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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

January 30, 2014 - 10:12 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)
Toan Nguyen, Esq. (Iberdrola/Groton Wind)

Reptg. Counsel for the Public:
K. Allen Brooks, Esq.
Senior Asst. Atty. General
N.H. Attorney General's Office

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

Reptg. the Town of Groton:
Miles Sinclair, Selectman

Reptg. the Town of Rumney:
Edward Haskell, Selectman

**Reptg. the Buttolph/Lewis/Spring
Intervenor Group:**
Cheryl Lewis
Lisa Linowes (Wind Action Group)

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

 Reptg. Mario Rampino:
Justin C. Richardson, Esq. (Upton & Hatfield)

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

ALSO PRESENT: Raymond Landry (with Marianne Peabody)
Eric Werme (Wind Watch)
Rep. Suzanne Smith (Grafton-District 8)
Jennifer Tuthill (Wind Watch)
George Tuthill (Interested)
Robert Piehler (Wind Watch)
Edna Piehler (Interested)
Sarah Allen (Interested)

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P R O C E E D I N G

1
2 MR. IACOPINO: Okay. Why don't we get
3 started with the prehearing conference. We are here today
4 in Docket Number New Hampshire Site Evaluation Committee
5 Docket Number 2010-01. We're here today for a prehearing
6 conference. I did try to distribute late yesterday an
7 agenda for our conference here today. There are copies of
8 them on the back tables, if anybody needs a copy. And,
9 that agenda lays out what the purpose of a prehearing
10 conference is. This is not the first one that we've had
11 in this docket. But, on the first page of that
12 memorandum, there is a definition of what our purpose is
13 here today. And, as indicated there, a prehearing
14 conference is an informal meeting. I've been designated
15 by the Chair of the Site Evaluation Committee to preside
16 at this informal meeting. Our purpose today is to go
17 through the number of different issues in this particular
18 case. Those issues are defined in the Administrative
19 Procedures statute, as well as in our administrative
20 rules. Prehearing conferences are used to consider and to
21 determine whether there are settlements that can be made
22 between the parties; whether there are issues that can be
23 simplified; whether there are stipulations or admissions
24 with respect to issues of fact or proof that the parties

{SEC Docket No. 2010-01} [Prehearing conference] {01-30-14}

1 can agree to; if the parties can agree to procedural
2 issues, such as limiting the number of witnesses or the
3 types of prehearing discovery; whether there should be
4 some change in this particular docket, based upon the
5 individual aspects of the docket to the regular procedures
6 that are followed in an adjudicatory proceeding; whether
7 examination of witnesses can be consolidated or shortened;
8 and any other matters which would help the Committee in
9 getting to a final disposition of the matter.

10 As I said, this is informal. I've
11 provided an outline and an agenda on the second page of
12 that memorandum. And, that's not set in stone. We may
13 deviate from that, if the conversations here today require
14 that.

15 But the first order of business is to go
16 around the room and identify everybody who is here. I
17 will start with myself. My name is Michael Iacopino. I
18 have been designated as outside counsel for the New
19 Hampshire Site Evaluation Committee in this docket. I
20 actually practice law in Manchester, New Hampshire. And,
21 I've been designated as the presiding officer for this
22 proceeding here today.

23 What, I'm going to do is go clockwise
24 around the room, to have everybody else identify

1 themselves, starting with the Applicant at the front table
2 on my -- to the audience's right.

3 MS. GEIGER: Yes. Good morning, Mr.
4 Iacopino. Susan Geiger, from the law firm of Orr & Reno,
5 on behalf of Groton Wind, LLC. And, with me at counsel's
6 table is Attorney Toan Nguyen, from Iberdrola and Groton
7 Wind.

8 MR. IACOPINO: Thank you. Miles.

9 MR. SINCLAIR: Miles Sinclair, Town of
10 the Groton Selectboard.

11 MR. IACOPINO: Justin.

12 MR. RICHARDSON: Justin Richardson, with
13 Upton & Hatfield, here for Mario Rampino.

14 MR. PIEHLER: Bob Piehler, Alexandria,
15 Wind Watch.

16 MR. WERME: Eric Werme, Boscawen, Wind
17 Watch.

18 MR. IACOPINO: Ma'am.

19 MS. ALLEN: Sarah Allen, interested.

20 MS. PIEHLER: Edna Piehler, interested.

21 MR. IACOPINO: Ed.

22 MR. HASKELL: Ed Haskell, Selectman,
23 Rumney.

24 REP. SMITH: Suzanne Smith, State Rep.,

1 Grafton County, District 8.

2 MR. TUTHILL: George Tuthill,
3 Alexandria, interested citizen.

4 MS. TUTHILL: Jennifer Tuthill, New
5 Hampshire Wind Watch.

6 MR. WATSON: Mark Watson, intervenor.

7 MS. LEWIS: Cheryl Lewis, intervenor.

8 MS. LINOWES: Lisa Linowes, Wind Action
9 Group.

10 MS. PEABODY: Marianne Peabody, abutter.

11 MR. IACOPINO: Sir.

12 MR. LANDRY: Ray Landry, husband.

13 MR. BROOKS: Allen Brooks, sitting in
14 for Counsel for the Public, Peter Roth.

15 MS. MARTIN: Dianne Martin, from New
16 Hampshire Attorney General's Office, here for the Office
17 of the Fire Marshal and Department of Safety.

18 MR. ANSTEY: Ron Anstey, State Fire
19 Marshal's Office.

20 MR. IACOPINO: And, if you haven't
21 noticed, we do have a court reporter, Mr. Paquette
22 [Patnaude], who is taking everything down. So, it's
23 important that, when we speak during this proceeding, we
24 don't speak over each other, and one person speaks at a

1 time. Please try to be as clear in your speaking as
2 possible, and use the microphones that are in front of
3 you. You'll be able to know if the microphone is on, if
4 there's a little red light, that's on.

5 Okay. In my agenda, I wanted to first
6 outline what I perceive and what I think the Committee
7 perceives as being the outstanding issues in this docket.
8 And, I've listed them as "A" through "G", under Subsection
9 II of the agenda. I also note that, in the order and
10 notice of -- I forget what date this was -- but, in the
11 order of notice of January 9th, 2014, the Chair of the
12 Committee laid out what he perceived to be the outstanding
13 issues in this case. Essentially, and they're stated a
14 little bit differently in each document, but I think
15 they're essentially the same.

16 There is the issue of the Road Safety
17 and Maintenance, that has sometimes been referred to as
18 the "Environmental Health and Safety Plan", and is
19 encompassed in the order of notice for this hearing as to
20 whether or not the facility is in compliance with the
21 terms of its Certificate pertaining to that particular
22 plan. And, I know that there have been some efforts over
23 the course of time to come to some kind of resolution with
24 respect to that particular issue. However, as of at least

1 the time that we scheduled this hearing, I have not been
2 made aware of any resolution of that issue.

3 The second issue that the Chair laid out
4 is "whether there should be an amendment to the
5 Certificate pertaining to that", to that particular issue,
6 "the Safety and Maintenance Program?"

7 The third issue, which is the fourth
8 issue on my Outline of Agenda, is "Should the Motion to
9 Re-open the Record that was filed by the
10 Buttolph/Lewis/Spring intervenors, should that motion be
11 granted?"

12 The next issue is, "Is the facility in
13 compliance with the terms and conditions of the decision
14 and Certificate, as they pertain to the location where the
15 Operation & Maintenance Building and the location of the
16 individual turbines are presently, where they were
17 actually built?"

18 The Chair listed the fifth issue as
19 "Should the request of the Fire Marshal to suspend the
20 Certificate be granted?"

21 And, the sixth issue is the "Applicant's
22 Motion to Amend the Certificate, should that be granted?"

23 I have a seventh issue involving
24 "Individual Intervenor Issues", because I was advised

1 before our meeting today that some of the individual
2 intervenors may have reached or may be close to reaching a
3 settlement agreement with the Applicant. So, I put that
4 on our list as well.

5 So, I'm going to go around the room,
6 starting with the Applicant, and then going over to
7 Counsel for the Public and the Fire Marshal, and then
8 going, zigzagging back across the room. Does anybody
9 believe there are any other outstanding issues that need
10 to be addressed at this prehearing conference today,
11 starting with the Applicant?

12 MS. GEIGER: I don't believe so.

13 MR. IACOPINO: Mr. Brooks?

14 MR. BROOKS: No.

15 MR. IACOPINO: Ms. Martin?

16 MS. MARTIN: No.

17 MR. IACOPINO: Sir?

18 MR. WATSON: No.

19 MR. IACOPINO: Cheryl?

20 MS. LEWIS: No.

21 MR. IACOPINO: And, I know you filed an
22 appearance. And, I don't know -- who's going to speak for
23 that intervenor group today, at least at this proceeding?

24 MS. LINOWES: Just for the moment, if

1 both either Cheryl or I can, if that's okay?

2 MR. IACOPINO: Okay. But I'm going to
3 -- I'll look to you to see who's going to answer the
4 questions, okay?

5 MS. LINOWES: Okay.

6 MR. IACOPINO: Ms. Peabody?

7 MS. PEABODY: No.

8 MR. IACOPINO: Okay. Mr. Sinclair?

9 MR. SINCLAIR: No, sir.

10 MR. IACOPINO: Any additional issues?
11 Justin, any?

12 MR. RICHARDSON: No issues.

13 MR. IACOPINO: Okay. Any other
14 intervenors? Mr. Haskell?

15 MR. HASKELL: No.

16 MR. IACOPINO: Okay. And, I think that
17 covers everybody who is actually a party to the
18 proceeding. Any party that hasn't been asked?

19 (No verbal response)

20 MR. IACOPINO: Okay. So, those are the
21 issues. And, I understand that there are subissues
22 contained in each one of those, which may ultimately
23 become litigated or settled, depending upon how the
24 parties go.

1 All right. Well, then, at this point, I
2 do understand that, actually, the Chair strongly urged all
3 the parties to pursue settlement and/or discovery
4 informally. And, I do understand there have been some
5 settlement discussions that have occurred. So, I'm going
6 to start with the Applicant. And, if you could, Ms.
7 Geiger, just let me know, are there any settlements that
8 the Applicant believes have actually been reached with
9 other parties?

10 MS. GEIGER: Yes.

11 MR. IACOPINO: And, could you tell me
12 what those are. I don't need the great detail. Right
13 now, I'm just trying to sort of get an inventory.

14 MS. GEIGER: Sure. As evidenced by the
15 withdrawal form filed by Gregory Saulnier, any issues that
16 he may have raised at the prior prehearing conferences
17 have been resolved to his satisfaction.

18 MR. IACOPINO: I'm sorry, --

19 MS. GEIGER: Mr. Saulnier. He's an
20 abutter.

21 MR. IACOPINO: Yes. Right. When did he
22 file a withdrawal? I have not seen it.

23 MS. GEIGER: It was posted on by
24 Ms. Murray this morning. We got an e-mail.

1 MR. IACOPINO: Okay. Okay. I haven't
2 seen my e-mail today. Okay. So, Mr. Saulnier has
3 settled.

4 MS. GEIGER: Yes.

5 MR. IACOPINO: Is there any others?

6 MS. GEIGER: Yes. We're in the process
7 of executing documents with Mr. Rampino and his counsel,
8 Attorney Richardson. And, we expect that, within the next
9 couple of days, Mr. Rampino will be withdrawing any claims
10 that he might have asserted in this docket. And, I defer
11 to Mr. Richardson to confirm that.

12 MR. RICHARDSON: That is correct.

13 MR. IACOPINO: Thank you. Are there any
14 other settlements?

15 MS. GEIGER: Yes. Ongoing discussions
16 with Ms. Peabody regarding a potential settlement of her
17 claims. And, those are still in -- they're still ongoing.
18 And, I believe an offer has been made and is being
19 considered.

20 MR. NGUYEN: Correct.

21 MS. GEIGER: And, I guess I would defer
22 to Ms. Peabody, if she wants to speak to that, to confirm
23 the fact that an offer has been made to here.

24 MS. PEABODY: An offer has been made.

1 MR. IACOPINO: Okay. And, you're
2 considering it?

3 MS. PEABODY: We're in the early stages
4 of discussion.

5 MR. IACOPINO: Okay. Thank you. And,
6 are there any other settlements that the Applicant is
7 aware of?

8 MS. GEIGER: Yes. With respect to the
9 State Fire Marshal, we've been in I would characterize
10 them as "fairly active conversations" over the last month
11 or so, to try to resolve the State Fire Marshal's issues.
12 And, there was a site visit by the State Fire Marshal last
13 Friday. And, I could -- I did not attend that. But
14 perhaps Mr. Anstey can fill you in, if you need that.
15 And, I would also defer to Attorney Martin as well, to
16 confirm the fact that we are actively pursuing
17 negotiations over the installation of a fire suppression
18 system, which is one of the concerns that the State Fire
19 Marshal has been pursuing in this docket, as well as other
20 fire safety-related issues at the site. And, we continue
21 to work on those, and are trying to make a diligent effort
22 to resolve those issues.

23 MR. IACOPINO: Okay. Is that a fair
24 statement a status of negotiations with the Fire Marshal's

1 Office?

2 MS. MARTIN: It is. I would say that we
3 -- that they have, in the recent past, made efforts to
4 come into compliance, and representations that they're
5 going to come into compliance, including fire suppression
6 in the nacelles. However, they are not in compliance at
7 this time. And, so, our position will not change, given
8 the history of this case, until they are actually in
9 compliance.

10 MR. IACOPINO: Okay. If you or Mr.
11 Anstey could just inform us a little bit in terms of the
12 fire suppression system that's under discussion. Is that
13 something that is deemed to be acceptable to the Fire
14 Marshal's Office or is it still under review or --

15 MS. MARTIN: Yes, it's still under
16 review. We are still in the initial phases of discussing
17 that and reaching an agreement. But, at this point, it's
18 looking favorable.

19 MR. IACOPINO: Okay. We've gotten up
20 through the Fire Marshal. Any other settlements that the
21 Applicant --

22 MS. GEIGER: I don't believe so.

23 MR. IACOPINO: Let me ask you a
24 question. Has there been any discussion regarding the

1 Safety and Maintenance Program, the winter safety and
2 maintenance issues?

3 MS. GEIGER: Yes. I apologize. I spoke
4 too quickly. And, perhaps Mr. Sinclair can help me out on
5 this one. The Applicant or Groton Wind is in the process
6 of trying to memorialize the arrangements for access to
7 the Project during months when the roads are impassable
8 due to snow cover conditions. And, we drafted a motion --
9 well, we drafted an amendment to the Town Agreement,
10 which, as you recall, is a Certificate condition, to
11 further clarify Paragraph 8.2.1 that speaks to road access
12 maintenance, road maintenance. And, we've presented an
13 amendment to the Town Agreement to the Town of Groton for
14 its consideration. We're working on getting that
15 hopefully reviewed by the Town's attorney, and then
16 approved by the Board of Selectmen. But I will defer to
17 Mr. Sinclair on that, because I have not been directly
18 involved in dealing with the Town on that matter.

19 MR. IACOPINO: What say you, Miles?

20 MR. SINCLAIR: We did fairly recently
21 receive a proposed revision, a draft form. We did discuss
22 that at our Selectboard meeting last night. We did
23 propose some minor revisions. We needed a clarification
24 of the intent of a particular paragraph within that

1 proposed amendment. And, we did decide to, once that is
2 ironed out and it's basically in its final draft form, to
3 refer that to the Town's attorney for some input.

4 MR. IACOPINO: Can I -- is there any --
5 is this just the Selectmen or are the safety officials in
6 the Town involved in this review as well?

7 MR. SINCLAIR: The fire -- the Town's
8 Fire Chief, Roger Thompson, was present when this
9 discussion took place.

10 MR. IACOPINO: All right. And, is the
11 plan to get approval through Groton first, and then to --
12 actually, I don't even know, maybe between Mr. Haskell and
13 Mr. Sinclair, you can let me know, who's providing first
14 responder services to Groton today?

15 MR. SINCLAIR: At present, it's the Town
16 of Rumney, but that's --

17 MR. HASKELL: Up in the air.

18 MR. SINCLAIR: That's a fair -- a fair
19 statement.

20 MR. IACOPINO: Well, I know that it's
21 been an ongoing issue. I know that's been, you know, we
22 got copied on the letter when Rumney indicated they were
23 no longer going to be providing, or I forget whose letter
24 it was, whether it was Groton or Rumney's letter. But,

1 right now, I mean, if I needed help in Groton today, it
2 would be the Rumney Fire Department that would respond or
3 Rumney EMS?

4 MR. HASKELL: Right.

5 MR. IACOPINO: All right.

6 MR. SINCLAIR: And, I just got some
7 information from Mr. Haskell here this morning. The
8 letter that you referred to was not that they couldn't
9 provide fire response, it was EMS services. And, he's
10 indicated here this morning that, apparently, that's been
11 straightened out.

12 To be forthcoming, the Town of Groton
13 has been weighing what its options are with respect to
14 fire coverage. We've gotten a recommendation from our
15 Fire Chief not to renew the contract with Rumney, but that
16 doesn't mean that's what's going to happen. We, actually,
17 last night, we're looking to finalize our budget, and we
18 factored in monies to cover the contract with Rumney,
19 should we sign it, because we have our budget hearing
20 coming up this Tuesday.

