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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

October 2, 2013 - 11:12 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

In re: **SITE EVALUATION COMMITTEE:**
DOCKET NO. 2010-01: Application
of Groton Wind, LLC, for a
Certificate of Site and Facility
for a 48 MW Wind Energy Facility
in Groton, Grafton County,
New Hampshire.
(Prehearing Conference)

PRESENT:

Michael J. Iacopino, Esq. Counsel for the Committee
(Presiding) (Brennan Caron Lenehan & Iacopino)

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

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APPEARANCES: **Reptg. Groton Wind, LLC:**
Susan S. Geiger, Esq. (Orr & Reno)
Mark Epstein, Esq. (Groton Wind)
Karl Delooff (Groton Wind)
Michael Clayton (Groton Wind)

Reptg. Counsel for the Public:
Peter C. L. Roth, Esq.
K. Allen Brooks, Esq.
Senior Asst. Attys. General
N.H. Attorney General's Office

Reptg. N.H. Dept. of Safety:
Karen Schlitzer, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office
Ronald Anstey, State Fire Marshal's Office

Reptg. the Town of Rumney:
Edward Haskell, Selectman

**Reptg. the Buttolph/Lewis/Spring
Intervenor Group:**
Cheryl Lewis

 Marianne Peabody, *pro se*
 (Abutter - Groton Hollow Road)

 Mario Rampino, *pro se*
 (Resident - Groton Hollow Road)

 Mark Watson, *pro se*
 (Resident - Groton, Stone Glade Lane)

ALSO PRESENT: Raymond Landry (with Marianne Peabody)
Eric Werme, *pro se* (Boscawen)
Greg Saulnier, *pro se* (Rumney)
Rep. Suzanne Smith (Grafton-District 8)
Sen. Jeanie Forrester (District 2)
Jennifer Tuthill (Wind Watch)
Robert Piehler (Wind Watch)
Kenneth Sullivan, *pro se* (Temple)
Lisa Linowes (Wind Action Group)

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P R O C E E D I N G

1
2 MR. IACOPINO: Good morning, ladies and
3 gentlemen. Thank you for being here this morning. We are
4 here today for the New Hampshire Site Evaluation
5 Committee, Docket Number 2010-01. This is a prehearing
6 conference regarding the Groton Wind facility. A
7 prehearing conference is a conference -- is an inform
8 conference at which the parties involved in a proceeding
9 meet informally in an attempt to do one of two things.
10 Either get matters that are in dispute settled, or at
11 least facts that underlie the dispute agreed to and
12 stipulated, or, to basically create a schedule for the
13 resolution of issues by the Site Evaluation Committee
14 through an adjudicative process. Our hearing today is
15 informal, however, we do have a record that is being made.
16 That means that everything that you say is being recorded
17 by our court reporter. And, therefore, I would ask that,
18 if you are going to speak, make sure that you speak into
19 the microphone in front of you, speak one at a time. You
20 must use full words, things like "uh-huh" or "uh-uh" will
21 not translate well into our record.

22 On May 6, 2011, the Site Evaluation
23 Committee issued a decision granting a Certificate of Site
24 and Facility with conditions to the Groton Wind facility.

{SEC Docket No. 2010-01} [Prehearing conference] {10-02-13}

1 That there were motions for rehearing filed, which were
2 resolved in August of 2011, I believe. And, since that
3 time, we've had a number of requests and filings since
4 earlier this year regarding the facility.

5 And, we had a prior prehearing
6 conference, at which some of the issues were resolved.
7 Most of those issues pertained to the relationship between
8 the towns and the developer, the Applicant, Groton Wind,
9 LLC, with respect to the training of first responders and
10 others, and most of those issues were resolved informally.
11 We did have a meeting back in I think it was April, in
12 Groton, where we invited the fire chiefs and first
13 responders, police chiefs and police and fire commissions
14 from the various towns to attend, to address one of the
15 issues that was raised during the course of this
16 proceeding, and that is the safety and maintenance
17 program, particularly during the -- during the winter
18 months at the facility.

19 If you will note on the agenda that I've
20 passed out and emailed to the service list prior to this
21 proceeding today, it's my understanding that at least an
22 agreement was reached in principle amongst those parties.
23 I have not yet seen that agreement in writing. It seems
24 to me that that is something that has to be presented to

1 the Committee. Even if it's uncontested, it has to be
2 presented to the Committee, because it's going to
3 essentially constitute an amendment to the Certificate.
4 So, that's one of the issues that we will need to address
5 today.

6 The second issue is -- involves the
7 operations and maintenance building and where it was
8 built. There is a motion to reopen, that was filed by one
9 of the intervenors, Mr. Buttolph, I believe. Counsel for
10 the Public responded to that, to that motion, and seeks
11 relief in the nature of having the building moved or the
12 Certificate suspended until it is moved. And, so, that's
13 the second issue that we will need to address today.

14 The third issue involves correspondence
15 that I received, as Counsel for the Committee, from the
16 Fire Marshal's Office. And, that involves the Fire
17 Marshal's request that the Project be shut down, based
18 upon alleged failures to comply with various life, safety,
19 building and fire codes.

20 Those are the three main issues that I
21 have -- that I have determined are outstanding. And, in
22 one way or another, we'll need -- we'll need the action of
23 the Committee. And, our purpose today is to see if there
24 is any settlement prospects for any of those issues. And,

1 if not, whether or not there is a schedule that everybody
2 can agree to to get those issues before the Committee and
3 get them resolved.

4 Before we get into the three issues,
5 though, is there a Mr. Watson here?

6 (Non-verbal indication given.)

7 MR. IACOPINO: Okay. I'm going to take
8 appearances. But then I'm going to -- Mr. Watson, you
9 filed a Motion to Intervene?

10 MR. WATSON: Yes.

11 MR. IACOPINO: I do have a couple
12 questions for you about that. But, first, I want to go
13 around the room and get everybody's appearances, so that
14 we have a record of who is here. And, I'll start with the
15 Applicant. Ms. Geiger, if you could please introduce your
16 team and make your appearance.

17 MS. GEIGER: Yes. Good morning,
18 Mr. Iacopino. Appearing on behalf of Groton Wind, LLC,
19 I'm Susan Geiger, from the law firm of Orr & Reno. And,
20 with me, on behalf of the Company, are Attorney Mark
21 Epstein and Mr. Karl Delooff and Michael Clayton.

22 MR. IACOPINO: Counsel for the Public?

23 MR. ROTH: Good morning, Mr. Iacopino.
24 Peter Roth, Counsel for the Public, and with me today is

1 Allen Brooks, both of us from the Office of the Attorney
2 General.

3 MR. IACOPINO: Thank you.

4 MS. SCHLITZER: Good morning, Mr.
5 Iacopino. I'm Karen Schlitzer, with the Attorney
6 General's Office. I have not yet filed an appearance. I
7 will. And, I have with me Ron Anstey, who is an
8 Investigator with the Fire Marshal's Office.

9 MR. IACOPINO: Could you just spell your
10 last name for us?

11 MS. SCHLITZER: Yes. It's
12 S-c-h-l-i-t-z-e-r.

13 MR. IACOPINO: Thank you.

14 MS. SCHLITZER: Thank you.

15 MR. IACOPINO: Table behind there. Sir?

16 MR. HASKELL: Ed Haskell, Selectman,
17 Rumney.

18 MR. WERME: Eric Werme, Boscawen, just
19 representing myself.

20 MR. IACOPINO: I'm sorry, I didn't catch
21 your name, sir.

22 MR. WERME: Eric Werme, W-e-r-m-e.

23 MS. PEABODY: Marianne Peabody, abutter.

24 MR. IACOPINO: And, Ms. Peabody, you're

1 actually an intervenor in this proceeding as well?

2 MS. PEABODY: Yes. I am.

3 MR. LANDRY: Ray Landry, Marianne
4 Peabody's husband.

5 MR. IACOPINO: And, Cheryl?

6 MS. LEWIS: Cheryl Lewis, representing
7 Buttolph/Lewis/Spring Intervenors.

8 MR. WATSON: Mark Watson, Groton, trying
9 to become an intervenor.

10 MR. SAULNIER: Greg Saulnier, abutter.

11 MR. RAMPINO: Mario Rampino, abutter.

12 REP. SMITH: Suzanne Smith, State Rep.,
13 for Plymouth, Hebron, and Holderness.

14 MR. IACOPINO: Thank you. Senator?

15 SEN. FORRESTER: Jeanie Forrester,
16 Senator for District 2, representing 27 communities that I
17 will not name off.

18 MR. IACOPINO: Thank you. Ma'am?

19 MS. TUTHILL: Jennifer Tuthill, Wind
20 Watch, Alexandria, New Hampshire.

21 MR. PIEHLER: Bob Piehler, Alexandria,
22 Wind Watch.

23 MR. IACOPINO: And, sir?

24 MR. SULLIVAN: Ken Sullivan, interested

1 party, Temple.

2 MR. IACOPINO: Lisa, you want to make
3 your appearance while --

4 MS. LINOWES: Oh, sure. Lisa Linowes,
5 with Wind Action Group.

6 MR. IACOPINO: Thank you.

7 (Court reporter conferring with Mr.
8 Iacopino regarding one of the
9 appearances.)

10 MR. IACOPINO: The gentleman sitting
11 next to Mr. Sullivan, could you tell us your name again?
12 I'm sorry, I didn't get your name. Actually, I wrote it
13 down, but I can't read my own writing. Sorry.

14 MR. PIEHLER: Bob Piehler,
15 P-i-e-h-l-e-r.

16 MR. IACOPINO: Okay. Mr. Watson, I know
17 that you filed a Motion to Intervene in the proceeding.
18 And, I guess I just had a couple of questions for you.
19 But, before I ask you the questions, does the Applicant
20 intend to object to Mr. Watson's request to intervene?

21 MS. GEIGER: Mr. Iacopino, I apologize.
22 I really haven't had an opportunity to review it in depth.
23 And, I haven't had an opportunity to discuss it with my
24 client. But my initial reaction is that --

1 MR. LANDRY: Speak into the mike. We
2 can't hear you.

3 MS. GEIGER: I apologize. My initial
4 reaction is, I believe I looked at that correspondence, it
5 was letter, and I didn't actually know that it was a
6 request for intervention. And, I think there were other
7 letters filed the same day. If you could -- if you could
8 refresh my memory as to what --

9 MR. IACOPINO: Yes. I believe Mr.
10 Watson has a letter, and the objection date would not be
11 until October 10th, under our rules.

12 MS. GEIGER: Okay. Thank you.

13 MR. IACOPINO: But his letter dated
14 September 30th is the only one that I have that actually
15 requests intervention. I know that we have received -- we
16 have received some various public comment letters over the
17 past couple of weeks. But his letter is the only one that
18 actually requests relief from the Committee. It's dated
19 September 30th. It's very short. It says "I request
20 intervenor status on Groton Wind SEC Docket 2010-01. I
21 make this request due to the recent disclosure by the
22 State's Fire Marshal that Groton Wind does not have a
23 fixed fire suppression system. My home is in close
24 proximity to Groton Wind and would be threatened by a

1 Groton Wind fire. Intervenor status would allow me a
2 voice in the SEC's hearing process. Thank you."

3 So, Mr. Watson I just have a couple of
4 questions for you, in terms of -- just so that, I don't
5 make the decision on whether you get to intervene. That
6 will be made by the Chairman of the Committee. But I just
7 have a couple of questions as to what your purpose in
8 intervening is, because your letter is pretty short. Do
9 you foresee yourself hiring any kind of witnesses or
10 experts to testify in the proceeding?

11 MR. WATSON: Not at the present time.

12 MR. IACOPINO: Okay. And, do you
13 anticipate that you would participate by questioning other
14 parties' witnesses, if there are any, and filing memoranda
15 or whatever the Committee requests?

16 MR. WATSON: Yes.

17 MR. IACOPINO: Okay. Do you have any
18 experience in doing that?

19 MR. WATSON: No, I don't.

20 MR. IACOPINO: Do you intend to be
21 represented by legal counsel?

22 MR. WATSON: I have legal counsel.

23 MR. IACOPINO: Okay. So, it's sort of a
24 -- what do they call it, whatever the new form of

1 representation is in New Hampshire. So, you have a
2 lawyer --

3 MR. WATSON: Right.

4 MR. IACOPINO: -- who is helping you
5 out, basically?

6 MR. WATSON: Yes. But I can't afford to
7 have him with me all the time.

8 MR. IACOPINO: I understand. Okay. All
9 right. And, what is the -- it may be on your letter, but
10 what is the address of your home?

11 MR. WATSON: Thirty-five Stone Glade
12 Lane, in Groton.

13 MR. IACOPINO: And, just for my
14 edification, where is that in relation to the Project?

15 MR. WATSON: It's about a mile, mile and
16 a half from the East Ridge, Turbines 12 and 13.

17 MR. IACOPINO: Okay. How would one get
18 to Stone Glade Lane, if they were driving in? Is it
19 possible?

20 MR. WATSON: You would go up North
21 Groton Road, take a right onto Rogers Road, and it's a
22 private road, you go three-quarters of a mile up, uphill.
23 And, it's the only house up there. You know, so --

24 MR. IACOPINO: Well, that was going to

1 be my next question. Are there other homes in that area?

2 MR. WATSON: No, very isolated.

3 MR. IACOPINO: Okay. And, you --

4 (Court reporter interruption.)

5 MR. WATSON: Yes. My home abuts the
6 Forest Society land, which, obviously, it's green
7 woodlands, is a part of the track of Groton Wind.

8 MR. IACOPINO: Okay. All right. And,
9 you've participated previously in these proceedings,
10 haven't you?

11 MR. WATSON: I've been at quite a few of
12 these proceedings. I've been at all the STE hearings,
13 I've been at the workshops for SB 99, SB 191. I've been
14 paying attention since December 4th, 2012 quite closely.

15 MR. IACOPINO: All right. At any point
16 did you file a previous motion to intervene in this
17 proceeding?

18 MR. WATSON: No, I did not file any
19 motion. I have submitted letters --

20 MR. IACOPINO: Okay.

21 MR. WATSON: -- before to the Committee.

22 MR. IACOPINO: All right. Thank you,
23 sir. As I indicated, the Chairman will make the decision
24 on your motion. I hope to have that out from the Chairman

1 -- the Committee [Company?] has until the 10th to file an
2 objection, if they so choose. And, I hope to get an order
3 for the Committee -- from the Committee Chairman shortly
4 after the objection deadline.

5 But, for our purposes today, I think
6 that you should participate. Because if you are granted
7 intervenor status, you will be that much ahead of the
8 curve. Okay?

