 for -- or the Applicant's plans for post-construction  
23 monitoring?

24 A. I think it's a concurrence between both parties.

1 Q. Okay. Are you also working with the U.S. Fish and  
2 Wildlife Service --

3 A. No.

4 Q. -- for bird and bat protection?

5 A. No.

6 Q. Is that because they have no jurisdiction or they  
7 lack interest?

8 A. It appears that it's due to a lack of interest. You  
9 know, this project has been discussed with the  
10 Service on several occasions. So it wasn't  
11 intentional. It's just -- I don't think that -- they  
12 didn't express concern over that.

13 Q. I'm sorry. You started that statement by saying  
14 you've discussed it with them on several occasions?

15 A. Yeah, the project in general and the studies that  
16 were carried through on the project, the study  
17 methods and results of those studies were discussed  
18 with the Service.

19 Q. But they've shown no interest in helping you develop  
20 a post-construction plan?

21 A. No. No, they didn't.

22 Q. Okay. Now, you have proposed one year of monitoring  
23 that includes the type of work that would let you  
24 eliminate the biases, scavenging and survey bias. In



1 light of the recent document -- and I believe you  
2 said you've seen this new guidance that came from  
3 Fish and Wildlife Service?

4 A. Yes, I have.

5 Q. And I guess I should ask you first: Remind me of the  
6 perceived risk to birds and bats, the conclusion you  
7 came to as part of the application.

8 A. Birds were low and bats were moderate.

9 Q. Bats were what?

10 A. Moderate.

11 Q. Moderate? Okay.

12 So, in this document, this U.S. Fish and  
13 Wildlife Service, which I realize is just voluntary  
14 and draft, they recommend a minimum of two years. In  
15 light of this, would you reconsider your  
16 post-construction monitoring?

17 A. No, I wouldn't, because I think that the corporate  
18 avian and bat protection plan allows for a lot longer  
19 term analysis than just two years. So, absent, you  
20 know -- with a company that does not have an avian  
21 and bat protection plan that monitors for the life of  
22 a project, you'll only get two years of data. So I  
23 think that in this situation, one year of robust  
24 analysis followed by light monitoring for the life of

1 the project would be stronger data than just two  
2 years.

3 Q. Okay. I think there's a couple lines I want to  
4 pursue here.

5 First, you're familiar with Iberdrola's bird and  
6 bat protection plan --

7 A. Yes.

8 Q. -- which speaks of its partnership with Fish and  
9 Wildlife Service --

10 A. Yes.

11 Q. -- on several occasions.

12 Okay. Let me make sure I understand the  
13 monitoring after that first year. I thought it was  
14 the operational staff who was going to get trained in  
15 recognizing birds and was going to go out there and  
16 take a picture and mark on some kind of a sheet where  
17 the dead bird or the bat was and leave it there. Is  
18 that accurate or is that inaccurate?

19 A. I think that's accurate, and it would also be  
20 reported to the Service within 24 hours.

21 Q. Right. I think there was another level there, where  
22 if it was an endangered species, they would report  
23 that to the proper authority.

24 A. Yes.

1 Q. So how do we use that information that's coming from  
2 the operational monitoring? We have no corrections,  
3 right; so we can't really estimate the kill?

4 A. Well, I mean, I don't know that you can't estimate  
5 it. You could -- I mean, the searcher efficiency  
6 biases that you find during your first year and your  
7 scavenger removal trials are essentially a correction  
8 factor. I would think those could be applied the  
9 following years.

10 Q. Are the operational people going to be involved in  
11 that first year in what we call a "more robust  
12 monitoring," so that they get the hang of it?

13 A. That would be a question for Iberdrola. But I'm  
14 assuming that they would be trained for those, to  
15 detect those events.

16 Q. In your -- it wasn't clear to me in the letter from  
17 Fish and Game. Are you continuing to -- or "you" may  
18 not be the right pronoun, because this is being  
19 passed off to a consultant, another consultant,  
20 robust monitoring? Or are you doing it --

21 A. I don't know.

22 Q. -- or Stantec? You don't know?

23 A. I don't know, no.

24 Q. So there's a commitment to somebody doing robust

1 monitoring the first year, a company unknown, and  
2 then operation staff picking it up after that first  
3 year.

