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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

January 3, 2011 - 10:00 a.m.
21 South Fruit Street, Suite 10
Concord, New Hampshire

RE: **SEC Docket No. 2010-03**
Joint Application by Granite
Reliable Power, LLC, and
Brookfield Renewable Power,
Inc., for Approval to Transfer
Equity Interests in Granite
Reliable Power, LLC, under
RSA 162-H.
(Prehearing conference)

PRESENT:

SITE EVALUATION COMMITTEE:

Michael J. Iacopino
(Presiding as Hearings Examiner)

Counsel for the Committee

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

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APPEARANCES:

Counsel for Joint Applicant: Douglas L. Patch, Esq.
(Granite Reliable Power) (Orr & Reno)
Michael J. Palmieri, Esq.
(Noble Environmental Power)

Counsel for Joint Applicant: Harold C. Pachios, Esq.
(Brookfield Renewable Power) (Preti Flaherty)
Sigmund D. Schutz, Esq.
(Preti Flaherty)
David Bono, Esq.
(Brookfield Renewable Power)

Counsel for the Public: Peter C.L. Roth, Esq.
(Sr. Asst. Atty. General)
Department of Justice

**Reptg. Industrial Wind
Action Group:** Lisa Linowes

ALSO PRESENT: Pip Decker (Noble Environmental Power)
Tom Swank (Noble Environmental Power)
Kim Osmars (Brookfield Renewable Power)
Michael Cutter (Brookfield Renewable)
Daniel Whyte (Brookfield Renewable)
Tom Colgan (Wagner Forest Mgt./Freshet)

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P R O C E E D I N G

1
2 MR. IACOPINO: Okay. Thank you,
3 everybody, for coming today. We are here today for an
4 informal prehearing conference in the New Hampshire Site
5 Evaluation Committee Docket Number 2010-03, the Joint
6 Application by Granite Reliable Power, LLC, and Brookfield
7 Renewable Power for Approval to Transfer Equity Interests
8 in the Granite Reliable Power, LLC, pursuant to RSA 162-H.
9 My name is Michael Iacopino. I am the counsel to the
10 Committee. On Friday, Commissioner Burack designated me
11 to preside at this proceeding today.

12 I'm going to try to run this as
13 informally as possible. I'm going to start off with
14 introductions. So, why don't we just go clockwise around
15 the table and have everybody introduce themselves for the
16 record. And, if you're here appearing on behalf of a
17 particular party, please identify the party whom you
18 appear on behalf of.

19 MR. PATCH: Douglas Patch, from the law
20 firm of Orr & Reno, on behalf of Granite Reliable Power.

21 MR. PALMIERI: Michael Palmieri,
22 General Counsel of Noble Environmental Power.

23 MR. OSMARS: Kim Osmars, Chief Operating
24 Officer, U.S. Operations, Brookfield Renewable Power.

1 MR. BONO: David Bono, Vice President of
2 Law and General Counsel for the U.S. Operations of
3 Brookfield Renewable Power.

4 MR. ROTH: Peter Roth, the Counsel for
5 the Public.

6 MR. SCHUTZ: Sigmund Schutz, Preti
7 Flaherty, counsel for Brookfield.

8 MR. PACHIOS: Harold Pachios, Preti
9 Flaherty, counsel for Brookfield.

10 MR. IACOPINO: Why don't we go back to
11 you, sir, back there.

12 MR. CUTTER: Michael Cutter. I'm Vice
13 President of Engineering and Development for Brookfield
14 Renewable Power.

15 MR. IACOPINO: Mr. Whyte.

16 MR. WHYTE: Daniel Whyte, Vice
17 President, Brookfield Renewable Power.

18 MR. DECKER: Pip Decker, Project Manager
19 for Noble Environmental.

20 MR. SWANK: Tom Swank, Chief Commercial
21 Officer of Noble Environmental Power.

22 MR. COLGAN: Tom Colgan, President of
23 Wagner Forest Management, here representing Freshet Wind,
24 LLC.

1 MR. IACOPINO: And, for the record, I
2 would also note that last week we received a Petition to
3 Intervene on behalf of the Industrial Wind Action Group
4 filed by Lisa Linowes. We've waited ten minutes past our
5 scheduled starting time, but Ms. Linowes has not appeared
6 yet, but we are going to proceed in any event.

7 The only Petition to Intervene that --
8 actually, let me address you, Mr. Pachios. Did the notice
9 of the hearing get published?

10 MR. PACHIOS: Yes, it did. It was
11 published both in the Manchester Union Leader and the
12 Berlin newspaper.

13 MR. IACOPINO: Okay. And, I think your
14 affidavit has to be filed today, is that from the order?

15 MR. SCHUTZ: Yes. The affidavit was
16 mailed in on Thursday.

17 MR. IACOPINO: Okay. Thank you. The
18 only Petition to Intervene that I'm aware of is the one
19 that was filed last week by Lisa Linowes and Industrial
20 Wind Action Group.

21 MR. ROTH: And here she is.

22 MR. IACOPINO: And here she comes.

23 MR. ROTH: Okay.

24 MR. IACOPINO: Lisa, why don't you take

1 the seat right down there.

2 MS. LINOWES: Thank you.

3 MR. IACOPINO: We've barely started, Ms.
4 Linowes. And, all we've done is have everybody state
5 their names for the record. So, why don't you do the
6 same.

7 MS. LINOWES: Okay. I'm Lisa Linowes.
8 I'm with the Industrial Wind Action Group. I was an
9 intervenor in the original Granite Reliable case.

10 MR. IACOPINO: And, we have received
11 your Petition to Intervene in this particular docket, and
12 that's where we had left off just before you walked in.

13 My next question was going to be, just
14 informally and generally, is anybody aware of any other
15 Petitions to Intervene? Technically, they have until the
16 end of today to be filed under the order. Was anybody
17 aware of or had spoken to any other parties who had
18 indicated an intent to intervene, if you're aware?

19 (No verbal response)

20 MR. IACOPINO: I'll take it Brookfield
21 hasn't heard of anybody? Counsel for the Public?

22 MR. PACHIOS: No.

23 MR. ROTH: No.

24 MR. PACHIOS: We had a telephone call

1 from the clerk of a town, and just left a message for me,
2 "We don't know anything about this. Why did we get this
3 notice?"

4 MR. IACOPINO: Town of Dummer maybe?

5 MR. PACHIOS: I'm not sure it was the
6 Town of Dummer. I can't remember. But it was, you know,
7 "we don't know why we got this."

8 MR. IACOPINO: Well, it is --

9 MS. LINOWES: That was a question to
10 you, they didn't know why they got it?

11 MR. PACHIOS: That was a message that my
12 secretary took.

13 MR. IACOPINO: Well, we do send notices
14 to the affected towns and the abutting towns, so it may
15 very well be. Although, I can't remember what towns were
16 involved with this, other than Dummer and the county,
17 because a lot of it was in the unincorporated areas. But,
18 if they are a town, they have an absolute right, if it's
19 their town that's affected, they have an absolute right to
20 intervene. And, if we receive a petition, we will address
21 it accordingly.

22 Ms. Linowes, are you aware if any of the
23 other intervenors with who you participated in the
24 underlying docket may file a petition?

1 MS. LINOWES: I have not heard from any
2 of them.

3 MR. IACOPINO: Okay. All right. So, it
4 looks like, at least at this point, the parties to this
5 proceeding will be the Joint Applicants, Counsel for the
6 Public, and, if the IWA's petition is granted, they will
7 be a party as well.

8 I'm going to let everybody know, it's my
9 intention to recommend that the petition be granted by
10 Industrial Wind Action Group to the Committee. The
11 Committee will make the ultimate decision. However, they
12 did intervene in the underlying docket, I think they have
13 a sufficient understanding of these proceedings, and I
14 don't believe that they will cause any undue delay in the
15 proceedings. And, that's going to be my recommendation.
16 I haven't seen any objections. I know I'm sort of jumping
17 the gun, not giving anybody an opportunity to object.
18 But, quite frankly, from a regulatory standpoint, it's
19 probably the best way to make sure that the matter stays
20 on track and proceeds swiftly.

21 So, I don't know if you had any
22 objections, Mr. Pachios. But, if you wanted to state them
23 for the record, you can.

24 MR. PACHIOS: Well, my client was not a

1 party in the underlying proceeding. So, we know that the
2 issues here are financial, technical, and managerial.
3 And, I don't know what Ms. -- I'm not familiar with Ms.
4 Linowes or her organization or their level or approach in
5 the proceeding below. But, to the extent that that's what
6 her interest is, the financial, technical, and managerial,
7 you know, I just don't know.

8 MS. LINOWES: Would you like me --

9 MR. IACOPINO: Well, go ahead. Go
10 ahead, Lisa.

11 MS. LINOWES: When I was granted
12 intervenor status, it was -- at the time, there were no
13 limits placed on it, in terms of the subject matters. We
14 did delve into the issues of the financial, managerial,
15 and technical ability of Noble Environmental at the time.
16 And, so, it's -- And, the other reason we're interested in
17 being a part of this proceeding here is that there are
18 conditions that have been placed on the order that involve
19 -- that involve concerns about the environmental issues.
20 And, I know that that's not why you're here today, but I
21 do also understand that you have concerns in expediting
22 the process. And, I just want to make sure -- our
23 organization wants to make sure that there is no effort to
24 expedite it to the extent that other conditions of the

1 order are addressed or adjusted downward.

2 MR. IACOPINO: And, I do note --

3 MR. PACHIOS: You're talking about the
4 environment -- excuse me, can I just --

5 MR. IACOPINO: Sure. Go ahead.

6 MR. PACHIOS: You're talking about some
7 of the environmental conditions, when you can work, and
8 the period between April and August, *etcetera*?