9 MR. WATSON: Thank you.

10 MR. IACOPINO: Well, let's start with
11 the Turbine Access Road Maintenance and Safety Agreement.
12 Has there been any progress with some kind of written
13 document that memorializes the agreement between the
14 various fire, safety, and police officials, first
15 responders?

16 MR. EPSTEIN: Well, there has been. We
17 have a document that was agreed to at the meeting and a
18 sign-in sheet. But, upon further guidance from Ms.
19 Geiger, we realize that the sign-in signatures actually
20 need to be on the agreement. So, we are starting -- we're
21 collecting those. But we hope to have something on file I
22 would guess within the next five to ten days.

23 MR. IACOPINO: Does anybody have
24 anything to add to that representation? Mr. Roth.

1 MR. ROTH: Mr. Iacopino, Peter Roth. I
2 was not at that meeting, I don't believe I was invited to
3 it, when this document was discussed. And, I have not
4 seen it. So, I'm not a party to it. So, until I see it,
5 I can't really say whether it's going to be objectionable.
6 I just have no idea what's in there.

7 MR. IACOPINO: I thought you were at
8 that meeting?

9 MR. ROTH: I was at a meeting in April,
10 in Groton.

11 MR. IACOPINO: Yes.

12 MR. ROTH: But I believe that there was
13 a subsequent meeting held that Mr. Epstein is referring
14 to. And, maybe I'm wrong about that.

15 MR. IACOPINO: I think they actually
16 went up to the site.

17 MR. EPSTEIN: Yes, there was a meeting
18 with the first responders. I didn't participate myself.
19 It was just a meeting of the first responders and our
20 technical team.

21 MR. ROTH: Right. So, I was not there.
22 So, if he's got a sign-up sheet of parties to that
23 agreement, who they believe may be parties to the
24 agreement, I'm not one of them.

1 MR. IACOPINO: Understood.

2 MR. ROTH: So, as I said, I have not
3 seen it or been consulted on any of its contents.

4 MR. IACOPINO: And, obviously, we
5 wouldn't ask you to agree to anything that you haven't
6 seen. So, -- Mr. Haskell?

7 MR. HASKELL: If they're talking about
8 the meeting we had in Rumney with the first responders, I
9 have all 18 pages of the minutes right here.

10 MR. IACOPINO: Okay. But is that -- is
11 that what you're talking about, the minutes, or is there
12 some -- was something reduced to the form of an agreement?

13 MR. EPSTEIN: It was a plan that was
14 circulated. It wasn't reduced to the form of an
15 agreement. That's what we need to do, is we need to turn
16 it into an agreement that actually has signature blocks
17 and so on.

18 MR. HASKELL: So, do we get to see this
19 agreement before they -- before you act --

20 MR. IACOPINO: Everybody -- nobody who
21 is a party to this proceeding will be asked to agree to
22 anything they haven't seen, okay? And, you know, you can
23 take whatever position you like, once you see it. Part of
24 what we're trying to do is figure out where it is, because

1 it's sort of taken some time to get to this point.

2 My understanding, after the public
3 meeting in Groton, was that it would be relatively quick,
4 and we'd have it done by the end of the summer. Now,
5 we're into the fall, and it's not done.

6 So, I would appreciate you getting that
7 agreement signed by those first responders who have
8 agreed, and circulate it to everybody on the service list
9 in this case. If you have any difficulty in doing that,
10 if you get it to me, I will make sure that it gets to the
11 service list.

12 And, as I have indicated in the memo
13 that accompanies the agenda, that is something that will
14 likely have to be approved by the Committee. Therefore,
15 anybody who is a party to these proceedings will have the
16 ability to say whether they agree that the Committee
17 should adopt that as an amendment to the Certificate or
18 not.

19 And, at this point, I think that what we
20 will do, when we get to scheduling, we will schedule it as
21 though it's still an open issue, so that, if anybody is
22 going to -- is going to object to it, there will be a
23 process in place for whatever preparation needs to be done
24 prior to the adjudicatory hearing on that issue.

1 So, the answer to my last question on my
2 agenda is "yes", the procedural schedule will have to
3 address this issue. Does anybody disagree with that?

4 (No verbal response)

5 MR. IACOPINO: Okay. Is there anything
6 about the Fire, Safety, and Environmental -- what's the
7 name of the -- what's the formal name of that plan that
8 you've been using? Is it "Environmental, Health and
9 Safety" or --

10 MR. EPSTEIN: Honestly, I just call it
11 "The Plan". I know there is a formal name.

12 MR. DELOOFF: It's the "Emergency Action
13 Plan".

14 MR. IACOPINO: "Emergency Action Plan".
15 Okay. Is there anything else about the Emergency Action
16 Plan that anybody thinks needs to be addressed here, other
17 than scheduling things like discovery and hearings on it?

18 (No verbal response)

19 MR. IACOPINO: Okay. The next issue,
20 major issue that I've identified at least, is the
21 Operations and Maintenance Building. There is a dispute
22 with respect to that particular issue on whether or not
23 the -- first of all, whether or not the building is in
24 compliance with the Certificate in this case. And, then,

1 secondly, there have been some, at least last time around,
2 there have been -- there were some settlements from
3 individual abutters with the Applicant. And, there was
4 some discussion with Counsel for the Public's office about
5 some kind of "public benefit" settlement being involved.
6 There was also -- and, there was also discussion about --
7 we've had previous discussion about this will need some
8 formal discovery to be conducted, if the parties do not
9 come to some kind of agreement.

10 So, let me first look to the Applicant.
11 Anything to report, in terms of any further action towards
12 settlement with respect to this particular issue?

13 MR. EPSTEIN: Yes, only two minor
14 updates. First of all, Mr. Emmett of the Company, who is
15 unfortunately unable to be here today, I believe had
16 reached out to Ms. Lewis in an attempt to resolve this,
17 but was unable to do so.

18 MR. IACOPINO: I'm sorry. Who did?

19 MR. EPSTEIN: Mr. Emmett.

20 MR. IACOPINO: Okay.

21 MR. EPSTEIN: Sorry. Had reached out,
22 and I don't think there was any resolution. We did plant
23 some trees around the O&M building, I believe, Friday of
24 last week, just as an accommodation. But, other than

1 that, there's been no -- no progress on this issue.

2 MR. IACOPINO: Have you entered into any
3 settlement agreements with any other individuals, other
4 than Mr. Rampino?

5 MR. EPSTEIN: We have not. We remain
6 willing to do so. But we've been unable to -- but we've
7 been unable to reach agreement with anyone.

8 MR. IACOPINO: Is Mr. Buttolph here?

9 MS. LEWIS: He's not.

10 MR. IACOPINO: I'm sorry. Cheryl, you
11 wanted to speak.

12 MS. LEWIS: He's not here. But I'm not
13 sure if he meant to say my name, because I know I have
14 heard nothing from anyone from Groton Wind.

15 (Court reporter interruption.)

16 MR. IACOPINO: Did you mean Ms. Peabody?

17 MR. EPSTEIN: I apologize, I may have
18 misspoken. My memory is not what it used to be. I
19 apologize. It may well have been Ms. Peabody that
20 Mr. Emmett had referred to. He's, unfortunately, unable
21 to clarify my memory. So, the error is entirely mine.

22 MR. IACOPINO: Ms. Peabody?

23 MS. PEABODY: He did, he did e-mail me.

24 MR. IACOPINO: Okay.

1 MS. PEABODY: I did not respond.

2 MR. IACOPINO: Do you intend to respond
3 to his e-mail? I mean, I don't know what's in the e-mail,
4 but --

5 MS. PEABODY: It had to do with
6 plantings.

7 MR. IACOPINO: Is it your intention to
8 proceed in trying to -- trying to reach an on-site
9 mitigation agreement with them, with respect to that? Or
10 is it just something that you want to be decided by the
11 Committee?

12 MS. PEABODY: I can't answer that right
13 now.

14 MR. IACOPINO: That's fine. Counsel for
15 the Public.

16 MR. ROTH: We have not been approached
17 by Groton Wind, with respect to any further agreements.
18 And, based on the last conversation that we had about it,
19 which you were party to, I don't anticipate any such
20 approach.

21 With respect to your agenda, you mention
22 that on-site -- "whether on-site mitigation measures can
23 resolve this issue?" And, I don't think anybody has ever
24 suggested that that alone would solve it. So, that's

1 certainly not within my contemplation, that an on-site
2 mitigation could possibly resolve it, unless I
3 misunderstand your use of that impression.

4 MR. IACOPINO: I think the Applicant has
5 suggested that on-site mitigation can resolve any issues.

6 MR. ROTH: And, with respect to
7 Mr. Rampino, as I recall from the last time we were here,
8 which was sometime last winter, his position is that he
9 made an agreement with them with respect to the
10 contamination of his drinking water supply that was caused
11 by the Project, and that it was not his belief that that
12 applied to everything that -- all the harms that they may
13 have inflicted.

14 Now, while there may be some dispute
15 over the language of that agreement, I think it's not
16 totally fair to refer to it as a "settlement agreement",
17 without that sort of a footnote to it.

18 MR. IACOPINO: Understood. Understood.
19 And, I know that there's a dispute over whether or not
20 that was a full agreement. Is that still the case,
21 Mr. Rampino?

22 MR. RAMPINO: I can hardly hear what
23 you're saying, but --

24 MR. IACOPINO: He said he's "not sure

1 you fully settled with the Applicant."

2 MR. RAMPINO: No, I haven't.

3 MR. IACOPINO: Okay.

4 MR. RAMPINO: Not even quite, I didn't
5 quite get my 30 pieces of silver, like the Town of Groton
6 got. So, --

7 MR. IACOPINO: Thank you. All right.
8 Ms. Lewis, I have one question, because it's your -- it's
9 actually yours and Mr. Buttolph's motion that originally
10 raises some of these issues. In that motion, there was
11 some suggestion that several of the turbines themselves
12 were not constructed in accordance with the Certificate.
13 Is that still a position that you are taking?

14 MS. LEWIS: Well, we still haven't
15 received any of the data showing exactly where the
16 turbines were moved or any information regarding it. So,
17 we have no more information than we did the last time we
18 were here.

19 MR. IACOPINO: Okay. All right. Well,
20 what I'm hearing is that settlement is highly unlikely,
21 and probably not worthwhile going down that track today.
22 All I can do, though, is remind the parties that, once an
23 issue is submitted to the Committee for determination,
24 there is a risk to all parties that the position you take

1 may not be the position that the Committee eventually --
2 eventually agrees with. And, that goes for all parties
3 involved in this particular proceeding. You know, so, I
4 do encourage you, to the extent that you can settle your
5 issues with respect to the Operations and Maintenance
6 Building, and present those to the Committee, as a
7 stipulation or as a settlement, that you continue to make
8 efforts to do so.

9 Based upon prior efforts to try to see
10 some kind of resolution of this matter informally, I don't
11 know that we're going to spend a lot of time today to try
12 to reach a settlement, because I just think the parties
13 are too far away, and, ultimately, unless I hear
14 differently from the parties, you know, I don't see us
15 getting too close to a settlement.

16 Does anybody disagree with that outlook
17 on my part?

18 MR. EPSTEIN: I don't disagree. We, at
19 the Company, remain willing to hear offers, bids, however
20 you want to characterize them, from any of the objectors.
21 Obviously, we remain open to anything short of picking up
22 and moving the building. But, I agree with you, I don't
23 think it's likely, based on the discussions.

24 MR. IACOPINO: And, I've spoken to

1 Counsel for the Public before. He does not think it's
2 likely either, correct?

3 MR. ROTH: That's correct.

4 MR. IACOPINO: Okay. When we get to
5 scheduling, we will start talking about making sure that
6 whatever data is needed is shared amongst the parties, and
7 that everybody is ready to proceed in an adjudicatory
8 hearing with respect to that issue.

9 The third major issue that I have on the
10 agenda is the correspondence from August from Inspector
11 Anstey from the Fire Marshal's Office and the Department
12 of Safety. And, I understand that there may have some
13 movement or some efforts at settling that very recently.
14 The Applicant, can you please tell me where you see the
15 issue being right now?

16 MR. EPSTEIN: We've -- one of our major
17 concerns on this is just the technical feasibility of the
18 fire suppression system that had been requested by -- been
19 requested to be installed. Mr. Delooff, who's with me
20 today, had brought to my attention, literally, this
21 morning, a new system that we believe may be technically
22 feasible. And, we believe that, in lieu of arguing over
23 this issue, we would propose to reach an agreement with
24 the Fire Marshal's Office for the evaluation and potential

1 implementation of that system. Obviously, we don't seek
2 to do so in a way that deprives the Fire Marshal's Office
3 from continuing to raise its objections. But we think
4 that it would be better to have a solution, rather than to
5 turn this into an issue, if we're able to do so.

6 And, we briefly discussed it. But Mr.
7 Anstey I think was running a little bit behind, so, we
8 didn't have time to raise it before the meeting. But we
9 welcome the opportunity to sit down and hopefully reach a
10 resolution with them on it.

11 MR. IACOPINO: Ma'am.

12 MS. SCHLITZER: Mr. Iacopino, I'm going
13 to turn it over to Investigator Anstey.

14 MR. IACOPINO: Thank you. Good morning,
15 Investigator Anstey.

16 MR. ANSTEY: Good morning. Appreciate
17 being able to be here. I apologize for not being at the
18 March 2011 meeting or hearing. We just didn't know about
19 it. We're trying to take steps to make sure that we know
20 where we need to be and when we need to be there. We
21 would have made every effort to be here had we known about
22 that hearing.

23 Having said that, the suppression in the
24 nacelles are not the only outstanding issue. It certainly

1 is taking center stage. And, we'd certainly welcome the
2 chance to sit down with the Applicant to discuss other
3 alternatives, other types of suppression systems in the
4 nacelles.

5 We're still awaiting plans. We've
6 received a Site Plan from the Applicant, we've received
7 the O&M Building Plan. We've not received any type of
8 structural plans for the towers. We're still awaiting
9 that for review. We have not done any kind of inspections
10 in any of the facilities on-site. We did do a review of
11 the O&M Building Plans, and submitted our review comments
12 back in July, I believe. We've not gotten any response to
13 the review comments on the O&M building, other than a
14 letter from the subcontractor that actually constructed
15 the building, and basically said that they finished their
16 project and they have closed it. So, we're still awaiting
17 a response to our review comments on the O&M building, and
18 still awaiting plans submittal for the towers.

