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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

January 31, 2011 - 10:00 a.m.
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire

RE: **SEC DOCKET NO. 2010-03**
Join Application by Granite
Reliable Power, LLC, and
Brookfield Renewable Power,
Inc., for Approval to Transfer
Equity Interests in Granite
Reliable Power, LLC, under
RSA Chapter 162-H.
(Public Hearing
and Deliberations)

PRESENT:	SITE EVALUATION SUBCOMMITTEE:
Thomas Burack, Commissioner (Presiding as Chairman)	Dept. of Environmental Services
Thomas B. Getz, Chairman (Vice Chairman of SEC)	Public Utilities Commission
Robert Scott, Director	Air Resources Division - DES
Glenn Normandeau, Director	N.H. Fish & Game
Clifton Below, Commissioner	N.H. Public Utilities Comm.
Amy Ignatius, Commissioner	N.H. Public Utilities Comm.
Elizabeth Muzzey, Director	Div. of Historical Resources
George Campbell, Cmsr.	Div. of Forests & Lands - DRED
Joanne Morin, Director	Office of Energy & Planning
Michael Harrington, Engineer	Public Utilities Commission

* * *

Counsel for the Committee: Michael Iacopino, Esq.
(Brennan, Caron, Lenehan...)

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

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APPEARANCES:

Counsel for Joint Applicant: (Granite Reliable Power)	Douglas L. Patch, Esq. (Orr & Reno) Michael J. Palmieri, Esq. (Noble Environmental Power)
Counsel for Joint Applicant: (Brookfield Renewable Power)	Harold C. Pachios, Esq. (Preti Flaherty) Sigmund D. Schutz, Esq. (Preti Flaherty)
Counsel for the Public:	Peter C.L. Roth, Esq. (Sr. Asst. Atty. General) Department of Justice
Reptg. Industrial Wind Action Group:	Lisa Linowes
Reptg. Coos County Comm.	Frederick King, Treasurer

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P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. We are here today for a public meeting of
4 the New Hampshire Site Evaluation Committee. As many of
5 you may already know, the Committee is established by RSA
6 162-H. The membership of this Committee includes the
7 Commissioners or Directors of a number of State agencies,
8 as well as designated senior personnel from various State
9 agencies.

10 At this point, I would like to introduce
11 the members of the Committee who are present at this
12 meeting. In fact, I will ask them to introduce
13 themselves. I serve as the Chair of the Commission. My
14 name is Tom Burack. I am the Commissioner of the State's
15 Department of Environmental Services. Once we have gone
16 through the introductions, there will then be a procedural
17 item involving the Public Utilities Commission, a
18 designation of their engineer who will sit in this matter.

19 So, if we can start with introductions
20 to my far right please.

21 DIR. MORIN: Joanne Morin. I'm the
22 Director of the Office of Energy and Planning.

23 DIR. MUZZEY: Elizabeth Muzzey, Director
24 of the Division of Historical Resources.

1 DIR. NORMANDEAU: Glenn Normandeau,
2 Director of Fish & Game.

3 DIR. SCOTT: Bob Scott, Director of the
4 Air Resources Division with the New Hampshire Department
5 of Environmental Services.

6 CMSR. BELOW: Clifton Below, one of the
7 three Public Utility Commissioners here.

8 VICE CHAIRMAN GETZ: Tom Getz, Chairman
9 of the Public Utilities Commission and Vice Chair of this
10 Committee.

11 CMSR. IGNATIUS: Amy Ignatius, Public
12 Utilities Commission Commissioner.

13 CMSR. CAMPBELL: George Campbell,
14 Commissioner, DOT.

15 MR. HARRINGTON: Mike Harrington, soon
16 to be designated Engineer from PUC.

17 CHAIRMAN BURACK: To my immediate right
18 is Michael Iacopino, who serves as legal counsel to the
19 Committee for purposes of this proceeding. Commissioner
20 Getz.

21 VICE CHAIRMAN GETZ: Thank you, Mr.
22 Chairman. This is a motion for the three members of the
23 Public Utilities Commission. And, I move, pursuant to RSA
24 162-H:3, that we designate Mr. Harrington as the Staff

1 Engineer for this proceeding.

2 CMSR. IGNATIUS: And, I second the
3 motion.

4 CMSR. BELOW: And, I concur.

5 VICE CHAIRMAN GETZ: I note that the
6 motion is unanimous and Mr. Harrington is so designated.

7 MR. HARRINGTON: Got my hopes up there.
8 I was hoping. Amy, I was counting on you.

9 CHAIRMAN BURACK: Thank you. Our agenda
10 today involves only one item, an adjudicatory hearing in
11 Docket 2010-03, Joint Application by Granite Reliable
12 Power, LLC, and Brookfield Renewable Power, Inc., for
13 approval to transfer equity interests in Granite Reliable
14 Power, LLC, under RSA 162-H.

15 Today's meeting is convened as a result
16 of an Order and Notice of Final Prehearing Conference and
17 Public Hearing that I issued on December 17, 2010. Notice
18 of today's public meeting was published in the Union
19 Leader, a newspaper of general statewide circulation, on
20 December 22, 2010. Notice was also published in the
21 Berlin Daily Sun, a paper of general circulation in Coos
22 County, on December 22, 2010. Affidavits attesting to
23 publication were filed with the Committee and they will
24 become part of the record in this docket.

1 On December 3, 2010, Granite Reliable
2 Power, LLC, which we will refer to as "GRP", and
3 Brookfield Renewable Power, Inc., which we will refer to
4 as "Brookfield", filed a Joint Application for Approval to
5 Transfer the Equity Interests of Noble Environmental
6 Power, LLC, which we will refer to as "Noble", to
7 Brookfield under RSA 162-H. And, we will refer to this
8 Application as the "Joint Application".

9 GRP is currently owned by Noble, 75
10 percent, and Freshet Wind Energy, LLC, 25 percent. The
11 Joint Application seeks approval from the Committee to
12 transfer Noble's 75 percent interest in GRP to Brookfield.
13 Such approval is required by conditions to the
14 Certificate, and may also be required pursuant to RSA
15 162-H. The Committee's authority to approve or deny the
16 proposed transfer is set forth in RSA 162-H:4, :5, and New
17 Hampshire Code of Administrative Rules, Site 203.

18 The public will be represented in these
19 proceedings by duly appointed Counsel for the Public,
20 Peter Roth. Mr. Roth is a Senior Assistant Attorney
21 General. The parties to the adjudicative proceedings are
22 the Joint Applicant, Granite Reliable Power, LLC,
23 represented by Douglas Patch of Orr & Reno; the Joint
24 Applicant, Brookfield Renewable Power, Inc., represented

1 by Harold Pachios and Sigmund Schutz of Preti Flaherty;
2 Industrial Wind Action Group, *pro se*, represented by Lisa
3 Linowes; and the Coos County Treasurer, Frederick King.