4 What's Fish and Game's role on this? Are  
5 they -- does Iberdrola have to submit the detailed  
6 post-construction plan to Fish and Game and seek  
7 approval? Or are we past that, and you're just --  
8 Iberdrola's just doing the work and sending reports  
9 at the end of it?

10 A. Let me double-check. I believe the first bullet said  
11 it's a commitment for Iberdrola to work with New  
12 Hampshire Fish and Game for the exact design.

13 Q. First bullet in the Fish and Game?

14 A. Yeah. I'm sorry. Not the first bullet.

15 Q. It says -- you might be referring to the second one,  
16 where it says "continue to coordinate."

17 A. No, that's... so, yeah, it would be the first bullet.  
18 IRI will commit to -- oh, no. I'm sorry. That is  
19 for the acoustic bat protection. So that's for the  
20 post-construction acoustic bat activity commitment.  
21 That will be coordinated with Fish and Game.

22 Q. Probably not being fair. I'm asking you questions  
23 that you might not have the answer to, because you  
24 haven't been tasked with drawing up the detailed

1 monitoring plan; is that correct?

2 A. That's correct.

3 Q. All right. So, do you know if there's someplace else  
4 in the documents from the Applicant that would  
5 provide us with details on the monitoring,  
6 post-construction monitoring, beyond the paragraph or  
7 two that...

8 A. Yes. So, the December letter, December 22nd letter  
9 from Iberdrola to New Hampshire Fish and Game,  
10 outlined a plan for monitoring.

11 Q. Right. That's the one at the tail end of Mr.  
12 Cherian's supplemental testimony?

13 A. I believe so.

14 Q. And is there no more detail than that? Nobody's  
15 developed detail beyond that?

16 A. No.

17 Q. Will that -- again, I apologize if I'm unfairly  
18 asking you a question that needs to be asked  
19 someplace else.

20 Is there an intent to provide a more detailed  
21 plan before this Committee deliberates?

22 A. I don't know the answer to that.

23 Q. You don't know.

24 MS. GEIGER: Dr. Kent, if I may? I

1 know the application itself contains a summary of  
2 what the post-construction avian survey plans are by  
3 the Applicant. I also think that the corporate avian  
4 bat -- bird and bat protection policy has been marked  
5 previously as an appendix to the application. I  
6 don't have the number, offhand, but --

7 DR. KENT: I've seen the bird and bat  
8 protection plan. And unless I'm missing something in  
9 the application, I went through there, too, and it's  
10 pretty short on details. There's kind of a  
11 conceptual intent, but it doesn't seem to have many  
12 details on how the work will actually be carried out,  
13 the protocol.

14 MS. GEIGER: Well, I guess the other  
15 thing I would note, too, is in the letter from Fish  
16 and Game, it indicates that the study would be  
17 coordinated and discussed with Fish and Game staff.

18 DR. KENT: Yeah, that was one of my  
19 questions I was trying to get at. What does that  
20 mean, "coordinate"? Work out the details in  
21 conjunction with Fish and Game? But I'm asking the  
22 wrong witness, so...

23 A. I think I can add to it, though. Part of the reason  
24 for that, the discussion, is because every year we

1 get a new -- more new information, basically, that  
2 increases our knowledge base on, you know, how to  
3 assess these impacts. So, part of the reason for  
4 having just a commitment to work with Fish and Game,  
5 I believe, is to allow for that, you know, and not  
6 lock in a plan based on science that we know now, in  
7 case anything new comes up.

8 Q. Okay. Thank you.

9 CHAIRMAN GETZ: Any other questions  
10 from the Committee?

11 MR. IACOPINO: I have one question.

12 INTERROGATORIES BY MR. IACOPINO:

13 Q. You were asked on cross-examination by Counsel for  
14 the Public about eagles. And if I recall your -- the  
15 reports that you filed as part of the original  
16 application, you didn't find any nesting eagles in  
17 the project area; correct?