19 As far as the fire suppression goes in
20 the nacelles, as we said, we're certainly open to
21 discussion on alternative forms of suppression. We don't
22 think that a water-based system is viable in northern New
23 Hampshire. Water tends to freeze, and it gets cold in
24 Groton. So, we think that a localized system is certainly

1 applicable. There are other wind turbines with localized
2 systems. There are 167 that I know of in the U.S., based
3 on my source last night. So, it's new technology, but not
4 unheard of in the industry.

5 The reason that suppression in the
6 nacelle becomes an issue for us is that, should a fire
7 occur in the nacelle, it's going to impact contiguous
8 communities, as well as the Town of Groton. They put
9 those towers on mountaintops for a reason, and the wind
10 will carry anything to other areas. And, that would
11 allow, with localized suppression, at least allow the fire
12 departments to mobilize and get in a little bit of
13 mobilization time should a suppression system be able to
14 control a fire, until they can mobilize and at least
15 establish perimeters and a strategy to deal with the fire.

16 But we'll gladly entertain any -- enter
17 into any conversation with the Applicant, relative to
18 their fire protection.

19 MR. EPSTEIN: If I might add, on the
20 comments on the O&M building? We had obviously been more
21 focused on the fire suppression as being the bigger issue,
22 the bigger delta. But I believe we can -- I believe we
23 can agree to make the requested modifications to the O&M
24 building. And, we would want to, as part of the

1 resolution, to sit down and talk about that. But we
2 didn't see anything that was a huge show-stopper for us.

3 MR. IACOPINO: Well, let me take you
4 through what Investigator Anstey just said. First of all,
5 plans. He's apparently waiting for some additional plans
6 dealing with the turbine structures themselves. Are you
7 -- do you need to provide those to the Fire Marshal?

8 MR. EPSTEIN: I thought we -- again,
9 we've sent several batches, and I didn't realize that
10 there was one still outstanding. Again, I apologize. I
11 thought that was -- I thought that had been resolved.
12 But, clearly, the plans are part of the -- I think they're
13 already part of the public record. So, --

14 MR. IACOPINO: So, the answer is --

15 MR. EPSTEIN: Yes. We'll submit them.

16 MR. IACOPINO: -- you don't have any
17 problem with providing those?

18 MR. EPSTEIN: None.

19 MR. IACOPINO: The second --

20 MR. EPSTEIN: I'm sorry.

21 MR. IACOPINO: The second request that
22 he had is inspections. Do you have any problem with Fire
23 Marshal staff coming up to the facility to inspect the
24 turbines and, I assume, the O&M building?

1 MR. EPSTEIN: As part of a broader
2 agreement, I think we would be willing to do so. We
3 reserve, as had been indicated in some of the
4 communications, reserve our right to dispute the Fire
5 Marshal -- Fire Marshal's Office's authority over the
6 Project. But, if we're able to reach agreement, I think
7 we would be willing to -- we'd rather agree than fight.
8 So, if we're able to do so in a way that doesn't -- that's
9 part of a broader settlement, I think we would be willing
10 to concede to that as well.

11 MR. IACOPINO: Okay. And, then, he
12 referenced the "O&M comments"; you've indicated that
13 you're going to respond to those. And, then, finally, the
14 major issue, the fire suppression in the nacelles, which
15 sounds like you're both willing to talk about an
16 appropriate system.

17 I understand, and the Committee
18 understands, that there is, in fact, a dispute over
19 whether or not the Fire Marshal has authority. But, just
20 to the Applicant, I will tell you that, to the extent
21 there are disputes about things like that, and there's a
22 state agency that has the knowledge and wherewithal, it's
23 not unusual for the Committee to rely on their expertise
24 in those cases. Whether it's through the process of an

1 adjudicative proceeding or whether it's, you know, simply
2 in the process of delegating authority to a particular
3 agency.

4 In this particular case, the decision
5 indicated that the -- and I understand that there is a
6 dispute about what it means, but the decision did, in
7 fact, indicate that "the Applicant will comply with all
8 applicable fire, building, and life/safety codes." And,
9 I'm not a fire marshal and I'm not a contractor, I don't
10 have access to those codes.

11 One of the things that I have asked
12 Inspector Anstey is that, to the extent that we don't have
13 all of your issues settled, that you, within ten days,
14 provide us with the codes that you believe are applicable,
15 so that the Committee has access to those. And, then, I
16 think, in the scheduling order, I also -- or, the amended
17 scheduling order, I also asked that, if the Applicant
18 disagrees, or if any party disagrees, that those are the
19 applicable codes, that you file the codes that you believe
20 are applicable to -- with the Committee, and I forget what
21 the timeframe was, but there's a timeframe set forth in my
22 amended order. Or, actually, it's in the memo and agenda,
23 within five days after receiving them from the Applicant
24 -- from the Fire Marshal. And, --

1 MR. ROTH: Mike?

2 MR. IACOPINO: And, I know, just to make
3 things -- just one minute -- just to make things even more
4 confusing, I understand that there has been a change in
5 New Hampshire law that might apply here as well. I've
6 been -- but we'll have to address that, in terms of
7 scheduling. Mr. Roth.

8 MR. ROTH: I thought I heard you just
9 say that "the other parties have five days after the Fire
10 Marshal's Office makes their submittal."

11 MR. IACOPINO: Yes.

12 MR. ROTH: I just would point out that
13 five days is an unreasonably short period of time within
14 which to review those submittals and to make that kind of
15 a response. And, I would ask for an additional five days,
16 for a total of ten.

17 MR. IACOPINO: That's fine. Ten days
18 for everybody is fine. I'm not wed to that. I just want
19 to -- I am interested in getting the law, because that's
20 what these codes will be, in a place where the Committee
21 has access to it, so that they can make the determinations
22 that they're going to have to make, if this matter is not
23 settled prior to an adjudicative proceeding. And, this
24 matter can be settled, as I see it, prior to an

1 adjudicative proceeding, between the Applicant and the
2 Fire Marshal's Office. The Fire Marshal has brought the
3 matter to the attention of the Committee. And, if they
4 are satisfied that it's been resolved, they can withdraw
5 their request for consideration by the Committee.

6 So, the way that I look at this
7 particular issue, it is something that can be resolved
8 with the Fire Marshal's Office. But, if it's not, the
9 Committee will have to make a determination with respect
10 to all of the issues that we just went over, as well as
11 the law that applies, and what does the decision mean,
12 from a legal standpoint. So, hopefully, we won't have to
13 do that. Hopefully, there can be a resolution that
14 satisfies everybody.

15 Was there anything else you wanted added
16 to the substantive issues that are -- you've raised before
17 the Committee, Inspector Anstey?

18 MR. ANSTEY: No, sir. It's basically a
19 process that we use for all projects, and we're just
20 holding them to that same standard.

21 MR. IACOPINO: Anything else that
22 anybody else wanted to raise? Ms. Lewis.

23 MS. LEWIS: I just -- I have a question
24 regarding the liability factor. If the Site Evaluation

1 Committee does not view this as an emergency situation,
2 based on the Statute 162-H:12 for enforcement, and they're
3 allowing this process to continue till we don't know when,
4 as far as the fire aspect of it, what about all these
5 abutters that are sitting here today, if a fire happens to
6 tomorrow, and there's no fire suppression system in place,
7 there's no training and safety agreement in place, what
8 happens to all these abutters if their homes go up in
9 flames? Does the Site Evaluation Committee then become
10 liable, in the fact that this is allowing to continue?
11 Does the Town of Groton or other towns that are allowing
12 this to keep going? At what point --

13 MR. IACOPINO: I can't give you --

14 MS. LEWIS: -- can these people be
15 assured that action is taking place immediately to protect
16 them?

17 MR. IACOPINO: I can't answer your
18 question, because I can't give you legal advise, for any
19 individual or for the town. I know that the Committee,
20 there is a process in the statute. That is the process
21 that the Committee is following. And, that's what we will
22 continue to follow. There's been no determination of an
23 emergency, as set forth in the statute. And, you know, as
24 a matter of fact, there has not been any designation of it

1 as an "emergency".

2 MS. LEWIS: Are there particular
3 parameters that need to be met before the Committee views
4 it as an emergency or --

5 MR. IACOPINO: Well, as you know, there
6 is a dispute here over even the application of what --
7 what building codes actually apply, what fire codes
8 actually apply, whether or not the Fire Marshal even has
9 authority.

10 Now, regardless of what anybody's
11 individual views, including mine, are of that dispute,
12 that is a dispute that is before the Committee, and is
13 something that the Committee would, if this matter does
14 not get resolved, something that the Committee will have
15 to resolve, prior to getting to the substantive issues of
16 "Are they in compliance? And, if not, what should be
17 done?"

18 MR. ROTH: Mike, if I might interrupt.
19 You referred to a "dispute". But I see the Fire Marshal's
20 letter of August 12th, and I don't see anything from the
21 Applicant, or, I guess it's not an applicant anymore, from
22 the owner disputing that. And, I'm not sure where this
23 "dispute" you're referring to is set out. And, if there's
24 something that I've missed, I'd appreciate if you would

1 point me to it.

2 MR. IACOPINO: I don't know. That's a
3 good question. Now, there has been no response to the
4 letter itself. Although, obviously, the Committee is
5 aware that there is a dispute. Counsel?

6 MR. EPSTEIN: Certainly, to the -- our
7 goal is to reach an accommodation with the Fire Marshal's
8 Office. Hopefully, we'll be able to at least reach the
9 outlines of an agreement this afternoon. But, if not,
10 we'll clearly take all the necessary steps, as part of the
11 record, to dispute whatever we feel is appropriate.

12 MR. ROTH: And, the Fire Marshal's
13 letter has been in the record since at least August 12th,
14 six weeks ago.

15 MR. IACOPINO: No, it hasn't been.

16 MR. ROTH: It was -- I believe it was
17 posted by Jane Murray on or about August 12th. Am I
18 mistaken on that?

19 MR. IACOPINO: No, it was posted after.
20 But it's dated August 12th, and she put the date on the
21 website. It was after that, because I did not forward it
22 to her until I got back.

23 MR. ROTH: I guess, for my purposes, I
24 would like to see, you know, some timeframe by which they

1 state the nature of their dispute, so we know what we're
2 dealing with. I mean, at the moment, we just have
3 Attorney Epstein's say-so.

4 MR. IACOPINO: I think we'll do that as
5 part of the scheduling, okay? Because, obviously, the
6 best that they're going to be able to do today is reach
7 some kind of outline of an agreement. So, we will reserve
8 it as if it's an issue, and we'll give the Applicant the
9 ability to respond to the letter as part of that process.

10 Were there any other issues, before we
11 get into the scheduling discussion, any other issues that
12 anybody thinks should be considered to be outstanding,
13 other than the three that we've discussed? Ms. Peabody.

14 MS. PEABODY: Yes. I strongly feel
15 that, until all of these issues are resolved, since there
16 are so many of them, that the Site Committee could --
17 should consider cease and desist all operations there.

18 MR. IACOPINO: In order to issue what is
19 essentially a suspension of the Certificate, the Committee
20 itself has to determine that there's a violation of the
21 Certificate. In order to do that, this Committee is going
22 to have to hold an adjudicative process before it can do
23 that. If it determines, at that point, that, in fact,
24 there is a violation of the Certificate, that warrants

1 suspension of the Certificate, it will issue a Suspension
2 of the Certificate, consistent with I believe it's Section
3 12 of the statute. It will give, under the statute,
4 they're required to provide the Applicant with 15 days to
5 come into compliance. And, if they don't, then they can
6 move onto further suspension, and revocation, if
7 necessary, of the Certificate. That's the process that's
8 set forth in the RSA 162-H.

9 MS. PEABODY: Okay.

10 MR. IACOPINO: Under the Administrative
11 Procedures Act, we have to have an adjudicative hearing to
12 determine whether or not they're violating their license,
13 permit or certificate. So, that's the statutory
14 requirement that the Site Evaluation Committee must
15 follow. They have to have -- it's due process for
16 everybody.

17 MS. PEABODY: Uh-huh.

18 MR. IACOPINO: And, that's eventually
19 where we're at, with respect to where we're going to go
20 with the next part of this meeting, assuming there's no
21 other substantive issues that anybody was going to raise.
22 And, the Fire Marshal issues and the Safety Plan issues,
23 they're raised, and, you know, they will be on the agenda
24 for the adjudicative proceeding, and they will be part of

1 what we schedule.

2 And, just so I hope people didn't miss
3 it, it's the intention of this Committee to hold this
4 adjudicatory hearing this year, before the end of the
5 year. And, that's what we're going to be work on. And,
6 there are very good reasons why the Committee is going to
7 do that, based upon anticipated filings of other cases
8 coming up, particularly in 2014. So, there's going to be
9 an adjudicative proceeding this year, most likely in
10 December. And, we will probably work our scheduling
11 backwards from that.

12 MR. ROTH: Mike, I did see that. And, I
13 have to say I object to that in the most certain terms. I
14 think, in this case, this matter has been on the
15 Committee's docket since December of last year. And,
16 there's a lot of difficult factual investigation that
17 needs to be done by us. We don't have any documents. We
18 may need to depose people. We need legal briefing. And,
19 there are other matters that all of us have to attend to
20 in the meantime. So, I think it's not reasonable and
21 unfair to the parties to compress the schedule like that,
22 based on filings that have not yet been made, or for any
23 reason, really. I mean, we have a right to a fair
24 proceeding here, and to try to cram it all in to two

1 months is not a fair proceeding.

2 MR. IACOPINO: Today is October 2nd.
3 Two months is more than enough time to get whatever
4 information it is that you need, and to get whatever
5 witnesses it is that you need, Mr. Roth, in my --

6 MR. ROTH: I disagree most vociferously.
7 And, I think that, you know, we'll have to consider
8 whether we seek alternative relief in light of that,
9 because that's really not a fair proceeding.

10 MR. IACOPINO: Any other substantive
11 issues that anybody wanted to address or things that need
12 to be addressed by the Committee?

13 (No verbal response)

14 MR. IACOPINO: Okay. So, in essence, it
15 seems to me we have three unresolved issues at this point
16 in time. One being amendment to the Certificate involving
17 the Turbine Access Road Maintenance and Safety Agreement,
18 the second being the Operations and Maintenance Building
19 issues, and the third being the Fire Marshal issues.

20 So, let me just go around -- I'm sorry,
21 Lisa. Did you have a substantive issue you were going to
22 add?

23 MS. LINOWES: No. I'm sorry. I just
24 wanted to mention, the turbines also that have been moved,

1 as Ms. Lewis has stated, there is no information in the
2 record right now of where they have been moved to.