4 In this proceeding, we will first take
5 appearances. Then, the Applicant will present its
6 witnesses, along with any prefiled testimony and exhibits.
7 It is my understanding that the Applicant will present a
8 panel of witnesses, including Michael Cutter, Kim Osmars,
9 and Jason Spreyer. The order of examination of the
10 Applicants' witnesses will be, first, cross-examination by
11 the Industrial Wind Action Group, if any;
12 cross-examination by Coos County Treasurer, Frederick
13 King, if any; cross-examination by Counsel for the Public;
14 and then Committee questions.

15 It is my understanding that neither
16 Counsel for the Public nor the intervenors intend to
17 present any witnesses. Therefore, when we have completed
18 the examination of the panel of witnesses, I will consider
19 allowing the parties to make brief closing arguments.
20 Thereafter, I will open the floor to public comment. I
21 will then close the evidentiary portion of the
22 adjudicative proceeding. And, if appropriate, we may move
23 into a deliberative proceeding, at which time the
24 Committee will consider the merits of the Application, or

1 we may decide to adjourn and schedule further hearings for
2 the purpose of deliberation.

3 In terms of timeline here, my
4 expectation is that we will take a break probably sometime
5 between approximately 11:45 and 12:00, possibly a little
6 earlier than that, so that we can give our stenographer a
7 chance to rest a little and give folks a chance to have a
8 lunch break. So, that's the basic plan that we have for
9 the morning.

10 And, I think, at this point, I would ask
11 that we now have appearances from the parties.

12 Mr. Pachios, do you wish to begin?

13 MR. PACHIOS: Yes, Mr. Chairman. Can
14 you hear me okay?

15 CHAIRMAN BURACK: Yes, we can. Thank
16 you.

17 MR. PACHIOS: My name is Harold Pachios,
18 of the law firm of Preti Flaherty, Concord and Portland.
19 And, I am joined by my partner, Sigmund Schutz, of the law
20 firm of Preti Flaherty, appearing in behalf of Brookfield.

21 CHAIRMAN BURACK: Thank you.

22 MR. PATCH: Good morning, Mr. Chairman,
23 members of the Committee. Douglas Patch, from the law
24 firm of Orr & Reno, on behalf of GRP this morning. And,

1 with me are Michael Palmieri, Pip Decker, and Thomas
2 Swank.

3 CHAIRMAN BURACK: Thank you. Mr. King.

4 MR. KING: Yes. I'm Frederick King, the
5 Treasurer of Coos County.

6 CHAIRMAN BURACK: Thank you.

7 MS. LINOWES: I'm not sure if this is
8 on. Mr. Chairman, I'm Lisa Linowes with the Industrial
9 Wind Action Group.

10 CHAIRMAN BURACK: Thank you. Attorney
11 Roth.

12 MR. ROTH: Good morning, Mr. Chairman.
13 I'm Peter Roth, Counsel for the Public.

14 CHAIRMAN BURACK: Thank you. Thank you
15 all for being here this morning. And, Attorney Pachios or
16 Attorney Schutz, would you like to proceed? We'll need to
17 have your witnesses take an oath in just a moment.

18 MR. PACHIOS: Okay. I'd like first to
19 introduce the witnesses just in the order that they sit
20 here. First is Kim Osmars; in the middle, Jason Spreyer;
21 and, to the right, Michael Cutter. And, would the three
22 of you please stand to be sworn.

23 (Whereupon *Jason M. Spreyer, Kim Osmars,*
24 and *Michael R. Cutter* were duly sworn

1 and cautioned by the Court Reporter.)

2 MR. PACHIOS: Before we begin, I'd like
3 to have marked for identification the three prefiled
4 testimonies of these three gentlemen. And, I suggest to
5 mark them Brookfield Number 2, 3, and 4. I think Counsel
6 for the SEC has suggested that Brookfield Number 1 be a
7 proposed order drafted by the Applicant. So, why don't we
8 start with Brookfield Number 1.

9 CHAIRMAN BURACK: And, you have provided
10 copies of that proposed order to each of the parties, is
11 that correct?

12 MR. PACHIOS: To each of the parties and
13 to Mr. Iacopino.

14 CHAIRMAN BURACK: Yes. Thank you. And,
15 members of the Committee, you should have already received
16 a copy of that document. Okay. Do any of the parties
17 have any objection to the marking of these exhibits?

18 MR. ROTH: Mr. Chairman, no objection to
19 marking the exhibits. I would like to have some input on
20 the proposed order exhibit.

21 CHAIRMAN BURACK: Yes. We understand,
22 and I think there will be ample opportunities for all
23 parties to provide input with respect to that proposed
24 order at the appropriate time.

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 (The documents, as described, were
2 herewith marked as Petitioner's
3 **Exhibits 1** through **4**, respectively, for
4 identification.)

5 MR. ROTH: Thank you.

6 CHAIRMAN BURACK: Thank you.

7 **JASON M. SPREYER, SWORN**

8 **KIM OSMARS, SWORN**

9 **MICHAEL R. CUTTER, SWORN**

10 **DIRECT EXAMINATION**

11 BY MR. PACHIOS:

12 Q. I'd like simply to begin, the witnesses having been
13 sworn, by asking each of these witnesses for the record
14 to answer three questions. First, and we'll go down
15 the line, are you familiar with the exhibit which has
16 been marked for identification as "Exhibit 1", which is
17 the prefiled "Testimony of Kim Osmars"?

18 A. (Osmars) Yes, I am.

19 CHAIRMAN BURACK: Excuse me,
20 Mr. Pachios, I believe that would be number "2".

21 MR. PACHIOS: Oh, excuse me. I'm sorry.
22 Number 2.

23 BY MR. PACHIOS:

24 Q. And, if you were to deliver your testimony, your direct

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 testimony orally here today, would it be substantially
2 as you have set forth in this prefiled testimony?

3 A. (Osmars) It would be.

4 Q. And, you adopt it as your own direct testimony here
5 today?

6 A. (Osmars) Yes, I do.

7 Q. Okay. Mr. Spreyer, if you were -- are you familiar
8 with --

9 CHAIRMAN BURACK: That would be
10 "Exhibit 3".

11 BY MR. PACHIOS:

12 Q. -- Exhibit Number 3, the prefiled "Testimony of Jason
13 Spreyer". Are you thoroughly familiar with it?

14 A. (Spreyer) Yes, I am.

15 Q. Okay. And, if you were to deliver your direct
16 testimony here today orally, would it be substantially
17 as you have set forth in your prefiled testimony?