18 A. That's correct.

19 Q. But you did note that there was an occasional eagle  
20 sighting during the spring and fall migratory  
21 periods; is that correct?

22 A. Yes, that's correct.

23 Q. And he asked you whether that -- well, that's not  
24 exactly his question. I guess the question I'm going

1 to ask you: Does that mean that that is a migratory  
2 corridor?

3 A. And that's what I was -- I guess what I was trying to  
4 basically put into context is that, you know, I've  
5 been looking -- I've been watching birds migrate over  
6 ridge lines and other environments for the past seven  
7 years. And I can't recall a single project or a  
8 single location, really, that I haven't seen an  
9 eagle, a bald eagle. And that's what I'm trying to  
10 get at, is that because the Service doesn't define  
11 what a corridor -- migration corridor is or a  
12 concentration area is, it's difficult to say if it's,  
13 you know, a concentrated fly-away for eagles. Their  
14 range is just so far-reaching, especially when they  
15 get further north, that they're all -- they're moving  
16 from a large area. So it's more -- it's not  
17 consistent as to what route they take each year, so  
18 it's hard to determine what would be considered a  
19 concentration area. Is it 1 eagle or 50 eagles  
20 that...

21 Q. So you believe that the proposed voluntary guidance  
22 with respect to eagles lacks definition?

23 A. Yeah, that's one of -- I mean, as a company and as a  
24 group of wildlife professionals doing a lot of this



1 work, we have a number of those types of questions,  
2 asking for clarity and guidance, you know, as to  
3 where you -- you know, they draw lines based on the  
4 categories, risk categories. But trying to figure  
5 out which -- when you turn that line over to a  
6 category is undefined.

7 MR. IACOPINO: I have no further  
8 questions.

9 CHAIRMAN GETZ: Mr. Dupee.

10 MR. DUPEE: Thank you, Mr. Chairman.

11 INTERROGATORIES BY MR. DUPEE:

12 Q. Mr. Gravel, do Golden eagles either live or migrate  
13 through New Hampshire?

14 A. They do migrate. I don't believe they live in New  
15 Hampshire.

16 MR. DUPEE: Thank you.

17 CHAIRMAN GETZ: Okay.

18 MR. STELTZER: Yeah, I guess I do have  
19 one question.

20 INTERROGATORIES BY MR. STELTZER:

21 Q. I'm just curious about Exhibits 22 and 24 from the  
22 Public, and whether they were -- in your  
23 conversations that you had with New Hampshire Fish  
24 and Game, did those recommendations noted in that

1 study come up in the conversation about the  
2 post-construction monitoring and how long it should  
3 go?

4 A. No, it didn't. And when we were designing the  
5 studies early on to, you know, the raptor migration  
6 studies and the peregrine studies, these guidance  
7 documents were not available to us.

8 Q. Yeah, I realize that. And that's why I was trying to  
9 figure out with the date that they were noted in the  
10 Federal Register was -- appears to be there might  
11 have been some moment of time where that conversation  
12 could have been had with Fish and Game. And I know  
13 you can't speak for Fish and Game, but I'm trying to  
14 get a sense of whether they were familiar with these  
15 documents or not.

16 A. Yeah, I'm not sure. I'm not sure if they're familiar  
17 with the documents.

18 MR. STELTZER: Thank you.

19 CHAIRMAN GETZ: Anything further from  
20 the Committee?

21 MR. ROTH: Mr. Chairman, if you would  
22 indulge me with one question as a follow-up to one of  
23 the Committee questions?

24

1 SUPPLEMENTAL RECROSS-EXAMINATION (cont'd)

2 BY MR. ROTH:

3 Q. During the -- or maybe it's one and a half questions.

4 During the conversations and meetings with Fish  
5 and Game, did you discuss the recommendations made in  
6 the earlier association committee draft or  
7 guidelines?