3 MR. IACOPINO: I'm sorry, I should have
4 addressed that. I continue it as part -- I consider it as
5 part of the O&M issues, because it is all contained within
6 the Motion to Reopen, which was filed by Mr. Buttolph,
7 Ms. Lewis, and Mr. Spring. So, I consider -- I understand
8 that that is an issue, and understand that there's going
9 to want to be -- at least some parties are going to be
10 seeking discovery with respect to those issues.

11 I want to start with Counsel for the
12 Public. You mentioned, at least in the teleconference
13 that we had, that you might want to take depositions in
14 this case. And, I guess the question is, is how many
15 depositions is it that you intend to seek to take? What
16 authority do you think that the Committee has to allow you
17 to do so? And, thirdly, you know, do you know -- do you
18 have an idea of whose depositions it is that you're going
19 to take or how you're going to determine whose depositions
20 should be taken? I know that's a lot of questions, sorry.
21 But I want to get to the deposition issue first.

22 MR. ROTH: Uh-huh. Give me a minute.
23 We can't know who we're going to depose at this point,
24 until we see the documents that we would expect to have

1 produced. In your agenda, you provided two categories, or
2 at least, I suppose, one category, really, and that's the
3 communications between the Applicant, Groton Wind, and the
4 Department of Environmental Services. That, obviously, we
5 would expect to receive those. But, in addition, we would
6 also expect to receive communications internally at
7 Iberdrola, or whoever owns Groton Wind, about this issue,
8 including with consultants, and communications between
9 attorneys for Groton Wind and consultants. So, until we
10 have an opportunity to look at those documents, we can't
11 really determine who we're going to depose, because those
12 documents will tell us who is involved in making this
13 decision, and what kind of input they had on it.

14 The authority for doing it is in the
15 Site Evaluation Committee's rules, Rule 202 -- Site
16 202.12, which says "The presiding officer shall authorize
17 data requests", *etcetera*, "requests for admission of
18 material facts, depositions and any other discovery method
19 permissible in civil judicial proceedings before a state
20 court." So, we believe that, you know, the rules provide
21 the authority for a deposition in this case.

22 MR. IACOPINO: I put in, in my memo, and
23 I'll let counsel respond in a moment, but just I put in my
24 memo, which is basically the basics that I know my

1 Committee is going to require. And, that's why those are
2 in there. It's not meant to be a limitation of any sort,
3 or an invitation to greater, on behalf of the Committee.
4 It's just simply, I know that the Committee is going to
5 need those documents. And, I understand that some of them
6 have already been presented to the Committee in the
7 response that the Committee filed to the motions. But,
8 obviously, what I want is all of that correspondence, I
9 don't know if that was culled or not. And, obviously,
10 people who have been involved with this know that the
11 reason is that the Committee understands what the
12 communications between DES and the Applicant were. And,
13 there's no secret that DES apparently approved this as a
14 minor -- or, DES's opinion, a minor amendment to the
15 Wetlands or Alteration of Terrain Permit.

16 But I determined that, at a minimum, the
17 Committee needs those communications in order to do their
18 job in this case. It's not meant to be a limitation or an
19 invitation to extensive discovery to any party.

20 MR. ROTH: So, I guess, if I may, I read
21 your memorandum in the agenda. And, what I read it as,
22 you were, in light of the discussion we had on the phone,
23 where you were suggesting that, rather than have the
24 parties produce written requests for documents and

1 interrogatories, that they simply do it. And, maybe this
2 was an instruction to simply do it, and perhaps not.
3 Maybe I misunderstood what's here. And, if what you're
4 suggesting is that, instead we do requests, actual written
5 requests for documents and interrogatories and admissions,
6 as the rule says, then, I'm happy to do that. But I read
7 you as -- this as this, you're providing kind of a
8 shortcut.

9 MR. IACOPINO: This says "do it". Okay?
10 What's in my memo is "do it." If need be, I can have an
11 official order from the Committee making it an official
12 data request of the Committee. But my agenda includes
13 that, because I see that as a minimum of what the
14 Committee needs in order to determine this issue. And, it
15 -- I mean, this was, quite frankly, information that we
16 should be able to get from DES as well. So, it is, to me,
17 the minimum that is needed. I want to make sure that the
18 Committee at least has the minimum that's needed. It's
19 not meant, as I said, to limit or to ask you to expand.

20 To the extent that you want to rely on
21 this, I would say you can rely on it, you don't have to
22 repeat my requests. I would assume that the Applicant is
23 going to comply. And, if they don't, I'm going to get it
24 from DES anyway, and it will be a Committee exhibit one

1 way or another.

2 MR. ROTH: Well, with respect to the
3 Counsel to the Committee's own need for information or
4 Committee's own need for information, that's one thing.
5 But, I guess, I'm not -- I don't see a need to be limited
6 by this instruction in here. And, instead, what I'm
7 understanding from you is that I will file my own requests
8 for documents and interrogatories.

9 MR. IACOPINO: Right. And, like I said,
10 I'm not trying to limit you. But what I don't you to -- I
11 don't want you to think that you have to make your own
12 requests for the very same things that I've requested.
13 I've asked for them to provide it and to provide it to all
14 the parties, which includes you. That's not just to be
15 provided to me.

16 So, it's up to you. If you want to
17 repeat the requests, you can do that. You know, it's a
18 small point. But I'm not trying to limit you, or any
19 other party, and I'm not trying to -- I'm also not
20 encouraging you to expand the discovery either. I'm just,
21 you know, that's at a minimum what I believe the Committee
22 is going to need with respect to that issue. So, you can
23 make your own judgments as to, if you want to repeat the
24 requests to them in a formal set of written data requests,

1 which we're going to set a deadline for today, or not.
2 That's up to you. That's up to any party. If you choose
3 to repeat that, you can repeat it. I mean, I don't know
4 why you would. I assume the Applicant is going to
5 respond.

6 MR. ROTH: I don't consider repeating it
7 I consider that each party has a right to request
8 documents and make interrogatories. And, you know,
9 Counsel to the Committee can do whatever he likes within
10 the law, but that doesn't necessarily bind any of the
11 parties. Am I mistaken in that?

12 MR. IACOPINO: Well, I consider it as
13 binding the Applicant to provide the correspondence that
14 I've requested. And, if I need to get an order signed by
15 the Chair, I will do that. But I don't see that as a
16 problem.

17 And, I guess, we're not disagreeing
18 about anything, Mr. Roth. My putting this in this memo is
19 to get the information that I believe at a minimum my
20 Committee needs, as an administrative tribunal, to
21 understand what happened.

22 If there is more that you think you need
23 to litigate and understand what happened, you're going to
24 have a deadline by which you make those requests, they

1 will be subject to objection, if the parties you make the
2 request from believe that your data requests are, for some
3 reason, unlawful or overbroad or whatever objection they
4 might want to make. Hopefully, there will be very few of
5 those. Hopefully, everybody can agree to provide
6 information and trade information. But I'm not trying to
7 shortcut anything. I'm just trying to make sure that the
8 Committee has at least what I consider the minimum basis
9 to go forward and find out what happened.

10 So, that's all. I'm not trying to limit
11 you. And, I'm also not encouraging you to expand
12 discovery either. I mean, I'm not looking to, you know,
13 to put things out there that people should go and look
14 for.

15 So, let's talk about that, though. So,
16 what you're telling me is the first thing that you're
17 going to need to do is to issue some form of
18 interrogatories or data requests to the Applicant, and
19 perhaps other parties, from Counsel for the Public's side?

20 MR. ROTH: That's correct.

21 MR. IACOPINO: Okay. Any other people,
22 who are already intervenors now, not just interested
23 members of the public, but people who are intervenors, do
24 you anticipate issuing any interrogatories or written data

1 requests? Which are essentially written questions given
2 to the -- to other parties in the proceeding, looking for
3 either production of documents or answers to factual
4 questions. These are not a place for legal argument or to
5 try to make an argument to anybody. It's a request for
6 information. Is there any other party to the proceeding
7 that intends to issue written data requests with respect
8 to any of the three areas that we have, that we've gone
9 through: Turbine Access Road Maintenance and Safety
10 Agreement, O&M Building, and the Fire Marshal? I
11 understand that Counsel for the Public reserves his right
12 on all three issues, is that correct?

13 MR. ROTH: That's correct.

14 MR. IACOPINO: Let me just go through
15 the tables, okay? How about the Fire Marshal's
16 Office/Department of Safety? Do you intend to
17 participant? I know you're going to file an appearance.
18 Do you intend to seek discovery in the case?

19 MR. ANSTEY: The only thing we'd be
20 really interested in is their Emergency Plan, and then
21 structural plans, like we've outlined before. Part of our
22 review of access and such would be location of the various
23 structures and how you would access those. So, that would
24 be probably the only thing that we'd look for.

1 MR. IACOPINO: So, the answer, I guess,
2 is "yes"?

3 MR. ANSTEY: Yes.

4 MR. IACOPINO: That there may be some
5 limited requests from you?

6 MR. ANSTEY: Yes.

7 MR. IACOPINO: Okay. Ms. Peabody?

8 MS. PEABODY: I'd like to know if any
9 abutters' notices were mailed out during the procedures.

10 MR. IACOPINO: Okay. That certainly is
11 a request that you can submit to the Applicant. And, I
12 can -- you can look at the service list to see --

13 MR. EPSTEIN: I believe that's already
14 part of the record --

15 (Court reporter interruption.)

16 MR. EPSTEIN: Sorry. I believe the
17 abutters' notices were submitted as part of the public
18 record in the application process. We're certainly happy
19 to provide them again, but --

20 MS. PEABODY: I'd appreciate that. I'd
21 like to see if mine is there.

22 MR. IACOPINO: Okay. But I think what
23 you're -- you may be addressing -- you may be thinking of
24 two separate issues and the two of you may be talking

1 about two separate issues. You were asking about
2 "abutters' notices", from the Site Evaluation Committee or
3 from the Applicant?

4 MS. PEABODY: Actually, both.

5 MR. IACOPINO: Okay. I can tell you
6 that there is no abutter -- formal abutter notice process
7 that the Site Evaluation Committee goes through.

8 MS. PEABODY: What about DES?

9 MR. IACOPINO: There is -- let me finish
10 here.

11 MS. PEABODY: I'm sorry.

12 MR. IACOPINO: There is a public --
13 notice of public hearing and an order of notice, so,
14 sometime prior, sometime probably a year before May, when
15 the decision was issued, there was public notice that went
16 out. But there's no formal abutter notice that the Site
17 Evaluation Committee itself undertakes.

18 There was, during the course of this, a
19 determination of abutters. I don't know if the Applicant,
20 on its own, sent any information to abutters. That's
21 something that you could ask in the process of the
22 Applicant. Although, I guess the question is is, is what
23 are you getting at? Because, whether somebody got notice
24 of the proceeding, --

1 MS. PEABODY: No.

2 MR. IACOPINO: -- at this point, isn't
3 really one of the three issues that we're --

4 MS. PEABODY: No. But I feel as though,
5 since we're -- if the abutters were aware that the
6 building was going to be constructed where it was, there
7 could have been input, as far as traffic safety,
8 everything that goes along with what an abutter's concern
9 is. Abutters weren't notified at all on any of this.

10 MR. IACOPINO: So, I mean, subject to
11 their objection, they may object to your request, that is
12 something that you can make a written request, a data
13 request, by whatever deadline we set here today, to the
14 Applicant.

15 So, so far, I've got Counsel for the
16 Public intends to engage in written discovery; the Fire
17 Marshal, to a limited extent, apparently; Ms. Peabody.
18 Town of Rumney, probably not?

19 MR. HASKELL: Probably not.

20 MR. IACOPINO: Okay. Cheryl?

21 MS. LEWIS: At this moment, I don't know
22 whether we will or not. I'd like to reserve the right.

23 MR. IACOPINO: Well, you've already told
24 me that you're looking for certain information. I think

1 it, quite frankly, I think it would be helpful to you, and
2 probably helpful to the Applicant and the Committee as
3 well, if you did put what the information is that you're
4 looking for in writing, so that they can respond.

5 MS. LEWIS: Okay. I mean, it's part of
6 your requests that you have written there, as far as the
7 turbine locations. So, that's why I just wasn't certain.
8 We very well may have some data requests submitted.

9 MR. IACOPINO: Okay.

10 MS. LEWIS: I just don't know for
11 certain at this moment.

12 MR. IACOPINO: I actually think, because
13 of the motion that was filed by your group, it might be --
14 it might be helpful to have the written requests of what
15 you're looking for. Because I'm not -- I mean, I put the
16 thing about the turbines in there, because I'm not really
17 sure that the turbines are inconsistent with anything
18 that's in the plan as it was presented. Obviously, the
19 O&M building is not what was originally presented, and why
20 it's there is going to be an issue. But I couldn't find
21 any real clear issue with the turbines. So, you may want
22 to ask --

23 MS. LEWIS: It was in the DES report.

24 MR. IACOPINO: I'm sorry?

1 MS. LEWIS: It was in the DES report
2 that it specifically stated that the turbines had been
3 moved. That was the only way that we even knew it had
4 happened, was in that particular DES form, when we made
5 our original filing.

6 MR. IACOPINO: Well, there's going to be
7 a discovery process here. I do think that the type of
8 data that you're looking for might be helpful. So, if you
9 can, and if you choose to, and I'm sure that Counsel for
10 the Public will probably address it anyway, although I'm
11 not going to tell him what to do, he knows what to do.
12 You know, I mean, that is helpful. If there's going to be
13 an issue that the Committee is going to have to determine,
14 whether or not the turbines themselves were positioned in
15 accordance with the requirements of the plans that became
16 part of the Certificate, then, you know, if there is
17 information, that will have to be presented to the
18 Committee to determine that.

19 Who was next? Mr. Rampino, I know that
20 you're technically not an intervenor as of yet. But was
21 there any written requests for information you were going
22 to make to the Applicant?

23 MR. RAMPINO: What's that again, sir?

24 MR. IACOPINO: Was there any written

1 requests for information that you were going to make to
2 the Applicant?

3 MR. RAMPINO: Do I want to or not?

4 MR. IACOPINO: Do you want to, yes.

5 MR. RAMPINO: Yes.

6 MR. IACOPINO: Okay. And, what's the
7 nature of it? What's it about? What type of written
8 questions --

9 MR. RAMPINO: I'm getting lost here. I
10 come in late.

11 MR. IACOPINO: Yes, be comfortable.
12 Please, sit down, and just pull the microphone to you.

13 MR. RAMPINO: Oh. Okay.

14 MR. IACOPINO: Okay?

15 MR. RAMPINO: I'm kind of nervous at
16 this.

17 MR. IACOPINO: Nothing to be nervous
18 about, sir.

19 MR. RAMPINO: Unless it was a criminal
20 matter.

21 MR. IACOPINO: Nothing criminal here.

22 MR. RAMPINO: If it was, then I would be
23 okay.

24 (Laughter.)