21 MR. IACOPINO: Okay.

22 MR. SINCLAIR: So, that's pretty much
23 where we stand at the moment.

24 MR. IACOPINO: Okay. So, right now,

1 though, it's Rumney that's responding to an emergency?

2 MR. SINCLAIR: Rumney and Hebron.

3 MR. IACOPINO: So, to follow up on my
4 line of questions then, is there, and this may be for Ms.
5 Geiger, and not necessarily for you, Mr. Sinclair. But
6 does the Applicant intend to, once you've come to some
7 kind of terms with Groton, to present that agreement to
8 the folks in Rumney, because they're the ones who are
9 actually going to go up on the mountain, so to speak?

10 MS. GEIGER: Well, I was really
11 following, taking my lead from the agreements that were
12 filed and have been part of the Certificate. And, it's
13 the Town of Groton's Agreement that we believe should be
14 amended, because that is the one that specifically speaks
15 to road maintenance and access. So, it was that agreement
16 that we were initially seeking to have amended by the
17 counterparty, Town of Groton.

18 We had not specifically decided whether
19 or not to, for lack of a better term, shop that around to
20 other parties. What we were going to do is file a motion
21 to amend the Certificate, to include the -- assuming that
22 the amended agreement is signed, that we would file a
23 motion to amend the certificate conditions, to reflect the
24 amended agreement. And, in doing that, we obviously, in

1 filing a motion, need to seek concurrence of other
2 parties. So, what we would do in that concurrence
3 exercise, if you will, is find out what the other parties,
4 you know, do or do not feel about the proposed amendment.

5 MR. IACOPINO: Okay. Well, that makes
6 sense. But I guess the reason why I asked, I just want to
7 know if it is going to be sent around, and I assume it --
8 you're saying you're going to do it as part of this
9 process?

10 MS. GEIGER: Right. And, what we do is
11 I file a motion to amend, and then, obviously, file the
12 amended agreement, assuming that that's filed. Have all
13 the parties to the docket review it and give their
14 position, and then I can represent those positions in the
15 motion to amend.

16 MR. IACOPINO: All right. And, I ask
17 this last question about settlements just out of hope.
18 Any resolution with respect to the as-built plan or any
19 settlements with respect to the as-built plan for the
20 Operation & Maintenance Building or the turbines that are
21 alleged to be sited outside the terms of the Certificate?
22 Other than I understand that certain intervenors -- it
23 sounds as though certain intervenors are going to withdraw
24 their participation, I guess. But, other than that, is

1 there any settlement towards that?

2 MS. GEIGER: I mean, to the extent that
3 Public Counsel has been, I think, the primary or the lead
4 party with whom we were supposed to have been dealing on
5 this issue. I think, if you recall a couple of prehearing
6 conferences ago, I believe that Public Counsel was
7 designated as sort of the leader or the spokesperson on
8 this issue. And, we have been in discussions with
9 Attorney Brooks on behalf of Public Counsel. And, we are
10 in the process of trying to resolve those issues, but it's
11 just we're not 100 percent there yet. Again, I'll turn to
12 Attorney Brooks to see how he feels about this.

13 MR. IACOPINO: Mr. Brooks.

14 MR. BROOKS: Thank you. There's no
15 settlement. We're proceeding as if there will not be a
16 settlement.

17 MR. IACOPINO: Okay. Any other
18 settlements that the Applicant wishes to inform us about?

19 MS. GEIGER: I don't believe so.

20 MR. IACOPINO: Okay. Any other party to
21 the proceeding aware of any settlement negotiations or any
22 settlements going on that would be helpful for -- in
23 today's proceeding?

24 (No verbal response)

1 MR. IACOPINO: Does anybody dispute, and
2 I've gone around each time, so I don't think we need to do
3 it again. But does everybody feel they understand what
4 the status of negotiations is going on? Does anybody have
5 any questions about the status of negotiations? Now is
6 the time to ask them.

7 (No verbal response)

8 MR. IACOPINO: Nobody has any questions,
9 so, we'll move on. I do encourage the Applicant, Counsel
10 for the Public, and every other party involved in this
11 proceeding, to do their very best to get these issues
12 settled, even if it can't be settled by all of the
13 parties. To the extent that settlements are made, it
14 makes for easier -- it makes for an easier process for the
15 Committee. And, of course, it's always better, as
16 everybody should know, to get matters settled before it's
17 put in the hands of a third party to make decisions about
18 how your company or how your life is going be -- is going
19 to be run. So, there's always a risk to everybody in any
20 type of litigated situation. So, I highly encourage all
21 parties to consider the possibilities of settlement with
22 respect to those issues that you are involved with. Lisa.

23 MS. LINOWES: Excuse me, Mike. I had a
24 question. You're encouraging settlement. But I don't

1 think that the public or this process has revealed
2 entirely all that has happened. And, so, I'm a little bit
3 stuck on that. And, you know, so, parties can sit down
4 and negotiate settlements, in terms of penalties and other
5 things that they would like to see happen. But I'm having
6 difficulty seeing how that can happen outside of the SEC
7 process.

8 MR. IACOPINO: Any settlement would have
9 to be approved by the Committee, except for those
10 settlements that are reached by virtue of somebody
11 withdrawing their position. Anybody can do that. Any one
12 of the intervenors, who has intervened and wants to settle
13 and withdraw their intervention, can certainly do that.
14 But any settlement that includes the parties and includes
15 any change in their Certificate would, obviously, have to
16 be approved by the Committee, unless it's the type of
17 settlement that can be achieved by the parties simply by
18 withdrawing a claim.

19 So, I don't know if that answers your
20 question. I mean, I think that there will be -- I think
21 what you're probably concerned about is other parties
22 settling and leaving some parties unsettled. And, in
23 those cases, to the extent those are issues for the
24 Committee, and not individual issues with some of these

1 intervenors, the Committee is going to make a
2 determination, and you'll get the ability to litigate the
3 issue. Even if it's ten people have settled, and there's
4 one party who's still litigating, there will be
5 litigation. You know, there will be a hearing with
6 respect to the issues.

7 So, I guess, and your observation that
8 we haven't sort of "gone through the history of everything
9 that's here", I've just gone through the issues. I
10 haven't like laid out the history that on such and such a
11 date a new plan was filed or there was correspondence with
12 the Department of Environmental Service, or any of those
13 subissues, I haven't gone through all that for our
14 purposes today, because the understanding is that, to the
15 extent that there are people who disagree, there will be
16 an adjudicatory process.

17 MS. LINOWES: Okay. Thank you.

18 MR. IACOPINO: And, that was the next
19 sort of -- one of the things that I had put on the agenda
20 here is sort of an identification of relief sought by each
21 party. And, I don't really -- I mean, I understand that
22 the -- well, let's start with the easy one. The Applicant
23 has filed a motion to amend the Certificate to deal with
24 some of the issues that are outstanding. Counsel for the

1 Public has argued for a suspension of the Certificate, and
2 an order requiring, at least with respect to the O&M
3 building, that it be moved to its originally planned
4 position. Mr. Buttolph and Ms. Lewis, Mr. Spring have
5 argued that the record should be reopened and,
6 essentially, a rehearing with respect to those issues.
7 The Fire Marshal and Counsel for the Public and some of
8 the intervenors have taken the position that the
9 Environmental Health and Safety Plan, at least the one
10 that has been distributed, is insufficient. And, trying
11 to get to see if I've missed anybody's request for relief
12 in there. And, obviously, I know that some of the
13 intervenors have joined in the request with the parties
14 I've already mentioned. But that's essentially the relief
15 that I think has been requested out there.

16 From the Applicant's view, it's a
17 serious issue. I mean, there is and there has been notice
18 that the Certificate may be suspended or revoked, if it is
19 determined that you're out of compliance with the
20 Certificate. So, it is an issue that is, I'm sure, very
21 important to Groton Wind, and also important to the
22 parties.

23 I just want to ask the parties, though,
24 have I done a sort of, because what we're going to have to

1 do next is get into things that we may be able to
2 stipulate to as to facts or -- facts or procedures. But
3 have I missed anybody's request for relief substantively?
4 I'm sorry, Ms. Martin.

5 MS. MARTIN: I was just going to say, I
6 didn't hear you say the Fire --

7 (Court reporter interruption.)

8 MS. MARTIN: -- the Fire Marshal's
9 request to suspend the Certificate, and also we had asked
10 that the Committee take official notice of the Fire
11 Marshal's authority.

12 MR. IACOPINO: That is correct, yes. In
13 the memo filed by the Fire Marshal, there is a request
14 that, it's an interesting request, actually, that the
15 Committee not do anything, just determine that the Fire
16 Marshal has the jurisdiction to regulate the Project.
17 And, there's also the request that, contained within the
18 letter that he sent prior to our last prehearing
19 conference, asking that the Committee suspend the
20 Certificate. And, the interesting question about that is,
21 if the Fire Marshal believes that he has the jurisdiction,
22 I take it he's voluntarily chosen not to exercise it, not
23 to require to issue a "cease and desist" order or
24 something like that, in lieu of going through this

1 process. Now, I'm not -- I don't have any relationship to
2 the Fire Marshal or that office. And, the question really
3 isn't relevant as to what the Committee chooses to do with
4 respect to its Certificate, but that's the assumption I've
5 been working on.

6 MS. MARTIN: I think, just to clarify,
7 and, in the brief, we had indicated that the Committee's
8 authority comes from the fact that it included compliance
9 with the codes in the Certificate.

10 MR. IACOPINO: Uh-huh.

11 MS. MARTIN: And, so, to the extent the
12 Committee can suspend, it sort of comes from that. And,
13 the Fire Marshal is not waiving any of its own authority
14 to act independently, and could explain today, probably,
15 the plan for using that authority going forward. So, I
16 see those as two distinct things. But I think the Fire
17 Marshal's request to suspend based on a clear violation of
18 the Certificate is legitimate and should go forward.

19 MR. IACOPINO: Okay. And, you're
20 correct. Somehow I forgot those two issues, but they are
21 part of the relief that's being sought by the various
22 parties here today.

23 MR. BROOKS: And, just to be clear, from
24 Counsel for the Public. Your summary of our position is

1 correct. But, just so you know, we do have settlement
2 overtures that have been made short of revocation of the
3 permit.

4 MR. IACOPINO: I assume that that's part
5 of the definition of "settlement". So, okay, is
6 anybody -- is there any other request for relief out there
7 that anybody believes that I have missed? And, I
8 understand there will be a second motion to amend the
9 Certificate forthcoming, if there is some resolution of
10 the Town of Groton over the Safety -- Health and Safety
11 Plan -- I'm sorry, Road Maintenance and Safety Plan.

12 MS. GEIGER: Right.

13 MR. IACOPINO: Okay. That's a fair
14 number of issues that are on the table, and with fairly
15 substantial possible results. So, one of the things that
16 I would like to pursue at this point is, are there any
17 factual stipulations that the parties can reach that we
18 can, in essence, provide a shortcut for the Committee?
19 And, I'll give you some of the ideas that I've been
20 thinking of, you can probably note them from my outline.
21 There is an allegation, and I don't think that it is
22 actually a disputed allegation, that the Operation &
23 Maintenance Building and some identified turbines are not
24 in the exact place where they were originally planned to

1 go. I think it would be very helpful for the Committee if
2 we were to (A) be able to do two things through
3 stipulation. Number one is identify a sheet that gives
4 the best illustration for the Committee of what the
5 original plan was, and then a sheet that gives the best
6 illustration as to where these facilities actually are
7 having been built. Also, consistent with that, and I
8 don't know if anybody has this factual information, but is
9 there a way that we can develop the dimensions of what the
10 differences actually are?

11 I know, for instance, that the Operation
12 & Maintenance Building is now on the opposite side of
13 Clark Brook. I'm not sure exactly, I mean, I have a
14 general feel for it, because I've looked at pictures and
15 I've, you know, been through these proceedings. But the
16 Committee is going to have to make factual determinations
17 about some of these things. And, I think it would be
18 helpful for the Committee if we had some factual
19 stipulations as to what's the actual distance? How far
20 from the original plan is the Operation & Maintenance
21 Building? How far from the originally planned locus are
22 each of the turbine pads that are not where they were
23 originally planned? And, I know there is some
24 identification in the memoranda about which turbines may

1 not be in the exact place. But, if we could get some
2 factual stipulations, I think that will help the
3 Committee. I'm not asking anybody to stipulate to the
4 credibility of another party, I'm not asking anybody to
5 stipulate as to anybody's intent. What I'm trying to see
6 is if there are factual issues that the parties will agree
7 are beyond dispute and can be stipulated hereto. And,
8 those, I think, should be easy ones to start off with.
9 There are more difficult ones that we can get to. But I'm
10 just going to go around the room and, first of all, ask
11 the Applicant, is that something that you think the
12 Applicant, that you can do?

13 MS. GEIGER: We'd willing to stipulate
14 to those two set of facts.

15 MR. IACOPINO: How about Counsel for the
16 Public?

17 MR. BROOKS: I'm sure that we can reach
18 a stipulation with respect to construction plans versus
19 as-built plans. But we do want to do an inspection. We
20 probably can't do that with snow on the ground. That will
21 go into scheduling issues that you're going to take up
22 later. But the building is where it is and the turbines
23 are where they are. And so, I'm sure, at the end of day,
24 we'll be able to reach a stipulation as to that.

1 MR. IACOPINO: Okay. Fire Marshal?

2 MS. MARTIN: We would take the same
3 position as Public Counsel.

4 MR. IACOPINO: Buttolph/Lewis/Spring
5 intervenors?

6 MS. LINOWES: Mike, the position of
7 Buttolph/Lewis/and Spring group is that, in addition to
8 those changes that have been identified in the letter to
9 DES that you brought up, we also are aware that the road
10 profiles have changed significantly. The original plan
11 was to have the Project built with 12 percent maximum
12 steepness on the grade on the roads. We now know that
13 there 12 to 15 percent, up to 15 percent. It's very
14 difficult -- we would like to be added to that list or
15 that plan the location of where those road profiles have
16 deviated from the original, and as well as any of the
17 other marked changes in the road, to see that in a plan,
18 versus what we have today.

19 And, to the extent that there are other
20 changes that we are not aware of, that all we really have
21 is what we can look at on some of the older plans and what
22 was in the letter to DES. If there are other changes, we
23 would like to have those stipulated.

24 MR. IACOPINO: Just I believe the

1 as-built plans have been filed and they are on the
2 website. You do have those, right?

3 MS. GEIGER: And they're there
4 [indicating].

5 MS. LINOWES: Yes.

6 MR. IACOPINO: No, those are my --
7 that's not an as-built, that's an original one. I brought
8 -- I couldn't -- my as-builts are in the computer. I'm
9 sorry.

10 MS. LINOWES: They are on -- you're
11 right. They are available, but they are huge. The plans
12 are huge. It's very difficult to look at one page next to
13 the other and compare them. And, some of the information,
14 for instance, the road profile, is not -- that's on a
15 separate page from the actual plans. So, identifying the
16 locations of where these changes have been made would be,
17 even graphically, if we could circle on a plan and say
18 "this is where we made the changes", it would be very
19 useful. We can't tell that, if you sat down and tried to
20 look at the plans, it's not easy to identify all of the
21 changes, except those that have been called out.

22 MR. IACOPINO: I don't know that the
23 Applicant has ever agreed that there have been changes in
24 the road profiles. But, I'll turn to the Applicant, is do

1 you believe that you can reach a stipulation with respect
2 to what Ms. Linowes is asking about, in terms of the road
3 profiles, if they're different than originally proposed?

4 MS. GEIGER: I mean, I can't speak with
5 -- I speak with authority, I don't know the answer to the
6 question of differences. But, if there were differences
7 in the as-built plans than from the original plans, those
8 would be reflected by comparing the two. I think that's
9 the best I can do. I'm sorry.

10 MR. IACOPINO: All right. Well, maybe
11 that the Committee will have to determine, if there can't
12 be a stipulation with respect to that, the Committee will
13 have to determine if, indeed, there is a deviation from
14 the original plan, and whether or not it makes a
15 difference to them. So, I would encourage -- and, so, it
16 sounds like that's an issue that will be litigated. I
17 encourage both sides, and anybody who's -- any parties
18 that are interested in that particular issue, to, if you
19 can come to some kind of stipulation about it, if maybe
20 looking at the plans together, taking the time to do that,
21 having a meeting and doing that would lead to a factual
22 stipulation, it's certainly helpful for the committee.
23 Because, I mean, what was built was built. The Committee
24 is going to have to make that determination, and then

1 determine whether or not it makes a difference. So, I
2 think the harder -- the Committee's job becomes harder if
3 the parties are not in agreement as to what the
4 differences are.

5 MS. LINOWES: Mr. Chairman -- or, Mike,
6 it's clearly written and documented by letters written by
7 VHB to the Town of Groton that the -- that the road
8 profiles are now 12 to 15 percent. And, that was given as
9 the explanation for why they could not now provide
10 year-round access with the emergency -- the typical
11 emergency vehicles. So, it is a important part of this
12 proceeding. And, I'd be happy to sit down with the
13 Applicant and show them exactly where they have made those
14 statements that the road now is -- the roads now are 12 to
15 15 percent.