18 A. (Spreyer) Yes, it would.

19 Q. And, you hereby adopt it as your direct testimony?

20 A. (Spreyer) Yes, I would.

21 Q. Okay. And, Mr. Cutter, Exhibit Number 1, are you
22 familiar with Exhibit --

23 CHAIRMAN BURACK: Four.

24 BY MR. PACHIOS:

{SEC Docket 2010-03} {01-31-11}

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 Q. -- 4, sorry, are you familiar with Exhibit Number 4?

2 A. (Cutter) I am.

3 Q. Okay. And, you've reviewed it thoroughly?

4 A. (Cutter) Yes, I have.

5 Q. Okay. And, if you were to deliver your testimony
6 orally here today, would it be in substantially the
7 same form as in your prefiled testimony?

8 A. (Cutter) It would be.

9 Q. And, you hereby adopt it as your direct testimony in
10 this case?

11 A. (Cutter) Yes, I do.

12 MR. IACOPINO: Mr. Pachios, can you have
13 your witnesses speak up please? We're having trouble with
14 this side of the room hearing you.

15 DIR. MORIN: You need to speak loudly.

16 MR. PACHIOS: Okay. Yes. You need to
17 make sure they hear over here.

18 Okay. Mr. Chairman, the witnesses are
19 now ready to cross-examined as a panel.

20 CHAIRMAN BURACK: Very good. Thank you
21 very much. We will turn first to Ms. Linowes. Do you
22 have any questions for any of the panelists?

23 MR. PACHIOS: Excuse me, just in terms
24 of your practice?

{SEC Docket 2010-03} {01-31-11}

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 CHAIRMAN BURACK: Yes.

2 MR. PACHIOS: Shall I move the admission
3 of these exhibits now or later.

4 MR. IACOPINO: Is there any objection?

5 CHAIRMAN BURACK: Any objection to the
6 admission of these?

7 MR. IACOPINO: To the prefiled
8 testimony?

9 MR. ROTH: No objection.

10 CHAIRMAN BURACK: Very good. We will
11 enter them into the record.

12 MR. PACHIOS: Thank you.

13 CHAIRMAN BURACK: Thank you. Okay. Ms.
14 Linowes, do you have any questions?

15 MS. LINOWES: Yes. I do. Mr. Chairman,
16 before I proceed, this proposal for a decision, I haven't
17 had a chance to look at it. And, will we be
18 cross-examining on this later or is it possible that the
19 Applicant can present this now, so that we have some
20 information about it? I'm just trying to understand where
21 this would fit in.

22 CHAIRMAN BURACK: Thank you.

23 (Chairman Burack, Vice Chairman Getz,
24 and Atty. Iacopino conferring.)

{SEC Docket 2010-03} {01-31-11}

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 CHAIRMAN BURACK: Thank you, Ms.
2 Linowes, for your question. We're going to treat this not
3 as testimony or as evidence, but really simply as a
4 memorandum of law submitted to the Committee. And, I
5 think there will be ample opportunity for the parties to
6 provide comment on this memorandum or to respond to it at
7 an appropriate time following this.

8 MS. LINOWES: I guess I'm not sure of
9 the process, though. Is the intent of the Committee to
10 deliberate today and make a decision or will you
11 deliberate today, take written comment, briefs, and then
12 decide later?

13 CHAIRMAN BURACK: We do not know at this
14 time what action the Committee will take. It is possible
15 that we will deliberate and come to a decision today on
16 this matter. It is also possible that we will not reach
17 that point today. The typical practice of the Committee,
18 once it does deliberate on a matter, is to have -- we
19 deliberate in public, we put our reasoning on the record
20 for the basis for our determination, for our decision. We
21 then take a vote and a decision is made. We then ask our
22 counsel to prepare a written decision that sets forth in
23 detail the basis for our determinations and our decision.
24 That written decision is then reviewed by the Committee

{SEC Docket 2010-03} {01-31-11}

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 before it is signed by the members and published. So,
2 what I would anticipate is that what we have received
3 today as a proposed order is simply information that would
4 be considered by -- essentially a memorandum that could be
5 considered by the Committee as it is drafting a -- as it
6 is drafting a Final Order in this proceeding. So, there
7 would be an opportunity following the deliberative process
8 here for any parties, if they wish to, we can certainly
9 provide an opportunity, I believe, for people to submit
10 any written comments they wish to or responses to this
11 proposed order.

12 MS. LINOWES: Okay. So, no
13 cross-examination on this then?

14 CHAIRMAN BURACK: That's correct.

15 MS. LINOWES: Okay. Thank you. Before
16 I proceed also, some of the questions I have relate to
17 information that is under the protective order. And, I've
18 made copies, I know they're not in the official record.
19 You have not seen these documents. But I've made copies
20 of them that I would like to submit as exhibits. I'm not
21 sure, I've gone through my questions, and it's possible I
22 may be able to ask the questions without making a public
23 comment about actual numbers. The question I'm getting at
24 is whether or not you will need to go into non-public

{SEC Docket 2010-03} {01-31-11}

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 session. It's possible that's not necessary, if you have
2 the numbers in front of you. But I wanted to defer to you
3 on how to proceed. I would like to give you the documents
4 and submit them as exhibits.

5 MR. IACOPINO: Are they essentially
6 portions of the documents that the Committee has already
7 issued the protective order on?

8 MS. LINOWES: Yes, they are. Would you
9 have those?

10 MR. IACOPINO: No.

11 (Chairman Burack, Vice Chairman Getz,
12 and Atty. Iacopino conferring.)

13 CHAIRMAN BURACK: Ms. Linowes, I think
14 what we'll ask you to do is to submit the documents, take
15 them -- we'll mark this as "IWAG Exhibit 1" through
16 whatever it is. We'll ask you to start your examination,
17 and we'll provide copies to the Committee here, we'll ask
18 you to begin your examination and see if you can conduct
19 your examination in a manner that does not cause us to
20 have to -- or, cause the witnesses to have to discuss
21 matters that are considered protected by the protective
22 order.

23 MS. LINOWES: Okay.

24 CHAIRMAN BURACK: And, if we're all to

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 do that, fine. If not, then we may have to go into
2 non-public session under RSA 91-A in order to go through
3 that.