8 A. No.

9 Q. Did you discuss with Fish and Game the  
10 recommendations made by Mr. Lloyd-Evans during this  
11 proceeding and the position taken by Counsel for the  
12 Public?

13 A. No.

14 Q. Thank you.

15 MR. ROTH: That's all.

16 CHAIRMAN GETZ: Redirect, Mr. Patch?

17 MR. PATCH: Yes. Thank you.

18 SUPPLEMENTAL REDIRECT EXAMINATION

19 BY MR. PATCH:

20 Q. Mr. Gravel, you were asked some questions on  
21 cross-examination with regard to peregrine falcons.  
22 I wonder if you could explain to the Committee who  
23 did Groton Wind and Stantec work with, insofar as  
24 this project is concerned, with regard to peregrine

1 falcons.

2 A. We initially talked to New Hampshire Fish and Game to  
3 get the conversation rolling. They recommended that  
4 we talk to what they considered the state expert on  
5 peregrine falcons; that's Chris Barton at New  
6 Hampshire Audubon.

7 Q. And so you worked with the Audubon Society,  
8 basically, with regard to peregrine falcons, as they  
9 relate to this project?

10 A. Yes. We designed the study together and  
11 collaboratively implemented the study. Audubon had  
12 two observers and we had two observers.

13 Q. Is it your opinion that additional peregrine falcon  
14 surveys would provide a greater understanding of the  
15 use -- or risk for them with regard to this project?

16 A. It's difficult for the risk because you're assessing  
17 an area that doesn't have turbines.

18 The one thing we did do, to take it just a step  
19 further than just visual observations, is that New  
20 Hampshire Audubon has collected prey remains for the  
21 past 15, 20 years at these nest sites. And so we --  
22 they provided -- they made those prey remains  
23 available to us, and then we shipped them, those prey  
24 remains, to the Smithsonian Institute for

1 identification. And it's amazing. All of the even  
2 bone fragments and feather fragments were identified  
3 to species based on DNA. And the majority of those  
4 specimens were from what the Smithsonian Institute  
5 considered urban birds -- so, you know, your typical  
6 bird-feeder, neighborhood birds -- which indicated  
7 that they were foraging in open, rural areas.

8 Q. There's been some discussion with regard to  
9 Iberdrola's ABPP. Could you explain again what that  
10 is?

11 A. What the ABPP is?

12 Q. Yes.

13 A. It's a corporate commitment to -- basically, it's  
14 starting -- it's a framework that allows you to  
15 monitor potential risk right from the start of a  
16 project's concept, basically. So it takes you from  
17 the pre-construction phase all the way through  
18 post-construction and operations.

19 Q. And is it your understanding that that ABPP has been  
20 applied to the Groton Wind project?

21 A. Yes.

22 Q. And is basically an ABPP suggested in the new  
23 guidelines?

24 A. Yes, it is.

1 Q. And do the guidelines include Tier 4 -- a tiered  
2 approach? I'm sorry.

3 A. Yes, they do. Yeah.

4 Q. And what about the ABPP?

5 A. It's also a tiered approach, similar to the guidance.

6 Q. I believe in response to a question from Dr. Kent you  
7 had described the long-term monitoring that was  
8 involved in the ABPP. Do you recall that?

9 A. Yes, I do.

10 Q. Do you know if, again, in this project, there will be  
11 long-term monitoring as part of the ABPP?

12 A. Yes, there will be.

13 Q. And would the yearly operational monitoring proposal  
14 that's included in the ABPP account for scavenging,  
15 removal and searcher efficiency?

16 A. Yes, it will.

17 MR. PATCH: Thank you. No further  
18 questions.

19 CHAIRMAN GETZ: Anything further from  
20 the Committee?

21 (No verbal response)

22 CHAIRMAN GETZ: Hearing nothing, then  
23 the witness is excused. Thank you.

24 Let's take a recess until 4:00.

1                   And I take it we're going to have some  
2                   questions for Mr. Cherian relative to some of the  
3                   noise issues that were raised in Mr. O'Neal's  
4                   testimony? I think we should -- well, I'm not sure  
5                   if it's better to -- what to do with Mr. O'Neal's  
6                   testimony. Have it adopted or just have it marked or  
7                   -- it's already marked for identification. Well, why  
8                   don't we --

9                   MR. IACOPINO: He's already testified.

10                  CHAIRMAN GETZ: Okay. Well, if  
11                  there's any administrative matters, think them over  
12                  in the next 10 minutes. We'll resume at 4:00.