16 MR. IACOPINO: Well, I think -- I
17 understand in the letter, but what I'm trying to get at is
18 a factual stipulation, and I thought you were asking about
19 as to where that actually occurred.

20 MS. LINOWES: Yes.

21 MR. IACOPINO: I understand that there's
22 a letter, and you can certainly use the letter as
23 evidence. But I thought you were trying to ask for a
24 stipulation as to where the roads don't -- are not the

1 same as in the original plan, where the road grade is not.

2 MS. LINOWES: That's right.

3 MR. IACOPINO: And, as I hear the
4 Applicant, they're not prepared to stipulate to that. You
5 know, which means that the Committee ultimately, if they
6 decide that it's important, will have to -- will have to
7 do that from the sets of plans, which I assume will be
8 admitted as evidence.

9 MS. GEIGER: I apologize, Mr. Iacopino.
10 I mean, the Applicant, to be clear, our position is not
11 that we won't stipulate, just I'm not prepared to
12 stipulate today, because I'm handicapped by lack of
13 information. And, Ms. Linowes is correct, we had made
14 some statements in the past, and I simply forgot about
15 them, and I apologize.

16 It seems to me what might be most
17 expedient is for parties who are alleging that there are
18 discrepancies, to point out to us differences between the
19 filed and as-built. We'll take a look at that. And, if
20 we can agree with what they're saying, we'll stipulate.
21 If not, we won't. But it's not the Applicant's position
22 that it will not stipulate to facts concerning the grade
23 of roads as built.

24 MR. IACOPINO: And, just so everybody

1 understands what I'm getting at, is putting together a
2 package that's very easy for the Committee. To say this
3 is what was proposed, this is what was built. Is it a
4 major difference? Does it make a difference? I don't,
5 you know, if the Committee has to make the determination
6 that, you know, the roadway on the original plan was 11
7 and a half percent grade between Mile Marker 3 and Mile
8 Marker 3.5, and it turned out to be, you know, 12 and a
9 half percent. That's going to -- you know how the
10 Committee -- there's going to be 15 members of the
11 Committee up here. That's going to be very difficult
12 presentation for parties to make, and it's going to be a
13 very difficult deliberation for the Committee to
14 undertake. And, I don't think that there's really -- I
15 mean, there is an answer to these things. There's a
16 factual answer.

17 And, so, what I really want the parties
18 to do, and would encourage you to do, is to come to
19 agreement on the dimensions, for lack of a better word,
20 and the things that are really going to be beyond dispute.
21 Because the party who posits an issue, has the burden of
22 proof on it. So, if you're going to claim that there is a
23 difference, you're going to have the burden of proof.
24 And, the other party can pretty much sit there and say

1 "well, this is what we understand it to be. You know,
2 proof us wrong." You know, that that's -- and that burden
3 of proof has to be eventually resolved by the Committee.

4 I would like to avoid the Committee
5 having to determine "well, is this stretch of roadway
6 graded at 11 and a half percent versus 12 and a half
7 percent? 12 percent versus 15 percent? Whatever --
8 whatever it may be, because it is what it is. I mean,
9 ultimately, the Committee could go out there and take
10 their own measurements or hire a firm to go out and, you
11 know, survey the site to get that information. But we'd
12 like to avoid the delay and what comes up, you know, the
13 delay and complications that all of that would require.

14 MS. LINOWES: Mike?

15 MR. IACOPINO: So, I do encourage you to
16 try to sit down with each other and see if you can agree
17 where there may be deviations from the original plan, as
18 opposed to -- the original plans versus the as-built
19 plans, and identify those and put them in a stipulation
20 for the Committee.

21 And, again, all stipulations should
22 ideally be sent around to all of the parties, even those
23 who you might think don't have a concern about a
24 particular issue. Any party that's still a party to the

1 proceeding, any intervenor, for them to review, and either
2 assent to or object to. That's just basic due process,
3 and we have to do that. And, unfortunately, sometimes
4 that does cause more litigation than is probably
5 necessary, but that's due process. And, we're not going
6 to avoid due process in this proceeding.

7 MR. BROOKS: Can I make a proposal?

8 MR. IACOPINO: Certainly.

9 MR. BROOKS: My proposal would be that
10 Public Counsel do a site inspection to confirm the
11 as-built plans. We might be able to do that in
12 coordination with one of the agencies who has surveyors on
13 staff. But, if not, we can work with the Applicant to
14 hire someone to do that. Once we confirm that the
15 as-built plans are accurate, we can work with the
16 Applicant to create an overlay pre and post. We can
17 create also one that identifies any grade changes, the
18 locations and presumably profiles of grade changes. I
19 think that's something that, with the Applicant, we ought
20 to be able to do, and obviously circulate it to all
21 parties, so that they have that.

22 MR. IACOPINO: What do you think of
23 that, Ms. Geiger?

24 MS. GEIGER: That would be acceptable.

1 Thank you, Mr. Brooks.

2 MR. IACOPINO: Allen, can I ask that you
3 put together like a paragraph, just what you've just said,
4 and circulate it to all of the parties after the meeting
5 today, through electronically? And, I would ask that --
6 how am I going to do that? And, all the parties that are
7 still in the proceeding, if they assent -- well, let me
8 just go around the room. Does the Fire Marshal have any
9 objection to proceeding in that fashion?

10 MS. MARTIN: No.

11 MR. IACOPINO: Okay. Ms. Lewis? Mr.
12 Spring [Watson?]?

13 MR. WATSON: I feel it would be better
14 to have an independent, a third party sign on the
15 measurements. I know that it's an expense, but I think
16 the Applicant should bear, because they have admitted that
17 things aren't as the original Application was proposed.

18 MR. IACOPINO: The proposal that
19 Mr. Brooks is making is that Public Counsel be responsible
20 for that through the use of either surveyors from a State
21 agency or from a outside company. Does that satisfy your
22 concern about a neutral third party doing it?

23 MR. WATSON: As long as it's a neutral
24 third party, yes.

1 MR. IACOPINO: Let me ask you this. Do
2 you consider Counsel for the Public to be a neutral third
3 party?

4 MR. WATSON: Most of the time, yes.

5 MR. IACOPINO: Except when he disagrees
6 with you, right? Okay.

7 MS. LINOWES: We're also -- the
8 Buttolph/Lewis/and Spring group is also in agreement with
9 that. And, we would like to have an opportunity to
10 participate or be on that site walk, if that's possible.

11 MR. IACOPINO: Any objection to a
12 representative from that group being present? Let me just
13 start, since it was your idea, Mr. Brooks, any objection
14 from Counsel for the Public to that?

15 MR. BROOKS: No objection. Just the
16 experience with site walks is the fewer people you have
17 the better. So, if they do have a representative and
18 not --

19 MR. IACOPINO: One person? Can you
20 agree to one person?

21 MS. LINOWES: Yes, we can.

22 MR. IACOPINO: And Applicant?

23 MS. GEIGER: I've been advised that
24 there are -- whenever there are site visits on this and

1 other facilities, there are safety issues involved. And,
2 we can't make a commitment today. We, obviously, want to
3 cooperate to the extent possible, but we can't say with
4 certainty today that we're agreeable with this plan.

5 MR. IACOPINO: Okay. With the plan to
6 have other parties other than Counsel for the Public?

7 MS. GEIGER: With other -- right.
8 Right. I think, just having Public Counsel and their
9 representative would be fine. But, when you start adding
10 more people, it's difficult.

11 MR. IACOPINO: Uh-huh. Okay. All
12 right. So, that's an issue that maybe we can iron out.
13 We'll get back to that. Ms. Peabody, did you have any
14 objection to the proposal suggested by Counsel for the
15 Public?

16 MS. PEABODY: We don't, no.

17 MR. IACOPINO: Okay. Mr. Sinclair?

18 MR. SINCLAIR: None.

19 MR. IACOPINO: Mr. Richardson.

20 MR. RICHARDSON: None.

21 MR. IACOPINO: I'm going to go -- well,
22 who else? Okay, what other parties do I have in the back?
23 Oh, Mr. Haskell, does Town of Rumney have any problem with
24 that?

1 MR. HASKELL: No.

2 MR. IACOPINO: Okay. Are there any
3 parties that I have not asked?

4 (No verbal response)

5 MR. IACOPINO: Okay. Are there any
6 other parties, other than the Buttolph/Lewis/Spring group,
7 that want to have a representative on-site when there is a
8 attempt to confirm the as-built plan?

9 (No verbal response)

10 MR. IACOPINO: Okay. So, we would be
11 talking, and now I'm speaking to the Applicant, we would
12 be talking about one person. I do know, because I've gone
13 on these sites, and, actually, Lisa, you may know this as
14 well, is that any time you go on an active wind site, you
15 do have to go to a safety briefing. And, there is
16 equipment that has to be worn, if you're going to be up in
17 the active areas. And, I don't know, I assume you're
18 going to run this by a safety director or somebody in
19 Iberdrola?

20 MR. NGUYEN: Correct.

21 MR. IACOPINO: So, how long before the
22 Applicant could get back to Ms. Linowes about finding out
23 whether that's possible to do or not?

24 MR. NGUYEN: Within the week.

1 MR. IACOPINO: Within the week. Okay,
2 great. Okay. I want to get back to what we had -- the
3 original thing. I don't know how familiar the folks here
4 are with the two sets of plans. But does anybody have any
5 idea or have been able to, at least up to this point, go
6 through the plans? And, what I'm really looking for is
7 I'm looking for to create a stipulated exhibit for the
8 Committee that shows, just a page, the best page that
9 shows where things were proposed before and where they are
10 now, sort of an overview.

11 MR. BROOKS: And, I think that was part
12 of my proposal. I think most of these drawings are in
13 either CAD or some other program. And, so, what they
14 should be able to do pretty easily is to prepare an
15 overlay that has both on the same sheet, and we can
16 stipulate to that. And, that should be a relatively
17 simple matter.

18 MR. IACOPINO: Can I do this then,
19 because this is going to impose upon all the parties?
20 Everybody has said that we can probably stipulate to these
21 things. Can I sort of set a deadline here by which we can
22 have at least a draft stipulation circulated to the
23 parties? I assume that the Applicant and Counsel for the
24 Public are going to be doing the -- most of the, you know,

1 laboring, carrying most of the laboring. So, can we have
2 a date by which we might be able to have a list of sort of
3 the dimension constructions? If you're -- if this needs
4 to wait until you can have somebody out on the site, I
5 don't know, the conditions up there right now, my guess is
6 that they're not all that safe right now. I don't know
7 what the conditions of the roadways are and if it is even
8 possible to do the survey that you might be thinking
9 about.

10 MR. BROOKS: We'd like to wait until the
11 snow is off the ground to do that. It doesn't mean,
12 though, that a preliminary overlay of an as-built versus
13 the proposed couldn't be created, subject to later
14 confirmation on-site.

15 MR. IACOPINO: Okay. All right. Well,
16 to both the Applicant and Counsel for the Public, how long
17 do you think you could get something preliminary --
18 something preliminary, and then maybe a plan along with it
19 for the spring survey?

20 MR. BROOKS: That would be the
21 Applicant's task, so I look to them.

22 MR. NGUYEN: So, just to be clear, are
23 your expectations for us to then do the overlay between
24 our propose versus the as-builts?

1 MR. BROOKS: I do, because I believe you
2 should have both the plans in electronic form.

3 MR. NGUYEN: We do. And, so, I think we
4 can get the preliminary --

5 MR. IACOPINO: Don't --

6 MR. NGUYEN: -- drawing --

7 MR. IACOPINO: Don't say a date that
8 you're not going to be able to make, okay? Because that's
9 caused problems before.

10 MR. NGUYEN: That is correct.

11 MR. IACOPINO: So, make sure that you're
12 giving yourself the appropriate amount of time.

13 MR. NGUYEN: I think we should have it
14 to you by the end of February, if push come to shove,
15 which is, you know, essentially a month's time.

16 MR. IACOPINO: Okay. One of the
17 subissues in this case is the correspondence that occurred
18 between the Applicant and the Department of Environmental
19 Services. I know that Counsel for the Public in the past
20 has raised an issue about wanting to obtain all of those
21 documents. I know that many documents have been
22 submitted. And, I guess my question is is, is there any
23 agreement or can we reach any agreement as to whether --
24 what those documents are and whether they have all been

1 distributed to all the parties? I know that I think both
2 sides, or at least a party on each side has attached the
3 e-mail correspondence and the VHB correspondence to their
4 various pleadings in this docket. Do we -- is it going to
5 be possible for us to reach an agreement in terms of what
6 that course of communication was? And, I look first to
7 the Applicant.

8 MS. GEIGER: I believe so. I think that
9 was -- I think those documents were turned over by
10 Attorney Epstein, to Ms. Murray, via e-mail on October
11 14th. I believe, in the e-mail that I'm looking at, says,
12 "Pursuant to your request, Mr. Iacopino, a file containing
13 Groton Wind's correspondence with the State Fire Marshal's
14 Office was submitted." And, so, that has been provided to
15 Ms. Murray. I don't know if she's posted it to the
16 website. But my understanding is that constitutes the
17 entirety of the e-mail correspondence.

18 MR. IACOPINO: You just mentioned the
19 "Fire Marshal". I was talking about Department of
20 Environmental Services.

21 MS. GEIGER: Oh, I'm sorry. Okay. I
22 apologize. Yes, we did, the Fire Marshal correspondence
23 was requested, we turned that over. And, then, I also
24 believe that there was a stack of documents, but I will

1 need to check that on the O&M Building.

2 MR. IACOPINO: And, Counsel for the
3 Public, do you think we'll be able to reach an agreement
4 as to the body of the communication?

5 MR. BROOKS: We absolutely should be
6 able to reach an agreement with respect to the
7 correspondence between the Applicant and DES. I think we
8 also requested internal correspondence from the Applicant.
9 I think the representation was made to me earlier that we
10 did receive that. I haven't gone over it.

11 MR. IACOPINO: Okay.

12 MR. BROOKS: But that should be another
13 area that we ought to reach a stipulation on.

14 MR. IACOPINO: Well, I want to take the
15 correspondence one issue at a time. And, let's just deal
16 with DES now. I guess the other question is,
17 understanding that Counsel for the Public comes from the
18 Attorney General's Office, understanding that, the
19 Department of Environmental Services is a State agency.
20 Have you obtained any additional documentation from DES,
21 other than what's been -- in other words, I'm trying to
22 just make sure that, when the adjudicatory process occurs,
23 there can be a single exhibit that includes all of the
24 communications between the Applicant and DES. I

1 understand they may have internal communications, we'll
2 deal with those in a minute. But do you foresee any issue
3 arising with respect to that?

4 MR. BROOKS: No. Counsel for the Public
5 is only able to obtain publicly available documentation.
6 It's easy to confirm that that actually is the record
7 within the file. There shouldn't be any issue.

8 MR. IACOPINO: Okay. We're talking
9 about DES. I don't know if the Fire Marshal has a
10 position with respect to that? No?

11 MS. MARTIN: No.

12 MR. IACOPINO: Okay. Let's go back to
13 the intervenors in the second row on the right, on your
14 left. Sir?

15 MR. WATSON: I'm fine with that.

16 MR. IACOPINO: So, you believe that
17 you've seen sufficient documentation of the --

18 MR. WATSON: Yes.

19 MR. IACOPINO: Okay. Ms. Linowes or
20 Ms. Lewis?

21 MS. LINOWES: The only information that
22 I've been able to -- that I know of are e-mails that are
23 dating back to November of 2011, that some of the -- and
24 they're not very many, stating that the -- that revisions

1 have been made to the plan.

2 But, in my own conversations with Craig
3 Rennie and others at DES, there were clearly other
4 communications that happened. I don't know if they're in
5 the form of e-mails that went back and forth between the
6 Applicant. But there are communications that went into
7 evaluating whether or not a new permit would be necessary
8 for the Alteration of Terrain Permit or a new permit
9 application or an amendment to the existing one. So, I'm
10 not sure where those fall under.

11 MR. IACOPINO: Okay. But are you
12 speaking about communications between the Applicant and
13 DES or within DES?

14 MS. LINOWES: Well, that's not -- I
15 don't know if there were communications directly with the
16 Applicant and DES on that. And, I suspect -- I personally
17 suspect that there were. That, if there -- the rules
18 under DES call for -- would have called for a new permit
19 on the AOT. And, the parties would have know that, and
20 there would have -- I would have suspected -- expected
21 communications on whether or not a new permit was
22 necessary versus an amendment to the existing permit
23 application. So, I would like to know if there are more
24 communications. I'm not satisfied that we have all of

1 them yet.

2 MR. IACOPINO: Okay. All right. Any
3 position, Ms. Peabody?

4 MS. PEABODY: No. I haven't seen any
5 additional communication. I did wonder about it, though.

6 MR. IACOPINO: Do you think you'll be
7 able to agree to a stipulation, if one can be reached,
8 about sort of what that communication was?