9 MS. LINOWES: Correct. And, I
10 understand that that's not the purpose --

11 MR. PACHIOS: Yes.

12 MS. LINOWES: -- of your Application,
13 but anything can happen.

14 MR. PACHIOS: You want to watch.

15 MS. LINOWES: Yes.

16 MR. IACOPINO: I do note, Ms. Linowes,
17 that in your motion you state that "given the current
18 economic conditions, it is prudent to examine the
19 financial, managerial, and technical abilities of
20 Brookfield Renewable Power, Inc." And, I assume that's
21 the reason why you're seeking to intervene?

22 MS. LINOWES: Absolutely.

23 MR. IACOPINO: In the past, that's
24 really, when there's been a proceeding like this, whether

1 it's a transfer of a certificate or a transfer of
2 ownership of the holder of a certificate, that is
3 primarily the review that the Committee has performed. It
4 has not been the practice of the Committee in the past to
5 undertake a wholesale review of the entire Application and
6 the entire project, and all of the environmental and state
7 permitting aspects that go into it. Everybody here is
8 probably aware that there have been several proceedings
9 like this over the past five or six years. And, in each
10 of those proceedings, the issue of whether the transferee
11 is an appropriate transferee has been the issue. And, I
12 don't expect that this will be any different in this
13 particular case, unless, of course, members of the
14 Committee overrule me.

15 Mr. Patch, did you have any objection to
16 Ms. Linowes' Petition to Intervene?

17 MR. PATCH: I guess, just for the
18 record, I'd like to object on the same grounds that
19 Granite Reliable objected to her original Petition to
20 Intervene. And, just like to cite for the record the
21 filing that we made back on September 25th of 2008, and
22 the same basis for objection, would like to have that in
23 the record.

24 The other thing that I'd like to point

1 out is that, to the extent that the Committee is or does
2 grant her request, I would request that it do so under the
3 same circumstances that it did originally. And, I'd cite
4 back to the order that was issued on October 14th of 2008,
5 where it specifically said that her group had "not
6 demonstrated rights, duties, privileges, immunities, or
7 other substantial interests which require that they be
8 granted intervention." I just think it's important that
9 that be in the record. And, for the same reasons that we
10 objected before, we would object here.

11 And, I'd just like to underscore what
12 Mr. Pachios had said, which is basically that this is a
13 much more limited in scope proceeding. And, so, -- and,
14 obviously, we think it ought to remain as such and ought
15 to remain on the schedule that the Committee has already
16 indicated when it issued the procedural order. So, for
17 those reasons, we would object to the intervention.

18 MR. IACOPINO: Mr. Roth?

19 MR. ROTH: I don't have any objection to
20 Ms. Linowes' participation in the proceeding. And, have
21 discovered in the first case, in Granite Reliable, and in
22 other cases that she's participated in, that she conducts
23 herself very professionally and to the point. And, I
24 don't see that as being a problem here.

1 In terms of there being any sort of
2 "mission creep" on the hearing, I don't see that occurring
3 either. I don't know that the --

4 MR. IACOPINO: My guess is that the
5 presiding officer will not allow that to occur.

6 MR. ROTH: Right.

7 MR. IACOPINO: But that's just a guess
8 at this point.

9 MR. ROTH: And, changing the subject
10 slightly, Mike. I have not yet been appointed by the
11 Attorney General to serve as Counsel for the Public. So,
12 I'm here basically in my previously appointed capacity as
13 Counsel for the Public in the Granite Reliable matter.
14 But I do expect that the Attorney General will make that
15 appointment.

16 MR. IACOPINO: You know you're welcome
17 here in whatever capacity you show up in, right?

18 MR. ROTH: Thank you.

19 MR. IACOPINO: Okay. So, nobody really
20 expects any other intervenors. I've told you what my
21 recommendation is going to be. We've had the objections
22 placed on the record. If any of the parties want to file
23 a written objection, please, if you can get it in within
24 the next 48 hours, that would be very helpful.

1 And, I guess the next thing to discuss
2 is potential discovery issues, if there are any. And, for
3 the purposes of this discussion, we will treat Ms. Linowes
4 as if she is already involved, because we have a hearing
5 scheduled for January 31, 2011. And, it's been my
6 experience that, if we don't permit the potential
7 intervenors to participate in this type of scheduling, we
8 wind up behind the eight ball when we come to the time to
9 have the actual merits hearing.

10 So, first, though, I'll turn to Counsel
11 for the Public. Do you anticipate any type -- having to
12 perform any type of discovery, whether it be data requests
13 or technical sessions or anything?

14 MR. ROTH: I think it's probably a good
15 idea to have a technical session. Because, in going
16 through the financials that were included in the
17 Application or in the submission, there were some
18 questions that I had. And, I know that Mr. Pachios has
19 been cooperative in terms of answering questions that I
20 have given him in meetings that they have initiated. I
21 think it probably would be useful to have at least
22 certainly one technical session, just to have an
23 opportunity to speak directly with the witnesses while
24 they're -- before the hearing.

1 MR. IACOPINO: And, just for the record,
2 I would point out that, along with the Application, the
3 Joint Application, was filed prefiled testimony by Jason
4 M. Spreyer, S-p-r-e-y-e-r; from Kim Osmars, and from
5 Mr. Cutter, Michael Cutter. That was filed with the --
6 with the Petition back on December 1. So, it has been
7 available to people who are interested in the proceeding.

8 Ms. Linowes, did you have any particular
9 ideas about any discovery that you need to do or wish to
10 undertake in this proceeding?

11 MS. LINOWES: At this point, I don't. I
12 think a technical session would probably be sufficient. I
13 don't think data requests are necessary at this point.
14 But I'm not sure how to proceed on the confidentiality
15 side of it. I'm hoping that there -- I'm assuming that
16 there's quite a bit of information that's confidential
17 that I don't have.

18 MR. IACOPINO: To date, I don't believe
19 we've received any motion for confidentiality of any
20 documents. Have we, Mr. Pachios?

21 MR. PACHIOS: Not yet. It depends on,
22 obviously, what they ask for. So, we are anticipating,
23 you know, a question or two, it's very likely that we'll
24 have to have it treated confidentially. So, it depends on

1 which -- of what you want. A lot of the stuff about
2 Brookfield Renewable is public. These are public
3 companies. Some things, in terms of financing, some
4 aspects may be confidential, and would be given to you on
5 a confidential basis, with whatever -- you have, I assume,
6 a typical confidentiality agreement that we would review
7 and comment on. I don't know how you take it, but --

8 MR. ROTH: Well, for me, what typically
9 I do is I get the same access under the same terms that
10 the Committee does, and that the Applicant will enter into
11 confidentiality agreements of their own making with other
12 intervenors, such as Ms. Linowes.

13 MR. PACHIOS: Okay.

14 MR. IACOPINO: Right. But those --

15 MR. PACHIOS: So, it depends on what you
16 ask for, Lisa.

17 MR. IACOPINO: Those agreements are
18 usually determined by the presiding officer, by the
19 Committee, as to whether or not that something is going to
20 be maintained as a confidential document, and what the
21 terms of the release to various parties will be. And, I
22 think you've signed confidentiality documents in the past
23 in proceedings before our Committee. But I guess it is
24 difficult to know what they'll seek to have confidential

1 before we know what you're going to ask for.

2 MR. ROTH: Do you expect that there will
3 be a closed session during the adjudicatory hearing?

4 MR. IACOPINO: I don't know. I mean,
5 when I looked at this filing, I mean, I see primarily a
6 publicly traded company. I can't imagine there's a whole
7 lot of stuff that isn't easily available to anybody with a
8 computer right now.

9 MR. PACHIOS: I was --

10 MS. LINOWES: The specific questions I
11 had that I would want to be delving into, unless, you
12 know, a hand slap, "this is not where we're going", is
13 information about the power purchase agreement that was
14 signed with the two Vermont utilities, that are not
15 specific to Brookfield, but information about the Project
16 itself and where that's going, and the financial viability
17 of the Project as it continues forward. Is that not part
18 of these proceedings?

19 MR. IACOPINO: I suppose it depends upon
20 how -- what the information is that you're actually
21 seeking on that. I think the best way to do that is let's
22 set up a format for you to get the questions that you have
23 out, for them to review them, and determine, number one,
24 if they believe they're objectionable, they'll file an

1 objection. Number two, if it's information that they feel
2 is already in the public domain and should be in the
3 public domain, or they don't care if it's in the public
4 domain, they will probably provide -- I assume they would
5 provide that to you. If it's something that they are
6 going to seek confidentiality on, they will be required to
7 file a motion with the Committee in the normal, as we
8 always do, unless you come to some other agreement outside
9 of a Committee order.

10 I'm sorry, Mr. Pachios.

11 MR. PACHIOS: I'd just like to make one
12 brief comment on that. First, there is some -- there's an
13 enormous amount of public information about these public
14 companies. That, as Mike points out, I mean, if you have
15 access to a computer, which I know you do, you are going
16 to be able to get a lot of information.

17 Specifically, with respect to the
18 viability, I mean, if you -- I suppose you could put in
19 evidence about viability. But, if you want to know about
20 the financial viability, the answer is that this is a
21 company that has a lot of money to invest, has much more
22 than \$300 million to invest. It's going to invest
23 300 million, which is a very small portion of the amount
24 of money it has available to invest in projects, in this

1 project. They think it's viable, because they're not in
2 the business of investing 300 million to lose it. So,
3 they think it's viable. So, my view is --

4 MS. LINOWES: I would say, and I don't
5 want to get into what or won't be a part of the
6 proceeding, --

7 MR. PACHIOS: Right.

8 MS. LINOWES: -- you think it's viable,
9 but I'm sure there were conditions upon whether or not it
10 was viable. For instance, you make clear in your
11 Application, in Section 16.03 [sic], "dollars have to be
12 available", was that a condition of the sale? I don't
13 know. I don't know. I assume that was the case. So,
14 it's viable -- yes, I understand that you have a lot of
15 money. But that's not what I'm asking.