13                  (Brief recess taken.)

14                  CHAIRMAN GETZ: Okay. We're back on  
15                  the record. And do we want to hear from Mr. Cherian  
16                  with respect to some noise questions?

17                  MR. ROTH: Mr. Chairman, during the  
18                  break we -- I spoke with Mr. Cherian and his  
19                  attorneys, and in lieu of further questioning of Mr.  
20                  Cherian on both Mr. O'Neal issues at this time, what  
21                  they have agreed to do is to apply, in the instance  
22                  of the construction of the substation and related  
23                  facilities in Holderness, the work restrictions that  
24                  were agreed to by the project with the Town of

1 Groton -- in particular, the construction vehicle  
2 restrictions found on Paragraphs 9.7.2 through 9.7.5  
3 of the Groton agreement which deal with, you know,  
4 hours and days of the week of operations.

5 I think I should, just to be fair, I'm  
6 -- and this wasn't discussed -- but I'm going to  
7 reserve the right to request in the memorandum  
8 conditions, both to that effect and to the  
9 construction of visual and sound barriers around the  
10 site. I realize that they'll dispute that, and I  
11 don't blame them. But I may very well ask for that.

12 CHAIRMAN GETZ: Ms. Geiger.

13 MS. GEIGER: Yes, thank you, Mr.  
14 Chairman. The Applicant will agree and has agreed  
15 with Attorney Roth as to the application of the  
16 provisions of the Town of Groton agreement that he  
17 just referenced, the 9.7.2 through 9.7.5, to the  
18 Holderness substation construction.

19 With respect to -- and I will probably  
20 get to this when we discuss post-hearing briefing.

21 With respect to the reservation of  
22 rights to request additional conditions for a  
23 certificate that Attorney Roth just referenced, as  
24 well as any other party, what the Applicant would



1 respectfully request is a very limited opportunity to  
2 present its position on any requested conditions  
3 that -- any request for conditions that are made by  
4 other parties. In other words, if we file  
5 post-hearing briefs on a particular date that  
6 contain -- that the opposing parties' provide or list  
7 their requested conditions, we'd like a very limited  
8 opportunity not to rebut the entire brief, but just  
9 to provide the Applicant's response and position on  
10 their request for conditions.

11 CHAIRMAN GETZ: Okay. Thank you.

12 Well, let's see. There's a number of issues I think  
13 we need to address.

14 First of all, so we won't be hearing  
15 directly from Mr. O'Neal. His testimony's been  
16 marked for identification. But let's address, first,  
17 is there any objection to striking all of the  
18 identifications and admitting all the exhibits in the  
19 record into evidence?

20 MS. GEIGER: Yes, we would object to  
21 two of the exhibits that were marked for  
22 identification by the Buttolph/Lewis intervenors.  
23 They were No. 43 and 44. And they were  
24 communications that -- you know, from folks that I

1 believe Ms. Lewis asked Mr. Gravel questions about.  
2 We would believe they're not relevant to the instant  
3 proceeding; that they are essentially, in essence,  
4 testimony by individuals who were not here, were not  
5 placed under oath, and were not available for  
6 cross-examination by the Applicant or other parties;  
7 and so we don't think that those two pieces of  
8 unsworn testimony should be entered into the record.  
9 I recognize that the Committee sometimes takes these  
10 statements as public comment and gives them the  
11 weight that they believe is appropriate, but we don't  
12 think they should be admitted as full exhibits.