9 MS. PEABODY: I don't see why not.

10 MR. IACOPINO: Okay. Mr. Sinclair?

11 MR. SINCLAIR: The Town of Groton takes
12 no position on that issue at this time.

13 MR. IACOPINO: Mr. Richardson? I assume
14 no position?

15 MR. RICHARDSON: Yes. I think I
16 indicated previously that it's my expectation that
17 Mr. Rampino will be withdrawing all claims in this. And,
18 so, I'm --

19 MR. IACOPINO: Just in case he doesn't,
20 I guess my question is is, you know, is there a problem
21 with reaching a stipulation or are we going to need some
22 kind of discovery?

23 MR. RICHARDSON: I can't take any
24 position on any of this.

1 MR. IACOPINO: Okay. Have I exhausted
2 all the intervenors?

3 (No verbal response)

4 MR. IACOPINO: I think I have. Okay. I
5 am going to ask that, between Counsel for the Public and
6 the Applicant, because I think there is an agreement
7 there, if you could put together as an exhibit the
8 correspondence between the Applicant and the Department of
9 Environmental Services pertaining to any change in the
10 plan, and circulate that.

11 I'm going to ask that, Ms. Linowes, in
12 that -- that you prepare a data request specifying what it
13 is that you may be looking for. And, at this point, just
14 to keep it very clear, we're talking about between DES --
15 correspondence between DES and the Applicant, okay? And,
16 with any data requests, there will be a deadline by which
17 we'll reach that they will have to be provided to the
18 other party by, but I think we're just going to make the
19 answers all due within 20 days any data requests. Does
20 anybody have any objection to that?

21 MS. GEIGER: What would be the date?

22 MR. IACOPINO: Haven't got there yet.
23 But just thinking that, in terms of whatever the -- so, if
24 you receive Data Request Number 1 today, the answer would

1 be due in 20 days, as opposed to 30, which is the normal
2 interrogatory in superior court. Because I think that
3 some of the things that we're discussing here should be
4 fairly easily obtained and presented. And, we'll get to
5 it, when we get to the actual scheduling part of this
6 proceeding. But what I am, as I'm going through here, I'm
7 trying to make it as simple as possible for all parties,
8 even those who might not agree right now, to eventually
9 come to stipulations. And, by doing that, I'm trying to
10 explain what is outstanding, and then to get some
11 documentation for you, because most of this is going to be
12 directed to the Applicant, that, you know, this is going
13 to be necessary to be provided, unless you have a
14 privilege objection or some other objection to the data
15 request. And, it will also provide you with the
16 opportunity of not being sandbagged at a prehearing
17 conference, but to, if you do have an objection, to
18 formulate the objection and provide it to the Committee.

19 But I'm hoping there won't be
20 objections. I'm not trying to encourage objections. I'm
21 hoping that the information will be freely -- freely
22 provided back and forth.

23 You raised the second issue, which is
24 correspondence with the Fire Marshal's Office. That was

1 sent in October. I don't believe -- I don't believe that
2 Jane put it on the website, but I do recall getting the
3 e-mail that I think was distributed to the e-mail list as
4 it existed in October. There are some parties who may
5 have come in after that who may not have it.

6 But does anybody have, now moving on to
7 the correspondence with the Fire Marshal, is there any
8 objection to a stipulation that the package that was filed
9 by Mr. Epstein on October 14th is basically all of the
10 correspondence, written correspondence between the Fire
11 Marshal's Office and the Applicant? And, Mr. Epstein
12 filed it. So, I assume the Applicant doesn't have any
13 problem with that. I'll go to Counsel for the Public and
14 then the Fire Marshal.

15 MR. BROOKS: I have no problem.

16 MR. IACOPINO: And, Mr. Anstey or
17 Dianne, are you familiar with what was sent by Mr. Epstein
18 back in October?

19 MS. MARTIN: I am. Although, I think
20 the Fire Marshal would want to review it again, just to
21 make sure that it is entirely complete.

22 MR. IACOPINO: Okay. And, I didn't hear
23 any, at the time, we didn't get any response from the Fire
24 Marshal indicating that it was incomplete. I know there's

1 been differences with the Applicant, but we didn't hear
2 that as being a difference, that there was anything
3 missing there.

4 So, if you could, what I'm going to ask
5 is if you could, within the next ten days or so, review
6 that, and confirm for us whether that's the sum total of
7 the written correspondence with the Applicant. And, when
8 you -- a confirmation one way or another. If you find
9 that's there additional correspondence, file it, and
10 circulate it to the entire service list.

11 MS. MARTIN: And, again, that --

12 MR. IACOPINO: Unless, of course, it's
13 subject to some kind of privilege or some legal, you know,
14 security issue or some reason why it shouldn't be made a
15 public document. In that case, I think, file a pleading
16 that alerts the Committee to it and seeks a protective
17 order.

18 MS. MARTIN: And, again, that's just
19 correspondence between the Fire Marshal and the Applicant?

20 MR. IACOPINO: Yes.

21 MS. MARTIN: It's nothing internal?

22 MR. IACOPINO: Yes. At this point,
23 we're just dealing with the external correspondence. Any
24 parties have any objection to the Fire Marshal confirming

1 the correspondence and filing as I've just described?

2 Let's start with you, sir?

3 MR. WATSON: No.

4 MS. LEWIS: No.

5 MR. IACOPINO: Okay.

6 MS. PEABODY: No.

7 MR. SINCLAIR: The Town of Groton takes
8 no position on that issue at this time.

9 MR. IACOPINO: Thank you, Mr. Sinclair.
10 I assume the answer from Mr. Rampino is the same. And,
11 Town of Rumney, no problem?

12 MR. HASKELL: No problem.

13 MR. IACOPINO: Okay. Thank you, sir.
14 The next one is personal to my own heart. And, I'm going
15 to look to Mr. Anstey, because this is something that I
16 have trouble getting my own arms around. I'm sorry, I'll
17 let you confer first.

18 (Short pause.)

19 MR. ANSTEY: Thank you. Sorry.

20 MR. IACOPINO: Thanks. You have
21 provided the Committee with the -- what you believe were
22 the applicable codes that the facility is subject to. The
23 decision in the case said that they shall -- that the
24 Applicant shall abide by, or words to the effect, they

1 shall abide by all applicable fire, building and life
2 safety codes. And, I know that you have provided those
3 codes to the Committee through your counsel.

4 I am trying to find a stipulation so
5 that the Committee does not have to go through the
6 exercise of determining which codes are applicable. I
7 understand that there is a dispute about the change in the
8 law regarding the Fire Marshal's authority. I'm not
9 asking for stipulations about that. But, if this -- if
10 the issue before the Committee were to be "is what was
11 built in compliance with applicable codes?" Are the codes
12 that you submitted the only ones that you think would be
13 applicable or the ones that you think that they've failed
14 to comply with that are applicable?

15 MR. ANSTEY: Yes, sir. I believe we
16 gave NFPA 101, which would be an applicable --

17 (Court reporter interruption.)

18 MR. ANSTEY: Is it working now?

19 MR. PATNAUDE: Yes.

20 MR. ANSTEY: NFPA 101, which would be an
21 applicable code, NFPA 1, which would be an applicable
22 code, and then the International Building Code, which is
23 the State -- under the State -- adopted as the State
24 Building Code would be an applicable code. We referenced

1 as well -- well, structurally, at least that would take
2 care of the O&M building and the structures of the towers.
3 And, then used NFPA 850 as a reference in the document as
4 well.

5 MR. IACOPINO: All right. And, if I
6 understand your position correctly, is that many of the
7 applicable mandatory codes make reference to things that
8 might be recommendations or guidance, and that that's part
9 of the code as well. Is that -- am I correct in
10 understanding that?

11 MR. ANSTEY: The body of the code are
12 mandates, as a rule, are the standard. The codes do have
13 an appendices. And, those are more recommendations, as
14 opposed to -- you can adopt the appendices as part of the
15 code and make it a mandate as well. But the body of the
16 code is the mandate, and some of the rest is explanatory
17 material.

18 MR. IACOPINO: Let me ask it more
19 direct. One of the codes that you've referenced is 850.
20 I believe that's for electric generators, is that correct?

21 MR. ANSTEY: Correct. Power generating
22 plants.

23 MR. IACOPINO: Yes. Is that a
24 mandatory --

1 MR. ANSTEY: Recommended practice.

2 MR. IACOPINO: It's a recommended
3 practice.

4 (Court reporter interruption.)

5 MR. IACOPINO: Sorry. The question is,
6 850, is that a mandatory code?

7 MR. ANSTEY: It's not a standard. I
8 believe it is listed as a "recommended practice" --

9 MR. IACOPINO: Okay.

10 MR. ANSTEY: -- for power generation.

11 MR. IACOPINO: Now, --

12 MS. MARTIN: Can I just add?

13 MR. IACOPINO: I'm sorry, yes.

14 MS. MARTIN: Two things. The state law
15 says that the Building Code and the Fire Code, they will
16 include those other codes incorporated by reference. So,
17 just for clarification on that. And, then, as to 850, I
18 believe that that -- that requirement arises out of one of
19 the other codes, and that's how we get to 850. Just for
20 clarification.

21 MR. IACOPINO: That was my first
22 question, and then I had to specify it a little bit more
23 to 850.

24 So, let me turn to the Applicant. Does

1 the Applicant agree that those codes that have been filed
2 by the Fire Marshal's Office are the applicable codes or
3 do you believe they are not applicable or is there a
4 possibility of reaching a stipulation on that?

5 MS. GEIGER: At this time, the Applicant
6 is hopeful that it will be able to resolve all of the
7 outstanding issues with the State Fire Marshal's, such
8 that it would not be necessary to stipulate. So, at this
9 time, we're not in a position to or willing to stipulate
10 to any particular code provisions. However, we are
11 working cooperatively with the State Fire Marshal to
12 ensure that the facilities comply with and are
13 satisfactory to the standards that the Fire Marshal is
14 applying.

15 MR. IACOPINO: Okay. What I am going to
16 ask that you do then, Ms. Geiger, is, and we'll pick a
17 date later, but, if this issue is going to be litigated, I
18 want to know, and I think the Committee is going to want
19 to know, what codes the Applicant takes the position is
20 that apply --

21 MS. GEIGER: Uh-huh.

22 MR. IACOPINO: -- to the facility. And,
23 I understand -- I understand the issue with regard to the
24 authority of the Fire Marshal is in dispute under -- and

1 what the proper interpretation of state law is. But I
2 think that the Committee can deal with interpretation of
3 our own statutes. But, when you start getting into these
4 codes, it would be nice if you could stipulate, because
5 these codes are rather lengthy, very technical, and they
6 become difficult for a large body to deliberate over, so
7 to speak. So, and we've seen that very often in, for
8 instance, when we deal with --

9 (Mr. Iacopino's cellphone ringing.)

10 MR. IACOPINO: -- when we deal with
11 noise standards in wind hearings.

12 (Laughter.)

13 MR. IACOPINO: So, it would be helpful
14 if there could be some stipulation with respect to that
15 issue. And, I encourage the parties to find a way to
16 agree, if you can. And, as with everything, because I
17 encourage you to resolve an issue, does not mean that you
18 have to. And, it shouldn't be taken by any party as any
19 kind of indication as to what I believe or what the
20 Committee believes the outcome of the proceeding should
21 be.

22 That is sort of my list of areas where I
23 thought we might be able to obtain some stipulations. So,
24 let me just go over what I understand that at least we

1 have that the parties have agreed to. The big thing is we
2 have agreed, with one loose end on it, but that we've
3 agreed that there will be a site visit conducted by
4 Counsel for the Public and his or her expert or surveyors,
5 whether they be from a State agency or an independent
6 company, who will, after the snow is gone, go out to the
7 site and do their -- make their best efforts to survey and
8 confirm the as-built plan, to confirm that the as-built is
9 accurate.

10 There will be an effort to identify the
11 best sheets from the various plans, assuming that the
12 plans are accurate, the best sheets from those plans to
13 make an exhibit for the Committee to show before and
14 after, so to speak, the proposed and the as-built in a
15 visual representation. And, I understand that that's
16 going to include an overlay. And, my notes say that we
17 should expect that from the Applicant at least to be
18 distributed by the end of February.

19 With respect to the designation of
20 documents, it's my understanding that, with respect to --

21 MR. BROOKS: Mr. Iacopino, could I back
22 up just one second?

23 MR. IACOPINO: Sure.

24 MR. BROOKS: I think also the request

1 was on some sort of plan to show the location of the grade
2 changes, and possibly show the profiles as well. So, you
3 would have the overlay of the changes, let's say, of the
4 wind turbines and the O&M Building, but then you'd have
5 one that shows where, if any grade changes occurred, where
6 they would be.

7 MR. IACOPINO: Right. But I have to go
8 back. Is that something that the Applicant agreed that
9 they would -- I didn't think that that was stipulated to.

10 MR. BROOKS: I didn't know that they
11 agreed that there have been any grade changes.

12 MR. IACOPINO: Right.

13 MR. BROOKS: But, if, in fact, grade
14 changes have occurred, that --

15 MR. IACOPINO: Right.

16 MR. BROOKS: -- they will show them.
17 And, that's what we'd be looking for.

18 MR. IACOPINO: Okay. So, I'm seeing the
19 Applicant shake their head. So, why don't you respond to
20 Mr. Brooks, so that I understand your position.

21 MS. GEIGER: The Applicant's agreement
22 was just the overlay of the -- showing the structures, the
23 pre and post construction locations. It was not with
24 respect to the grades.

1 MR. IACOPINO: And, that's my notes,
2 too, because I had "no stip, no stip" with respect to that
3 particular issue.

4 MR. BROOKS: My recollection was that
5 there was no stipulation that any grade changes had
6 occurred. So, therefore, you wouldn't produce a document.
7 But I also remember Attorney Geiger saying she can't
8 remember all the correspondence, and wanted to double
9 check to see whether or not a change had been made from
10 12 percent in some locations to 15 percent in some
11 locations. If they do that, and there are changes, the
12 request would be that they just identify the locations of
13 those changes.

14 MR. IACOPINO: What I'm going to ask you
15 to do, because I -- I don't want to force any party to do
16 something that they don't feel that they should be
17 required to do, and that's whether it is an opponent of
18 the Project or the proponent of the Project. What I would
19 suggest that you do, though, is prepare a data request
20 with respect to that. If you can, in the interim, come to
21 an agreement with Public Counsel and provide that
22 information, if you believe that it is, in fact,
23 information that is available, you know, and reach a
24 stipulation, that would be great. But I'm going to ask,

1 because I'm not hearing a full agreement from the
2 Applicant, so, why don't you prepare a data request for
3 that information. And, then, with respect to
4 correspondence, I have that the --

5 MS. GEIGER: Excuse me, Mr. Iacopino. I
6 apologize. For the due date for the overlay, and I know
7 we've been saying "the end of February", but I know that
8 on the last day of February I will not be here. And, so,
9 to the extent that I'm local counsel and will need to make
10 that filing, it will be difficult. So, I would ask --

11 MR. IACOPINO: When are you back?

12 MS. GEIGER: I believe March, whatever
13 that Tuesday is, March --

14 MR. IACOPINO: Fourth.

15 MS. GEIGER: -- 4th?

16 MR. IACOPINO: It's Fat Tuesday. I'm
17 going to be in New Orleans.

18 (Laughter.)

19 MS. GEIGER: I was wondering if we could
20 get a couple of more days?

21 MR. IACOPINO: Any objection?

22 MR. BROOKS: No objection.

23 MR. IACOPINO: Any objections from
24 anybody?

1 (No verbal response)

2 MR. IACOPINO: Hearing none, why don't
3 we make it that -- I think the 7th is that Friday or do
4 you want the 10th, the following Monday?

5 MR. NGUYEN: Either.

6 MS. GEIGER: Either. Either would be
7 fine.

8 MR. IACOPINO: I'll give you time to get
9 back from your vacation. March 10th.

10 MS. GEIGER: Thank you very much.

11 MR. IACOPINO: It's about the only date
12 that I know coming up, by the way, what day of the week it
13 is.

14 Okay. Correspondence with the
15 Department of Environmental Services. We understand that
16 Lisa and the Lewis/Buttolph group is going to make a data
17 request for any additional, but the rest of the parties
18 are satisfied with the documents that have been provided
19 to date. What I would like the Applicant to do, if you
20 could, and circulate it, and it doesn't have to be
21 circulated to be filed, but I just want to make sure that
22 we have one package that ultimately is filed as an exhibit
23 representing what that correspondence is.

24 And, then, the same thing for the Fire

1 Marshal. The Fire Marshal is going to check and confirm.
2 And, then, if Ms. Martin can update us as to whether or
3 not the October 14th filing is correct and accurate, if it
4 includes all of the written correspondence. Okay.

5 MS. LINOWES: Excuse me, Mike? On the
6 DES question, and, presumably, the Fire Marshal, are you
7 only talking about written correspondence or only --

8 MR. IACOPINO: When I say "written", I
9 mean e-mails, I mean letters, I mean anything in writing
10 that's communicated -- which twenty years ago would have
11 been communicated on paper, okay?

12 MS. LINOWES: To the extent that we have
13 conversations, notes of conversations, are those also
14 something --

15 MR. IACOPINO: No. Right now, I'm
16 trying to do the stuff that I think is pretty easy, which
17 is correspondence. Something with a State agency. I
18 mean, there's very few circumstances under which we
19 shouldn't be able to agree as to what the written
20 correspondence to and from a State agency was. Because,
21 even if one party doesn't want to provide it, usually, you
22 can get it from a State agency, if it's not a protected
23 document of some sort. Okay?