4 MS. LINOWES: That sounds fine. I'll
5 distribute them. The documents, just so you know, there
6 are a two-page document that Brookfield provided for us
7 that are the financials on the Project itself, and the
8 other documents are also two-page, they are the equivalent
9 of what we received from GRP back two years ago. And,
10 they were also issued under protective order. I'm not
11 going to be referencing the GRP documents in terms of my
12 questions here except by reference, so it will be valuable
13 for you to have both documents.

14 CHAIRMAN BURACK: Okay. Thank you. Ms.
15 Linowes, we need to mark them here first please.

16 MS. LINOWES: Oh, sure.

17 (Brief recess taken for marking of
18 exhibits. Whereupon **Exhibit IWAG-1** and
19 **Exhibit IWAG-2** were herewith marked for
20 identification.)

21 CHAIRMAN BURACK: We will now resume the
22 proceeding, Ms. Linowes.

23 MS. LINOWES: Thank you, Mr. Chairman.

24 **CROSS-EXAMINATION**

1 BY MS. LINOWES:

2 Q. Okay. I have some basic questions about the technical
3 abilities of Brookfield. Currently, how many power
4 plants does Brookfield own?

5 A. (Cutter) In the U.S., we have 100 hydroelectric power
6 plants.

7 Q. One hundred hydroelectrics?

8 A. (Cutter) Yes.

9 Q. How many megawatts does that come to?

10 A. (Cutter) It's in the order of two gigawatts,
11 2,000 megawatts.

12 Q. And, what -- how many of those are in New England?

13 A. (Cutter) There would be eight here in New Hampshire.

14 (Court reporter interruption.)

15 **BY THE WITNESS:**

16 A. (Cutter) Eight in New Hampshire. Sorry. Two in
17 Massachusetts, our pump storage plant and the Pike
18 Brook run-of-river plant. And, then, I believe there's
19 a dozen in Maine.

20 BY MS. LINOWES:

21 Q. Okay. So, one of them is a pump storage?

22 A. (Cutter) It is.

23 Q. Okay. And, were any of them brought on line in the
24 last ten years?

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 A. (Cutter) As to new facilities, there would be upgrades
2 to the existing facilities, but I believe all of those
3 were acquired.

4 Q. They're all acquired?

5 A. (Cutter) Yes.

6 Q. So, Brookfield has not built a power plant in New
7 England?

8 A. (Cutter) In New England, we're in the process --

9 Q. Or, in the United States, I should say.

10 A. (Cutter) No. We're in the process right now of
11 building a facility in Minneapolis, Minnesota.

12 Q. And, what is that facility?

13 A. (Cutter) It's the Lower St. Anthony's Falls
14 hydroelectric facility. And, also a complete
15 rehabilitation of an abandoned or decommissioned plant
16 that had not operated since about 2004, when we
17 acquired it in West Virginia, called the "Glen Ferris
18 hydroelectric facility". So, those two projects are
19 under construction as we speak.

20 Q. Okay. So, you've operated -- predominantly operated
21 plants here in the United States?

22 A. (Cutter) Operated and upgraded. There's been some
23 significant capacity additions. I can't tell you the
24 numbers, I just don't have them in front of me. But a

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 number of significant upgrades that required teardown
2 of facilities, new generators, new runners, a rebuild.
3 Some of these were very old facilities, dating back to
4 the -- 1899 I think is the oldest nameplate I've seen.
5 And, so, there's a level of complexity when you're
6 dealing with machinery of that vintage that is quite
7 significant.

8 Q. And, how many employees in total are involved in, not
9 refurbishing or reconstructing, but in operating those
10 hydroelectric facilities?

11 A. (Cutter) It would be in the order of 250 to 300, I
12 believe, out of our 400 U.S. employees. Typically, the
13 employees that we have in our field operations are
14 involved with the -- both the maintenance and
15 operation, to a certain extent the rehabilitation of
16 plants. We do have a machine shop at our facility in
17 New York, where we do some of our own work. But,
18 predominantly, we rely on the expertise of outside
19 vendors and engineers and so forth to be involved in
20 that process. So, we're not a one-stop shop where we
21 do it all. What we do is we manage that risk and the
22 investment by employing the best experts we can find to
23 do that type of work for us.

24 Q. Okay. So -- but I want to get a sense of the number of

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 people. So, you're saying that for 2,000 megawatts of
2 hydroelectric in the United States, you have ten people
3 per megawatt? Does that make sense?

4 A. (Cutter) I didn't do the math, but that sounds -- it
5 sounds right, subject to checking the math.

6 Q. You said "250 to 300" people.

7 A. (Cutter) I believe, if -- I'm sorry, but that would be
8 my recollection. There's about 400 people in the U.S.,
9 I'm just doing the subtraction for our Marlborough
10 office, and those that are involved in management.
11 And, I would say it's in that 250 to 300 range.

12 Q. So, that's --

13 A. (Cutter) Happy to get the exact --

14 Q. -- that's a lot of people per megawatt, would you
15 agree?

16 MR. PACHIOS: Objection. By what
17 standard? "A lot of people per megawatt"?

18 MS. LINOWES: By a natural gas plant or
19 a nuclear power plant.

20 **BY THE WITNESS:**

21 A. (Cutter) I don't have those numbers.

22 **BY MS. LINOWES:**

23 Q. Okay. How much wind has Brookfield built?

24 A. (Cutter) There are three wind farms in Canada, and

1 another one under construction.

2 Q. And, what are their sizes?

3 A. (Cutter) If you'd like me to refer to my testimony,
4 there was a chart in the testimony that had all of
5 those laid out. They're in the order of 166 -- if you
6 don't mind, I'd like to --

7 A. (Spreyer) The Prince wind farms are 99 and 90; the
8 Gosfield facility is 50; and the current Comber
9 facility that's under construction is 166.

10 A. (Cutter) One sixty-six (166), yes.

11 Q. And, are those ridgeline projects? Or, are they built
12 on farmland? What is the terrain that they're built
13 on?

14 A. (Cutter) They're not ridgeline. Mr. Osmars is most
15 directly involved with the Prince Wind Farm.

16 A. (Osmars) Yes. The Prince wind farm was built on the
17 north shore of Lake Superior, a very similar condition
18 to --

19 (Court reporter interruption.)

20 **BY THE WITNESS:**

21 A. (Osmars) As I said, the Prince Wind Farm was built on
22 the north shore of Lake Superior, at 1,200 foot above
23 sea level. It's in the Precambrian Shield area. Very
24 similar to what you would find in the Granite Ridge

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 area.

2 CHAIRMAN BURACK: Could you push the
3 button to make sure that that's on.

4 (Short pause.)