1 MR. RAMPINO: So, run it by me again, in
2 English, so, I can understand it.

3 MR. IACOPINO: Okay. Part of our
4 process is to allow the trading of information between
5 parties. One way that we do that is by issuing written
6 questions. Sometimes we call them fancy words like
7 "interrogatories" or "data requests". Some of the parties
8 will have written questions that they're going to pose to
9 the Applicant, the Applicant is going to have to answer
10 those in writing. And, they would have to involve the
11 issues that are involved in the case, which are Safety and
12 Maintenance Plan, O&M Building and position of the
13 turbines, and fire safety, from the Fire Marshal's order
14 -- Fire Marshal's letter, I guess. Those are the three
15 issues that are in there. You have a interest, I know, in
16 the location of the Operation and Maintenance Building.

17 MR. RAMPINO: Yes, because it's right
18 after my driveway.

19 MR. IACOPINO: I understand.

20 MR. RAMPINO: I probably have an issue
21 with the fire safety aspect, being so close --

22 MR. IACOPINO: Okay.

23 MR. RAMPINO: -- my house being so close
24 to that building.

1 MR. IACOPINO: So, my question is, if
2 allowed by the Committee, do you intend to actually
3 present written questions to the Applicant before the
4 hearing that we have sometime at the end of the year?

5 MR. RAMPINO: I'm kind of sorry that you
6 had to go through that whole spiel. Can I have time to
7 think that or do you need an immediate answer today?

8 MR. IACOPINO: No. You can have time to
9 think about it.

10 MR. RAMPINO: Oh. Thank you.

11 MR. IACOPINO: But you're going to have
12 to do two things. Okay. You're going to have to file a
13 motion to fully intervene in the proceeding, a request, a
14 letter is fine, asking to intervene, because your
15 interests are involved. That's going to have to be
16 granted by the Committee. Okay? And, you're going to
17 have to abide by whatever deadline is set for putting
18 these questions --

19 MR. RAMPINO: Those are two easy ones I
20 can understand. All right. Can I write it out in
21 longhand and just bring it up to the building?

22 MR. IACOPINO: You can. You can even,
23 if you have access to an e-mail account, --

24 MR. RAMPINO: No.

1 MR. IACOPINO: -- you can even e-mail it
2 to me and I'll make sure it gets filed.

3 MR. RAMPINO: I'm having trouble with
4 this microphone here. You want me to go into computers?
5 But --

6 MR. IACOPINO: Well, I guess my point
7 is, you don't have to drive down here, you can mail it.

8 MR. RAMPINO: Okay.

9 MR. IACOPINO: Okay? You can mail it.
10 If you don't have access to a computer, you can mail it.
11 I would advise you, though, is that the best way to keep
12 track with what's going on with the Site Evaluation
13 Committee is through our website. So, I don't know what's
14 available in your town library, whether there's computers
15 available and things like that, but that's usually the
16 best way to keep track of what's going on.

17 MR. RAMPINO: Now, if I don't respond in
18 a timely manner, will I be penalized or --

19 MR. IACOPINO: Yes. We send the State
20 Police out to make you respond. No.

21 MR. ROTH: Mike?

22 MR. RAMPINO: As long as you let me know
23 ahead of time. Okay. Thank you.

24 MR. IACOPINO: I'm sorry, Peter.

1 MR. ROTH: Mike, it occurs to me, that
2 this discussion about Mr. Rampino's filing a motion to
3 intervene is a bit strange. Because Mr. Rampino's house
4 is directly abutting and across the street from this
5 building, and is probably the most affected property of
6 any of them out there. And, for -- I think, you know, the
7 Committee has the ability to waive the rules and allow him
8 to participate. And, if anybody had an objection to his
9 participating, it would be near an outrage, given the
10 level of impact that this place has on his property. So,
11 to put this sort of needless formality on Mr. Rampino at
12 this point seems to be a bit much and completely
13 unnecessary.

14 MR. IACOPINO: You know, I don't doubt
15 what you represent the facts to be about Mr. Rampino's
16 property, Mr. Roth. But, you know, he also should file a
17 motion to intervene, to make sure the record is there. It
18 protects not only everybody else in the room, and all the
19 other parties, but it also protects Mr. Rampino's ability,
20 should there be a ruling against him and he'd be seeking
21 some sort of appeal. If he doesn't have an appearance, if
22 he hasn't been granted intervenor status, I'm not so sure
23 the Supreme Court would be as quick to waive their rules
24 or to waive their prior case law, as the Site Evaluation

1 Committee might be under the circumstances.

2 MR. ROTH: Well, it's my understanding
3 that Mr. Rampino would separately have to establish his
4 standing in an appeal with the Supreme Court. But, I
5 think that, at this instance, the Committee or the
6 Chairman could make a ruling, and, you know, I would ask
7 Ms. Geiger or Mr. Epstein to concur, that Mr. Rampino has
8 standing and should be allowed to intervene, just on his
9 oral request today. And, we can avoid this unnecessary
10 and formality on it.

11 MR. IACOPINO: I don't have an
12 adjudicator to make that decision today, that's the
13 problem. If there's an agreement by the end of the day
14 today, that's fine. It still is going to have to be put
15 in writing so that it can be approved, but maybe another
16 party can put it in writing. Okay?

17 MR. EPSTEIN: For the record, we don't
18 object.

19 MR. IACOPINO: Thank you. So, -- yes,
20 sir?

21 MR. SAULNIER: I need to bring up a
22 point that I'm pretty much in the same situation as
23 Mr. Rampino. I'm not an intervenor. I am one of the
24 highly-impacted abutters. And, --

1 MR. IACOPINO: Mr. Saulnier, is that
2 your name, right?

3 MR. SAULNIER: Yes. And, now, I'm
4 asking myself "well, maybe I should have gotten involved
5 in the intervenor process."

6 MR. IACOPINO: Well, what an intervenor
7 does is an intervenor has all the rights of a full party.
8 And, part of the party's role in an adjudicative
9 proceeding is to educate the Committee and persuade the
10 Committee to see the issues that are in dispute their way.
11 Normally, that's done by providing evidence, in many
12 cases, calling witnesses. It's also done by testing the
13 evidence of the other parties through a process of
14 cross-examination. Although, it's an adjudicative
15 proceeding, it's not exactly like a trial in these
16 administrative hearings. And, you know, the same thing, I
17 mean, the same rules would apply to you that would apply
18 to a party represented by a lawyer. That's one of the
19 reasons why I asked the questions of Mr. Watson earlier,
20 in terms of what his intentions were. Because, if what he
21 had told me was that he just wants to know what's going on
22 and tell us his opinion, we have a public comment process
23 for that. But, if you intend to participate as a full
24 party, you must be designated an intervenor. And, the way

1 you get designated as an intervenor, normally, is filing a
2 motion, the other parties have an opportunity to object to
3 that motion. Once that objection period has run, the
4 Committee will make a decision on whether or not you're
5 granted status as an intervenor.

6 The statute sets forth the requirements
7 to be an intervenor. And, essentially, you have to have
8 an interest in the outcome of the proceeding, is probably
9 the simplest way to put it, although that's not complete.
10 So, that's the -- that's what an intervenor does. And,
11 so, I don't know -- if that makes you wish to file a
12 motion to intervene, you should do so. As I've told Mr.
13 Roth, I can't grant the motion. I'm not the
14 decision-maker here. If there is -- and the same thing
15 could happen to you. If they agree that you can be an
16 intervenor, and the two of you sit down at the end of the
17 day and you write up an agreement to intervene, and nobody
18 else objects, that will be presented to the Chair of the
19 Committee. The Chair of the Committee will still decide
20 whether or not you have an interest that warrants
21 intervention, and make a decision one way or another.

22 MR. SAULNIER: I guess the one thing I
23 don't understand is, where is the line where I'm not
24 sufficiently covered by the public defender? Which I

1 assumed all along that, since I brought this issue to
2 them, that they were going to carry it forward.

3 MR. IACOPINO: Mr. Roth's position as
4 Counsel for the Public, not the public defender, --

5 MR. SAULNIER: Oh, I'm sorry.

6 MR. IACOPINO: -- but Counsel for the
7 Public, is to represent the public at-large, not the
8 interest of any individual or even any group of
9 individuals.

10 MR. SAULNIER: Okay.

11 MR. IACOPINO: I mean, you could have
12 the whole town agree on something, and Mr. Roth does not
13 have to take the same position, just so you know.

14 MR. SAULNIER: All right.

15 MR. IACOPINO: So, he is not your
16 lawyer.

17 MR. SAULNIER: Uh-huh.

18 MR. IACOPINO: And, he represents the
19 public at-large, the entire state.

20 MR. SAULNIER: Okay.

21 MR. ROTH: And, I just would -- the
22 arguments that I made about Mr. Rampino I think apply
23 equally to Ms. Peabody and her husband, Mr. Saulnier, and
24 I think there was another one, Ms. Foote, who is not

1 present today.

2 MR. IACOPINO: I believe Ms. Peabody was
3 already granted intervenor status.

4 MR. ROTH: Okay. Then, I would also say
5 that, in echoing what you just said about my role, I
6 explained to Mr. Saulnier and others at the time that we
7 met, that I did not represent them. I was attempting to
8 negotiate something that would be good for everybody. And
9 that, if that hasn't happened, I will continue to
10 negotiate something that would be good for everybody, if I
11 have the opportunity. But I do not represent them, and I
12 am not their attorney. And, I advised them that they
13 should get their own counsel to represent them in this
14 proceeding, because it's difficult and complicated.

15 So, I just wanted everybody to be clear
16 that I am not the public defender or the public, you know,
17 knights-errant, but, you know, I'm trying to get a good
18 result for the public at-large.

19 MR. IACOPINO: Understood. I think what
20 you should do, sir, is you should speak to the Applicant,
21 and the other parties as well. If there is an agreement
22 that you can intervene, and there's no objections to it,
23 reduce that to writing somehow, we'll get it before the
24 Chair of the Committee so that he can decide whether to

1 permit the intervention or not. And, the same goes for
2 you, Mr. Rampino. Yes, sir.

3 MR. RAMPINO: You know, I only stepped
4 out to go to the men's room and get a water.

5 MR. IACOPINO: That's what happens when
6 you step out.

7 MR. RAMPINO: What -- in fact, I was
8 going to ask permission, I don't know what the procedure
9 was. But are we being thrown to the wolves, me and my
10 neighbor here, or did I miss something? And, I'm slow and
11 old. And, all of a sudden everything's getting cloudy.

12 MR. IACOPINO: There is no way to answer
13 your question. I certainly don't have the authority to --

14 MR. RAMPINO: It probably doesn't make
15 sense anyway, right, my question?

16 MR. IACOPINO: I can't answer that
17 question. I can recommend to you, and anybody else who
18 feels that they are affected by the issues before this
19 Committee, that sometimes it makes sense to sit down with
20 a lawyer, and either for the purposes of getting yourself
21 educated, as Mr. Watson has indicated that he's done, or
22 to have that lawyer represent your interests. I highly
23 recommend it.

24 MR. RAMPINO: But there's no guarantee

1 here for either me or Greg, as far as a favorable outcome.

2 MR. IACOPINO: There is no guarantee
3 ever to anybody. There's no guarantee to the Applicant or
4 Counsel for the Public or any party of any outcome. The
5 Committee will hear the evidence and make the rulings that
6 it finds to be correct, based on the evidence that it
7 hears.

8 MR. RAMPINO: Now, is that everybody on
9 Groton Hollow Road or just the immediate abutters? I
10 mean, --

11 MR. IACOPINO: What do you mean "is it
12 everybody"? Is it "everybody" for what?

13 MR. RAMPINO: Man, I should have stayed
14 here and had crossed my legs. I missed all this, thought
15 I heard something when I come back.

16 MR. IACOPINO: There's an --

17 MR. RAMPINO: But I'll talk to somebody.

18 MR. IACOPINO: Now, Mr. Epstein has
19 agreed that you can be an intervenor in this case. As
20 long as none of the other parties object -- does anybody
21 object to Mr. Rampino intervening?

22 (No verbal response)

23 MR. IACOPINO: Okay. We need to get
24 that in writing somehow, though, so that it can be

1 presented to the Chair of the Committee. Okay? Why don't
2 I do the same thing with Mr. Saulnier. Is there an
3 objection to Mr. Saulnier intervening?

4 MR. EPSTEIN: To be honest, I'm not
5 familiar with Mr. Saulnier. So, I don't know his position
6 in relation to the Project. But, if presumably he's
7 similarly situated, again, subject to knowing the facts, I
8 don't have an objection.

9 MR. IACOPINO: Okay. Is there any other
10 party that would object to Mr. Saulnier intervening?

11 (No verbal response)

12 MR. IACOPINO: Okay. Ms. Peabody, your
13 -- are you going to object, sir?

14 MR. LANDRY: No. I've got a question.

15 MR. IACOPINO: Yes, sir.

16 MR. LANDRY: Can I ask it? I'd like to
17 know -- I'd like to know how many times we have to come to
18 these Committee meetings before something is really taking
19 part. It's been a year, maybe two years, and all we've
20 been doing is coming to these meetings, nobody's getting
21 informed of anything what's going on in these meetings.
22 So, I mean, I think we're wasting everybody's time just
23 coming down here. I mean, nothing is resolved, nothing is
24 taking part. I mean, we have a lot of serious business

1 out on that road due to certain things that's going on on
2 that road, right now, in the Town of Rumney and Groton and
3 West Plymouth, and any of the surrounding towns. I come
4 from Thornton. Fine. I live there. But all the people
5 on Groton Hollow Road lived out there for years. Now, all
6 of a sudden we've got a big project on this road, in the
7 Town of Rumney, in Groton, in West Groton continuing there
8 to take place. Thank you.

9 MR. IACOPINO: You're welcome. Same
10 thing, Mr. Saulnier. We will need to -- you're going to
11 need to reduce your request to writing. They are going to
12 want to review it. I think you should make sure that you
13 put exactly where, how close you are to the facility in
14 your request. And, you can submit it to Jane Murray, who
15 is the Secretary for the Committee, or to me. I'll give
16 you my card before we finish here today. And, we'll --
17 I'll note for the record that nobody else objects. They
18 will want to review to make sure that you have -- that
19 you're impacted the way that you say. And, we will get
20 that before the Chair to rule on as well.