16 MR. PACHIOS: No, no. No, the question
17 that --

18 MR. IACOPINO: One at a time. One at a
19 time, we're making a record here.

20 MR. PACHIOS: Yes.

21 MR. IACOPINO: Let her finish please.
22 Go ahead, Lisa.

23 MR. PACHIOS: Yes. No, I have no
24 problem into your inquiring into those things, Lisa. The

1 ultimate question of viability I don't think is an issue.
2 The issue is whether somebody is going to invest money to
3 build the project, and whether it has the ability to do
4 that. That's the issue. Not whether they're going to
5 succeed or not succeed. I mean, it's financial
6 capability, not certainty of whether it's a good business
7 decision.

8 MS. LINOWES: May I just add to that?

9 MR. IACOPINO: You can.

10 MS. LINOWES: The point I'm trying to
11 make is that you have established, I'm assuming,
12 conditions upon which the sale makes sense to you. Some
13 of those conditions may or may not have come, they're
14 still pending. If they don't happen, are we back here
15 again in six months to a year with another sale of this
16 project to someone else, or does Granite Reliable, this
17 whole deal fall through and Granite -- and the whole
18 project falls through? I don't know. And, that's why I
19 think it's important to look at some of the issues
20 revolving around the viability of the project.

21 MR. PACHIOS: Okay.

22 MR. ROTH: Are the PPAs public in
23 Vermont? No?

24 MS. LINOWES: The content of them are

1 not, is not.

2 MR. IACOPINO: Do they have a proceeding
3 before the Public Service Board in Vermont?

4 MS. LINOWES: Yes, they already went
5 through the process, and the power purchase agreements
6 were approved. But the specifics of the dollar amounts
7 per kilowatt-hour and conditions around those PPAs were
8 not made public.

9 MR. IACOPINO: That's interesting.
10 Okay.

11 MS. LINOWES: We can only guess what the
12 amounts were.

13 MR. IACOPINO: All right. So, we -- all
14 right. Well, we understand that -- so, then, you have
15 some discovery that you want to do. The technical session
16 should satisfy that for you?

17 MS. LINOWES: I think it will. And, in
18 order to expedite the process, if we could establish my
19 right to access to confidential information before we walk
20 into that, so that, if Brookfield wants to object to my
21 questions, that would be okay, but it would avoid having
22 to file a confidentiality request after the question has
23 been asked. So, I'm sort of laying the groundwork for the
24 kinds of questions I'm going to be asking.

1 MR. IACOPINO: Well, I guess the
2 difficulty is is it's difficult for, under the Right To
3 Know Act in New Hampshire, the Committee can't just
4 willy-nilly decide that something is going to be a
5 confidential document. It has to meet the standards of
6 RSA 91-A. So, in order to do that, we need to have -- we
7 need to know what is going to be subject to
8 confidentiality, as far as things that -- documents that
9 are received by the Committee. If the parties want to
10 make, you know, on their own, without filing something
11 with the Committee, some arrangements to provide
12 information to each other outside of the Committee
13 process, that's entirely up to you all. It's not been the
14 way that people have -- that we've done this in the past.
15 Normally, there's been a request, there's been an effort
16 to get the information, and then file it with the
17 Committee with a request for confidentiality, and then the
18 Committee has generally ruled on that.

19 So, I think the best way to address this
20 issue is to sort of set an intermediate date for the
21 parties to speak to each other about what is it that
22 you're going to be looking for, so that, if
23 confidentiality is a requirement, that it can be brought
24 to the Committee's attention in advance of the technical

1 session. So that, if there is an issue, we can have it
2 resolved before the technical session. Because I do
3 understand you don't want to come to a technical session,
4 not be able to learn the information that you're trying to
5 learn, and then have to come back after it's been deemed
6 to be confidential.

7 MR. ROTH: And, thinking a little bit
8 about it, I guess I'd also like to not have a long
9 relevance argument at the technical session, and that, I
10 mean, I'm getting a sense that there's not necessarily a
11 meeting of the minds whether the viability of the project
12 is a relevant consideration, and I'd like that to be
13 resolved. Personally, I think, if -- that Ms. Linowes'
14 comment is probably correct, that the PPA price and sort
15 of the financial performance of the operating project is
16 relevant. It may not be able all that interesting in the
17 end, but I think it meets the minimal test of relevance.
18 And, then, if there are, in addition, conditions to the
19 sale that would -- might suggest we're going to be back
20 here in a few months, again, I think that that's relevant,
21 but perhaps not dispositive.

22 So, I just -- I'd rather not have a big
23 fight about relevance on some of this stuff at a technical
24 session, that's, to me, that's like an incredible waste of

1 time.

2 MR. PACHIOS: I think that it is very
3 important to resolve the relevance issue prior to going
4 further, and perhaps this prehearing conference can be
5 used to resolve what we know now apparently is an issue of
6 relevance. And, I just, for the record, want to state
7 that this project is certificated. It's certificated.
8 The issue here is the impact of Brookfield stepping into
9 the shoes of a 75 percent owner of a certificated company.
10 And, so, it's going to, you know, if, in fact, the
11 substitution of Brookfield for Noble has some impact on
12 the viability of the project, I suppose that's an issue.
13 But the issues here relate to the substitution, the
14 transfer of Noble's interest to Brookfield, and not to the
15 project as a whole, which is already certificated.

16 MR. ROTH: Harold, just for -- while
17 we're making a record, while I'm not sure what the point
18 of that is, but it's certificated subject to a condition
19 that there be essentially a post certification financing
20 being met. And, one of the things you're asking for is to
21 have that condition deemed satisfied. And, it seems to me
22 that a look at all of the issues surrounding how that
23 condition is being satisfied are important and relevant.

24 And, so, as I say, I don't know that

1 it's, in the end, this stuff is going to be dispositive.
2 But, in the spirit of openness and cooperation and getting
3 to the hearing smoothly, I think having battles over
4 relevance on that stuff is not well advised.

5 MR. IACOPINO: And, the Committee is
6 going to be concerned with financial, technical, and
7 managerial capability of the Company stepping into the
8 place of Noble. And, although I understand that you make
9 the representations in your filing that they are more than
10 -- more than financially, technically, and managerially
11 qualified, this also is a type of proceeding in which that
12 can be tested. And, the only manner in which that can be
13 tested is by the ability of the parties to obtain
14 information and argue whether that information undermines
15 what you represent in your -- in your filing.

16 So, we are going to need to have a
17 contested hearing. And, in order to get prepared for that
18 contested hearing, it makes sense to have, you know, some
19 of these things resolved.

20 With regard to relevance, let me just
21 first turn to Ms. Linowes. Do you have an idea of the
22 type of information that you're going to want to discuss
23 at the technical sessions that we will schedule as part of
24 the prehearing proceedings in this case?

1 MS. LINOWES: It's primarily related to
2 what I've been talking about now. The conditions of the
3 sale and how it applies to the -- moving forward with the
4 project being built. I don't have a lot of questions as
5 to whether or not Brookfield is a financially viable
6 company.

7 MR. IACOPINO: Okay. What types of
8 documents are there that you believe you'll be looking for
9 that go to the conditions of the sale and what types of
10 questions are there that you think will be raised
11 pertinent to that at the technical session? So that they
12 have an opportunity to determine whether or not they need
13 to seek a protective order or some kind of
14 confidentiality, or whether or not they're going to raise
15 an objection, that maybe we can get any objections
16 resolved in advance of a technical session.

17 MS. LINOWES: I'd be looking at the
18 power purchase agreements that were signed between the
19 utilities in Vermont, and also be looking at the
20 importance of the federal subsidies associated with the
21 project. And, I'm not sure how public or private that is,
22 at least to the extent that it's affecting the bottom line
23 in this project.

24 MR. IACOPINO: Okay.

1 MS. LINOWES: As well as the value of
2 the RECs, renewable energy credits, and how important
3 those are.

4 MR. IACOPINO: Okay. Let me just back
5 up. Obviously, the purchase power agreements, we know
6 there's agreements. So, those are documents. The
7 importance of the federal subsidies that you mention, when
8 you discuss that, --

9 MS. LINOWES: Yes, I'm sorry. Let me
10 make that more clear.

11 MR. IACOPINO: Are you looking for
12 documents or is it just questions you're going to have
13 about it?

14 MS. LINOWES: The documents -- they
15 would show up in the form of the Project's financials.
16 There was testimony during the Granite Reliable
17 proceedings on that and how the RECs -- the value of the
18 RECs and the value of the federal dollars apply to the
19 Project. And, so, that's where it would show up. I'm
20 assuming there are new financials on the Project, based on
21 either current economic conditions or based on what
22 Brookfield has put together, and demonstrating to itself
23 that the Project makes sense. Those I would like to also
24 see.

1 MR. ROTH: Is there a financial model
2 for the Project? Sort of an operating model, a post
3 construction operating model?

4 MR. PACHIOS: I don't know.

5 MR. ROTH: Because that was something
6 that we had a lot of conversation about at the evidentiary
7 hearings two years ago.

8 MR. PACHIOS: Okay.

9 MR. IACOPINO: Is there anything else
10 that you think that you're going to request?

11 (No verbal response.)

12 MR. IACOPINO: Mr. Roth, in addition to
13 what Ms. Linowes has mentioned, is there anything that you
14 believe you will need before --

15 MR. ROTH: No.

16 MR. IACOPINO: -- the technical session?
17 Okay.

18 MS. LINOWES: You know, I think the only
19 other thing might be the timeline on the Project at this
20 point, in terms of development or construction.

21 MR. IACOPINO: Well, I doubt that that's
22 something that will be confidential. I mean, you're going
23 to -- the Applicants will be prepared to give their best
24 estimate of what the timeline is with respect to the

1 Project. I imagine that's not a confidential issue.

2 MR. PACHIOS: Well, we'd definitely
3 disclose that. I don't know -- I'm not sure I agree it's
4 relevant to what we're deciding, supposed to be deciding
5 in this case. I think it's probably outside that, but
6 we'll definitely tell you what the timeline is.