5 WITNESS OSMARS: Mr. Chairman, would you
6 like me to repeat please? I'm happy to do it again.

7 CHAIRMAN BURACK: Why don't you repeat
8 your response please.

9 WITNESS OSMARS: Sure.

10 **BY THE WITNESS:**

11 A. (Osmars) I was in charge of building the Prince wind
12 farms on the north shore of Lake Superior. It's
13 189 megawatts of wind capacity. They were built in
14 2006. They're built in a Precambrian Shield area,
15 about 1,200 feet above sea level. Very hard
16 rock/granite construction and virgin forest, similar to
17 what you see in the New Hampshire area of the Granite
18 Ridge park.

19 BY MS. LINOWES:

20 Q. So, you had 50-foot ledge cuts?

21 A. (Osmars) We had valley cuts of over 150 feet deep, in
22 actual fact, because we constructed roads throughout
23 the project.

24 Q. How many miles of roads?

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1 A. (Osmars) We built -- there's 20,000 hectares. So, 2.
2 -- so, we're 50,000 acres of turbine areas. We built
3 126 turbines over about 50,000 acres. The roads, my
4 recollection, I would say about 12 miles of road, in
5 hard rock, you know, Cambrian Shield, similar to which
6 you would find on your project site for Granite Ridge.

7 Q. So, 12 miles about?

8 A. (Osmars) About that, correct. Yes.

9 Q. And, who built -- who was your contractor for that?

10 A. (Osmars) Our balance-of-plant contractor was Mortenson
11 and our turbine supplier was General Electric.

12 Q. And, I seem to recall there was something in the paper
13 about a contractor being selected for this project, but
14 I'm not sure. Has one been selected?

15 A. (Cutter) It has.

16 Q. Is it Mortenson?

17 A. (Cutter) It is not. It's RMT.

18 Q. And, where are they based?

19 A. (Cutter) In Wisconsin.

20 Q. And, have they built projects like this?

21 A. (Cutter) They have. The contractor has been selected
22 and a BOP, balance-of-plant, EPC, Engineer, Procure and
23 Construct, contract had been left by the Granite
24 project when we came on board. They have built, I

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 believe there are six different projects, that was one
2 of the things that we looked at during our due
3 diligence, to see that they had experience building
4 ridgeline projects. And, they have been involved in
5 over six of them.

6 Q. Do you know which ones?

7 A. (Cutter) I can pull that information and provide it.
8 There were -- I don't have them. We did that as part
9 of our due diligence, to verify, in fact, that the
10 contractor that would be involved here did have
11 experience in the type of terrain that would be
12 involved here at Granite.

13 Q. Were they built here in New England?

14 A. (Cutter) I don't believe that any of them were in New
15 England. They were out west. We went out and did some
16 due diligence on one of their projects that's under
17 construction in Utah, prior to -- to verify their
18 construction capability techniques, safety, and
19 environmental standards, as part of our due diligence.

20 Q. Would that be the Milford Wind Farm?

21 A. (Cutter) That was the Milford Wind Farm.

22 Q. Okay. And, the owner of that is, do you know?

23 A. (Cutter) I'm not sure of the owner of the wind farm.

24 Q. Okay. Now, I wanted to, this is going to be a little

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1 bit interesting, because I'm going to ask you questions
2 referring to what I believe is now "Exhibit 1", that is
3 the "Granite Reliable Power, LLC, Pro Forma" document
4 that you -- Brookfield had supplied to us.

5 CHAIRMAN BURACK: Just to be clear,
6 we're talking about what we have labeled as "Exhibit
7 IWAG-1"?

8 MS. LINOWES: Yes. Thank you.

9 BY MS. LINOWES:

10 Q. I'm going to ask you questions, and I'm not going to
11 give specific numbers, but I'll reference on the
12 document what I'm looking at. And, I'm hoping that we
13 won't have to go into non-public session. In that
14 second, the column over on the right-hand side, it
15 talks about -- mentions the Power Purchase Agreement
16 price. So, there are two Power Purchase Agreements
17 currently signed for the energy coming from this
18 Project?

19 A. (Spreyer) That's correct.

20 Q. And, who are they with?

21 A. (Spreyer) Central Vermont and Green Mountain Power.

22 Q. Okay. And, that number there and the price, we were
23 told in a technical session that it was a weighted
24 average based on the time of day, peak time and nonpeak

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 time for the energy, is that correct?

2 A. (Spreyer) That's right.

3 Q. Can you tell us today what percentage of the energy is
4 expected to be coming during nonpeak hours?

5 A. (Cutter) The energy profile for the Project was
6 developed and provided by a wind consultant that would
7 have done data analysis based upon met towers and wind
8 data and their experience with that type of data, in
9 order to create an energy profile that then fits into
10 the PPA purchase. I don't have the specific numbers
11 with me, in terms of exactly the number of
12 megawatt-hours in each time period.

13 Q. Who prepared this document?

14 A. (Cutter) I believe the wind study was done by AWS
15 Truewind.

16 Q. No. Who prepared this document we're looking at today?

17 A. (Spreyer) Brookfield did.

18 A. (Cutter) Brookfield did.

19 Q. That would be you?

20 A. (Spreyer) Not me directly, but our team, yes.

21 Q. Okay. Someone applied a weighted average to the prices
22 based on energy coming during peak hours versus not?

23 A. (Spreyer) That's right.

24 Q. That has nothing to do with -- the wind decision has

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1 already been made, AWS Truewind's information has been
2 compiled. Can you tell me what percentage was assumed
3 to be coming during off-peak hours?

4 A. (Spreyer) I can't tell you, I don't have that
5 information in front of me.

6 Q. Was it more than 50 percent?

7 A. (Spreyer) I couldn't answer. I don't know.

8 Q. Okay. Going down to the "Net Capacity Factor" and the
9 "P50" number.

10 A. (Spreyer) That's right.

11 Q. And, I'm just going to reference, and this is the only
12 piece of information I'm looking for out of the second
13 exhibit, Page 2 -- or, rather, the second exhibit,
14 Exhibit 2, --

15 CHAIRMAN BURACK: And, you're referring
16 now to Exhibit IWAG-2?

17 MS. LINOWES: That's correct.

18 CHAIRMAN BURACK: Thank you.

19 BY MS. LINOWES:

20 Q. Roughly in the same location on that document on the
21 front page there's also a P50 number. And, you see
22 that those two numbers are different?

23 A. (Spreyer) I do.

24 Q. Before I get into my questions, can you explain what

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 "P50" is? What a "P50" number is?

2 A. (Cutter) Yes. I believe it's basically a reliability
3 standard that would indicate that that amount of wind
4 energy production would occur at least 50 percent of
5 the time. So, it's almost a -- it's a confidence type
6 of analysis that's applied to the data that's used.