21 I want to give the court reporter a
22 break, because it's 12:32, and I know he's been busy all
23 morning. So, I'm going to suggest we come back here in --
24 does anybody have any objection to going right through,

1 just stopping for like 10, 15 minutes, and then going
2 through, or do people actually want to have a lunch break,
3 because I think all we're going to be doing is scheduling?
4 Lisa.

5 MS. LINOWES: This is a little bit --
6 this is going back to before you get to the break. I had
7 -- I was wanting to ask two questions with regard to the
8 parties, if I may, and then you can go to scheduling after
9 the break.

10 But the first question was, is DES
11 considered a party to these proceedings and will they be
12 subject to data requests? Because I think it would
13 streamline the process, if we can go to DES and get data
14 from them, and compare with what the Applicant is saying.
15 And, the other question is, can we establish today to what
16 extent the Applicant is going to object or insist that the
17 information be under a confidentiality agreement? So that
18 you're requesting looking for information to the
19 Committee, but they may not be willing to share that
20 information with other parties in the case.

21 MR. IACOPINO: Let me just answer your
22 second question first, is what I've requested them to
23 provide I don't think would ever be considered to be in
24 protective orders, because it's communications with a

1 state agency. So, I don't think that a protective order
2 applies to that at all.

3 I think the other answer to your second
4 part of your question is, I think, and any party would
5 answer this way, is we need to see what the questions are
6 before we can decide if it's something that they think is
7 exempt from the public, exempt from the Right to Know
8 statute and subject to a protective order.

9 So, I mean, if there were -- the shoe
10 were on the other foot and, you know, there was going to
11 be data requests going the other way, which there may be,
12 you know, I think I would expect the same answer. It's
13 just an unanswerable question at this point in time, and
14 no party is going to say "we give up our right to seek a
15 protective order." So, it's hard to answer your question.

16 And, I don't even remember. Are you an
17 intervenor in this case or not? You're not, are you?

18 MS. LINOWES: I am not an intervenor.
19 But, to the extent that I can assist others, --

20 MR. IACOPINO: I understand.

21 MR. ROTH: Mike, I think Ms. Linowes'
22 point is well taken, and especially in light of the
23 unreasonably compressed schedule that you've proposed.
24 You know, when we did Antrim Wind, there were objections

1 to many questions by Attorney Geiger's office on the
2 grounds of confidentiality. Now, I don't, you know, I
3 can't say that she'll make the same kinds of objections
4 that she made in that case in this present case, but I
5 would certainly expect so. And, in that case, you know,
6 the process of the objection on the basis of
7 confidentiality and then the motion to compel, that
8 process took virtually the entire amount of time that
9 you're suggesting that we're supposed to get the whole
10 thing done. And, I think, you know, that's why, you know,
11 and that's a reason why this just doesn't work to get done
12 by December.

13 MR. IACOPINO: Noted. Nobody's answered
14 my question. Is a 10 to 15 minute break okay, and then we
15 just proceed?

16 MS. PEABODY: Yes.

17 MR. EPSTEIN: Yes. That's fine with us.

18 MR. IACOPINO: Okay. Then, let's take a
19 15 minute break, and then we'll proceed with scheduling.

20 (Recess taken at 12:37 p.m. and the
21 prehearing conference resumed at 1:04
22 p.m.)

23 MR. IACOPINO: Okay. Thank you,
24 everybody. We're going to move on to discuss the

1 scheduling here. While everybody was sort of speaking
2 with each other informally, some of the parties have
3 approached me, and indicated that they believe that there
4 are some threshold legal issues that should be framed and
5 argued, and would need to be framed and argued before we
6 can get to the factual discovery discussion.

7 I don't know who wants to explain that
8 first, either the Applicant or Counsel for the Public, or
9 the Department of Safety, you were the three that
10 approached me with this issue. So, does somebody want to
11 take the lead, so that the other parties know what it is
12 that's being proposed?

13 MS. GEIGER: Sure. Basically, as you've
14 indicated, the representatives of the Applicant,
15 Department of Safety, and Attorney General's Office have
16 indicated that or agreed that there appear to be a couple
17 of threshold legal issues that should be decided, and that
18 may direct the course -- the outcome of those issues or
19 the decision by the Committee would then indicate whether
20 or not a full procedural schedule, and with discovery and
21 adjudicative hearing, is necessary on all of the issues.

22 And, the two threshold legal issues
23 would be, I believe, whether or not the Department of
24 Environmental Services was properly delegated or had the

1 authority to approve a modification in the location of the
2 O&M building and wind turbines. And, then, the second
3 issue would be whether or not the Fire Marshal's Office
4 has the authority to make the request that it has in this
5 docket.

6 MR. IACOPINO: How about Department of
7 Safety? Do you concur with those, with that view that
8 these are threshold legal issues that need to be resolved
9 first? And, secondly, that those are, at least with
10 respect to your issues, that's the issue that needs to be
11 resolved?

12 MS. SCHLITZER: Yes. I understand the
13 legal issue regarding the Fire Marshal's Office to be that
14 the Applicant does not believe that the Fire Marshal's
15 Office has the authority to impose the requirements that
16 it is. And, yes, that does seem to us to be a threshold
17 legal issue that should be resolved.

18 MR. IACOPINO: Let me just address that
19 threshold issue for a minute. And, I'm just going to ask
20 the Applicant whether, I know that there is a change in
21 the law, which I understand you're going to argue applies,
22 and that it's no longer the Fire Marshal, but the local
23 building inspector who has the building inspection
24 authority, I guess. Is there also an argument, a legal

1 argument, that the Fire Marshal doesn't have any authority
2 because the Site Evaluation Committee preempts his
3 authority as well? Or, is it just this issue of the
4 change in the statute?

5 MS. GEIGER: I'm not prepared to make a
6 legal argument today on that issue. I'm just raising it
7 as a threshold issue.

8 MR. IACOPINO: Okay. Well, I'm just
9 trying to find out what the legal issues are. I mean, a
10 difference of whether a statute applies is different than
11 -- whether or not the Fire Marshal statute applies is one
12 legal issue, whether or not certain parts of RSA 162-H
13 applies is a separate legal issue. I'm just trying to
14 determine if they're both on the table. If you don't --
15 you don't know if they're both on the table? Okay.

16 MS. GEIGER: I'm not prepared today to
17 discuss the merits of the legal claim. I'm just raising
18 it as a threshold issue that needs to be addressed.

19 MR. IACOPINO: Counsel for the Public,
20 the two issues that the Applicant says need to be
21 determined are whether DES is properly delegated the
22 authority or had the authority to approve the change in
23 the position of the O&M Building, and the Fire Marshal's
24 Office -- the Fire Marshal's Office's authority to make

1 the request that it's made to the Committee. Do you agree
2 that those are the threshold legal issues or are there
3 other ones or --

4 MR. ROTH: In broad strokes, I do agree.
5 And, when I say "broad strokes", I think that they're
6 essentially three parts of the delegation issue. Part
7 one: Does the statute allow it? Part two: Did the order
8 actually do that? And, Part 3, which is more factual than
9 legal, but I think it's pretty straightforward from the
10 record: Did DES actually do what the Applicant says it
11 did?

12 So, I think, you know, at least the
13 first two parts could be briefed as threshold legal
14 issues.

15 MR. IACOPINO: Let me just go through
16 the other intervenors. And, right now, I'm just talking
17 people who are either have a motion to intervene pending
18 or are actually intervenors. Ms. Peabody, what is being
19 suggested is that, before they get into a determination of
20 factual issues by submitting written questions or taking
21 depositions of each others witnesses, --

22 MS. PEABODY: Uh-huh.

23 MR. IACOPINO: -- that the parties
24 brief, in other words, provide written legal argument to

1 the Committee on these, what they believe are threshold
2 legal issues. Do you have any objection to that process?

3 MS. PEABODY: No, I don't. No.

4 MR. IACOPINO: Mr. Haskell, how about --

5 MR. HASKELL: No.

6 MR. IACOPINO: Ms. Lewis?

7 MS. LEWIS: I don't have an objection,
8 but I do have a question. Wouldn't this have been better
9 to come up during the proceeding, before the Certificate
10 was issued, when we talked about the Fire Marshal and the
11 letter at that point came through? Wouldn't a question of
12 the authority at that time? I guess, not being a legal
13 person, it seems to me like this is all being done
14 backwards.

15 MR. IACOPINO: I think part of that
16 question is is that the Certificate required the Applicant
17 to comply with all applicable building, fire, and
18 life/safety codes. I think that there is dispute over
19 what's applicable to them. And, I think that's -- I mean,
20 that's the easiest way to describe it. Obviously, it gets
21 more detailed when you talk about this code versus this
22 code or the authority of the Fire Marshal, under the code
23 or under the law, versus the authority at the local
24 building inspector. Those are sort of smaller legal

1 issues that are subsumed within that bigger one of "does
2 the Fire Marshal have the authority to seek the relief
3 he's seeking?"

4 So, that's the best that I can answer
5 your question. Would it have been nice to anticipate
6 this? Sure. But nobody had a crystal ball when we were
7 doing the proceedings either. So, I mean, that's
8 unfortunate, but we don't have a crystal ball. So, the
9 answer to your question is "yes". It would be nice if we
10 could have predicted this beforehand, but it wasn't. And,
11 so, we have to deal with the record that we have.

12 MS. LEWIS: Uh-huh.

13 MR. IACOPINO: So, the question is, is
14 do you have any objection to the process that is being
15 recommended jointly by the Department of Safety, Counsel
16 for the Public, and the Applicant?

17 MS. LEWIS: No.

18 MR. IACOPINO: Okay. Mr. Watson, I know
19 that you're not technically an intervenor yet, but I would
20 like your opinion on that, in the event that the Committee
21 grants your request to intervene.

22 MR. WATSON: Okay. My question about
23 this is will there be a timeframe?

24 MR. IACOPINO: Yes. The next thing that

1 we'll do is set a briefing schedule by which these written
2 arguments, which -- and any party is free to write their
3 own brief. It's not just limited to these folks. If you
4 guys want to participate in that process of filing a
5 written argument, you can do that.

6 But we'll move to the timeframe of when
7 those written arguments will be due, once I have an idea
8 if anybody has any problems with the process. So, the
9 question to you is, do you have -- do you have any
10 objection to dealing with the legal -- those threshold
11 legal -- or, what have been defined as "threshold legal
12 issues" by the other parties first?

13 MR. WATSON: No.

14 MR. IACOPINO: Okay. And, Mr. Rampino
15 and Mr. Saulnier, I'm going to ask you both the same
16 questions. Mr. Saulnier first.

17 MR. RAMPINO: Oh, boy.

18 MR. IACOPINO: Let's deal with
19 Mr. Saulnier first, okay?

20 MR. RAMPINO: Now, what are you going to
21 lay on me? I'm not trying to disrupt this proceeding.

22 MR. SAULNIER: No, for me.

23 MR. IACOPINO: Okay. And,
24 Mr. Rampino, --

1 MR. RAMPINO: Yes. I'm going to
2 interject and put in some questions and inquiries.

3 MR. IACOPINO: Okay.

4 MR. RAMPINO: Hopefully, with the help
5 of Cheryl Lewis.

6 MR. IACOPINO: Okay.

7 MR. RAMPINO: Because she seems to be
8 computer-savvy.

9 MR. IACOPINO: I don't think you'll be
10 filing a legal brief, though, will you?

11 MR. RAMPINO: Come on now. You're
12 kidding me.

13 MR. IACOPINO: Okay. I didn't think so.
14 So, the question is, is do you have an objection if the
15 other parties file legal briefs first, before that written
16 question -- before those written questions occur?

17 MR. RAMPINO: No.

18 MR. IACOPINO: Okay.

19 MR. RAMPINO: That's the right answer?

20 MR. IACOPINO: You're the only one who
21 knows if it's the right answer. Okay?

22 MS. PEABODY: It's the only way we can
23 move forward.

24 MR. IACOPINO: Okay. What is the

1 suggestion, in terms of timing for briefing, I assume, and
2 the briefing schedule? We've got these two broad issues.
3 Are you looking for a party to file an opening brief, and
4 then responses, or are you looking for all briefs due the
5 same time?

6 MR. ROTH: My guess -- my thought would
7 be that Groton Wind would file opening briefs on these
8 issues, because that's their contention. I mean, and that
9 we would have an opportunity to reply.

10 MR. IACOPINO: And, Groton?

11 MS. GEIGER: I think, with respect to
12 the issue of DES's authority, that that's been laid out in
13 our pleadings. But we'd be happy to file that, file that
14 brief or have both parties file at the same time, and then
15 both parties be given an opportunity to file brief replies
16 to each others. So that, I mean, typically, we know -- we
17 know what the question is. Are you going to issue a -- do
18 you intend to issue an order or memo memorializing today's
19 prehearing conference outlining the question?

20 MR. IACOPINO: There's going to be a
21 procedural order that comes out of today's proceeding that
22 will be signed by the Chairman, assuming he agrees with
23 me. And, what I am now anticipating is that that order
24 will include a briefing schedule, and it will include a

1 discovery schedule, and a rough date for hearings. And,
2 if that needs to be changed down the road, then we will
3 change it. But I am anticipating that it all be rolled
4 into a procedural order.

5 MR. ROTH: Mike, when we did Timbertop,
6 I think the way Timbertop went was we had legal briefing,
7 and then, depending on the outcome of the legal briefing,
8 you know, there might have been adjudicatory hearings,
9 and, you know, the whole panoply of discovery and
10 everything. And, I think there's a very similar
11 circumstance here, where we have these threshold legal
12 issues. So, I don't know why we can't look at that as a
13 model. And, I really, again, can't -- I think all of us
14 are in agreement that December is not a reasonable time to
15 be holding the adjudicatory hearing on this.

16 MR. IACOPINO: The difference -- the
17 difference between Timbertop and this, though, Mr. Roth,
18 is that you have two parties here asking that their
19 Certificate be suspended, okay? You and the Fire Marshal.
20 That's a -- it's a different procedure than sitting on an
21 application for a certificate.

22 MR. ROTH: That wasn't an application
23 for a certificate.

24 MR. IACOPINO: Or an application for

1 jurisdiction.

2 MR. ROTH: That was an application for
3 jurisdiction.

4 MR. IACOPINO: It's a different
5 procedure. There are -- there is a notice that has to go
6 out so that the Applicant is aware of -- formally aware of
7 the possible consequences. And that -- there's going to
8 be an order, there's going to be a procedural order. It
9 will have deadlines that hopefully we can come to
10 agreement on, and a notice to the Applicant and the public
11 and all parties that, you know, a possible outcome of this
12 is the suspension of the Certificate. It's what the
13 statute requires. And, there's going to be a procedural
14 order to that effect.