7 MR. IACOPINO: And, I take it you need
8 to confer with your client about the purchase power
9 agreements that were approved by the Vermont --

10 MR. PACHIOS: Yes.

11 MR. IACOPINO: -- Public Service Board?

12 MR. PACHIOS: Yes.

13 MR. IACOPINO: And, the Project
14 financials, I mean, at least I think they're going to be
15 entirely different. I mean, I think they're probably
16 encompassed a good deal already what's in here. But is
17 there anything more specific than that? I mean, is there
18 something specific that you or Peter --

19 MR. ROTH: Well, the operating -- the
20 model, for the, you know, the proforma for operation.

21 MR. IACOPINO: Okay.

22 MS. LINOWES: We know that there were
23 specific dollar amounts said under confidential -- in
24 closed hearing about the value of the RECs and what they

1 had to be in order to make the Project viable. The RECs
2 are not trading at that amount anymore, and so something
3 is picking up the slack, at least it had to be a certain
4 amount for it to be viable for Noble. Is that not the
5 case for Brookfield? Those are the kinds of -- the kind
6 of information.

7 MR. IACOPINO: Okay. And, Harold, I
8 take it that's -- you have to talk to your client about
9 those issues as well?

10 MR. PACHIOS: Yes.

11 MR. IACOPINO: All right. What about --
12 let me start with Mr. Roth. Do you anticipate hiring any
13 witnesses or any experts in this proceeding?

14 MR. ROTH: No.

15 MR. IACOPINO: Okay. And, how about
16 you, Ms. Linowes?

17 MS. LINOWES: No.

18 MR. IACOPINO: I'm sorry?

19 MS. LINOWES: I have none.

20 MR. IACOPINO: So, we won't have a
21 flip-side of discovery that we're going to be -- where the
22 Applicants will be seeking discovery because you have new
23 witnesses. So -- okay.

24 What I would like to do then is, and if

1 everybody has a calendar with them, this is -- I would
2 like to set the technical session for sometime during the
3 week of January 17th, and then work backwards from there,
4 in terms of getting any issues resolved. And, I'm
5 comfortable going as late as the 21st, which is the Friday
6 of that week. Mr. Roth, what do you think of that?

7 MR. ROTH: That's fine.

8 MR. IACOPINO: That gives you a
9 technical session ten days before the scheduled hearing.

10 MR. ROTH: I just have another hearing
11 on the 18th. So, other than the 18th, I think --

12 MR. IACOPINO: Okay.

13 MR. PACHIOS: What day of the week is
14 the 17th?

15 MR. ROTH: The 16th is -- or, the
16 beginning of that week is a holiday. So, --

17 MR. IACOPINO: Oh, is the 17th a
18 holiday?

19 MR. ROTH: I think so.

20 MR. IACOPINO: Okay. So, basically,
21 then we're limited to the 19th, 20th, or 21st.

22 MR. PACHIOS: Well, I'd like to have it
23 on the 19th, because that's the day I was going away for
24 six days. And, so, I can postpone it a day, my departure

1 a day. I'd rather not postpone it --

2 MR. ROTH: Two days.

3 MR. PACHIOS: -- my departure two days,
4 three days, four days.

5 MS. LINOWES: That's fine, the 19th is.

6 MR. IACOPINO: And, what's your hearing
7 on the 18th, Peter? Is it an all-day thing or --

8 MR. ROTH: No. But, off the top of my
9 head, I can't think of whether it's in the morning or the
10 afternoon. And, I don't have a calendar.

11 MR. IACOPINO: I don't, I mean, in New
12 Hampshire, it's not usually our practice to make people
13 delay their vacations, Harold. So, can you do it on the
14 -- if we can -- do you all think it will take more than a
15 half a day? I mean, or --

16 MR. ROTH: I don't.

17 MR. IACOPINO: Is it too much of an
18 imposition with your other hearing to do a tech session
19 and the other hearing on the same day?

20 MR. ROTH: No, I don't believe so.

21 MR. IACOPINO: Do you want to do it on
22 the 18th, Harold? Does that fit your schedule better?

23 MR. PACHIOS: Yes.

24 MR. IACOPINO: Is that okay with you?

1 MS. LINOWES: Yes. That's fine.

2 MR. PACHIOS: That's even better.

3 MR. ROTH: I would prefer to -- the way
4 that, and I wish I had this information at my fingertips,
5 but the hearing is either in the morning, in which case
6 the afternoon is free, or it's early afternoon, in which
7 case I'd like to do it after that hearing.

8 MR. IACOPINO: Okay.

9 MR. ROTH: And, so, it will mean later
10 in the afternoon.

11 MR. IACOPINO: Can you get back to me?

12 MR. ROTH: Yes.

13 MR. IACOPINO: And, I will just schedule
14 it, whether we're scheduling it at, you know, at 1:00 or
15 1:30, because you have a morning hearing, or whether we're
16 scheduling it later in the afternoon.

17 MR. ROTH: Let me just make a call and
18 find out.

19 MR. IACOPINO: Sure. That would be
20 great. That way you don't have to delay your vacation.

21 MR. PACHIOS: And, Mike, we just need to
22 reconnoiter for a minute or two at the end here, to make
23 sure our witness -- you want the witnesses there.

24 (Ms. Linowes nodding in the

1 affirmative.)

2 MR. PACHIOS: So, we can just make sure
3 the witnesses can be there on that day.

4 MR. IACOPINO: Actually, do you want to
5 take a break and check that out right now, while he's
6 finding us the --

7 MR. ROTH: Okay.

8 MR. PACHIOS: Yes, let's do that.

9 MR. IACOPINO: Because he's going to be
10 calling his office.

11 MR. PACHIOS: Yes.

12 MR. IACOPINO: So, why don't we take a
13 brief break.

14 MR. PACHIOS: Yes, and so we can make
15 sure they're there.

16 MR. IACOPINO: And check with your
17 witnesses, Peter will check with his office on his
18 hearing. And, hopefully, we'll have it all resolved for
19 the 18th.

20 (Whereupon a recess was taken at 10:50
21 a.m. and the prehearing conference
22 reconvened at 10:59 a.m.)

23 MR. IACOPINO: Okay. I think that we
24 have come, after that break, to some agreement on the date

1 of the 18th of January for a technical session. That's my
2 understanding, that Mr. Roth's other proceedings are in
3 the morning, so we would start that technical session at
4 1:30 p.m. The place will be determined. I will check
5 here with -- my first choice is right here in this
6 building, at the Public Utilities Commission offices.
7 That way, if there are members of the public who wish to
8 sit in and watch us, they are going to be permitted to do
9 so. And, it's just easier. In my experience, I have
10 never had a member of the public show up to a technical
11 session, I don't think, except maybe in Berlin one time.

12 MR. ROTH: In Berlin, we had a whole
13 bunch of them. Yes.

14 MR. IACOPINO: Yes. But, nonetheless,
15 that's going to be my preference. It's my understanding
16 that one of the witnesses may need to appear by telephone.
17 We do have the facilities to do that here. And, actually,
18 we did have, on that screen behind you there, Harold,
19 testimony in the last case, in the Groton Wind case, we
20 had actual Skype testimony from somebody in Illinois. So,
21 --

22 MR. ROTH: He was in Florida.

23 MR. IACOPINO: -- we can do it, although
24 -- that's right, he was on vacation in Florida. But we

1 will probably do it by telephone, only because it's
2 easier. And, I will determine the place. I may be
3 calling you, if I can't get these hearing rooms here, to
4 use your offices. But -- and, we appreciate the offer.

5 MR. PATCH: I know there's a hearing
6 here at 10:00 that morning in a docket that I'm involved
7 in here at the PUC on the 18th. But I'm not sure if it's
8 scheduled for the whole day.

9 MR. IACOPINO: I'm sorry, I didn't -- is
10 the 18th okay for you?

11 MR. PATCH: I mean, it's fine. If, for
12 some reason, that hearing goes over, then, you know, I've
13 got somebody else I think can cover it. But I don't think
14 we want to stand in the way of this. I think we're --

15 MR. IACOPINO: Everybody here, if I skip
16 over you or something, please stop me and let me make sure
17 that I --

18 MR. PATCH: I wouldn't hesitate to speak
19 up, so --

20 MR. IACOPINO: Okay. I'm sorry. All
21 right. So, I guess the only issue that arises between now
22 and the 18th then is the issue of, Harold, you need to
23 sort of determine what information you may seek to have
24 determined to be confidential for the purposes of RSA

1 91-A. And, I'm going to ask that if you can -- I mean,
2 the list that Ms. Linowes has given us right now includes
3 the purchase power agreements that were apparently
4 approved by the Vermont Public Service Board with a
5 Vermont utility; includes the project model or financial
6 documents, and those are the documents that should also
7 include values of the certificates, right?

8 MS. LINOWES: Uh-huh. Right.

9 MR. PACHIOS: Mike, if I could
10 interrupt. We understand power purchase agreements and
11 the importance of federal subsidy, RECs, where does all
12 this fit in? Those are facts that may have changed, as
13 you suggest. That's why you want to look at them. I can
14 understand that. But, in terms of making an investment,
15 all of the analysis of why my clients, you know, figure
16 out this is a good business to be in, versus somebody
17 else, that is totally proprietary, and would never -- I
18 mean, that's proprietary stuff. That's competition. And,
19 I don't think that needs to be disclosed. I think what
20 you need to find out is how important are these external
21 factors that were evaluated in the case below and may have
22 changed. But there is a -- there's a definite distinction
23 here, and I want to make clear what our position is.