24 MS. LINOWES: Thank you.

1 MR. IACOPINO: We'll address those
2 issues when we get into the scheduling of discovery.

3 MS. LINOWES: Okay.

4 MR. IACOPINO: Because I know you're
5 probably going to want to get notes or seek notes and seek
6 internal correspondence. So, we're going to take a break
7 in a minute, Steve, okay?

8 So, I think that takes care of the
9 stipulations. Is there anything that anybody is aware of
10 that I have missed that we actually had agreement on?

11 (No verbal response)

12 MR. IACOPINO: Okay. There is the one
13 loose end about attendance by a representative of the
14 Cheryl Lewis group on the field study, for lack of a
15 better term, which, hopefully, we'll be able to resolve
16 after today.

17 I'm going to give our court reporter a
18 15-minute break. Let's come back at quarter of 12. I
19 think that we'll then go into outstanding discovery
20 issues. We'll be talking about things like data requests
21 and tech sessions, if necessary, depositions. My hope is
22 that we're out of here by 1:30. I would like to do that.
23 And, in light of doing that, I'd like to skip any break
24 for lunch around noontime, unless anybody has any

1 particular reason why they would have to leave at noon or
2 around noon to eat?

3 (No verbal response)

4 MR. IACOPINO: Hearing none, we'll take
5 a 15-minute break, so the reporter can rest his hands.
6 And, we'll resume at 11:45.

7 (Recess taken at 11:33 a.m. and the
8 prehearing conference resumed at
9 11:55 a.m.)

10 MR. IACOPINO: Okay, folks. If we can
11 get going. Sorry for the delay. Okay, we're going to
12 jump into discovery, trading information, and scheduling
13 at this point. We've already talked a little bit about
14 data requests. If there's anybody out there who does not
15 know what a data request is, it is a written request for
16 information, very similar to what's called an
17 "interrogatory" in superior court in civil litigation.

18 It has been suggested to me that there
19 are really two tracks of information required in this
20 proceeding. The bulk of the information -- there are two
21 bulks of information. One bulk of information involves
22 the as-built plans, and whether or not -- and the motion
23 to amend based on those as well, and the other involves
24 the Fire Marshal issues. It's been suggested that we

1 might want to have a faster track for the Fire Marshal
2 issues, because fire season will be upon us probably
3 sooner than the other issues are going to be resolved.
4 But, first, Mr. Anstey, when is fire season?

5 MR. ANSTEY: It depends.

6 MR. IACOPINO: When would we most expect
7 it to begin?

8 MR. ANSTEY: It will depend on how much
9 snow we get and how wet the spring actually is. What we
10 would look towards is the Division of Forests and Lands,
11 daily, in the summer and spring and fall, will assess a
12 Class Day, a Fire Danger Day to the woods. As a rule,
13 Class 1 and 2 days are it's rainy, it's not -- nothing is
14 really going to happen. Class 3 is when you have a
15 potential for a fire. That would be when they man the
16 fire towers, that would be when they stop issuing fire
17 permits, on Class 3 days.

18 So, we would look to that, to their
19 weather stations, to say "Okay, this is a Class 3 day.
20 That's when the fire danger begins." And, we would use
21 that as basically the point at which, if we don't have any
22 forward movement, if we're not comfortable with what's
23 happen, then we would exercise our right to stop work on a
24 site.

1 MR. IACOPINO: Okay. But is there a --
2 I mean, I'm just looking for scheduling purposes. Is
3 there a season that is just sort of generally bounded, so
4 that we can sort of have an idea?

5 MR. ANSTEY: I would say, probably late
6 April to mid-May is when you're going to begin to see,
7 and, again, it depends on the rain and snow, when you'll
8 begin to see the forests drying up.

9 MR. IACOPINO: Okay.

10 MS. MARTIN: Can I just add?

11 MR. IACOPINO: Yes.

12 MS. MARTIN: And, I think that, for the
13 Fire Marshal's Office, that is sort of informing them as
14 to when they would take independent action as well. But I
15 understand your scheduling is a little bit different.
16 And, we would just ask that everything be done promptly
17 with regard to the Fire Marshal things, but understanding
18 that we have independent authority as well.

19 MR. IACOPINO: Okay. Is there any
20 objection from anybody to putting the Fire Marshal
21 discovery on a faster track than the other stuff? We know
22 that there's going to be a survey, that's going to have to
23 wait till the snow is gone anyway, with respect to the
24 as-built issues. So, is there any objection from the

1 Applicant to trying to sort of expedite? I can't -- and,
2 let me tell you what I can't guarantee you. I cannot
3 guarantee two hearings before the Site Evaluation
4 Committee. Although, I might be surprised by the Chair in
5 that regard. But I highly doubt I'm going to get two
6 adjudicatory hearing dates, one just to deal with fire
7 issues and one to deal with the other issues. But, if we
8 could advance the discovery, that might do two things. It
9 might put everybody into a position where they might be
10 able to come to agreement quicker, and also, you know,
11 well, I guess maybe resolve some of the issues, just going
12 through the discovery process.

13 MS. GEIGER: I would question what, if
14 the Applicant is able to reach a satisfactory resolution
15 of the Fire Marshal's issues, I question whether any
16 discovery is going to be needed. And, so, I think it
17 would be a more appropriate use of everyone's time,
18 insofar as the Fire Marshal's issues are concerned, is
19 that we continue to move on the path that we have been,
20 moving very aggressively in the last month, trying to
21 engage in meaningful dialogue with the State Fire Marshal
22 and take affirmative action to satisfy their concerns.

23 So, I question the appropriateness of
24 setting a discovery schedule at all. And, perhaps it

1 might more sense to set a deadline by which we would come
2 back to let you know whether the i's have been dotted and
3 the t's have been crossed, in terms of the fire
4 suppression system and addressing all of the outstanding
5 issues on a punch list that we're working on with the Fire
6 Marshal.

7 MR. IACOPINO: Well, as I understand it,
8 there are at least two issues -- three issues that the
9 Fire Marshal has raised concerns about. One is the
10 suppression system. The second is whether you're in
11 compliance with the various codes out there. And, a lot
12 of that actually depends upon whether he's given
13 approvals --

14 MS. GEIGER: Uh-huh.

15 MR. IACOPINO: -- for various things, if
16 I'm correct. That's the portions of the code that are
17 really at issue. And, the third issue is the
18 Environmental Health and Safety Plan. I think that the
19 Fire Marshal has also indicated a problem with that.

20 And, so, have I sort of summarized the
21 Fire Marshal's three concerns or was there a fourth one,
22 too? Oh, plans. There were plans, I don't know if you've
23 received the plans that you've requested?

24 MS. MARTIN: I think, I mean, overall,

1 the general thrust of what the Fire Marshal is looking for
2 is compliance with the codes. And, so, we have reached --
3 we have received some things, like the plans, that were
4 required. But we certainly are not at a point where there
5 is actual compliance with the codes. And, so, the Fire
6 Marshal's position at this point is that we should
7 proceed, because there are representations, but, until we
8 see actual compliance, we don't want to just rely on those
9 representations.

10 MR. IACOPINO: Okay. You know, this is
11 something we ran into at the last prehearing conference.
12 I think we're going to have to do both. I think you guys
13 need to try to settle, try to get as much agreement as you
14 can, because I think it's important for both parties,
15 actually, it's important for all parties, I suppose. But
16 I think we're also going to have to set some discovery
17 deadlines, too, because we -- this matter has been
18 lingering. And, quite frankly, I'm going to be expected
19 to be recommending a trial date to the Chairperson. So, I
20 think we're going to have to schedule anyway, Susan. Even
21 though I do encourage, as I have throughout the
22 proceeding, everybody to try to get things settled, and,
23 to the extent you can not settle, stipulate to facts. But
24 let's start -- let's start with setting out a discovery

1 schedule for the Fire Marshal issues.

2 And, I guess the first question is, does
3 the Applicant anticipate having the need to submit any
4 data requests to the Fire Marshal?

5 MS. GEIGER: I don't believe so.

6 MR. IACOPINO: Does Counsel for the
7 Public intend to submit any data requests to the Fire
8 Marshal?

9 MR. BROOKS: To the Fire Marshal, no.

10 MR. IACOPINO: Okay. Then, let's go
11 through the rest of the intervenors?

12 MR. WATSON: No.

13 MS. LINOWES: No.

14 MR. IACOPINO: Okay. And, I take it
15 none from Ms. Peabody. And, I take it that the Towns are
16 not going to submit any data requests? Okay. And,
17 Mr. Richardson has already answered this. Okay.

18 Does the Fire Marshal intend to submit
19 any data requests to the Applicant?

20 MS. MARTIN: I think there's the
21 potential for that. Although, at this point, I think
22 we're getting access to information pretty freely, but --

23 MR. IACOPINO: Okay. Assuming you had
24 to do it by data requests, when do you believe would be an

1 appropriate deadline for you to issue those requests to
2 the Applicant by?

3 MS. MARTIN: I mean, we want to keep it
4 moving. So, fifteen days.

5 MR. IACOPINO: Really?

6 MS. MARTIN: Yes.

7 MR. IACOPINO: Why don't we say 30 days.
8 Is that --

9 MS. MARTIN: Okay.

10 MR. IACOPINO: Okay. I mean, I just
11 want to give you the time to formulate your data requests.
12 I would, as I indicated before, I'm probably looking at 20
13 days to answer. But I guess we can do 30, if I'm going to
14 give her 30 to come up with the questions. But is that
15 satisfactory?

16 MS. GEIGER: I think that's fine. I
17 mean, obviously, if we get -- if we're confronted with
18 very technical questions that require us to find, you
19 know, outside folks to answer them, we may need more time.
20 But, conceptually, I don't have a problem with 20 days.

21 MR. IACOPINO: Well, I was going to give
22 you 30.

23 MS. GEIGER: Oh, 30?

24 MR. IACOPINO: Thirty days. Okay?

1 MS. GEIGER: Thirty is better. Thank
2 you.

3 MR. IACOPINO: Because I gave her 30,
4 so. Any objection to that deadline for the intervenors?
5 I assume other intervenors are going to have data requests
6 for the Applicant, is that correct?

7 MR. BROOKS: No.

8 MS. LINOWES: Specific to the Health and
9 Safety and Fire Marshal --

10 MR. IACOPINO: Specific to all of the
11 Fire Marshal issues. The applicability of the codes, any
12 other issues that he has raised. One of which, I mean, he
13 has been involved in the Maintenance and Safety Plan, too.
14 I know that he has given his opinion with respect to that.

15 MS. LINOWES: I don't think we'll have
16 discovery questions related to that, but I just need to
17 check. There's some crossover between the Project as
18 built and the health and safety. And, I think it would be
19 separate. My discovery questions could be separate,
20 though.

21 MR. IACOPINO: Okay. But understand the
22 Fire Marshal's -- okay. So, you -- well, let me
23 understand what you're saying then. You think that your
24 data requests are more about the as-builts, and would be

1 best addressed in whatever schedule we come up with the
2 as-builts?

3 MS. LINOWES: Yes, I believe that to be
4 the case.

5 MR. IACOPINO: Okay.

6 MS. LINOWES: Yes.

7 MR. IACOPINO: Okay. I'm sorry, Susan?

8 MS. GEIGER: Yes. I need to revisit the
9 issue about data requests in the schedule that you've laid
10 out here for discovery, because the very first thing on
11 the list is "Identification of witnesses and prefiled
12 testimony". And, typically, in the SEC proceedings, when
13 data requests are propounded, they're usually propounded
14 as a result of and on prefiled testimony. So, I think the
15 first question I think to go -- I think we're putting the
16 cart before the horse maybe, is if the State Fire Marshal
17 is going to prefile testimony, then, I'll know whether or
18 not I'm going to have data requests. At this point, I
19 don't know who's going to testify. And, until I see that
20 testimony, I don't know whether and how many data requests
21 I'm going to need to ask. So, right now, all we have on
22 file is a fairly lengthy letter. And, it seems to me, if
23 there's going to be an adjudication, there's going to have
24 to be a witness from the State Fire Marshal's Office.

1 And, it would be on that prefiled testimony that I would
2 expect to be propounding some data requests.

3 So I would ask respectfully that we
4 revisit that initial question about witnesses.

5 MR. IACOPINO: Okay. I suppose what we
6 would need to do would be to have a designation of
7 witnesses. And, I agree, that's normally the way that
8 it's done in our process here. I think I was probably in
9 my own head jumping, because I'm looking at the person who
10 I think is probably going to be the witness anyway. So,
11 what Ms. Geiger is saying, the normal process at the SEC
12 is that the party with the burden of proof would identify
13 the witnesses, there would be data requests submitted, and
14 then answered. And, there would be a deadline for a
15 designation of witnesses for the party that doesn't have
16 the burden of proof, designation, submission of data
17 requests and answers. That's the normal process that we
18 go through with respect to any other proceeding before the
19 Site Evaluation Committee.

20 This is a little bit different, because
21 we do have a lengthy letter that I think pretty much
22 outlines Inspector Anstey's position. And, I guess the
23 question to the Fire Marshal is, would you anticipate
24 witnesses other than Mr. Anstey and other -- any other --

1 and would you anticipate filing a more formal prefiled
2 testimony on behalf of Inspector Anstey and any other
3 witness?

4 MS. MARTIN: I have a couple thoughts.
5 One is that there may or may not, it's most likely that it
6 would be Mr. Anstey. But I'm also, as we sit here and go
7 through this separately, the days out aren't really
8 working out to put us much in advance of the fire season
9 as we just identified it. So, I'm wondering if it might
10 be more useful just to go through and do discovery for the
11 entire thing, and then, to the extent there's an issue
12 related to the Fire Marshal, that we could address it.
13 Because, if we're not going to have two separate hearings,
14 and we're not going to get discovery done before the fire
15 season, I'm not sure the benefit of kind of going down
16 this path.

17 MR. IACOPINO: I think the idea was to
18 get the discovery done before the fire season. But, I
19 mean, I leave that up to you and your client. You know,
20 if he thinks this Committee should act before the fire
21 season, we should get a request of that. That would make
22 a big difference to the Chairman of the Committee, I'm
23 sure.

24 MS. MARTIN: Okay.

1 MR. IACOPINO: But, you know, that's --
2 aside from that, I thought the idea was to get the
3 discovery done as soon -- relatively early. Ms. Geiger
4 does raise a good point, though, is normally there would
5 be testimony provided. We don't do direct examination in
6 these proceedings. Direct examination is usually done on
7 paper. So, there would be some testimony provided by the
8 witness, and then the data requests would be submitted.
9 And, then, there would normally be answers. And, then,
10 usually, there's some supplemental testimony that winds up
11 being filed as well, direct testimony. And, then, at the
12 actual adjudicatory proceedings, we proceed with a brief
13 introduction and then cross-examination.

14 MS. MARTIN: So, I think, given that,
15 we'd probably prefer to do a formal prefiled testimony --

16 MR. IACOPINO: Okay.

17 MS. MARTIN: -- as opposed to just
18 relying on the letter.

19 MR. IACOPINO: Okay. And, let me start
20 with that then. The formal prefiled testimony from the
21 Fire Marshal, when is it that you think you could
22 reasonably file that?

23 MS. MARTIN: Probably the same timeframe
24 we had just set, about 30 days.

1 MR. IACOPINO: So, 30 days? Okay. So,
2 if we were to do 30 days that would be essentially like
3 March 1st or 2nd that you would be receiving that,
4 somewhere in there. I don't need to be exact right now.
5 But somewhere at the beginning of March that you would be
6 receiving that. Could you get your data requests within
7 20 days to that?

8 MS. GEIGER: Yes.

9 MR. IACOPINO: Okay.

10 MS. MARTIN: And, can I just interject?
11 I'd just like to reserve the right to add other witnesses,
12 if, after today, we decide that we need other witnesses.

13 MR. IACOPINO: Yes. But I think you'll
14 be subject to that same deadline. So, like --

15 MS. MARTIN: That's fine. That's fine.

16 MR. IACOPINO: If it's 30 days, you have
17 two other witnesses, and you just file their testimony as
18 well.

19 MS. MARTIN: Okay. Thank you.

20 MR. IACOPINO: And, that will go for
21 everybody else, too. The Fire Marshal will file his
22 prefiled testimony. If it turns out, although most of you
23 indicated you would not have questions for him, if it
24 turns out that you do, those data requests would be, and

1 you'll get a procedural order with the exact dates in it,
2 starting counting today, even though the order is going to
3 be a few days from now, but you'll have 20 days to issue
4 any data requests to the Fire Marshal, and he will have 20
5 days to answer. And, that's going to put us 70 days out.
6 So that takes us, beginning of March, beginning of April,
7 beginning of May. Which is probably fire season, isn't
8 it?

9 (Mr. Anstey nodding in the affirmative.)

10 MR. IACOPINO: I don't know if there's
11 much we can do about that, but hope that it's wet. Okay.
12 The Applicant intend to present a witness or witnesses
13 with respect to the Fire Marshal issues? And, if so, what
14 would be an appropriate date to designate that witness and
15 require your prefiled testimony?