15 MR. ROTH: I have no problem with there
16 being a procedural order to that effect. But to set a
17 hearing in December is not in the best interest of anybody
18 in this room.

19 MR. IACOPINO: Let's deal with the dates
20 later. Right now we're talking about this threshold issue
21 in terms of what we are going to set for dates for the
22 briefing, okay?

23 MR. ROTH: Right. And, I think we can
24 do that. But you've said --

1 MR. IACOPINO: Well, we haven't even
2 agreed -- except we haven't even agreed on the method that
3 we're going to use yet.

4 MR. ROTH: Yes. But you have said
5 several times that there's going to be an order that sets
6 a hearing date in December, and that there's going to be a
7 discovery schedule. And, what I think you're hearing from
8 all these parties is that that's not the way we want to
9 go.

10 MR. IACOPINO: When do you think you
11 could provide a brief addressing the threshold legal
12 issues that you just outlined for all of us?

13 MR. ROTH: Well, as I proposed it, there
14 would be an opening brief from Groton Wind, and I'd have a
15 reply brief to that.

16 MR. IACOPINO: When do you think Groton
17 Wind's opening brief, under your scenario, should be
18 filed?

19 MR. ROTH: That's -- really, that's up
20 to them. You know, you should ask them that question.

21 MR. IACOPINO: So, you don't have an
22 opinion?

23 MR. ROTH: Well, it depends on what they
24 ask for. If they say their brief should be filed, you

1 know, six months from now, I would say "that's too long,
2 unless I get another six to reply."

3 MR. IACOPINO: Ms. Geiger, do you have a
4 recommendation for the filing of briefs?

5 MS. GEIGER: We would respectfully ask
6 for 30 days.

7 MR. ROTH: That's reasonable. And, we
8 would ask for 30 days to reply.

9 MS. SCHLITZER: I assume that we're
10 talking about all the threshold legal issues. And, I
11 would agree with that outline. And, I would also support
12 Susan's request that the legal issues be outlined in an
13 order, so that we're all on the same page as to what we're
14 arguing.

15 MR. IACOPINO: Well, the difficulty is
16 is I've asked a question to try to find out what those
17 issues are, and I can't get -- all I get is that we're
18 only prepared to deal broadly with what these thresholds
19 are. You know, so, I think the parties are going to be
20 somewhat on their own in determining what, you know, what
21 law you have to argue to address these issues. I've tried
22 to get the specifics of the issues involved. For
23 instance, I tried to ask the Applicant whether they
24 believe that the issues include not only the change in the

1 New Hampshire statute governing the Fire Marshal's
2 authority, but do they intend to also argue that somehow
3 the authority of the Site Evaluation Committee has
4 preempted the Fire Marshal's authority, and that, you
5 know, to make some argument based upon that? And, the
6 answer that I got is they "don't know yet."

7 MS. SCHLITZER: Yes. I guess we'll know
8 when they file their --

9 MR. EPSTEIN: Well, can I make
10 suggestion --

11 MR. IACOPINO: Well, that -- one moment,
12 though. What you're asking for is a procedural order that
13 defines the issues. And, I'm not so sure the parties have
14 defined the issues.

15 MS. SCHLITZER: Yes. I understand what
16 you're saying, Mr. Iacopino. And, I agree with you. And,
17 I guess, from my perspective, I'll know when they file
18 their document. So, I'm okay with that.

19 MR. IACOPINO: Mr. Epstein.

20 MR. EPSTEIN: I mean, the other thing I
21 was going to suggest is perhaps we might, you know, again,
22 the fact that we're not prepared to answer right now
23 doesn't mean we couldn't define the question, at least
24 with some degree of specificity in the next couple of days

1 and circulate it, you know. Again, we're not trying to --
2 I think it's helpful if we're all on the same page, and I
3 agree that the order would probably be better served that
4 way. So, maybe we could draft something and circulate it
5 to the service list as part of a way of helping to address
6 that issue.

7 MR. IACOPINO: That's normally the way
8 that I would do it. But things are just -- I mean, it's
9 just, there's too many issues here, I think. I'd rather
10 walk out of here with a recommendation that I can make to
11 the Chair, with a firm schedule, that's not really, you
12 know, waiting on something else.

13 MR. EPSTEIN: Okay.

14 MR. IACOPINO: And, I guess my question
15 to the Applicant, based upon that desire on my part is, do
16 you have any problem with addressing both legal issues in
17 your opening brief, and allowing them 30 days to respond?
18 And, I guess, at that point, if you feel that a response
19 to the response is necessary, to file a motion for leave
20 to do so.

21 MS. GEIGER: The deadline would be 30
22 days after receipt of the order that you're going to issue
23 about today's prehearing conference, is that correct?

24 MR. IACOPINO: I would prefer it to be

1 30 days from today, but I suspect it will be 30 days from
2 the order.

3 MS. GEIGER: I think that's doable.

4 MR. IACOPINO: And, no objection from
5 Counsel for the Public?

6 MR. ROTH: No. That would be fine.

7 MR. IACOPINO: Safety?

8 MS. SCHLITZER: No objection. But can
9 I, just to clarify, so, we're not going to try to work out
10 a statement of the issues, which I'm not asking for, I'm
11 very much in favor of having the Applicant just file their
12 pleading, and then --

13 MR. IACOPINO: You'll be responding.

14 MS. SCHLITZER: Thank you. Thank you.

15 MR. IACOPINO: Does anybody, any of the
16 other parties have any objection to that time frame?

17 (No verbal response)

18 MR. IACOPINO: Hearing none, I will
19 recommend that. Which puts us, roughly, because I don't
20 know what day the order will be signed, but, roughly,
21 November 2nd, which is actually a weekend, so,
22 November 4th, for the first brief from the Applicant;
23 thirty days from that will bring us to December 3rd --
24 December 2nd, I guess. And, those are rough. I haven't

1 counted out the days. Now, can you do all your discovery
2 in the next two weeks following that?

3 MR. ROTH: Very funny.

4 MR. IACOPINO: Okay. I would like to go
5 on beyond that for the whole issue of data requests and
6 depositions, so that we can at least have a plan if an
7 adjudicatory proceeding is needed. Because I would rather
8 do that now, than have another prehearing conference. I
9 understand it's not going to be December, Mr. Roth.

10 So, assuming an adjudicative hearing is
11 necessary after the filing of these motions, and I assume
12 that there will be a ruling on the motions, not the
13 motions -- on the briefings -- the problem is you guys
14 aren't going to get any hearing time, because the
15 Committee is going to have a number of other things going
16 on. I think we could reasonably say then that we would
17 get an order in 30 days from the final filing, which is,
18 what did I say, December 3rd, so that brings us to the
19 first of the year. Assuming there's an order by
20 January 3rd, which is the first Friday of 2014, when would
21 the parties like to send out their data requests?

22 MR. ROTH: Mike, at the risk of trying
23 your patience, I think it makes sense, instead of trying
24 to do that, to instead schedule another prehearing

1 conference, once we see the results of the briefing and
2 the decision, and then work it out. You know, people's
3 calendars, that's a long ways away. People's calendars
4 can change. I know I have a vacation scheduled for the
5 latter part of January. So, I think it makes some sense
6 to say we're going to have another prehearing conference
7 and address all those issues at that time.

8 MS. GEIGER: We would agree with that.

9 MR. IACOPINO: I knew that was going to
10 happen.

11 MS. SCHLITZER: I suspect also that,
12 perhaps after the order is issued, that might narrow some
13 discovery requests.

14 MR. ROTH: Potentially.

15 MS. SCHLITZER: So, that might make
16 sense.

17 MR. IACOPINO: Other parties that
18 haven't addressed this issue, what's being posited, what's
19 being suggested, requested by the Applicant, Counsel for
20 the Public, and Department of Safety, is that they're --
21 once they file those briefs and the Committee has ruled on
22 those threshold legal issues, that we then have another
23 meeting like this to determine the rest of the schedule.
24 That would, obviously, we're talking, that would be three

1 months from now, essentially, roughly three months from
2 now. If there's 30 days for them to file their brief, 30
3 days for everybody else, including you all, to respond
4 with briefs, and 30 days for the Committee to issue a
5 decision, that's 90 days. So, that's three months from
6 now. That puts us into January for a further prehearing
7 conference. Is there objection to that from any of the
8 other parties that haven't spoken to this issue yet?
9 Cheryl.

10 MS. LEWIS: I just have a question, not
11 an objection. Pardon me legal ignorance on this, but is
12 there any possibility of a Supreme Court appeal based on
13 the ruling?

14 MR. IACOPINO: There's always a
15 possibility. But I believe that this would not be
16 considered to be a final decision of the Committee. And,
17 usually, it's only a final decision of an administrative
18 agency that can be appealed. But that doesn't stop
19 anybody at any point from filing something with the
20 Supreme Court. I mean, we can never -- that's up to the
21 parties. If somebody believes tomorrow that what we did
22 here today is appealable, they could file an appeal to the
23 Supreme Court. I'm not saying -- I'm not going to posit a
24 guess what the Court would do with it. But it's always

1 possible that somebody could file an appeal. But,
2 normally, appeals are filed after a final order of the
3 Committee.

4 And, I'm pretty sure that, although I
5 haven't seen the briefs, I'm pretty sure that the -- well,
6 I suppose, depending upon how they ruled on the legal
7 issues, the Committee -- it might wind up being a final
8 order. It's possible, I suppose.

9 You know, could be that the Committee
10 says, you know, "somebody did" or "didn't have the
11 authority". Boom. And, that's the end of discussion.
12 The rest of it's unnecessary. In that case, there would
13 be the availability of an appeal to the parties who
14 disagreed with that.

15 MS. LEWIS: If that was the case, do we
16 just continue with the proceedings as if the appeal was
17 not in process?

18 MR. IACOPINO: Not under that
19 circumstance.

20 MS. LEWIS: I'm just thinking timing
21 wise --

22 MR. IACOPINO: Under that circumstance
23 -- I'm sorry. I cut you off. Why don't you finish your
24 question. I'm sorry.

1 MS. LEWIS: I was just questioning as
2 far as the timing part of it. Because, once that final
3 ruling is made, if it's still appealed, or once the ruling
4 is made on the briefs, if it's still potentially
5 appealable at that time, do we continue with the process
6 or does the process get stopped until there's a final
7 determination of that ruling?

8 MR. IACOPINO: It's hard to predict,
9 because we don't know what the -- whether the ruling would
10 be dispositive or not. If that ruling, if the legal
11 ruling on the briefs turns out to be dispositive of all of
12 the issues in the case, then there wouldn't be anything
13 further going on anyway at the Site Evaluation Committee.
14 If the Site Evaluation Committee issues a ruling that's
15 not dispositive of issues, then there would be further
16 proceedings. And, you know, there are several different
17 issues here, so that might rule one way on one that's
18 dispositive on that issue, but not dispositive on the
19 other. And, generally, they would wait until there's a
20 final order of the Committee.

21 MS. LEWIS: Thank you.

22 MR. IACOPINO: So, I mean, that's as
23 much as I can help you. Sort of the variables are too
24 many to actually predict what would happen. So, I'm not

1 hearing any objection to that timeframe then. There is
2 one issue --

3 MR. BROOKS: May I make a suggestion?

4 MR. IACOPINO: Yes, sir. I'm sorry,
5 Allen.

6 MR. BROOKS: Just in terms of how we are
7 going to proceed. I mean, I would schedule another
8 prehearing conference for around January 3rd anyway, get
9 that on everyone's calendars. But can we give some
10 instruction to the other folks who have to come down from
11 the Groton/Rumney area, that either they can choose to
12 participate telephonically or just submit something in
13 writing, because the next one is just going to be about
14 the schedule for discovery. It's just -- I think it's a
15 long trip for everybody to come down, if they don't feel
16 that they absolutely need to.

17 MR. IACOPINO: We may have some
18 limitations on the number of telephonic --

19 MR. BROOKS: Or, and maybe that they can
20 submit, again, something in writing that says "This is our
21 proposed schedule", and then defer. I just want to make
22 sure that they understand that they don't necessarily have
23 to make that trip.

24 MR. IACOPINO: I think that we can, in

1 the scheduling of that particular prehearing conference,
2 we can make some accommodations, in terms of, you know,
3 letting people know that they don't have to attend, or
4 making -- making arrangements for telephonic
5 participation.

6 MR. BROOKS: All right. We've done that
7 before. It doesn't always work well, and I'm not sure how
8 many -- I'm sure our court reporter would not like that,
9 but I'm not sure how many lines we actually can
10 accommodate. So, for instance, if everybody except the
11 front row wanted to call in, that would be -- I'm sure
12 that would be problematic, you know.

13 MR. ROTH: Mike, I have another wrinkle
14 to this, and --

15 MR. IACOPINO: I have a wrinkle, too,
16 but why don't we hear yours.

17 MR. ROTH: This wrinkle has to do with
18 the emerge -- or, the Turbine Access Road Maintenance and
19 Safety Agreement.

20 MR. IACOPINO: It's the same wrinkle I
21 was thinking of.

22 MR. ROTH: And, that is, we haven't seen
23 it yet, and there doesn't seem to be a dispositive legal
24 issue in the way of that. And, it may be that it's

1 perfectly acceptable to everybody and there is no issue.
2 But we won't know that until we've seen it. And, I think,
3 you know, all of us on this table probably want to see
4 that before we --

5 MR. IACOPINO: My understanding of that
6 agreement, and, Mr. Epstein, please correct me if I'm
7 wrong, is the agreement is in written -- it's in written
8 form, the substance of it is written down, it's just a
9 matter of adding signature blocks and getting them. Is
10 there any objection to, when you get back to your office
11 today, e-mailing that document, even though it's not
12 signed, to the service list, so that the other folks can
13 at least get a head start on looking at it?

14 MR. EPSTEIN: I don't get back to my
15 office till Friday. But, if I can send it out as soon as
16 I get back to my office? I apologize. I'm actually
17 taking some time up in New England while I'm here.

18 MR. IACOPINO: Is that fair enough for
19 everybody? Is it fair enough for you, Mr. Roth?

20 MR. ROTH: That sounds perfectly fine.

21 MR. IACOPINO: So, I want you to keep
22 getting the signatures and doing whatever it is --

23 MR. EPSTEIN: Absolutely.

24 MR. IACOPINO: -- that your Company

1 needs to do to get these people to sign it, okay, that
2 have already agreed. But, also, if you can get the draft
3 that exists now out to everybody when you get back to your
4 office, I think that would be helpful.