24 We're going to look at this stuff and

1 try to satisfy Lisa on these external factors. But we're
2 not going to get into whether the people with the green
3 eyeshades at Brookfield Renewable are smarter or dumber
4 than the competitors.

5 MR. IACOPINO: Well, and I'm sure that
6 you have people who do economic forecasting and things
7 like that, which you're not going to --

8 MR. PACHIOS: This all proprietary.

9 MR. IACOPINO: Right. Nor would that be
10 something that I think the Committee would actually even
11 entertain. I think I understand what you want. I think
12 it's something less than what Mr. Pachios is saying here.
13 I mean, but what I would like the two of you to do is, and
14 Mr. Roth as well, if you could talk informally to try to
15 determine, because I think what I don't want to do is I
16 don't want to get to the technical session and have
17 complaints that "well, this information isn't here" or "we
18 didn't know that that's what you wanted" or "we didn't
19 know that that's the document that you wanted and, you
20 know, we need to get a protective order for this. We
21 don't mind giving it to you, but we need to get it
22 protected first." I don't want to be in that, because
23 where we will be, if that's the situation on the 18th, is
24 we'll be in a place where people are going to claim

1 they're not ready to go forward on the 31st. And, I have
2 a Committee that wants to go forward on the 31st, and is
3 going to go forward on the 31st. So, that's the concern
4 that I have.

5 So, I would ask that, don't be shy with
6 each other, talk to each other. And, you know, and if you
7 get a better understanding of what she's requesting, and
8 you think you're going to need a confidentiality order,
9 get a Motion for Confidentiality in before, at least
10 several days before the 18th, so that we can get it over
11 to the Chairman and he can make a determination. In any
12 such motion, if you're not going to actually attach the
13 material, please give us a very good description of what
14 it is. Because, aside from whatever agreements the
15 parties make, the Committee also has an obligation to the
16 public to not receive documents that ought to be public
17 documents in confidence. If something ought to be a
18 public document under the Right To Know Act, the Committee
19 will want it to be a public document.

20 MS. LINOWES: I have one question.

21 MR. IACOPINO: Yes.

22 MS. LINOWES: I'm just trying to
23 understand what was being said just a moment ago. When
24 you said that you "consider information confidential that

1 you're not wanting to make available", does that mean
2 you're absolutely unwilling to make it available or you
3 will make it available under confidentiality, but you
4 understand that it is confidential information?

5 MR. PACHIOS: There's certain
6 proprietary information about how these folks analyze
7 deals that we will never make available to anybody in the
8 world. It's totally proprietary. And, I mean, you have
9 to make up your own mind, but, in our judgment, people
10 would not ask for this. This is our intellectual
11 property. This is the way we do things. And, we think
12 we're good at it.

13 However, as you say, there are certain
14 external components to this deal that may be different.
15 You mentioned "RECs", you mentioned "subsidy", you
16 mentioned "power purchase agreements", *etcetera*. I'm not
17 speaking for my clients, and I want to talk to them
18 afterwards about those, I don't know what their feeling
19 is. But, for purposes of this discussion, I make a
20 distinction between those things and the real intellectual
21 property of this deal. How these people analyze things.

22 MR. ROTH: I just -- I don't know what
23 you mean by that. And, I guess I want to be real clear
24 about it. And, that is, do you -- when you say the

1 "intellectual property that is proprietary", and is
2 secret, and, you know, locked in an Egyptian tomb, do you
3 -- hopefully you're not talking about the Project's
4 operating model? The Project's, you know, the proforma
5 for the Project going forward?

6 MR. PACHIOS: I am. Absolutely.

7 MR. WHYTE: May I interrupt for a
8 minute? I think --

9 MR. IACOPINO: Just identify yourself
10 for the record please.

11 MR. WHYTE: I'm sorry. My name is
12 Daniel Whyte, Vice President of Brookfield. Peter, in
13 terms of the stuff that we keep in a locked box, for
14 example, our view of the gas curve would be one.

15 MR. ROTH: I don't see how that would
16 show up in the operating models.

17 MR. WHYTE: No, that's just an example.
18 Our view --

19 MR. ROTH: Yes. I understand that.

20 MR. WHYTE: Our view of RECs going
21 forward is proprietary. Now, as Mr. Iacopino said, there
22 are indices, publicly available indices made available by
23 some of the firms that we rely on, some of the public
24 information that we rely on to arrive at our view of

1 forward prices. And, those you can get on the computer.
2 But our analysis of the data available in the market, and
3 our conclusions that come from that analysis are the
4 proprietary things, the intellectual property, if you
5 will, that Mr. Pachios refers to.

6 MS. LINOWES: The information, I am not
7 -- I mean, I'm assuming that, that whatever power purchase
8 agreement is in place has already locked in the REC
9 values. And, so, there's -- that's what I'm -- we're not
10 looking for something outside of the realm of this
11 project. And, that's why I'm -- I don't know what kind of
12 push-back we're going to get on some of the questions.

13 MR. IACOPINO: I think you're looking
14 for something that's less than what Harold has indicated
15 is proprietary, at least that's what it sounds like to me.
16 I mean, I use economic forecasting as sort of the -- I
17 mean, I don't think you would really be entitled to their
18 in-house economic forecasts.

19 MR. WHYTE: That's my point.

20 MR. IACOPINO: Because that's, I mean,
21 the relevant issue here is the issue of whether this
22 company has the requisite managerial capability and
23 financial -- managerial, technical, and financial
24 capability to comply with the conditions of the

1 certificate. That's what we're dealing with here. So, I
2 don't even anticipate you asking for, for instance, the
3 gas curve that they use or their economic forecasting
4 models or whatnot.

5 So, I mean, that's, you know, the only
6 thing that seems to be sort of on the bubble there is this
7 issue about the proforma, which just seems to be sort of
8 predictions in terms of what costs and expenses are going
9 to be, as against projected revenue, which I think is
10 probably project-specific, not necessarily something
11 that's, you know, analysis. But I am going to leave it to
12 you all to determine. If you're going to ask
13 specifically, Mr. Roth, for the project proforma, and if
14 Brookfield wants that to be a confidential document or
15 wants to object to that request, I anticipate that you
16 will let us know by filing the appropriate motions, with
17 plenty of time so that we can have a valuable technical
18 session, and so that we don't have to inject any delay
19 into this proceeding. Does that --

20 MS. LINOWES: That's fine, yes.

21 MR. IACOPINO: -- sound good to you?

22 MS. LINOWES: Sounds good.

23 MR. IACOPINO: Mr. Patch?

24 MR. PATCH: I have nothing. Thanks.

1 MR. IACOPINO: Peter?

2 MR. ROTH: No. That sounds workable.

3 MR. IACOPINO: Harold, anything else, in
4 terms of confidentiality? I hadn't gotten through the
5 list. The other thing -- well, one thing that was on that
6 list was the proforma, then there's sort of a construction
7 timeline was one of the requests. And, you already
8 indicated that there's not -- you don't have any problem
9 in providing that. So, I mean, I think that if, unless
10 there are some other discovery issues that are going to be
11 -- need to be resolved, we're probably done with that part
12 of our discussion here?

13 (No verbal response)

14 MR. IACOPINO: Okay. And, then, there
15 is already a final hearing scheduled. It's January 31st.
16 So everybody knows, this will be a meeting of the full
17 Committee, because technically it doesn't fall into an
18 application for a particular project, whether it be
19 renewable or otherwise, and therefore there is no
20 subcommittee. As a practical matter, there may be several
21 Committee members who are not able to make it that day
22 anyway. So, it might look more like a subcommittee when
23 we actually get here, but we will have a quorum.

24 MR. PACHIOS: What's that? Seven?

1 MR. IACOPINO: I'm sorry?

2 MR. PACHIOS: Is a quorum seven?

3 MR. IACOPINO: A quorum is eight.

4 MR. PACHIOS: Eight.

5 MR. IACOPINO: Yes. So, we will --
6 actually, we'll have many more than a quorum, but probably
7 not all fifteen. And, we will proceed in the -- at the
8 final hearing in the manner in which we normally have. We
9 will have the presentation of the witnesses for the
10 Applicants first.

11 MR. PACHIOS: Can I ask you a question
12 about that?

13 MR. IACOPINO: Well, what I was going to
14 say is, generally, with these types of things, we've
15 generally had panels. There's three witnesses that have
16 been noticed, there's three prefilled testimonies. They do
17 tend to overlap somewhat. I would believe that having all
18 three of the witnesses available for cross-examination at
19 the same time would be the most efficient way in which to
20 undertake that. Do I hear any objections from anybody out
21 there? I know, Mr. Roth, you sometimes have objections to
22 panels.

23 MR. ROTH: No, not in this case. I
24 think that's fine.

1 MS. LINOWES: No problem.

2 MR. IACOPINO: Okay.

3 MR. PACHIOS: Do I understand that what
4 our job at the beginning of the hearing is to offer as
5 exhibits the three prefiled testimonies, move their
6 admission, and then just say "they're ready for
7 cross-examination"?

8 MR. IACOPINO: Generally.

9 MR. PACHIOS: Just the three of them
10 sitting at a panel, and they can be examined?

11 MR. IACOPINO: Generally. And, on some
12 occasions, Harold, we've had situations where there might
13 have been some change, and somebody says "well, I need to
14 amend a portion of my testimony", because --

15 MR. PACHIOS: Yes.

16 MR. IACOPINO: -- if something has
17 changed.

18 MR. PACHIOS: Well, we would ask
19 actually is -- sorry. What we would ask is for them to
20 identify the exhibit, "Is this your prefiled testimony?
21 Do you have any additions or changes, amendments to make
22 to it?" If the answer is "no, "Do you stand by this
23 testimony? Is this what you would testify to orally if
24 you were to do so this morning?" And, say "witness ready

1 for examination."

2 MR. IACOPINO: Yes.

3 MR. PACHIOS: "Offer the witness, ready
4 for examination." Okay.

5 MR. ROTH: Harold, are there any pieces
6 of this still in motion where you expect there might be
7 supplemental or additional or amended testimony being
8 filed?