16 MS. GEIGER: Well, I think we won't know
17 that until we see what the Fire Marshal files. And,
18 so, --

19 MR. IACOPINO: So, how much time do you
20 think you will need after the Fire Marshal files his
21 prefiled testimony?

22 MS. GEIGER: Well, and, then, I think
23 it's probably after we receive answers to data requests,
24 too. I mean, I don't think it's -- I think that's

1 typically how it works, is that we get answers to data
2 requests, and then we prefile.

3 MR. IACOPINO: I'm just looking for what
4 you -- what you believe is most comfortable.

5 MS. GEIGER: Okay.

6 MR. IACOPINO: I mean, this is 70 days
7 out, when you would have the Fire Marshal's responses to
8 your data requests. So, you would have his prefiled
9 testimony in a month. You'd have your data requests out
10 within 20 days of receiving that prefiled testimony. He
11 would have his answers to you within 20 days of receiving
12 the data requests. To me, that's 70 days.

13 MS. GEIGER: I would look for another 30
14 days after receiving answers to those data requests to
15 prefile testimony.

16 MR. IACOPINO: It's kind of a while,
17 don't you think? It's kind of an extended period of time.

18 MS. GEIGER: I need -- I need to know
19 what information to address and rebut. And, so, I mean, I
20 think it's -- I think this is typically the way the
21 schedules are developed, but --

22 MR. IACOPINO: No, you're right. It is.
23 I'm just -- it's all right. So, --

24 MR. BROOKS: But, Attorney Iacopino, I'd

1 just like to point out that that is the way that the
2 schedules usually proceed, but this is not the normal
3 circumstance. You usually have a project that's waiting
4 to be built. Now, you have something that possibly poses
5 a health and safety hazard.

6 MR. IACOPINO: I understand. And, let's
7 -- let me see what the parties are looking for. And, if I
8 need to scrunch it down, we're going to scrunch it down.

9 MR. BROOKS: Okay.

10 MR. IACOPINO: So, that would take us
11 out to prefiled testimony from Applicant's witnesses.
12 And, incidentally, that would be prefiled testimony for
13 any other party that chose to present a witness in this
14 case, too, including Counsel for the Public. So, from the
15 time that you receive, and I'm going to go to the Fire
16 Marshal first, from the time that you receive the prefiled
17 testimony, you would be required to submit data requests
18 to the Applicant within 20 days, just using the schedule
19 that we started off with here. And, they would be
20 required to respond within 20 days. And, then, we would
21 normally set a deadline for any supplemental prefiled
22 testimony from both parties. Usually, it's the same date.
23 And, any suggestions as to what that would be? How much
24 time you would need for that? You're the Applicant. So,

1 I'll go to you first, Ms. Geiger.

2 MS. GEIGER: Right. I just want to make
3 sure I understand. You said --

4 MR. IACOPINO: Just the supplemental
5 prefiled deadline.

6 MS. GEIGER: And, this would be --

7 MR. IACOPINO: At this point, we are --
8 you've got 30 days, 70 days, 100 days, 140 days from now.
9 And, the last thing that happens there is you have
10 responded to data requests from the other parties.

11 MS. GEIGER: Uh-huh. And, so the
12 question would be whether --

13 MR. IACOPINO: Supplemental prefiled.

14 MS. GEIGER: On the part of both
15 parties?

16 MR. IACOPINO: Right. Just one deadline
17 for both. Because, at this point, everybody has traded
18 information.

19 MS. GEIGER: Uh-huh. I would think
20 within 20 or 30 days after that.

21 MR. IACOPINO: Okay. That totals 160
22 days. Which is almost six months, right? Not quite, five
23 months. Counsel for the Public, any suggestions on how we
24 shorten that up, if that's the concern?

1 MR. BROOKS: Usually, we have that
2 process and the deadlines for what's a complicated project
3 that has a lot of different facets to it. There's only
4 one facet here. And, so, I don't know if we can summarily
5 take care of this, by saying something like, within 30
6 days, the Fire Marshal has the burden of submitting all
7 the information that it thinks is pertinent, whether
8 that's documents or prefiled testimony, and along with a
9 legal memo of what it thinks ought to happen and why.
10 And, then, the Applicant has 30 to days to respond with
11 all the same and say why it -- either the codes don't
12 apply or why it's actually met the requirements, *etcetera*.
13 And, then, you basically have all the information. It
14 just doesn't seem like going back and forth and reviewing
15 prefiled and all that kind of stuff is going to matter all
16 that much on this one issue.

17 MR. IACOPINO: Well, and just so there's
18 no mistake. I mean, I think we have fairly substantial
19 memoranda from both -- from all parties with respect to --

20 MR. BROOKS: Probably more than you ever
21 wanted, actually.

22 MR. IACOPINO: Yes. I think it was more
23 than what I wanted anyway. But, nonetheless, I think the
24 legal memoranda, I think we're pretty good already in

1 that. I mean, I don't really see people's positions
2 changing with respect to what the law is supposed to be,
3 you know. So, what you're suggesting is an entire --
4 really, an entirely different thing. It's just basically
5 have the Fire Marshal provide all information, and not do
6 any interrogatories or discussions? I mean, one way that
7 we have shortened things in the past is, rather than
8 permitting data requests, we've just done tech sessions.

9 MS. GEIGER: That would be fine.

10 MR. IACOPINO: And, that's a
11 possibility. Tech session is a -- and we could even do
12 that with a record, normally, we don't, but, if parties
13 require it, we can impose on Mr. Paquette to be present at
14 our tech session.

15 MS. GEIGER: Mr. Patnaude.

16 MR. IACOPINO: Mr. Patnaude, sorry. I'm
17 calling him "Paquette", because that's the street I live
18 on now. I'm sorry.

19 But, anyway, that is a method that we've
20 used in the past, to avoid all the written back and forth.
21 In essence, what happens is, we trade the information
22 that's willing to trade. And, then, we all get in a room
23 and sit down and we permit questioning under -- usually,
24 with myself presiding, permitting questions of the two

1 witnesses. And, we can record it. And, sort of like a
2 deposition-style of a questioning.

3 MS. MARTIN: I'm wondering --

4 MR. IACOPINO: And, that could shorten
5 things up.

6 MS. MARTIN: I'm wondering if we can do
7 a combination. Where we took Counsel for the Public's
8 suggestion, and, thereafter, if there were outstanding
9 issues, we could do a tech session. But, this way, we're
10 talking 60 days out, not however many you said.

11 MR. IACOPINO: Well, we're -- okay. Oh,
12 I see what you're saying. Okay. I misunderstood you at
13 first. You're saying not schedule the tech session?

14 MS. MARTIN: Yes. At this point, I
15 think we're working fairly well with exchanging
16 information. But I would like to leave that out there as
17 a possibility, if we don't do all of that within the 60
18 days.

19 MR. IACOPINO: What does the Applicant
20 think of that? You get the prefiled of the Fire Marshal,
21 you get to file your own. And, then, any discovery that
22 may or may not be necessary occurs after that. I would
23 still schedule it here today, so that we have some dates
24 out there, but might turn out to not be necessary.

1 MS. GEIGER: Yes. I mean, I think what
2 makes sense -- might make sense is having the Fire Marshal
3 prefile their testimony, and then scheduling a tech
4 session, so that the parties can sit down and see if
5 there's, you know, if there's potential for resolution of
6 issues, and exploring any questions that we might have
7 about that testimony, in an informal manner, and then
8 filing, if necessary. I mean, and I'm hopeful that these
9 issues will be resolved. And, that's what the Project is
10 sincerely endeavoring to do.

11 MS. MARTIN: The obvious concern with
12 that is we're prefilings our testimony, but there's nothing
13 in return. If they're going to have a witness, and we're
14 not having access to that prior to the tech session.

15 MR. IACOPINO: Well, I think that what
16 would happen is, when they filed, you would have your own
17 tech session with their witness thereafter. You would
18 actually get to go last, which sometimes timing can be
19 important. But I'm trying to -- I mean, what you're
20 recommending, Ms. Geiger, is essentially we substitute the
21 data requests with the tech session. And, that does --
22 the one thing that that does do is it shortens up the
23 timeframe, because it's not 20 days to issue the
24 interrogatories, and then 20 days for you to respond. We

1 can say ten days after the prefiled testimony we schedule
2 a tech session. And, that does shorten it up, from 60
3 days to 40 days. And, it shortens up both of them, from
4 160 to 80, if we went through the whole process that way,
5 which is about half. So, that is a manner in which we
6 could shorten up that process.

7 Now, just so that you're clear, because
8 I want to make sure that I'm clear myself, you would issue
9 your prefiled testimony within 30 days; 10 days thereafter
10 we would hold a tech session. A certain amount of time
11 after that tech session, let's assume it's 30 days, just
12 for purposes right now, assuming no settlement, the
13 Applicant would file its prefiled testimony on that issue;
14 10 days after that you would have the tech session with
15 the Applicant's witness or witnesses. And, that would be
16 80 days, by my calculation. Yes, 40 and 40. As opposed
17 to doing it where there's these 20-day interims for people
18 to get their questions together. It shortens it by half.
19 I think, quite frankly, from my viewpoint, that's the best
20 way to proceed. I actually think that that might be even
21 quicker than prefile, prefile, and then a joint tech
22 session. I mean, you're talking the same timeframe either
23 way, because there's 60, 70, 70-80 days.

24 MS. MARTIN: Yes. I was just thinking

1 that a joint tech -- if we're going to do a tech session,
2 that a joint tech session would be --

3 MR. IACOPINO: What do you think of
4 that, though? Sometimes the joint tech sessions are good,
5 Ms. Geiger, because you have the two experts, so to speak,
6 there, and they speak each other's language and can speak
7 to each other. Do you have a concern about that at least
8 an initial round of filing of prefiled testimony on these
9 issues, and then having your witness and Mr. Anstey and
10 any other witnesses from the Fire Marshal in the room for
11 the tech session?

12 MS. GEIGER: I mean, I think that's the
13 way I was envisioning it. In other words, the State Fire
14 Marshal would file its prefiled testimony. And, then,
15 there would be a technical session, at which time I would
16 assume that the Project would bring its technical expert
17 to assist in asking the questions of the State Fire
18 Marshal. Then, based on the information that we receive
19 at that tech session, we'd be in a better position to file
20 our prefiled testimony.

21 MR. IACOPINO: All right. So, what I'm
22 -- I understand that. But the suggestion I think that is
23 out there is a way to shorten it even more, which is by
24 you get their prefiled testimony, you file your prefiled

1 testimony, and then, you know, the examination, for lack
2 of a better word, at the tech session goes in both
3 directions. And, then, you'll have the opportunity to
4 file supplemental prefiled afterwards anyway.

5 MS. GEIGER: That's true. I mean, I
6 think that the problem with that, of course, is that
7 sometimes, at tech sessions, most of the time you -- a lot
8 of the questions that you might have about the prefiled
9 testimony, that you might spend a lot of time addressing
10 and rebutting in the responsive testimony, those questions
11 go away through conversations. So, I think that the tech
12 session is a useful tool to assist in hopefully expediting
13 or in making the subsequent prefiled testimony a little
14 bit more focused.

15 MR. IACOPINO: Well, if we don't have
16 agreement, I want to sort of stick to as much as the way
17 that we do it normally anyway. So, what I'm going to
18 recommend to the Chair is that we do it what I -- you
19 know, the manner in which -- the hybrid of what was just
20 said by Ms. Martin and Ms. Geiger. Is that we have the
21 Fire Marshal issue his prefiled testimony from his
22 witnesses, and that there be a tech session ten days
23 thereafter. You'll have 30 days for the prefiled
24 testimony. We'll schedule that tech session 10 days

1 after. The exact date will be in the order that will come
2 out. And that, within 30 days after that tech session,
3 the Applicant or any responders, any other parties, file
4 their prefiled testimony on these issues, and that there
5 will be a tech session with those witnesses 10 days after
6 that's due. That cuts us down from the traditional way in
7 which we would probably go out, about 160 days to 80 days.
8 We're still probably pushing up against fire season, but I
9 think that it's probably the best that we're going to do
10 without a complete agreement.

11 So, now, because that is the plan,
12 doesn't mean that you can't try to resolve and stipulate
13 to issues, either to stipulate out issues and settle
14 things or stipulate to facts. You're always encouraged to
15 do that.

16 MR. BROOKS: Attorney Iacopino, we've
17 talked about having the prefiled testimony and the data
18 sessions. But what's the end game? What's going to
19 happen, once the 80 days passes and all that's done?
20 Without a ruling from the SEC, --

21 MR. IACOPINO: Well, the idea is --

22 MR. BROOKS: -- are you going to get
23 anywhere?

24 MR. IACOPINO: I think the idea is, I'm

1 only going to get us one, one hearing. And, it probably
2 is going to wait until the discovery for the O&M and those
3 other buildings are done. But I think the hope is is that
4 the discovery process, along with the settlement process,
5 prods everybody to come to some agreements on these
6 issues. I mean, if there is going to be a suppression
7 system installed, and it's okay with the Fire
8 Department -- with the Fire Marshal's, obviously, that
9 takes care of at least one of the concerns of the Fire
10 Marshal as we approach the fire season. You know, I can't
11 -- I mean, I've got to allow time in the process for folks
12 to do their due diligence and afford them the due process
13 as well. You know, so, I think that the idea of doing the
14 Fire Marshal separate, on a separate track and a faster
15 track, is a good idea, because I think it's going to
16 encourage some resolution of the issues in advance of the
17 other, which I think are probably more complicated --
18 well, I can't say "more complicated", but issues of a
19 different nature, in terms of the O&M building and the
20 as-builts. That's my view of it.

21 MR. BROOKS: I definitely think --

22 MR. IACOPINO: I'm happy to listen to
23 anybody.

24 MR. BROOKS: I definitely think that it

1 will help. I just didn't know if there is some
2 opportunity, it may be the case that relevant facts
3 aren't, you know, once we go through 30 days of this, we
4 realize relevant facts aren't really disputed, because we,
5 you know, understand what's there and what's not there,
6 and maybe what the codes require, and disagree about what
7 applies and doesn't apply.

8 I didn't know if there was an additional
9 opportunity for, let's say, the Fire Marshal or someone to
10 file the equivalent of a motion for summary judgment,
11 saying "We all agree to the facts. We don't agree on the
12 resolution. Can we get a ruling from the Committee as a
13 matter of, you know, the undisputed facts?"

14 MR. IACOPINO: I will try to get -- I
15 will try to get us a separate Committee hearing on the
16 Fire Marshal issues, okay? I will -- I'm telling you,
17 it's very difficult to do. Only because it's 15 people,
18 and they're all very busy people. I will try. I think, I
19 mean --

20 MR. BROOKS: You've done well to get it
21 down to 80.

22 MR. IACOPINO: Yes.

23 MR. BROOKS: I mean, I've lived here
24 enough to know that that's not easy to do. So, I

1 appreciate that, but --

2 MR. IACOPINO: Well, okay, I will try.
3 I mean, that's the best I can tell you, Allen. You know,
4 and I will recommend it to the Chairman as well and deal
5 with the response.

6 MR. BROOKS: And pray for rain.

7 MR. IACOPINO: Yes. Okay. I think that
8 deals with the Fire Marshal issues. Now, if we move onto
9 the other issues here. We have -- there's a motion
10 filed -- I'm going to try to group these things, to just
11 make the discovery easier. We have the motion to reopen
12 the record. We have the position of Counsel for the
13 Public regarding the suspension and revocation. And, we
14 have various intervenors joining in with that. We also
15 then have a motion to amend. So, there's really those
16 three sorts of general groups of issues out there.

17 Essentially, a request that the
18 Certificate be revoked or suspended, due to the fact that
19 it's not in compliance with the original plans, or with
20 the Safety and Maintenance Program or requirements. Then,
21 there is the motion to reopen the record, which is sort of
22 a little bit of a different animal. But, I think,
23 ultimately, the relief that is sought from those two
24 groups is the same. I mean, I don't see Ms. Lewis and Mr.

1 Buttolph saying they don't want the Certificate
2 suspended -- in fact, I think they want the Certificate
3 suspended, but the motion to reopen the record is sort of
4 a different animal procedurally. So, --

5 MS. LINOWES: Mike, if I may on that.
6 Back a year, more than a year ago when that letter was
7 sent in, I think I could say for the group that it was
8 unclear what the process was to bring the information
9 forward to the SEC. That there was an apparent change in
10 the plans. So, I think that the group would be willing to
11 withdraw that request, if the better request or if the
12 streamline -- it would streamline the process more to just
13 agree with what the Counsel for the Public is asking, and
14 then that would be fine. I don't think that it was --
15 folks are aware of what to do.

16 MR. IACOPINO: That's up to that
17 intervenor, whether they wish to withdraw their request.
18 All I'm trying to do now is group things, because you know
19 what the next question we're going to have is "who goes
20 first?" That's going to be the next question that we
21 have, okay? "Who is supposed to present evidence first
22 here?" I think that, on the request for the revocation or
23 suspension of the Certificate, those who are requesting
24 that, and I see your party as being part of that. So, I'm

1 trying to group them. They have the burden of proof to
2 demonstrate that they're not in compliance, and that the
3 failure to comply warrants a suspension of the
4 Certificate.