7 Q. So, if you had a P50 of, say, 40, there is a -- you
8 would say that the net capacity factor of that wind
9 project would be 40 percent, and what would that mean?

10 A. (Cutter) I'm sorry. Can you repeat that?

11 Q. If you had a P50 of 40 percent, which is, for the
12 record, neither one of these numbers, what would that
13 mean?

14 A. (Cutter) Yes. That at least 50 percent of the time you
15 would expect that amount of energy to occur.

16 Q. Over the course of a year? Over the course of an hour?
17 Over the course of how much time is that average?

18 A. (Cutter) I think, as you point out, that you can use it
19 over a time period, in other words, it's a confidence
20 interval. So, it can be applied over whatever the
21 analyst chooses to use for a time period.

22 Q. So, if I was looking at 2:00 in the afternoon, a single
23 hour of operation, 2:00 in the afternoon, in the middle
24 of August, would my P50 be 40 percent?

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1 A. (Cutter) No. I don't believe that that would be
2 applied on an hourly basis. So, it's on an average
3 time period. Typically, we would use data like this
4 over the project expected lifespan of 20 years.

5 Q. Okay. So, if you look at the number for the P50 that
6 was supplied to us two years ago, and then you look at
7 the number again that was supplied to us within the
8 last month, this month, there is a difference and a
9 change of 5 percent. And, that is, in wind talk, I'd
10 say that was a significant number. Can you comment on
11 that?

12 A. (Cutter) I would -- I'm not sure about "wind talk", but
13 it would, in this purpose, be a significant change in
14 the expected energy production, in terms of the
15 5 percent variation.

16 Q. Now, I appreciate that you are handing responsibility
17 for this reduction over to AWS Truewind, but there must
18 have been some explanation for why their confidence in
19 this Project's ability to produce was not as high as
20 Noble's sense. So, can you explain what factor might
21 have been probably the predominant reason why there was
22 a reduction?

23 A. (Cutter) I haven't compared the Noble numbers versus
24 AWS's.

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1 Q. Did they give any explanation or did AWS simply work in
2 a vacuum based on -- without looking at what Noble had
3 supplied?

4 A. (Spreyer) We would basically, when we undertake a
5 project like this, we tend to do our own due diligence.
6 And, so, we're less concerned, you know, the other
7 numbers are out there and interesting, but we would
8 tend to look at our own analysis that we have
9 confidence in. And, AWS has provided those numbers.
10 And, that's gone through the pro forma, as you
11 indicated.

12 Q. So, you don't know if AWS Truewind came back and said
13 "Icing conditions on this mountaintop is much more --
14 much more severe than it's been previously considered"
15 or they came back or someone else came back and said
16 "confidence factor in the Vestas V90 is such that we
17 believe that this number, the number that was
18 originally given, is too high"? Nothing like that?

19 A. (Cutter) That's correct. I did not get into the
20 analysis performed by Noble, so I don't have a basis to
21 compare that.

22 Q. Okay. All right. Let me go down then to the sources
23 of funding. And, this would be on the first column of
24 Exhibit -- IWAG Exhibit 1. You have, one, two,

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 three -- several sources of funding listed there. And,
2 I want to look at the -- there's a "DOE Debt" and then
3 the "Non-DOE Debt". Where is the Non-DOE Debt coming
4 from? Where is that loan coming from?

5 A. (Spreyer) They can come from all of the same sources.
6 The DOE Debt is the 80 percent that would be guaranteed
7 under the Department of Energy Loan Guarantee Program.

8 Q. And, that 80 percent will be of what amount of money?
9 You don't have to give the number, if you don't want
10 to, but what number on this page is that 80 percent
11 being?

12 A. (Spreyer) It's the top, top number.

13 Q. The top number. Under "Assumptions"?

14 A. (Spreyer) "Sources". It's 80 percent of, --

15 Q. That that figure --

16 A. (Spreyer) -- if you're looking at "assumptions", you
17 would be taking 80 percent of the "Total Long-term
18 Debt".

19 Q. Okay.

20 A. (Spreyer) If you're looking under "Sources", it's the
21 top number.

22 Q. Okay. And, so, you're saying that there's a pile of
23 money that's going to be coming in as loans for this
24 Project, of which 80 percent is going to be guaranteed

1 by the federal government?

2 A. (Spreyer) We are working on trying to get 80 percent
3 that would be guaranteed through the DOE Program.

4 Q. Okay. And, I want to come back to that in a second.
5 Then, it goes down to the "ITC Cash Grant Bridge", and
6 that -- explain what that is?

7 A. (Spreyer) The "ITC" is the "Investment Tax Credit", as
8 laid out in the American Reinvestment and Recovery Act.
9 That represents 30 percent of qualified expenditures
10 incurred for renewable assets.

11 Q. And, that represents 30 percent --

12 A. (Spreyer) Of the qualified --

13 Q. Of something --

14 A. (Spreyer) Of the qualified assets, right.

15 Q. And, those qualified assets is there. Is that number
16 represented on this page?

17 A. (Spreyer) No.

18 Q. So, under "Total Uses", and the bottom number on the
19 right-hand side, there's a number there?

20 A. (Spreyer) Yes.

21 Q. Is it 30 percent of that or some --

22 A. (Spreyer) No. It's a -- 30 percent of a subset of
23 that. Not all -- not all costs incurred to complete
24 the Project qualify for the ITC Program.

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1 Q. Okay.

2 A. (Spreyer) Only a subset of it.

3 Q. Okay.

4 MS. LINOWES: Mr. Chairman, before I
5 proceed, is it clear to the Committee, without my going
6 into mentioning numbers, where the -- is it difficult for
7 the Committee to follow what I'm asking by not -- by my
8 not mentioning numbers?

9 CHAIRMAN BURACK: I can't speak for all
10 the members of the Committee. I will say that it is clear
11 to me. And, if there is any lack of clarity, the
12 Committee will have a chance to ask questions later of the
13 panel.

14 MS. LINOWES: Okay.

15 CHAIRMAN BURACK: So, thank you.

16 MS. LINOWES: So, I'll just proceed
17 then.

18 CHAIRMAN BURACK: Please do.

19 CMSR. IGNATIUS: Mr. Chairman, can I
20 just clarify one question --

21 CHAIRMAN BURACK: Sure.

22 CMSR. IGNATIUS: -- that really can't be
23 asked of the witnesses, it's really Ms. Linowes. In your
24 discussion a moment before about comparing two different

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1 P50 figures, and a change between the two, you flipped
2 between your Exhibit 1 and your Exhibit 2, and said that
3 -- well, is that -- are these supposed to be -- you
4 suggested they were different over time. Is that what
5 your -- is that the basis of the second number, is that
6 how you get to two numbers to look at or is it from --

7 MS. LINOWES: Yes.

8 CMSR. IGNATIUS: -- the previous docket?

9 MS. LINOWES: The docket, I don't
10 remember the number it was for, but -- what it was. But,
11 when this process went through the adjudicative process
12 and was approved by the Site Evaluation Committee, the
13 number that we were told of the net capacity factor for
14 the Project was the number that was on this Exhibit 2
15 document.