5 MR. ROTH: Mike, what I would propose,
6 and I think this is somewhat logical, is that you set a
7 date by which they have to file a signed copy, and then
8 provide a date in your order by which parties have to
9 object to it. And, then, we'll go from there. Because,
10 if it doesn't draw any objections, then, you know,
11 terrific. But, if it does, then we need to come back,
12 perhaps, and talk about how that's going to get
13 adjudicated.

14 MR. IACOPINO: How much time do you
15 think, I know you haven't seen the document, but how much
16 time do you think would be fair to give you the
17 opportunity to review a safety plan and notifying of your
18 objection or not?

19 MR. ROTH: I'm assuming it's not going
20 to be hundreds of pages long, so --

21 MR. EPSTEIN: Six.

22 MR. ROTH: Six, there we go. Two weeks.

23 MR. IACOPINO: Okay. Anybody else have
24 any objection -- any objection to responding in two weeks

1 as to whether or not you object? And, remember, this
2 isn't, and I don't want to overstate or understate the
3 importance of this, this document. This document
4 primarily, as I understand it, pertains to the maintenance
5 of the roads up there. My understanding, rough, of the
6 agreement, rough, is that there was agreement that the
7 roads would not be plowed to tar, that, in fact, the roads
8 would be packed by the snow cats to allow access by track
9 vehicles, snowmobiles, and other, what are they called,
10 the four-wheeler type of vehicle, that are owned by the
11 Applicant and some of the local departments to get access
12 there. That's my rough understanding of the primary issue
13 in that, which was winter maintenance. So, it's not a
14 safety plan, at least to my understanding, is it's not a
15 safety plan in terms of, you know, I don't know, what
16 circuits they're going to turn off and stuff like that in
17 the event of an emergency. It's more an access plan,
18 right?

19 MR. EPSTEIN: Right. It deals with
20 access and communications with emergency responders. It's
21 how we communicate with emergency responders, how they get
22 access to the facility.

23 MR. IACOPINO: And, I've gone through
24 that primarily --

1 MR. ROTH: All year round?

2 MR. IACOPINO: I've gone through that
3 primarily --

4 MR. EPSTEIN: Yes. All year round.

5 MR. IACOPINO: And, I've gone through
6 that primarily for your benefit, Mr. Anstey, in terms of
7 how much time you think it would take for you to weigh in,
8 after review of a six-page plan?

9 MR. ANSTEY: The two-week timeframe is
10 fine.

11 MR. IACOPINO: Ms. Peabody.

12 MS. PEABODY: I'd like to say that snow
13 comes early in the north country. And, it could snow by
14 the end of the month. So, I think this is very important.

15 MR. IACOPINO: I've heard there is some
16 snow up there already. So, anybody -- does anybody, any
17 of the other intervenors have an objection to that?

18 (No verbal response)

19 MR. IACOPINO: Okay. So, what we will
20 do is there will be an order that will issue. You're
21 going to send out the draft as it exists. There's going
22 to be -- and, do you think, by the following Friday,
23 you'll have it with signatures on it?

24 MR. EPSTEIN: I've got -- obviously,

1 somebody else will be working on that. I don't know,
2 honestly. I will presume to say I would imagine, but I
3 don't know the availability.

4 MR. IACOPINO: Okay. All right. So, by
5 this Friday, you're going to provide the draft that
6 presently exists to the service list. And, we will then
7 set the next Friday for the final. And, if there's a
8 problem with that, let me know.

9 MR. EPSTEIN: And, to the extent that
10 there are objections, we would, obviously, want to or
11 need, I think, to consult with the emergency responders.
12 To the extent that they have already seen this, we
13 wouldn't want to make modifications to the plan that they
14 have not had a chance to review as well. So, again, we
15 met with them, and we believe that they're satisfied.
16 And, certainly, we don't want to short circuit the ability
17 of anyone's right to -- eh -- the ability of anyone to
18 participate in this process. But, clearly, they are the
19 most important people involved. So, they would need to be
20 involved with any modifications requested by anybody else.

21 MR. IACOPINO: That's understood. And,
22 that's why we went through the process to have them meet.
23 So, if the process then is that by Friday you get the
24 draft out to the service list. By the following Friday,

1 which I don't have the date right handy right now, but the
2 signed agreement is filed --

3 MR. EPSTEIN: That's the 11th.

4 MR. IACOPINO: The 11th, okay. And,
5 then, the parties have two weeks to object to that.

6 In response to those objections, how
7 much time do you think you would need to speak to the
8 other signatories and file a response to the objections,
9 so that the Committee knows if it's just something you're
10 going to tweak or if it's, you know, requires an
11 adjudicative proceeding?

12 MR. EPSTEIN: I'm assuming, I mean, we
13 are talking -- there were -- how many first responders did
14 we have? Fifteen of them, something like that?

15 MR. DELOOFF: Yes. We had
16 representatives of all the communities around there, and
17 we ended up with about 15 different people. And, so, we
18 have to go through all that again and to get everybody
19 back together, because we try to make certain that all the
20 responders can fulfill what they're saying that they're
21 going to be doing.

22 MR. IACOPINO: I don't want to require
23 you to do something that's impossible. But I also want
24 to --

1 MR. EPSTEIN: We would try to --

2 MR. IACOPINO: -- try to get this issue
3 resolved. Okay.

4 MR. EPSTEIN: Yes. I --

5 (Court reporter interruption - multiple
6 parties speaking at the same time.)

7 MR. EPSTEIN: Sorry.

8 MR. IACOPINO: He said he's going to try
9 within two weeks to respond to the objections, if any.
10 Does that satisfy your concern with respect to that
11 outstanding issue? It does mine.

12 MR. ROTH: Mine, it does, yes.

13 MR. IACOPINO: So, we're looking at
14 another prehearing conference under this scenario, early
15 January, is that right? Thirty days -- and somebody said
16 they had a vacation in January, I forget who it was.

17 MR. ROTH: I do, in the last part.

18 MR. IACOPINO: All right.

19 MR. ROTH: So, if you scheduled the
20 prehearing before the --

21 MR. IACOPINO: Yes, there will be a
22 prehearing --

23 MR. ROTH: -- before Martin Luther King
24 Day, I should be okay.

1 MR. EPSTEIN: Just to complicate things,
2 I actually have a vacation the first week, through the
3 9th, I'm afraid.

4 MR. IACOPINO: Okay.

5 MR. EPSTEIN: My first vacation in two
6 years, and my wife will shoot me, if I don't go.

7 MR. IACOPINO: Any other scheduling
8 issues?

9 (No verbal response)

10 MR. IACOPINO: Peter, do you know which
11 day is Martin Luther King that next year? I don't have it
12 in my calendar.

13 MS. LEWIS: Twentieth.

14 MR. IACOPINO: Twentieth?

15 MR. CLAYTON: January 20th.

16 MR. IACOPINO: Okay.

17 MR. ROTH: I will tell you when I'm
18 going, it will be easier.

19 MR. IACOPINO: Yes. I hope you're going
20 some place good.

21 (Short pause.)

22 MR. IACOPINO: I mean, from mine, just
23 looking at a calendar in January, it looks like it would
24 be the week of the 13th, which is the week prior to Martin

1 Luther King Day, assuming it's on the 20th. That
2 accommodates Mr. Epstein. Assuming that the 20th is the
3 key date for you, Peter, it looks like that week, at least
4 as far as your vacation goes, would be free. I don't know
5 what other scheduling issues you or anybody else might
6 have during the week of the 13th.

7 MR. ROTH: Yes. I couldn't tell you
8 right now. But I think that that works.

9 MR. IACOPINO: Anybody else have
10 problems with the week of January 13th? Obviously, I
11 can't pull a day out of the air right now, because we have
12 to see what the Public Utilities Commission is doing with
13 this room. But the week of the 13th, anybody have an
14 objection to that prehearing conference being scheduled
15 during that week?

16 MR. EPSTEIN: The 13th is my birthday.
17 So, if we schedule it that day, I'll bring a cake. You
18 can put that --

19 MR. IACOPINO: It better be a big one.

20 MR. EPSTEIN: You can put that in the
21 record, if you'd like.

22 MS. PEABODY: And, mine's the 18th.

23 MR. IACOPINO: Okay. That's what I am
24 going to recommend then. Now, there's no question, but

1 parties are talking about needing discovery. I am going
2 to ask that, and I'm going to recommend that the order,
3 what I have in the memo and agenda, be complied with,
4 which, even though it doesn't have to do with the -- may
5 have to do with the issues being briefed, but I'm still
6 going to ask that the Applicant provide a complete set of
7 all communication with the Department of Environmental
8 Services within ten days of the order. That the Fire
9 Marshal file those codes that you believe are applicable
10 within ten days of the order. And, then, if any other
11 parties think that some other codes are applicable, they
12 file them within ten days afterwards. And, again, my
13 reasoning there has nothing to do, other than making sure
14 that I have the minimum that is necessary for the
15 Committee to understand the issues.

16 Some of these are going to be issues of
17 interpretation. And, I assume that that's why there's
18 been a request to deal with the legal briefing first. I
19 would like to have that available, because the Committee
20 should -- will need to be updated on what's going on and
21 why. And, it also provides, at least as I can tell, the
22 minimum amount of information that would be necessary on a
23 factual basis to address the various issues here. And,
24 I'd like to get that out of the way as soon as possible.

1 I think it's also helpful to the number of *pro se*
2 intervenors that we have in the proceeding, so that they,
3 you know, the words "applicable building code" or
4 "applicable fire code" doesn't mean anything to anybody,
5 unless they have what it's expected to be in front of
6 them. So, I think it's also helpful to the *pro se*
7 intervenors to have that information available. So,
8 please, the order will have that, have those requirements
9 in it, assuming that the Chair agrees with me, and we will
10 ask that that information be provided, despite the fact
11 that we're now going into a legal briefing process.
12 Mr. Epstein, did you have something?

13 MR. EPSTEIN: The first item that you
14 had requested, our communications with DES, we've got that
15 assembled. It's, obviously, it's got voluminous
16 electronic attachments. We'll post that through some kind
17 of FTP site or an equivalent, and we'll circulate the
18 information. But we've got all that stuff together. So,
19 we'll provide that, we'll link to that as soon as we
20 figure out how we're going to do it.

21 MR. IACOPINO: Okay. I also suggest
22 that you contact Jane Murray at DES. She may have the
23 ability, she may not, depending upon the size, to do it.
24 But, if we need to set up a, you know, a data source

1 somewhere in the "cloud", as they say, or something, we'll
2 leave it to you to -- if Ms. Murray cannot accommodate the
3 size of the filing, I assume you'll do a drop box or
4 something.

5 MR. EPSTEIN: Yes. I was going to say,
6 we're happy to do it, we're happy to have Ms. Murray do
7 it. We're just offering, based on what we --

8 MR. IACOPINO: Well, check with her
9 first, because we would prefer to offer it on the website,
10 because that's a common place that, not only the people
11 who are aware of what's going on, but the public can go to
12 as well.

13 MR. EPSTEIN: Sure.

14 MR. IACOPINO: But, if we can't
15 accommodate it, because of the limitations of the state's
16 computer system, then we'll have to do it through a drop
17 box. Ms. Peabody?

18 MS. PEABODY: Could I have permission to
19 ask the Applicant a question, with regards to -- I just
20 wanted to know if a Wetlands application was submitted at
21 all?

22 MR. IACOPINO: I can answer your
23 question. Yes, there was. And, it is part of the
24 initial, if you look at our website, part of the initial

1 application that was filed with the Site Evaluation
2 Committee contained a copy of the Wetlands application.
3 That the website also contains the Department of
4 Environmental Services' responses and recommendations
5 regarding that Wetlands application. I don't recall if it
6 was amended at all in this particular case. But, if there
7 were amendments, it will be on the Site Evaluation
8 Committee's website as well. As you know, our website is
9 not the most --

10 MS. PEABODY: I don't know. I haven't
11 been on your website.

12 MR. IACOPINO: Well, it's not the most
13 intuitive. It goes, if you go to the bottom for what came
14 first, and the top for what came last. So, you're going
15 to be looking down at the bottom for that initial Wetlands
16 application.

17 MS. PEABODY: Okay. And, what -- give
18 me your address.

19 MR. IACOPINO: It's *www.nhsec.nh.gov*.

20 MS. PEABODY: Thank you.

21 MR. IACOPINO: And, if you don't find
22 what you're looking for there, you should, and this goes
23 for anybody, feel free to give me a call, if you need some
24 help getting around it or something. I don't physically

1 put the information on it. That's done by the State IT
2 people. But, obviously, I'm on it almost every day. So,
3 if you need some help finding something, I can try to help
4 you.

5 MS. PEABODY: Thank you.

6 MR. IACOPINO: All right. Does anybody
7 think there's anything else we need to schedule or resolve
8 here today?

9 (No verbal response)

10 MR. IACOPINO: Once again, as I always
11 do, I recommend to the parties, it is also much better to
12 settle issues that are in dispute than to have to litigate
13 them. We have serious issues in dispute in this case, I
14 understand that. It is my hope that some of them will go
15 away by settlement. I encourage the Applicant and the
16 Fire Marshal particularly to get together and talk about
17 if there's a way to resolve his concerns, you know. But I
18 also don't -- I'm not giving up on the prospect of the
19 possibility of settlement on the O&M issue. And, I
20 encourage all of the parties to speak to each other,
21 including to the Applicant, through their representatives,
22 to see if there is not some common ground that can be
23 reached with respect to that. I also encourage those
24 parties that are represented by counsel, only because this

1 is a little more complicated, is, if you believe there are
2 some factual stipulations that you can agree to, please
3 address that with each other now, in this timeframe, where
4 we have a briefing coming up. It may help you in your
5 briefing. But, aside from that, if there are things that
6 -- if there are factual determinations that you can
7 stipulate to, that will make the second phase of what
8 we're going to be doing, starting in January, easier for
9 everybody.

10 You know, there's never any guarantees
11 on what any administrative tribunal is going to do. And,
12 I ask everybody to keep that in mind in taking positions
13 with respect to settlement or stipulations. If you need
14 any assistance in that regard, I am more than happy to try
15 to assist. Is there anything else that anybody thinks
16 needs to be addressed at this prehearing conference?

17 (No verbal response)

18 MR. IACOPINO: It is ten minutes of two.
19 We'll be adjourned.

20 MR. ROTH: Thank you, Mike.

21 MR. IACOPINO: Thank you.

22 **(Whereupon the prehearing conference**
23 **ended at 1:50 p.m.)**
24