9 MR. PACHIOS: Don't expect that.

10 MR. ROTH: Okay.

11 MR. IACOPINO: Okay. If, as a result of
12 -- I'm sorry.

13 MS. LINOWES: I just have one quick
14 question.

15 MR. IACOPINO: Sure.

16 MS. LINOWES: Has the Purchase and Sale
17 been signed?

18 MR. PACHIOS: Yes.

19 MR. IACOPINO: If, as a result of our
20 technical session, there does come a need for there to be
21 supplemental testimony filed, we'll address that at that
22 time. And, hopefully, you know, we'll have 12 days in
23 between. Unfortunately, like Harold, I'm going away that
24 next week. So, I'm going to be gone in the interim week,

1 between the 21st and the 29th for my wife's 50th birthday
2 party.

3 MR. PACHIOS: That's a long birthday
4 party.

5 MR. IACOPINO: It's going to be in the
6 Dominican Republic, so it's going to be a long ways away.
7 But, okay. Yes. And, then, there will be
8 cross-examination, argument, if the parties -- if either
9 the Committee wants to see a final memo or just hear
10 arguments from the parties at the end of the evidence on
11 the 31st, that will be dictated by the Chairman of the
12 Committee. Yes, sir?

13 MR. PACHIOS: You permit redirect?

14 MR. IACOPINO: Usually. Yes.

15 MS. LINOWES: One question. You're
16 thinking that, if there is any follow-up final briefs,
17 that would happen -- will be submitted that day, is that
18 what you're thinking?

19 MR. IACOPINO: I think, if there's --
20 no, if there's final briefs, it will be on another day
21 after that. But they may not want to entertain briefs,
22 they may just want to have final arguments by the parties.

23 MS. LINOWES: So, we should be prepared
24 for that?

1 MR. IACOPINO: Yes. You should be
2 prepared for them to go into a deliberation session that
3 day as well, I believe, if I remember the notice
4 correctly.

5 MR. ROTH: Are you going to do a
6 prehearing --

7 MR. IACOPINO: It doesn't mean that they
8 will. But I think the notice actually indicates that they
9 may deliberate.

10 MR. ROTH: Mike, are you going to do a
11 final prehearing, you know, in the way you typically do,
12 you know, the day before the hearing or the last couple of
13 days before the hearing?

14 MR. PATNAUDE: He won't be here.

15 MR. IACOPINO: Well, I will be the rest
16 of that week.

17 MS. LINOWES: It does say it "may
18 include deliberation on the merits."

19 MR. IACOPINO: Right. "An adjudicative
20 proceeding and may include deliberation on the merits."
21 No, I think that's going to -- generally, I like to leave
22 that to my Committee, if they feel they have heard enough
23 evidence and they don't need briefing, then that's what
24 they'll do.

1 MS. LINOWES: Okay.

2 MR. IACOPINO: They will just go right
3 into it. Now, that doesn't stop any party, if you want to
4 file some kind of written brief or memorandum in advance,
5 based upon whatever your position is with respect to the
6 matter, you're certainly free to do that. If you want to
7 do a memorandum setting forth your position, I know it's
8 difficult to do, however, you already have the direct
9 testimony, you will have had the benefit of a technical
10 session, and any discovery that came out of there. The
11 only thing that you want have for the purposes of filing
12 such a memo, if you wish to, would be the benefit of the
13 cross-examination.

14 Now, it may be that the Committee says
15 "well, we would like to see written memos from the
16 participants, and we will schedule a day down the road to
17 deliberate." That hasn't been the way that they have done
18 these in the past, just so you know. Virtually all of
19 these have been done in a single hearing that's gone into
20 deliberations in the past. And, because of the dynamics
21 of this Committee and the difficulty in getting this many
22 state agency heads in one way place at one time, that's
23 generally the way they prefer to proceed. But I do know
24 that, if they don't feel that they're ready, they'll say

1 "I'm not ready."

2 MR. PACHIOS: Can I just summarize our
3 position with respect to the issues? Because I think
4 that's where this is most helpful, I found it very helpful
5 to have this discussion with the intervenors.

6 MR. IACOPINO: Sure.

7 MR. PACHIOS: The way we have looked at
8 this, and looked at the statute and the rules in prior
9 transfer of ownership proceedings that we've reviewed, is
10 that there is, in these proceedings, to approve a transfer
11 of ownership, particularly of a project -- a project
12 that's been approved, the issue here is Brookfield. The
13 issue is the financial capacity, technical capacity, and
14 managerial capacity of Brookfield, not the Project. The
15 Project has been through a lengthy process. So, we come
16 prepared to talk about the capacity of Brookfield to step
17 into the shoes as an owner of a certificated project, to
18 step into the shoes of Noble. And, that's our whole
19 thrust, that's how we prepared our prefiled testimony.
20 Have we misread the statute and the rules? I mean, that's
21 -- that's how we got to this point. The issue is
22 Brookfield, not whether this is a good project or a bad
23 project.

24 MR. IACOPINO: That you are absolutely

1 correct, the issue is whether or not Brookfield is an
2 appropriate entity to essentially have Noble's interests
3 transferred to. However, the one thing that is there is,
4 you're correct, the Committee will look at the financial,
5 managerial, and technical capabilities of Brookfield to
6 construct and operate the Project in accordance with the
7 terms and conditions that are on the certificate. So,
8 there is -- this is not done -- this proceeding is not
9 done without regard for the Project at all. I mean, the
10 Project is, and the terms and conditions that are on the
11 certificate for the Project are part of the yardstick, if
12 you will, that the Committee uses to determine if
13 Brookfield does have the financial, managerial, and
14 technical capabilities. So, that's, you know, it's not
15 done with -- it's not done forgetting about the Project
16 either. And, obviously, there are aspects of the Project
17 and the certificate that will -- that the Committee will
18 be concerned about whether or not Brookfield can comply
19 with those.

20 MR. PACHIOS: And, we're in total
21 agreement with that, and we heard Lisa say the same thing.
22 You know, there are all these conditions, and she wants to
23 make sure that Brookfield has the financial, technical, or
24 managerial capacity to abide and to accommodate those

1 conditions. And, we agree that that is part of this and
2 part of what your inquiry --

3 MS. LINOWES: I just want to say,
4 because I understand, you started out the conversation
5 exactly that point that, yes, that you want to prove that
6 Brookfield is viable. I don't think there are lots of
7 questions around that. But the question surrounds the
8 Project itself. And, Noble declared itself and was found
9 by the Committee to have the managerial, technical, and
10 financial ability to build and run that Project. But it's
11 not doing -- I have no idea what financial situation Noble
12 is in today. But, obviously, it may still be the right
13 thing for Noble to do, but it's decided not to do that for
14 reasons. And, I think those reasons are applicable to
15 Brookfield taking over the Project as well.

16 What really matters to the State of New
17 Hampshire or at least the public, from our perspective, I
18 would think for the public is whether or not the Project
19 is going to get built.

20 MR. ROTH: And, just there was -- I
21 don't agree with something that you just said, if I
22 understood you correctly, and that is "what were Noble's
23 reasons for getting out it?" And, whether Noble turned
24 out that it couldn't do it or doesn't want to do it or

1 it's going to open theme parks instead, I don't think
2 that's relevant, and I don't think we should spend any
3 time on that.

4 But what I -- and, I think I have
5 somewhat of a disagreement with Harold about what the
6 scope of the hearing is, because I don't think you can
7 look at Brookfield in a vacuum and say "whatever this
8 Project is and whatever it's become since that time, since
9 the hearing, Brookfield is capable of doing it." I mean,
10 maybe that's true. But we don't -- I think we need to be
11 able to look at what the economic condition of the Project
12 is, and if economic factors have changed, in terms of how
13 it's going to operate. And, such that so we can measure,
14 and you said "the yardstick", what is it we're measuring?
15 If Brookfield is a foot long and the Project is a foot and
16 a half long, it's not going to work. You know what I'm
17 saying? So, I think it's important, as I think
18 Mr. Iacopino said, to look at what the Project is, and we
19 -- and not just at Brookfield's economic power in a
20 vacuum.

21 MS. LINOWES: I agree with that. I just
22 wanted to say -- and that's what I would say about Noble.
23 For whatever reason, Noble has decided it doesn't want to
24 be part of this Project. It wants -- it's selling out.

1 And, that's -- I think that's what we're getting at. At
2 some point, it's not -- it doesn't make sense for you
3 either, and we're looking at that.

4 MR. PACHIOS: May I respond?

5 MR. IACOPINO: Yes, you may.

6 MR. PACHIOS: We do have a fundamental
7 disagreement here, and that's why these things -- this
8 prehearing conference is important, a fundamental
9 difference. The question here is there's three pieces:
10 Financial, managerial, and technical. Do you have the
11 money to build this Project? Do you have the financial
12 capacity to build this Project? Not -- and, second, are
13 you a good manager? Are you smart people? Or, do you
14 know what you're doing? Is there any evidence that these
15 people don't know what they're doing? Or, is there
16 evidence that "yes, they do know what they're doing"?
17 Third, technical; is there any evidence that they screw
18 up, they don't know how to run these things? They'll make
19 a mess of it. Or, is there evidence that these people are
20 technically sound and that the State of New Hampshire can
21 rely on them, based on the evidence, to do a good job?

22 The issue is not whether the intervenors
23 would make a different choice as to whether they would
24 invest in the Project. That's not the issue. Lisa,

1 Peter, you may evaluate things and say "Oh, jeez, I
2 wouldn't invest in this Project." That's not the issue.
3 It's whether they have the money and the smarts to do
4 this. That's the issue. They may not have the money.
5 They may not have a good track record as managers. They
6 may not have any technical capacity. And, that's what you
7 have to determine for the people of New Hampshire.