16 CMSR. IGNATIUS: All right.

17 MS. LINOWES: And, then, two years later
18 that -- and that number now is a percentage lower.

19 CMSR. IGNATIUS: Thank you.

20 MS. LINOWES: So, the amount of
21 production expected out of the Project is actually less
22 than what we were told. So, I was trying to get an answer
23 as to why, but apparently the witnesses don't know why --

24 CMSR. IGNATIUS: All right.

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1 MS. LINOWES: -- there was a drop.

2 CHAIRMAN BURACK: Thank you, Ms.

3 Linowes.

4 BY MS. LINOWES:

5 Q. So, in terms of the cash grant, so that's a certain
6 figure, it represents 30 percent of some amount of the
7 total cost of the Project. So, now, then it gets down
8 to the equity side of things, and Brookfield is putting
9 in some percentage and Freshet is putting in some
10 percentage. So, if I look at that, the federal
11 government is guaranteeing and/or supplying cash in the
12 amount of -- or is expected to, your expectations are
13 that it will supply either a guarantee of monies or
14 actual cash representing 65 percent of the Project, is
15 that correct?

16 A. (Spreyer) The government we hope will guarantee a
17 portion of our debt, and 30 percent of the total costs,
18 a subset of the total costs qualify for the ITC grant.
19 Not all the money comes from the government.

20 Q. Well, let me make sure I understand how the DOE loan
21 works then. If you borrow the money, and the federal
22 government is guaranteeing 80 percent of the money
23 you're borrowing. If you split after the Project's
24 been built and the money's been spent, who is paying,

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1 if you split and if you abandon the project and
2 disappear and run to Canada and we can't track you, who
3 is paying the 80 percent?

4 A. The government would be guaranteeing 80 percent of the
5 debt that was taken out from third party lenders.

6 Q. Okay. Thank you. That's it. Now, if one or the other
7 of those two federally backed programs disappear today
8 or tomorrow, or both, what happens to your interest in
9 the Project?

10 A. (Spreyer) If one or both were to disappear, we'd have
11 to evaluate the merits of the Project to determine
12 whether it still made financial sense for us to move
13 forward with the Project. But, as of today, both of
14 those programs are available to us. We are commencing
15 and moving forward with the Project to bring it to a
16 point of construction, because those two programs do
17 prevail themselves to us today, and we want to make a
18 best use of both programs.

19 Q. So, now, when will you apply for the ITC grant and
20 under what name will you apply for the ITC grant?

21 A. (Spreyer) The ITC grant would have to be applied at the
22 completion of the Project, once all of the Project has
23 been completed. We would make an application at that
24 point in time. It would be in the name of the Project

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1 itself, Granite Reliable Power, LLC.

2 Q. Okay. So, the project actually, according to the
3 schedule, which is not under the protective order, will
4 be commissioned, I believe, in June 2012, is that
5 correct?

6 A. (Cutter) We'd expect it to be commissioned before that.

7 Q. Okay.

8 A. (Spreyer) Yes.

9 Q. So, first quarter of 2012 or thereabouts?

10 A. (Cutter) Yes.

11 A. (Spreyer) Or thereabouts.

12 Q. So, what do you mean by "completion of the Project",
13 when you say that --

14 A. (Spreyer) When it first begins producing energy.

15 Q. Okay.

16 A. (Spreyer) So, we can't make an application until all
17 costs are completed and the Project has been completed.

18 Q. So, are you saying today that, if that ITC Cash Grant
19 Program disappears between now and when you start
20 producing electricity with the Project, there is a
21 problem?

22 A. (Spreyer) If it were to disappear between now and the
23 date that it was commissioned?

24 Q. Or when you started producing electricity, I believe

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1 you said.

2 A. (Spreyer) If there's any changes during the point in
3 time with which we actually are commencing or trying to
4 bring to operation an asset, we have to look at those
5 particular situations. If this particular program or
6 either program, primarily, I think you're asking about
7 the ITC, were to disappear at some point in time before
8 we went to operation, would it be a problem? We'd have
9 to evaluate where we are in the construction timeframe.
10 It may or may not be a problem.

11 Q. So, there's a -- it's a possibility, if things change
12 in Washington, and people are concerned about monies
13 going to these green renewable -- these renewable
14 projects, you're saying that you may be back here
15 potentially selling the Project?

16 A. (Spreyer) I don't know what we would do in that
17 particular situation, without being presented the facts
18 at that point in time.

19 Q. Okay. And, then, let me ask you one more question
20 about the ITC. You said that it would be -- or,
21 actually, I don't remember what you said. Did you say
22 it was going to be in Granite Reliable's name?

23 A. (Spreyer) Yes. It would have to be an application in
24 the name of the Project itself that own the assets,

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1 that's correct.

2 Q. If I recall correctly, and correct me if I'm wrong, a
3 number of projects were on applications and in other
4 companies' other projects, but that money, once it was
5 granted, was then utilized by that developer on other
6 projects. Is that your understanding as well?

7 A. (Spreyer) No. When you actually make an application
8 for the ITC, you're making it in the name of the
9 project. If you are -- if you don't have taxable
10 income, you have the election to take it in the form of
11 a grant. That cash would actually go to the project
12 itself. Not to other assets, but rather to that
13 project.

14 Q. Okay. All right. So, there's a vesting period on that
15 cash grant?

16 A. (Spreyer) It's an application. And, as long as you've
17 got your application and it's completed, the government
18 would essentially cut you a check within 60 days.

19 Q. But are you aware of a five year vesting period on
20 that?

21 A. (Spreyer) There's a period in time of ownership that
22 you would have to maintain under that program for a
23 period of time. I don't believe it's five years,
24 though. I don't remember the exact term. But I don't

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1 believe it's five. I think it's shorter than that,
2 actually.