13 CHAIRMAN GETZ: Any response? Ms,  
14 Lewis or Mr. Roth?

15 MS. LEWIS: I'd like to quickly  
16 respond to that. Just that if that's the case, then  
17 I feel that Mr. Gittell's economic report ought to be  
18 stricken as well, because we were not given the  
19 opportunity to ask him questions or be involved in  
20 that in any way. So it's no difference.

21 CHAIRMAN GETZ: Anything else?

22 MR. ROTH: Mr. Chairman, while I don't  
23 try to, you know, vouch for either of 43 or 44, I  
24 think Ms. Lewis's argument about the Gittell report

1 is well taken. But I think more importantly,  
2 Mr. Gravel was provided an ample opportunity to rebut  
3 all the assertions and opinions and allegations  
4 provided in 43 and 44, and the record would be kind  
5 of strange leaving them out, with nothing but his  
6 testimony denouncing them. So I would suggest that,  
7 having had as much of an opportunity to handle them,  
8 that they should probably be left in.

9 CHAIRMAN GETZ: Well, we're going to  
10 deny the motion to strike. We're going to admit them  
11 into evidence for the purposes of cross-examination,  
12 recognizing that neither the author of the documents  
13 or the -- or Mr. Wiegand, who was interviewed for  
14 those particular articles, was present to be  
15 questioned. So they'll be given whatever weight is  
16 due under the circumstances.

17 So, any other issues with respect to  
18 admitting exhibits into evidence?

19 (No verbal response)

20 CHAIRMAN GETZ: Hearing nothing else,  
21 then we'll admit all of the exhibits into evidence.

22 Now let me raise one other issue, and  
23 that's the prefiled direct testimony from Mr. Johnson  
24 on behalf of the Town of Holderness.

1           Mr. Iacopino has spoken to counsel for  
2           the Town of Holderness, and obviously they didn't  
3           appear here today. And this document has never been  
4           marked as an exhibit, though I guess it's in the  
5           files of the Site Evaluation Committee. And it seems  
6           to me it was not really in the nature of testimony,  
7           but more on a position that the Town of Holderness  
8           was taking. So I think we'll treat it as that, as  
9           the Town of Holderness's position. We've had  
10          testimony from Mr. Cherian, that he's spoken to the  
11          Town of Holderness. If we hear something from the  
12          Town in writing, then we'll take that under  
13          advisement.

14                    But any other recommendations or  
15                    concerns about how we should treat that one document?

16                            (No verbal response)

17                    CHAIRMAN GETZ: Okay. So that's how  
18                    we'll treat it.

19                            And I take it, so it's -- well, there  
20                            was a discussion of briefs. And I take it that's  
21                            briefs in lieu of closing statements? Is that a fair  
22                            conclusion on my part?

23                            MS. GEIGER: Yes.

24                            MR. ROTH: Yes.

1 CHAIRMAN GETZ: So there won't be  
2 closing statements today.

3 Two things: One is that in the  
4 procedural order we scheduled -- noted that there  
5 would be expected hearings today and Friday, and at  
6 the conclusion of the hearings there would be an  
7 opportunity for public comment. We will be here at  
8 10:00 on Friday morning. To the extent that there  
9 are members of the public that want to make comment,  
10 then we will convene to hear those public comments --  
11 and that means comments by persons that are not  
12 parties to this proceeding.

13 And that gets me back to briefs. We  
14 are scheduled for deliberations on April 7th and  
15 April 8th. From my perspective, I would like to see  
16 briefs by the close of business on Friday, April 1st,  
17 which I think takes on more importance, given, Ms.  
18 Geiger, what you pointed out in terms of wanting an  
19 opportunity to respond to any proposed conditions  
20 that might come in with the briefs.

21 So, I guess, first issue: The parties  
22 have a position on whether they can get their briefs  
23 in by April 1st?

24 MR. ROTH: Mr. Chairman, I'm sure we

1 can get them in. And that brings to mind the old  
2 saying that "If I had had more time, I'd have written  
3 less." We would -- I think the parties would  
4 appreciate a couple, you know, days over the weekend  
5 because of the transcript delivery time.