8 But, if they do, they step -- there is
9 no reason to prohibit them from stepping into the shoes of
10 Noble. And, that's what the issue is. So, we -- I feel
11 very strongly about that, Michael.

12 MS. LINOWES: Are you suggesting that we
13 have no right to ask these questions?

14 MR. PACHIOS: I don't think I said that.

15 MS. LINOWES: Okay. So, I mean, I don't
16 think I'm in a position -- or, I'm going to be asking
17 questions, I'm not in a position to say whether Brookfield
18 has all of these abilities to run the Project. But I'm
19 trying to understand where you're drawing the line.

20 MR. IACOPINO: I think we're talking
21 past each other here. I think that, and maybe because
22 everybody is trying to protect their positions. But I
23 think we're talking past each other. The Committee is
24 going to review this for the financial, managerial, and

1 technical capabilities of Brookfield to construct and
2 operate the Project as it is certificated, subject to the
3 terms and conditions of that certificate. That's the
4 analysis that the Committee has always used when
5 determining these types of things.

6 They have not determined in the past
7 whether it was a good idea for this particular purchaser
8 to purchase this or not. They have determined whether or
9 not they have the financial, managerial, and technical
10 capabilities to purchase the certificate in some cases or
11 the interests.

12 And, so, now -- but, to answer your
13 question, in the past we have had extremely large
14 companies not undertake and not complete their
15 obligations, such as with the AES plant in Londonderry.
16 They walked away from that particular project and left it
17 to their banks. They had the benefit of having a
18 non-recourse financing agreement. And, in that particular
19 case, a transfer of the certificate went to a consortium
20 of banks, who had to demonstrate that they were going to
21 take care of the technical aspects of it. So, the
22 questions that you're asking with respect to you want the
23 details about their managerial, technical, and financial,
24 primarily, capabilities are questions that I think should

1 be asked and should be answered. And, the Committee is
2 going to be interested in those questions as well.

3 But I think that, you know, whether it's
4 a good idea for this particular company to -- whether
5 they're making a good choice in buying this project or
6 buying this interest in this project, I don't know that
7 that's the analysis that the Committee is going to use at
8 least, so that everybody is aware. They're going to
9 determine, you know, are they financially, managerially,
10 and technically capable of operating and constructing this
11 Project in accordance with the certificate that's already
12 been granted.

13 So, I think, to some extent, the two
14 sides are talking past each other. But I understand it's
15 because you, obviously, don't want to be trying the case
16 past each other. So, it's better to get it out here. So,
17 --

18 MR. PACHIOS: Yes. And, thank you,
19 Mike, and I agree with you. And, I would say to Lisa,
20 with respect to questions, I am sure that you will have a
21 lot of questions about the financial capacity of
22 Brookfield, the managerial capacity of Brookfield, the
23 technical capacity of Brookfield.

24 MS. LINOWES: As it applies to this

1 Project, that's what I'm --

2 MR. PACHIOS: Of course, because the
3 Project is the only issue.

4 MS. LINOWES: That's right.

5 MR. PACHIOS: In terms of this Project,
6 yes. But it's their capacity, not Noble's capacity, not
7 somebody else's capacity, it's their -- the issue is
8 Brookfield's capacity.

9 MR. IACOPINO: Does anybody have
10 anything else that they wanted to address?

11 (No verbal response)

12 MR. IACOPINO: All right. I think that
13 we've pretty much finished up the agenda as I had it. Is
14 there any other issues that anybody needed to raise before
15 we conclude for the day?

16 MR. OSMARS: Excuse me. You had
17 suggested that we have an informal discussion between --

18 (Interruption by the court reporter.)

19 MR. OSMARS: Oh. My name is Kim Osmars.
20 You had suggested that we have a informal session, --

21 MR. IACOPINO: Yes.

22 MR. OSMARS: -- to better understand
23 their line of questioning?

24 MR. IACOPINO: Just to better understand

1 what the requests will be at the time of the technical
2 session on the 18th. That way, and before that date, if
3 there are going to be issues, if there's going to be
4 documents or information that any party is going to be
5 moving for a confidentiality order, that that can be done
6 in advance, so we don't have to have a technical session,
7 have a ruling on confidentiality, and impinge on the
8 hearing date of the 31st, because that motion may still be
9 outstanding.

10 MR. OSMARS: So, that's our initiative
11 to take on our own?

12 MR. IACOPINO: I would -- I would
13 appreciate if the parties would talk, so that you all have
14 a good idea of what type of information is going to be
15 looked for at that technical session, and that it be, you
16 know, that in advance we know whether or not there is
17 certain information that you're going to be requesting
18 protective orders on.

19 MR. OSMARS: That should be next week, I
20 guess, because the 18th is the week after that.

21 MR. PACHIOS: Yes. We'll talk about
22 that later this afternoon and be in touch.

23 MR. OSMARS: Okay.

24 MR. IACOPINO: In the normal course,

1 what happens when we have a full application, is there's
2 usually data requests that go out, so that this issue gets
3 resolved, because you see the questions. And, then, the
4 party who is answering the data request says "Oh, wait a
5 minute. We can't just give that to them. We need a
6 confidentiality order." So, generally, what we will see
7 is a Motion for Confidentiality order saying, you know,
8 that "Intervenor A has asked for the following
9 information: This is proprietary, this is commercial,
10 these are financial documents that are exempt from
11 disclosure under RSA 91-A. And, we ask that the court --
12 that the Committee find them to be exempt and require the
13 party to sign a confidentiality agreement." And, then, if
14 the parties object, they file an objection. The presiding
15 officer will rule on those motions. And, we can only go
16 from there, because I can't tell you what the rulings will
17 be. So, --

18 MR. OSMARS: Thank you.

19 MS. LINOWES: I have a question.

20 Regarding the confidentiality agreement, in the past it
21 was always, as I recall, it was a -- and you started to
22 talk about this earlier, a confidentiality agreement that
23 came from the Applicant that we signed.

24 MR. IACOPINO: That was approved,

1 though.

2 MS. LINOWES: Approved by the Committee.

3 MR. IACOPINO: Right. It had always
4 been -- there's always been an order. Because the problem
5 was that, if the Committee is going to receive the
6 documents, they become a public record unless they're
7 determined to be exempt under the Right To Know Act. If
8 they're determined to be exempt under the Right To Know
9 Act, what's generally happened is that the Committee has
10 also issued the confidentiality -- and usually it's a
11 confidentiality agreement that the Applicant or the party
12 who's seeking the confidentiality has proffered. I mean,
13 there's been some, actually, I think you negotiated one at
14 one point though, where there was something difficult in
15 one of the agreements and you couldn't agree to it, but
16 you did negotiate something else. Or, maybe it was the
17 AMC. I forget.

18 MS. LINOWES: That's right. It was in
19 Lempster, I believe. And, that was directly from
20 Iberdrola at the time.

21 MR. IACOPINO: Right. But I think it
22 was incorporated in the Committee's order finding the
23 documents to be confidential. Or, if not in the Iberdrola
24 case for Lempster, since then they have been doing it that

1 way.

2 MS. LINOWES: Okay.

3 MR. IACOPINO: That may have been wind
4 data, which I don't think ever actually came to the
5 Committee in that particular case.

6 MS. LINOWES: Correct.

7 MR. IACOPINO: But I know that you did
8 have a confidentiality agreement. But, if there are
9 documents that are going to come to the Committee, they
10 have to not only be agreed to be confidential by the
11 parties who are going to receive them, the Committee has
12 to agree that they're exempt under the Right To Know Act.

13 MS. LINOWES: Okay. So that they will
14 be itemized and provide --

15 MR. IACOPINO: Right. And, that's why
16 part of the exercise that I've been trying to get through
17 here is to try to get an idea of exactly what is it that
18 you're going to be asking for. I mean, to the extent that
19 you know the exact documents you're going to be asking
20 for, I want them to know in advance, so that we can get
21 this resolved in advance. Normally, we would have data
22 requests, so I would see it. And, I'd say, "Okay, I know
23 they're going to ask for confidentiality on these
24 documents." In this particular case, we're not going to

1 have a data request process. So that I'm kind of relying
2 on the parties to informally identify what they're going
3 to ask for, file the Motion for Confidentiality, if it's
4 necessary. Believe me, if we can do this without
5 exempting documents from the Right To Know Act, the
6 Committee would far prefer that. So, that is, you know,
7 we don't have that intermediate step here where it's easy
8 to identify what's actually being asked. So, what I'm
9 asking the parties to do is to talk to each other and
10 determine what it is that's being asked for. I think
11 we've got somewhat of a list that we've already gone over,
12 and get a Motion for Confidentiality in, if, in fact, you
13 think you will need it.

14 MR. PACHIOS: Or an objection.

15 MR. IACOPINO: Or an objection. If
16 there's something you're just outright not going to give,
17 --

18 MR. PACHIOS: Right.

19 MR. IACOPINO: -- that's fine, too. You
20 know, an objection is fine.

21 MR. PACHIOS: So, we would -- Mike, we
22 would --

23 MR. IACOPINO: Or, actually, you
24 probably ought to do a motion for --

1 MR. PACHIOS: To compel.

2 MR. IACOPINO: -- for it to compel, --

3 MR. PACHIOS: Yes.

4 MR. IACOPINO: -- that would probably be
5 the more appropriate way to do it.

6 MR. PACHIOS: Right.

7 MR. IACOPINO: So, if you say to him,
8 and I'll just use something that, you know, "I want your
9 -- I want all the lunch orders of your employees at
10 Brookfield for the last three weeks", and he's like "we're
11 not going to give you that", I would ask that you file the
12 Motion to Compel.

13 MS. LINOWES: Okay.

14 MR. IACOPINO: Whereas, if the answer is
15 "I'll give you that, but I really need a confidentiality
16 order. You know, they eat big lunches", or whatever. You
17 know, then I would be looking to him to file the Motion
18 for Confidentiality of the lunch orders.