5 On the other hand, the motion to amend,
6 the burden of proof falls on the Applicant. So, one of
7 the first things I anticipate us going through here is
8 "okay, whose witnesses are we going to hear from first?"
9 And, my guess is is that each of you is going to say "can
10 we hear from the others first?" So, that's -- that's why
11 I'm just trying to group them, so that, if we have two
12 sides, then we can make the decision. Yes, Susan.

13 MS. GEIGER: While it's correct that the
14 Applicant did file a motion to amend the Certificate, it
15 was filed on a conditional basis. It was filed with a
16 request that the Committee take it up, if necessary, upon
17 deciding that DES did not have the authority to review and
18 approve the amended site plan. So, --

19 MR. IACOPINO: So, it would be your
20 position they should go first.

21 MS. GEIGER: I think we need a ruling
22 from the Bench, to be honest with you. I mean, I think
23 that's where we were the last time, and I think -- I don't
24 know that Allen -- I can't recall if Allen was here when

1 we reached the agreement with Attorney Roth and Attorney
2 Schlitzer, but that we were going to brief these legal
3 issues, in order to reach some threshold decisions.
4 First, to decide how much, if any, discovery was going to
5 be necessary on these other issues. And, we don't have
6 that ruling yet.

7 MR. IACOPINO: No, you don't. But I
8 don't think you're going to get that ruling without more
9 facts. I think that's the problem. It's difficult for
10 the Committee to rule just sort of on those legal
11 questions, because there are facts -- the questions, first
12 off, aren't the best -- aren't the best version of the
13 question, I don't think, personally, and even though I had
14 a hand in crafting them. But the legal issues that make a
15 difference really stem on facts, really come from facts.
16 And, it's the application of both the language in the
17 decision and order, and the statute, to the facts that is
18 going to be -- I mean, the answer to the first question is
19 "does the DES have the authority to amend the
20 Certificate?", is probably answered by the statute itself.
21 However, DES does have other authority granted to it, in
22 the order, I mean, the order did grant certain authority
23 to the DES. And, whether or not that authority was
24 exercised, whether or not that was the extent of the

1 authority that was needed is really the question. And, I
2 understand that there's disagreement about that. But, in
3 order to come to a ruling on that, I believe that the
4 Committee needs the facts that we've talked about
5 stipulating, and that will ultimately, to the extent not
6 stipulated, be litigated. That's the problem with the
7 broad legal questions that are out there. Believe me, I
8 wish we had an order out, too.

9 And, that's not to say that the Chair
10 will not, in its upcoming procedural order after this
11 hearing, will not precisely identify the issues for the
12 adjudicatory proceeding. I think they will, somewhat
13 similar to what he did in the last order. But -- really,
14 so everybody will have formal notice. But I don't think
15 we're going to get a legal -- I don't think we're going to
16 get an order on the legal memoranda that was filed,
17 without some facts.

18 So, I guess the question then is is, as
19 I understand probably what you're, and tell me if I'm
20 wrong, Ms. Geiger, is that I assume that your position is
21 "well, these other motions were brought first, and the
22 burden of proof with respect to the other motions is on
23 other parties, so, they should have the burden of
24 proceeding first"?

1 MS. GEIGER: I agree.

2 MR. IACOPINO: And, that normally would
3 be the way that a matter would be dealt with. So, I think
4 that that is the appropriate way to go.

5 MR. BROOKS: But is the suggestion that
6 we're going to get all the way through the process of us
7 proving that the Certificate should have been amended,
8 before we even begin the process of them trying to amend
9 it?

10 MR. IACOPINO: Well, I only, because, as
11 I said before, --

12 MR. BROOKS: I mean, most of these
13 things ought to overlap.

14 MR. IACOPINO: Put it this way, I don't
15 see three hearings before the Committee.

16 MR. BROOKS: Right.

17 MR. IACOPINO: I think that the two -- I
18 mean, the problem here is each party has a burden of proof
19 in the way that the issues are presently presented to the
20 Committee. Those seeking suspension or revocation have
21 the burden of proving under our rules that that suspension
22 or revocation is warranted, that they're not in compliance
23 and that it is warranted.

24 MR. BROOKS: Uh-huh.

1 MR. IACOPINO: The Applicant has the
2 burden of proof on its motion to amend. And, I understand
3 the motion to amend is styled as "conditional", sort of
4 alternative relief that they're looking for. Normally, it
5 would all be decided after one evidentiary hearing and one
6 deliberation.

7 MR. BROOKS: Uh-huh.

8 MR. IACOPINO: I would anticipate, if
9 the Committee acts the way that it has in the past, it
10 would consider the suspension and revocation proceedings
11 first, make a decision. And, then, to the extent
12 necessary, go on to the motion to amend the Certificate.
13 Although, quite frankly, even with some of the agreements
14 that have been spoken about, there's going to be some --
15 it sounds like there's going to be some amendment of the
16 Certificate one way or another anyway, assuming it's not
17 suspended, because there are some issues that it looks
18 like folks are going to be agreeing on. So, --

19 MR. BROOKS: It just seems like it would
20 be in the Applicant's interest, let's say that we prevail,
21 and, in fact, they're operating outside the Certificate.
22 Now, they have a facility that they don't have a
23 Certificate for or is outside that and they're in
24 violation. It seems like that we might want to work

1 together to marshal all the facts together, so that, if we
2 have one hearing on that, we have a decision that says
3 "Yes, you need to amend, and you have the permission to
4 amend in the following ways" at about the same time,
5 rather than having the other one hang out there.

6 MR. IACOPINO: I agree.

7 MR. BROOKS: I don't mind going first
8 overall. It just means we may need more time to do -- we
9 might as well have all of the operable facts in there.
10 So, we might need time to have experts look at it, "okay,
11 what's the impact of the new road location?", etcetera, at
12 the same time that we're looking at "what did they
13 actually, you know, do?"

14 So, I don't mind necessarily going
15 first, but we probably will need more time than we usually
16 would need. You know, I'm thinking maybe --

17 MR. IACOPINO: Well, we have to figure
18 one other thing into the schedule here, is you're going to
19 be doing this survey.

20 MR. BROOKS: Right. And, that's not
21 going to happen until --

22 MR. IACOPINO: It's not going to happen
23 until April at the earliest, probably.

24 MR. BROOKS: Right. But, if we're doing

1 all the fact-finding, including not just "where is it
2 right this second?" And, "did they have permission from
3 DES?", let's say, that might be an issue for whether
4 there's a punitive aspect of it.

5 MR. IACOPINO: Right.

6 MR. BROOKS: But, if we're looking at,
7 "do we actually support the changes or do we think they're
8 detrimental?" We need to have the experts go out there.
9 My guess is that we'll need fair weather to do some of
10 those studies as well. So, I'm thinking it might take as
11 much as 120 days for us to do the first part. If they
12 need a certain amount of time, that's equivalent in
13 response. But I don't see us getting through to the end
14 point all that quickly. And, like I said, maybe that
15 doesn't matter that much, because the world isn't really
16 changing day-by-day out there. But we might as well do it
17 all at once. And, we can take, you know, we can be Part 1
18 of that, but we just need a lot of time to get through it.

19 MR. IACOPINO: And, that's the only
20 reason I raise it, is only because I anticipated perhaps
21 disagreement over who should go first. The discovery
22 process is going to occur, but somebody has got to file
23 their prefiled first and start it off. And, I think that
24 that should be those who are seeking the suspension, the

1 most -- the harshest remedy. And, also, it was what was
2 requested first as well.

3 MR. BROOKS: Right. But I'd like to
4 present everything as a package that says "Here's what we
5 think they did wrong? Okay, put that now aside. And,
6 here's what we evaluate whether they should be able to
7 keep, you know, the new alignment." Because we might not
8 -- you know, we might evaluate that and say "there's not
9 an issue", if there's a positive impact or whatever. So,
10 we might not oppose the amendment. And, as you said,
11 we'll actually seek amendment no matter what, because we
12 believe that, if there is a change, it ought to be
13 memorialized in the Certificate. So, it just makes sense,
14 I think, even -- that may put more of a burden on us, but
15 it makes sense for us to do that all at the same time, we
16 just need a lot of time to do that.

17 The request from Peter also is that, in
18 terms of discovery, because we're in a different realm,
19 and something that looks more like enforcement, that we
20 have the ability to do, you already mentioned
21 "depositions", which I think we need to do, data requests
22 and interrogatories are essentially the same, I think, for
23 the most part, but we might need some document production,
24 if we haven't gotten it. I don't know if there's a way to

1 simplify that. If they want to do a 30 --

2 (Court reporter interruption.)

3 MR. BROOKS: -- a 30(b)(6), 3-0 (b)(6),
4 type deposition, which means essentially they take someone
5 from the Company to answer all the questions that we are
6 going to depose them on. But, again, you know, 120 days
7 or so to put all that together doesn't seem unreasonable.

8 MR. IACOPINO: All right.

9 MR. BROOKS: And, I don't know what the
10 Applicant says in response.

11 MR. IACOPINO: And, what's the Applicant
12 response to that timeframe? In other words, that you
13 would be expecting prefiled testimony four months, 120
14 days, on the non-fire issues.

15 MS. GEIGER: I mean, --

16 MR. IACOPINO: And, that would
17 essentially start the process, what you're saying.

18 MR. BROOKS: Yes.

19 MR. IACOPINO: So, you would issue
20 prefiled testimony. They would have an opportunity to
21 provide --

22 MR. BROOKS: And, can you tell me the
23 date? I don't have a calendar in front of me to review
24 that. So, actually, that turns into the end of --

1 MR. IACOPINO: I turned my phone off.

2 MR. BROOKS: We might end of June,
3 instead of end of May, just because the weather in those
4 areas does not cooperate all the time.

5 MR. IACOPINO: No, it doesn't. So, if
6 we were to go 120 days from today, we would be -- I have
7 May 30th. It's not quite 120, it's four months.

8 MR. BROOKS: Okay. But I think we'd
9 need the end of June, because we're not going to have
10 enough weather. And, we do want to have the Applicant
11 assist us in hiring at least one expert to help
12 evaluate --

13 MR. IACOPINO: Okay. Just so I
14 understand. So, we're anticipating that the survey work
15 would get done in that time. Are you anticipating some
16 kind of trade of information before you provided your
17 prefilled testimony?

18 MR. BROOKS: I think that we've already
19 had information provided.

20 MR. IACOPINO: Okay.

21 MR. BROOKS: And, we'll both continue, I
22 think, to do that.

23 MR. IACOPINO: Okay.

24 MR. BROOKS: So, we'll work together on

1 getting that information.

2 MR. IACOPINO: Applicant?

3 MS. GEIGER: I agree with Mr. Brooks's
4 comments earlier about consolidating issues of developing
5 the record around alleged non-compliance, as well as the
6 motion to amend. I think that makes sense. I think that,
7 however, --

8 MR. IACOPINO: What about the timeframe?

9 MS. GEIGER: In terms of what time he
10 needs to file the prefiled testimony, that's really up to
11 him. We don't object to that. But, then, I would think
12 we would follow the same process as with the Fire Marshal,
13 and then have a tech session or data requests after that.

14 MR. IACOPINO: I think so, too, but I'm
15 sort of taking it in baby steps here. So, the next
16 question is for everybody. Does everybody else agree with
17 that one in that regard? So, that that would mean that
18 any party that is seeking suspension or revocation on the
19 Certificate, or any other relief, for that matter, would
20 file their prefiled testimony, when did you say, Allen,
21 end of June?

22 MR. BROOKS: End of June.

23 MR. IACOPINO: So, say, June 30th. And,
24 that would pretty much start the whole process. It would

1 be my hope -- well, let me forget about my hopes for a
2 minute, and let's go to the end of June. So, if that was
3 June 30th. And, then, we would anticipate a -- well, the
4 question is, the next question would be, do you want to do
5 it the same way that we did the Fire Marshal's, without
6 the data requests, or is that something Peter actually
7 wanted?

8 MR. BROOKS: We want to be able to do
9 all of that.

10 MR. IACOPINO: Okay. So, we would then
11 schedule data requests and a tech session. And, then, the
12 filing of the other side's prefiled testimony, data
13 requests, tech session. And, I suppose we can substitute
14 "deposition" for "tech session", I guess it's the same,
15 you know, the same concept. I understand that you might
16 want some more formality to it.

17 MR. BROOKS: Uh-huh.

18 MR. IACOPINO: So, --

19 MS. GEIGER: So, could you just run that
20 by me again. You said --

21 MR. IACOPINO: I haven't put any dates
22 on it yet.

23 MS. GEIGER: Okay.

24 MR. IACOPINO: I'm just -- they want to

1 do it sort of the full discovery route. So, they would
2 file their prefiled testimony June 30th. A certain number
3 of days thereafter, probably 20 days thereafter, you would
4 be required to submit any data requests to their
5 witnesses. Then, 20 days thereafter, those witnesses
6 would respond. Then, 30 days after that, you would submit
7 your prefiled testimony, and then it would work the same
8 way. Twenty days thereafter, they would submit data
9 requests to your witnesses. You'd have 20 days to answer
10 them. And, then, we'd schedule a tech session thereafter.
11 And, that's going to get us quite a ways out there, but
12 that I haven't done the math on yet.

13 MR. BROOKS: And, that's fine. We will
14 need, because of the enforcement aspect of it, we would
15 like to do --

16 MR. IACOPINO: Depositions.

17 MR. BROOKS: -- requests for documents
18 and stuff early, before we do -- before we get to our end
19 of June for the prefiled. We need the information before
20 we're going to do that. Usually, in the normal process,
21 you have an application to actually look at.

22 MR. IACOPINO: Uh-huh.

23 MR. BROOKS: But we need -- the
24 information in this case isn't provided in an application,

1 we have to get it, maybe some of it has been provided, but
2 we want to have the ability to do that before we're going
3 to push everything forward on June 30th.

4 MR. IACOPINO: And, do you have any
5 objection to entering the request for production of
6 documents prior to their filing of the prefiled testimony?

7 MS. GEIGER: Yes, I do. I don't think
8 that that's in the ordinary course of how the SEC has
9 operated. And, I think it puts the Applicant in a very
10 difficult position. We're willing to, I mean, we've been
11 cooperating in terms of providing requested information up
12 to this point. But, I mean, I think that the thing that
13 triggers --

14 MR. IACOPINO: I'm going to suggest, and
15 I'm sorry to cut you off. It sounds as though you've said
16 they have been cooperative with you in providing
17 information. Why don't we continue in that vein. And, if
18 you feel that there's a need to do something more formal,
19 or if any party at this point, determines that there's a
20 need to do something more formal before you file your
21 prefiled testimony, you file a motion to do that. So,
22 what that would mean for everybody is this. You make --
23 you ask Ms. Geiger for whatever it is that you're looking
24 for. She'll go back with her client and consider whether

1 or not to give it to you. And, then, you either get it
2 or, if you don't get it, and it's something that you do
3 feel you need, and it's something that deserves tying up
4 Committee time, you file a motion for production of it.

5 And, now, Ms. Geiger, that would be
6 somewhat different than in a normal application. But this
7 isn't a normal application either. It's a
8 post-certificate proceeding. So, there does have to be a
9 little bit of flexibility for folks who have the burden to
10 have some way of -- I mean, you certainly don't want -- we
11 don't want a hearing where we get prefiled testimony
12 saying that the -- you know, that Turbine 13 is sitting on
13 top of a rare plant.

14 MS. GEIGER: Uh-huh.

15 MR. IACOPINO: And, it turns out that
16 Turbine 13 isn't where the person saying in the testimony
17 says it is. I mean, we want to avoid that. So, to the
18 extent that there is information that's not privileged,
19 and, you know, can be shared, I think that it's probably
20 something that should be done. And, that was a bad
21 example. But, you know, they say -- somebody says Turbine
22 13 is sitting at a certain locus", and it isn't, I mean,
23 the response, you know, to that is "it isn't." I mean, --

24 MR. BROOKS: Well, generally, I mean,

1 this also has the enforcement aspect of it, which may
2 include penalties. And, to do that, you'll need -- we
3 can't possibly be privy to all that information with
4 respect to culpability yet. So, we actually have to ask
5 them the question "did you know X?", in order to have a
6 packet to you that's complete. Otherwise, we go through
7 it, they respond, and then we have to have some other
8 additional opportunity after that to actually, you know,
9 nail all that stuff down.

10 MR. IACOPINO: I understand. And,
11 you're going to --

12 MR. BROOKS: And, then, I'm fine with
13 making the request in the manner that you suggested.

14 MR. IACOPINO: Yes. Right. What I'm
15 saying is, though, to the extent it can't be done
16 cooperatively, you're going to have to ask the assistance
17 of the Committee.

18 MR. BROOKS: And, I understand that.
19 That's an acceptable way, and I appreciate that.

20 MR. IACOPINO: But I was pointing out
21 for the Applicant's sake, is that that is a little bit
22 different than the way things are done in an application.
23 And, I'm not really looking at it from a enforcement,
24 because this is an enforcement proposing, that that's the

1 reason why it's different. I think it's different because
2 we have the position where you don't have four volumes or
3 five volumes of information already in front of the
4 opposing party. And, of course, you'll be free to object
5 to their request for assistance from the Committee as
6 well. And, the Committee -- the Chair will probably
7 determine whether to permit the -- or, to require the
8 document production or not. And, that's pretty much what
9 we're talking about, document production, right?