6 But with respect to the Applicant's  
7 desire to rebut the conditions proposed, I guess I  
8 have a problem with that, in that we can -- I think,  
9 absent an agreement that gets expressed in anybody's  
10 brief, assume that the Applicant objects to all of  
11 the conditions being proposed that are not agreed to.  
12 And I don't think that it's necessary to give them an  
13 additional opportunity to present advocacy about it  
14 beyond what their brief was and beyond what their  
15 whole entire case has been since the beginning. I  
16 think we pretty much understand what they believe  
17 their conditions ought to be and that they would  
18 dispute anybody else's conditions that they propose.  
19 So I don't think it's necessary or appropriate to  
20 give them another final shot at disputing them.

21 CHAIRMAN GETZ: Okay. Well, two  
22 issues: One is in terms of the necessity of  
23 transcripts. I guess we've had the transcripts for  
24 the bulk of the proceedings for quite some time. So

1 the transcripts would only apply -- that issue would  
2 only apply to the issues today with respect to  
3 largely historic resources and the alternative route.

4 But the other issue is what the  
5 Applicant would do, in terms of conditions that were  
6 proposed in briefs. I guess I'd be less interested,  
7 personally, in whether it's rebuttal or not. But I  
8 think it would be helpful for the Committee to know  
9 which proposed conditions the Applicant objected to  
10 and which ones it didn't. That would be very  
11 helpful.

12 MR. ROTH: Just a simple up and down  
13 without a discussion?

14 CHAIRMAN GETZ: That would be -- or  
15 some explanation. But I guess I'm not looking for an  
16 opportunity to rebut or a reply brief on why a  
17 particular proposed condition is unreasonable or  
18 improper, but whether it's something that is  
19 acceptable or not acceptable would be helpful, and  
20 maybe some explanation why. But brief.

21 If the briefs were -- and I think for  
22 our purposes -- and I guess I'll -- for purposes of  
23 the members of the Committee, this whole enterprise  
24 is something we do in addition to our normal 9 to 5

1 jobs, to the extent that they are even limited to 9  
2 to 5. My expectation would be, I would like to see  
3 the briefs on Friday so I could spend the weekend on  
4 them and then be ready to do deliberations.

5 But if you saw the briefs on Friday,  
6 when could you -- or could you respond, in terms of  
7 the response to proposed conditions, by the close of  
8 business on Tuesday?

9 MS. GEIGER: Yes, that would be fine.

10 CHAIRMAN GETZ: Which would be the  
11 5th?

12 MS. GEIGER: The 5th.

13 CHAIRMAN GETZ: Mr. Iacopino, are  
14 there other administrative or other matters that I'm  
15 not thinking of?

16 MR. IACOPINO: Not that I can think  
17 of, sir.

18 CHAIRMAN GETZ: Well, that's my list.  
19 Is there anything else that we need to address then  
20 today?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Hearing  
23 nothing, then we'll recess until 10:00 Friday  
24 morning, and we'll see if I think of anything else



1           between now and then. Thank you, everyone.

2                               (Whereupon the hearing was adjourned  
3                               at 4:21 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

## C E R T I F I C A T E

1  
2 I, Susan J. Robidas, a Licensed  
3 Shorthand Court Reporter and Notary Public of  
4 the State of New Hampshire, do hereby  
5 certify that the foregoing is a true and  
6 accurate transcript of my stenographic notes  
7 of these proceedings taken at the place and  
8 on the date hereinbefore set forth, to the  
9 best of my skill and ability under the  
10 conditions present at the time.

11 I further certify that I am neither  
12 attorney or counsel for, nor related to or  
13 employed by any of the parties to the action;  
14 and further, that I am not a relative or  
15 employee of any attorney or counsel employed  
16 in this case, nor am I financially interested  
17 in this action.

18  
19  
20 \_\_\_\_\_  
21 Susan J. Robidas, LCR/RPR  
22 Licensed Shorthand Court Reporter  
23 Registered Professional Reporter  
24 N.H. LCR No. 44 (RSA 310-A:173)