19 MS. LINOWES: Well, one thing I'm
20 concerned, because the -- the question that Peter raised
21 earlier about, not wanting to get into a fight over
22 relevancy. I think we've put on the table what we -- the
23 information we're interested in. I have no way of knowing
24 if certain documents exist or not, for instance, a

1 proforma on the operating conditions of the Project. But
2 we have an understanding on the kind of data. I'm just
3 hoping that we're not going to run into a fight over
4 relevancy. You've made a point now at least two times
5 today of what you think that the Committee is looking for,
6 which sounds like we're heading into a fight over
7 relevancy. And, so, I'm not comfortable with that. I
8 mean, it's going to slow the process down.

9 MR. PACHIOS: Well, may I respond?

10 MR. ROTH: And, I share her concern, to
11 be honest with you, Harold.

12 MR. PACHIOS: Yes. No, no, I
13 understand.

14 MR. IACOPINO: Sure. Respond, Harold,
15 and then -- go ahead.

16 MR. PACHIOS: I understand. And, I
17 think we have a different view of what the test here is.
18 Our view is it's the financial capacity, technical
19 capacity, and managerial capacity of Brookfield. You have
20 a different view, and I understand that. But it is a --

21 MR. ROTH: But I don't think you
22 understand our view. Because our view is, at least mine
23 anyway, I can't speak for Lisa, but my view is that that
24 capacity does not exist in a vacuum. It exists with

1 respect to this Project as it is currently anticipated.
2 And, what we saw two years ago is perhaps not what is
3 currently anticipated. And, that's why I go back to, you
4 know, the yardstick. You know, if Brookfield's a foot
5 long and this Project is a foot and a half long, then the
6 capacity isn't there. But, if all we know is that
7 Brookfield is a foot long, then we don't really know
8 whether the capacity exists. That's what I'm trying to
9 get at.

10 MR. PACHIOS: The issue of how long
11 Brookfield is -- well, let me stop. I think we can narrow
12 this down. The Project is what the Project is, and there
13 are various conditions, as Lisa pointed out. You had a
14 whole, long hearing, and you know a lot about the Project.
15 I think that's true. You know a lot about the Project.

16 MS. LINOWES: As it existed two years
17 ago.

18 MR. PACHIOS: Yes. Well, and if it's
19 the same Project, if it's the exact same Project than what
20 existed two years ago exists today. That's the Project.

21 MS. LINOWES: Well, that's not the case.

22 MR. PACHIOS: Well, if it's not the case
23 -- we think it is the case. So, we are stepping into the
24 shoes of a owner of a company that holds a certificate.

1 We're obligated to proceed pursuant to that certificate.
2 The question is, are we able, you litigated this
3 certificate, are we in a position to accommodate that
4 certificate, and to do it the way the SEC said to do it?
5 That's the issue.

6 MS. LINOWES: If I may, the question
7 that Peter raised about relevancy, I think he was saying,
8 I think I understood, the question of relevancy is let it
9 come up on January 31. Don't let it stop the discovery
10 process between now and then is what we're asking. And, I
11 don't think asking for some of the documents or the
12 information we're looking for, which sounds like it's
13 outside of what you want to give, should become a fight
14 now.

15 MR. ROTH: Yes. I think the standard
16 for discovery is going to be a lot more in the vein of
17 "give it", because relevancy, for purposes of admission,
18 is different. I mean, you're a litigator. I'm sure you
19 understand.

20 MR. PACHIOS: No, no. We --

21 MR. ROTH: When we do discovery, we have
22 a right to get more information than perhaps we can admit.

23 MR. PACHIOS: You have a right to get
24 the information.

1 MR. ROTH: I don't think we've asked for
2 anything that's outside of the reasonable scope of
3 discovery in this case.

4 MR. PACHIOS: Well, if you ask for
5 proprietary information, it is outside the normal scope of
6 discovery.

7 MR. IACOPINO: I don't think you're
8 going to see them asking for something that's --

9 MR. ROTH: I don't think "proprietary"
10 is a scope issue.

11 MR. IACOPINO: I don't think you're
12 going to -- first of all, I don't think you're going to
13 see requests for something that you're actually going to
14 determine to be proprietary. Secondly, if the -- I'll
15 just use round figures, if the Project, if it costs
16 \$1 million to build the Project two years ago, but today
17 the cost is \$5 million, I assume that the Committee is
18 going to measure Brookfield's capacity against today's
19 number, as opposed to two years ago.

20 MR. ROTH: That's what I was saying.

21 MR. IACOPINO: So that, --

22 MR. PACHIOS: No problem there.

23 MR. IACOPINO: -- in that regard, it's
24 not just about Brookfield. It's also about the ability to

1 construct. And, when I say "Brookfield's capacity", both
2 managerial, financial, and technical, to construct and
3 operate the Project. That's a very plain vanilla example
4 of how the specifics of the Project come in.

5 MR. ROTH: And, I can give you a
6 somewhat more detailed, you know, my sort of look at this.
7 Let's say that the proforma of the Project shows that it
8 requires, in order for it to work, it requires Brookfield
9 to invest X number of dollars per year to support it, just
10 additional equity investment. Just to make up for the
11 fact that RECs are down or the PPAs are low or costs --
12 the costs of running it are higher, whatever the figure
13 is. And, we look at Brookfield, and we don't find that
14 money in Brookfield's balance sheet. Now, you say "That's
15 preposterous. This is a huge company. They'll always
16 have the money." But, you know, that may be the answer in
17 the end. But, in terms of our testing it and analyzing
18 it, you know, in this process, we have a right to ask
19 those questions and learn what those answers are.

20 MR. PACHIOS: You have a right, absolute
21 right to inquire into whether Brookfield has the capacity,
22 if it costs 350 million, does Brookfield have the money to
23 do it?

24 MR. ROTH: But building the Project

1 isn't the end of the analysis, because, and I think maybe
2 that's where you're not understanding us, the analysis
3 goes through the Project's operation. You have a burden
4 of showing that the Project -- that the Applicant has the
5 ability to construct and operate the Project. And, if we
6 don't understand what it costs to operate it, versus what
7 you're going to make on it, then you can't really meet
8 your burden. And, that's, you know, so that's where I'm
9 coming from.

10 And, I'm not looking for, you know, I
11 don't know what the idea of proprietary is that you're
12 embracing here. But, you know, when we met and we had
13 hearings here with Noble, they produced a financial model,
14 an operating model that we looked at. And, I can't
15 remember what all went into it. But, you know, we had a
16 financial expert look at it and say "Yeah, they have a
17 model. It seems to make sense. The numbers add up." So,
18 that's the kind of thing that I'm thinking about and
19 looking at. And, I don't remember the model was
20 especially complicated or detailed either.

21 MR. IACOPINO: I think we're talking
22 beyond each other, though. Because I think what Harold is
23 trying to protect is the "why", and what you all are
24 looking for is the "what". So, I think that that's the

1 difference --

2 MR. ROTH: Yes. I hope that's true.

3 MR. IACOPINO: -- in what we're talking
4 about.

5 MR. ROTH: But I'm afraid that Harold is
6 going to say "I'm not going to give you the what, because
7 I think you're looking for the why." And, I think that's
8 where we're -- we're going to end up in futility.

9 MR. IACOPINO: And, if that's the case,
10 then we'll see motions to compel, okay? And, we'll deal
11 with them. But I think you're going to walk out of here
12 today, Harold, with an idea of the types of information
13 that they want. I do want the three of you to please
14 communicate with each other.

15 MR. PACHIOS: This week. We'll do it
16 this week.

17 MR. IACOPINO: As soon as possible. So
18 that he can have a good idea on, if he does need to seek
19 confidentiality of documents, that he can have the time to
20 get that in. And, also, if there's something that he's
21 going to object to, he can let you know, so that you all
22 can get in a Motion to Compel.

23 Now, Lisa, I know you filed a motion
24 seeking to intervene *pro se*. I take it you do not intend

1 to hire counsel to represent your group in this matter,
2 right?

3 MS. LINOWES: I do not. That's correct.

4 MR. IACOPINO: Peter, is there anybody
5 else from your office who will be working on this?

6 MR. ROTH: Probably not.

7 MR. IACOPINO: Okay. So, it will be the
8 people who are here dealing with each other.

9 MS. LINOWES: Is this the service list?
10 I don't know if there is one or not.

11 MR. IACOPINO: There is a service list,
12 but I just don't -- it hasn't been published as a service
13 list. It's more like an e-mail list right now.

14 MS. LINOWES: Okay.

15 MR. IACOPINO: But we have been using up
16 to this point the Granite Reliable service list when we
17 first got this Application.

18 MS. LINOWES: Okay.

19 MR. IACOPINO: All those folks who were
20 on that list were notified. My guess is it's probably
21 going to keep that going, adding, obviously, Brookfield
22 and the folks who are -- actually, it's just Brookfield is
23 the only new party that I can think of since that time.

24 MS. LINOWES: Okay.

1 MR. IACOPINO: You did get notice
2 originally when this first came in, too, right?

3 MS. LINOWES: Yes. Correct.

4 MR. IACOPINO: Okay. So, the original
5 service list idea worked.

6 So, any other issues that anybody wants
7 to raise, other than this discovery issue that I think
8 we've pretty much pounded into the sand here? Anything
9 other issues?

10 (No verbal response)

11 MR. IACOPINO: All right. Why don't we
12 adjourn then. And, thank you all very much. And, please
13 keep me abreast, even if it's just informally, as to how
14 things are going. You know, I'm not a decision-maker.
15 So, you can call me up and say "I'm going to file this" or
16 "I'm going to file that", and it won't be an *ex parte*
17 communication. Thank you very much, Steve.

18 **(Whereupon the prehearing conference**
19 **ended at 11:49 a.m.)**

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