10 MR. BROOKS: It should involve at least
11 one deposition.

12 MR. IACOPINO: Okay. Well, we'll see
13 what --

14 MR. BROOKS: But we'll ask for the
15 relief that we need, if we can't agree, in the manner that
16 you asked.

17 MR. IACOPINO: Okay. With that
18 understood, let's try to put the timeframes on it then.
19 So, we're talking about June 30th would be your prefiled
20 testimony for the Applicant -- I'm sorry, for the Counsel
21 for the Public and any party seeking suspension or similar
22 relief. So, if we then did 20 days from June 30th for the
23 Applicant to submit data requests, and 20 days from the
24 submission of the data requests to reply, which means, if

1 you get the data requests on a 10th day, they're due 20
2 days from the date that you receive them.

3 And, then, schedules permitting, we
4 schedule a tech session of the Plaintiff's, just using
5 that for lack of a better term right now, tech session of
6 Plaintiff's witnesses. And, if the Applicant wishes, I
7 suppose what's good for the goose is good for the gander,
8 you want to do that tech session on the record or do it in
9 a deposition format, you have the option to do that. So,
10 that takes care of the moving parties. And, that gets us
11 50 days roughly beyond June 30th.

12 At that point, the Applicant would be
13 required to file its prefiled testimony. Can we say 20
14 days after that tech session or depositions are concluded?

15 MS. GEIGER: I think so. And, I
16 apologize.

17 MR. IACOPINO: Okay. You want me to run
18 through it? Sure.

19 MS. GEIGER: Did you indicate -- I
20 thought that you indicated that there would be data
21 requests, and then there would be responses, and then the
22 prefiled testimony from the Applicant would be due?

23 MR. IACOPINO: No. What I had, I had
24 June 30th, prefiled testimony from Counsel for the Public

1 and anybody seeking suspension. Twenty days after
2 June 30th, data requests to those parties from you.

3 MS. GEIGER: Uh-huh.

4 MR. IACOPINO: They reply within 20
5 days. And, 10 days after their reply, a tech session,
6 roughly, obviously, we would call around and make sure
7 everybody is available, but we do a tech session roughly
8 ten days after that.

9 Then, the next question is, the next
10 part of the sequence would be the Applicant's filing of
11 prefiled testimony. And, I was suggesting 20 days after
12 the tech session or deposition is concluded.

13 MS. GEIGER: That's fine.

14 MR. IACOPINO: Okay. Anybody object to
15 that?

16 MR. BROOKS: No objection.

17 MR. IACOPINO: So, that means that data
18 requests to the Applicant would be 20 days after that, and
19 responses due 20 days after receipt of the requests. And,
20 then, a tech session with the Applicant's witnesses 10
21 days, again, accounting for schedules, we'll schedule
22 this.

23 And, then, what I would suggest the next
24 sequence be, the filing of any supplemental prefiled by

1 both parties on the same deadline, which, I mean, if we
2 kept with the program here, it would be the next 20 days.
3 So, 20 days after that final tech session with the
4 Applicant, any supplemental prefiled testimony. Anybody
5 have any objection to that?

6 MR. BROOKS: No objection.

7 MR. IACOPINO: Within 10 days after the
8 filing of supplemental prefiled testimony, I am going to
9 ask that there be exhibit lists provided. And, I think
10 those exhibit lists should include anything that you are
11 going to ask the Committee to rely on, even if it is
12 already in the 2010-01 docket. With the exception,
13 obviously, you don't have to file the whole -- refile the
14 whole Application. And, you may not even have to bring a
15 copy of it. We just sort of want it on the list, so that
16 we know what it is the Committee is going to be referred
17 to. So, and I guess what I'm getting at is this. There
18 may be something in the record already from 2010-01, in
19 this docket, from the consideration of whether the
20 Certificate should have been granted. And, you may think
21 that's part of the record. We want it on the exhibit
22 list, because, in advance, I want to be able to let the
23 Committee members know, sort of like we did in Antrim
24 Wind, for those of you who were involved, and have

1 basically electronically every exhibit available for each
2 Committee member at his or her seat. And, so, I need
3 those lists in advance.

4 We cut it very close with Antrim Wind.
5 I remember the final prehearing conference I was in the
6 back room there helping one of the parties prepare his
7 exhibits, and then running them back to my office to scan
8 them for him.

9 So, I would like to have those exhibit
10 lists from each of the parties ten days in advance. To
11 the extent that it is something in the record that is
12 easily findable for me, it's probably easier for me to get
13 it to the Committee members than for you to make 15 copies
14 or re-email it, you know. So, it will also give me the
15 time to make sure that I can get all this stuff. And, it
16 may -- I may have to call you and say "Look, I don't have
17 easy access to this. Do you have it?" And, then get it
18 to me. But, if we have the exhibit lists, then at least I
19 know what we have to accumulate.

20 MS. GEIGER: So, are you -- will the
21 exhibits be provided to the Committee members only
22 electronically? In other words, will we be expected to
23 bring hard copies to be marked at a final prehearing
24 conference, as we typically do?

1 MR. IACOPINO: There will be a final
2 prehearing conference. I think that what we want you to
3 do, though, is it would be nice if they're already
4 pre-marked. So, if we have Applicant 1 through whatever,
5 Counsel for the Public 1 through or A through whatever,
6 whatever designation you choose. As simple as possible,
7 Ms. Linowes, okay? And, we don't need to skip numbers,
8 because it just confuses everybody. But, if we have those
9 lists, and then I will -- I'll confirm from the Committee
10 members who wants things electronically. And, we're going
11 to have an electronic version of it. But some of the
12 Committee members prefer the paper. I will make sure that
13 they have the paper. And, when I say "I will make sure",
14 that may mean, if I got five people, and it's something
15 that's big, I may need your assistance in getting them,
16 getting them copies.

17 But my idea here is this is ten days
18 after the final tech session. We will schedule a
19 adjudicatory proceeding after that date. And, I'm sure
20 there will be enough time in there for me to sort of put
21 together this, the record that you all are trying to
22 create, in a fashion that makes the most sense for a
23 15-member panel.

24 There will be one paper copy and one

1 electronic copy filed with Jane Murray at least. And,
2 those details we'll work out as we get closer, when I see
3 exactly what it is. If it's a total of five exhibits or
4 ten exhibits or something like that, then it may not be
5 that big a deal. If it is a project like Antrim Wind was,
6 you know, I may wind -- at that prehearing conference, we
7 may be doing the same thing. I'm also going to schedule
8 that prehearing conference at least two weeks before the
9 adjudicatory proceeding, so that -- because last time
10 there was last-minute changes and things that just made it
11 difficult, made it difficult to proceed. So, you can
12 expect that there will be at least two weeks between the
13 designation of exhibit lists and the adjudicatory hearing,
14 and there may be more, if I've got -- I don't know what my
15 Committee members' availability is at this point.

16 And, so, at this point, we're really
17 talking about an adjudicatory proceeding 160 days from
18 June 30th. And, I will be asking the Chair to do the Fire
19 Marshal issues on an expedited basis. And, I hope you
20 guys can resolve as much of that as possible. But we're
21 in the winter at this point. December. Does everybody
22 understand? Does everybody who is involved in this
23 proceeding understand that?

24 MR. BROOKS: Understood.

1 MR. IACOPINO: Anybody object to that
2 schedule?

3 (No verbal response)

4 MS. MARTIN: No objection. Can I ask,
5 before we -- because we're up first, can you just, I had
6 three different versions of what we were doing going. Can
7 you give me your final? I think it was prefiled testimony
8 30 days, and then 10 days for the tech session?

9 MR. IACOPINO: Yes. And, I have, "from
10 the Fire Marshal, prefiled testimony to the Applicant, and
11 also distributed to the other parties, within 30 days."

12 MS. MARTIN: Right.

13 MR. IACOPINO: And, then, I have "tech
14 session 10 days thereafter", and then I have "30 days for
15 Applicant fire witnesses' prefiled testimony, and tech
16 session there 10 days after."

17 MS. MARTIN: Thank you.

18 MR. IACOPINO: So, that was 40 and 40,
19 was 80 days. And, with respect -- I'm going to make a
20 request that we convene the Committee in there. It may --
21 there may actually be another filing that might make it
22 economical for the Committee to actually hear it ahead of
23 time. I don't know yet. So, that would be -- that
24 hearing could be as early as 94 days, on the Fire Marshal

1 stuff. I can't imagine it would be sooner than two weeks.
2 And, with respect to exhibits in that, I'm going to ask
3 for the same thing. If I could have exhibit lists 10 days
4 after the final tech session. And, I can't guarantee a
5 hearing in there, but I'm going to try. I'm sorry?

6 MS. GEIGER: Yes. We just have a
7 question about when the exhibit list will be due on the
8 State Fire Marshal issues?

9 MR. IACOPINO: Ten days after the final
10 tech session.

11 MS. GEIGER: Is there a tech session
12 after the supplemental prefiled testimony?

13 MR. IACOPINO: No.

14 MS. GEIGER: Okay. So, that means that
15 the exhibit list would have to be filed before?

16 MR. IACOPINO: Actually, you know, we
17 never scheduled supplemental pretrial. Did you have
18 supplemental prefiled? We didn't schedule supplemental
19 prefiled in that. We missed it.

20 MS. GEIGER: I wrote it down.

21 MR. NGUYEN: Twenty or thirty days. I
22 wrote it down as "prefiled" -- "supplemental prefiled
23 testimony 20 or 30 days after the" --

24 MS. GEIGER: Tech session.

1 MR. IACOPINO: Okay. That was after we
2 eliminated the data requests?

3 MS. GEIGER: Yes.

4 MR. IACOPINO: Okay. Let me -- all
5 right. Let me go through it again then. So, Fire
6 Marshal's prefiled testimony due in 30 days. Ten days
7 thereafter, and, again, we'll schedule this, tech session.
8 Then, I have 30 days from that tech session, Applicant's
9 prefiled testimony, and 10 days thereafter a tech session.
10 Then, we're going to say 20 days for supplemental prefiled
11 testimony. How about supplemental prefiled testimony and
12 exhibit lists?

13 MS. GEIGER: I think that that
14 conceptually might not be a problem. But sometimes there
15 are new issues brought up in supplemental testimony that
16 necessitate the marking of an exhibit that we didn't
17 anticipate. So, --

18 MR. IACOPINO: All right. But, I mean,
19 obviously, we're not -- the fact that something doesn't
20 make it onto your exhibit list is not going to be
21 necessarily that it isn't going to get in. You know that,
22 because you've seen many, many things entered in the
23 middle of hearings.

24 MS. GEIGER: I know, Mike. And, I'll

1 state my objection to that right now, because I don't
2 think that's such a good idea. But, in any event, I
3 understand that we have to be flexible. But I just think
4 that, in order to address that contingency, the very
5 strong likelihood that there might be an exhibit that
6 needs to be introduced as a result of something we see in
7 supplemental testimony.

8 MR. IACOPINO: All right. Why don't we
9 make it 10 days after the filing of the supplemental
10 prefiled testimony.

11 MS. MARTIN: And, when you schedule the
12 first tech session 10 days out, I think that puts us
13 outside of this issue, but Ron Anstey will be out-of-state
14 until the 8th of March.

15 MR. IACOPINO: I will be out that week
16 as well. On the Fire Marshal issues, we will put that
17 into -- consider it starting to run today. That will be
18 -- we'll have some have specific dates for the filings.
19 For the tech sessions, I will call around. There will be
20 a notice that will be put up, just with my notice that
21 will go on that go out to everybody through the service
22 list, and also be posted on the website. Okay. And,
23 that's because I'm going to try to make it accommodable
24 for everybody, and everybody's schedules. So, you'll all

1 be hearing from me after the procedural order comes out
2 saying -- because I'll have some dates. I'm going to try
3 to accommodate people who have other hearings, other
4 things they have to do, and find days that everybody is
5 available, if we can.

6 Okay. As far as the merits or
7 adjudicatory proceeding, at this point it's probably too
8 early to determine if there is any way to consolidate
9 presentations at that. We're already doing a lot of it by
10 prefiled testimony. So, are there any other issues
11 regarding the -- either the run-up to the adjudicatory
12 hearing or the process during the adjudicatory hearing
13 itself that anybody would like to raise for discussion?
14 And, that's either adjudicatory hearing?

15 MS. LINOWES: Mike, I do have one
16 question, if I may?

17 MR. IACOPINO: Yes.

18 MS. LINOWES: If I understand what's
19 happening, where we're going with all of this, there is
20 going to be an agreement at some point by June, I think,
21 that of what the as-built versus the planned or approved
22 Project was at. And, --

23 MR. IACOPINO: Well, nobody's required
24 to agree, Lisa. You may disagree. They may have somebody

1 go out there and do the survey, and any party says "I
2 don't agree with that." You can disagree.

3 MS. LINOWES: Okay.

4 MR. IACOPINO: But that action is going
5 to occur hopefully when the snow is gone.

6 MS. LINOWES: Yes. And, I have a fair
7 amount of confidence that we are going to be able to
8 demonstrate the facts, that what was built versus what was
9 -- I think that we will get there. When that is done, --

10 MR. IACOPINO: Hopefully, you'll be able
11 to stipulate to it.

12 MS. LINOWES: Yes. I should use that
13 word, right. But that -- then, we would actually be going
14 into hearings acknowledging -- okay. Maybe that's too
15 soon -- that's theoretical. But, let's say that we could
16 get to that point by virtue of reading as-built plans
17 versus the previously and originally submitted and
18 approved plans. Once, if we reach that point, we're going
19 into hearings with an acknowledgement that the Project was
20 not built according to the way it was approved. And,
21 then, the question then before the Committee come down to
22 "Were the decisions made by DES under the authority and
23 within the authority of DES?" And, "Is the Project as
24 built a problem for the Committee or is there actually a

1 violation?" I guess I'm asking, are those the two
2 questions that we're actually going to be attempting to
3 come to some decision on for the hearing?

4 MR. IACOPINO: To a degree, yes. But
5 let's say every fact was stipulated to, okay? What would
6 happen is -- then, what would happen is, there would
7 simply be argument, as to "what do these facts mean with
8 respect to these legal issues?" We've all briefed the
9 legal issues. You've all taken a position as to what the
10 legal issues should -- what your argument with respect to
11 legal issues and how they should be resolved. So, then,
12 the Committee's task at that point, after hearing your
13 arguments, would be to apply those facts. And, it would
14 be great if they were -- all the facts were agreed on to
15 the law, and make a determination. And, one of the
16 things, I mean, they could determine, it's totally
17 possible that they could determine exactly what the
18 Applicant has argued. That it was an appropriate
19 amendment to the Certificate and that it was within the --
20 and that the Applicant had, therefore, had the authority
21 to put the O&M building where they put it. Or, they may
22 agree with you, that "no, that authority only went to what
23 was contained within the Wetlands or Alteration of Terrain
24 Permit, and that the Applicant had the responsibility to

1 seek an amendment to the Certificate. I mean, those
2 are -- obviously, and there's lots of things in the middle
3 that go there, too. I'm trying to get to both ends,
4 because I see that as being what the Committee would do in
5 that circumstance where every single fact that was needed
6 to determine the issues was agreed to.

7 MS. LINOWES: And, the reason I'm asking
8 on this very simple question is, in determining what our
9 prefiled testimony would look like, it sounds like, in
10 hearing all the discussion, that many of the things that
11 have already been put into this docket and leading up to
12 this point, recognize that that's really what we will
13 probably be putting into our prefiled testimony, going one
14 step further, in that we will have, hopefully by June or
15 sometime in the spring, a layout, some understanding of
16 what all the changes were on the Project.

17 MR. IACOPINO: I would anticipate, like
18 in any application before the Committee or any cases
19 considered by the Committee that a lot of what goes into
20 the initial pleadings is also going to be contained in the
21 prefiled testimony. So that, to the extent, for instance,
22 Mr. Buttolph filed his motion to reopen the record, I know
23 that he did assert facts in there. I assume that he's
24 going, or somebody from that intervenor group, will file

1 prefiled testimony that will include those facts. That's
2 not unusual. That happens quite often. So, if what
3 you're worried about is being a repeat of what's already
4 been filed, to some degree, all prefiled testimony kind of
5 is. Even if you look at it from the initial filing of an
6 application, when you have the prefiled testimony in the
7 back of the application, much of it is duplicative of
8 what's contained in the application itself.

9 So, the testimony, though, is verified,
10 it's under oath. And, it's used by the Committee in the
11 course of adjudicating, not just bringing the issues
12 forward, which is what the pleadings are for, but in
13 adjudicating issues.

14 MS. LINOWES: Okay. Thank you.

15 MR. IACOPINO: Did I get that right?
16 Okay. Does anybody have any other issues they need to
17 raise here today?

18 (No verbal response)

19 MR. IACOPINO: Okay. Have I forgotten
20 anything?

21 (No verbal response)

22 MR. IACOPINO: I see Allen wants to head
23 out the door. I guess we are adjourned then. Thank you
24 all very much. And, I appreciate it. And, sorry for the

1 slow slogging through. We will have a procedural order
2 out very soon.

3 **(Whereupon the prehearing conference was**
4 **adjourned at 1:17 p.m.)**

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