3 Q. Is it your expectation that Brookfield will hold on to
4 this project?

5 A. (Spreyer) It is my expectation, at this point in time,
6 based on what we know, yes.

7 Q. Okay. And, then, in terms of the loan grant, similar
8 kinds of questions. When is it you make your
9 application for the loan, for the -- actually, it's not
10 the loan grant, the DOE --

11 A. (Spreyer) It's a process that you have to go through.
12 We're actually going through the process right now.
13 We're hopeful of coming to a completion on that process
14 at some point during the second quarter of this year,
15 whereby we would know one way or another whether or not
16 we were accepted within the program.

17 Q. So, if -- the same question then. If that were to
18 disappear, that would be problematic for you?

19 A. (Spreyer) No. Because we're here today to actually
20 move forward with the Project. We would like to begin
21 construction as soon as possible on this Project.
22 We're quite happy about this Project. And, we're
23 looking to try to commence construction during the
24 February timeframe, if possible.

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1 Q. Do you --

2 A. (Spreyer) So, that being said, we're going into this
3 without having that construction financing, because we
4 have the available cash to move forward and complete
5 the construction with this Project. If we were able to
6 secure the DOE Program, it would be in the best
7 interest of our shareholders, and we would be working
8 towards trying to do what's in the best interest of our
9 shareholders, of course. But, at this point in time,
10 we're moving forward.

11 Q. So, Jason, just so I'm clear then, the DOE loan
12 guarantee is not as important to the Project as the ITC
13 cash grant? Is that what I'm hearing?

14 A. (Spreyer) I'm not sure I could weight either one over
15 the other, quite frankly. Regardless, if the ITC --
16 and today we're looking to try to actually move forward
17 with construction as well. If events were to change
18 relative to the available programs that we have in
19 front of us, the ITC, we'd have to look at that as well
20 at a different point in time. Would that change our --
21 change our continued investment in that Project? We'd
22 have to reserve the right to actually take a look at
23 that investment at that point in time. But I don't
24 know that I would put one over the other.

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1 Q. Okay.

2 A. (Spreyer) Both we don't have in our pocket today until
3 we're done.

4 Q. In terms -- now, I just have only a couple more
5 questions, Mr. Chairman. In terms of the Purchase and
6 Sale between Granite Reliable or Noble and Brookfield,
7 I know that we had asked for that under protective
8 order, we were not given it. But I do have a question
9 that I'm hoping you're going to be able to answer.
10 And, that is, are there any stipulations in the current
11 Purchase and Sale that would result in a portion of or
12 all of the Project reverting back to Noble
13 Environmental?

14 A. (Spreyer) I'm not aware of any in the Purchase and Sale
15 that would revert back.

16 Q. So, it's -- oh, go ahead.

17 A. (Osmars) I'm not aware of any as well.

18 Q. So, it's an outright sale, once this purchase is --

19 A. (Spreyer) Completed.

20 Q. -- completed, it's -- Noble is out of the picture
21 entirely and will not fall back on it?

22 A. (Spreyer) That's correct.

23 Q. Okay. And, the same with the Power Purchase Agreements
24 that have been secured with the two Vermont utilities?

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 A. (Spreyer) That's right.

2 Q. And, is there anything, and I'm asking because I just
3 don't remember seeing it, but is there anything in the
4 Power Purchase Agreements that have been approved by
5 the State of Vermont that will involve or require
6 Nobles Environmental -- Noble Environmental?

7 A. (Spreyer) I'm not aware of any.

8 A. (Cutter) No.

9 Q. And, is it the intent of Brookfield to maintain those
10 Power Purchase Agreements or is it the intent of
11 Brookfield to consider renegotiating them?

12 A. (Spreyer) It's our intent today to maintain those Power
13 Purchase Agreements.

14 Q. Is there anything moving forward that you have had in
15 your mind that you've considered a need to renegotiate
16 those Power Purchase Agreements?

17 A. (Spreyer) No.

18 MS. LINOWES: Okay. Thank you, Mr.
19 Chairman. That's all.

20 CHAIRMAN BURACK: Very good. Thank you,
21 Ms. Linowes. Mr. King, questions for these witnesses?

22 MR. KING: I have no questions.

23 CHAIRMAN BURACK: Thank you very much.

24 We'll turn then to Counsel for the Public, Attorney Roth,

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 for your cross-examination.

2 MR. ROTH: Thank you. I only have a
3 very few questions.

4 BY MR. ROTH:

5 Q. Mr. Osmars, in the Application, the Company identifies
6 itself as "Brookfield and its affiliates". Can you
7 specify which of those affiliates are the Applicant?

8 A. (Osmars) If you don't mind, Mr. Roth, I'm going to let
9 Jason answer that question.

10 Q. Okay.

11 MR. PACHIOS: Can I just ask, so the
12 witness understands the question? The Applicant, as Mr.
13 Roth points out, is Brookfield, which is defined as "all
14 of its affiliates". Is that the question, what that
15 means?

16 MR. ROTH: Yes.

17 BY MR. ROTH:

18 Q. Can you tell us who those affiliates are? I can point
19 you to a organizational chart in the testimony, Exhibit
20 Spreyer Number 2. Are those the affiliates that are
21 intended to be the Applicant?

22 A. (Spreyer) Yes.

23 Q. Okay. Thank you. Now, in the request for relief, for
24 want of a better term, the Applicant seeks to amend the

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 condition limiting changes in ownership to allow
2 further changes as long as Brookfield retains the
3 controlling interest in GRP. Can you explain why you
4 want that condition?

5 A. (Spreyer) Yes. There are certain equity commitments
6 that would be necessary to complete the Project. In
7 the LLC arrangement that we have, there would be cash
8 calls necessary of those partners to complete the
9 Project. In the event one or the other did not perform
10 under that cash call from the LLC, there is a dilution
11 as it's defined in that LLC arrangement. That would
12 change the percentages. We're looking for that
13 amendment in the event that there were one or the other
14 partner that did not participate in that cash call.

15 Q. Would those non-participants be all affiliates of
16 Brookfield or are there outside parties?

17 A. (Spreyer) There is an outside party that has --

18 Q. Just one?

19 A. (Spreyer) Yes.

20 Q. Is that Freshet?

21 A. (Spreyer) Yes.

22 Q. Okay. Now, also in the request for relief, and I
23 believe throughout Mr. Spreyer's testimony, it is
24 indicated that there is a commitment to provide

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 100 percent of construction funding necessary to
2 develop this Project. Can you explain what form that
3 commitment is in, Mr. Osmars or Mr. Spreyer?

4 A. (Spreyer) I can answer the question for you. The
5 commitment that we have is defined by the LLC agreement
6 itself. In that, to complete the Project, there would
7 be capital calls of those partners to complete the
8 Project. We, Brookfield, through that LLC agreement,
9 are committed to moving forward on this Project, and
10 the construction of this Project, using cash available
11 that we have at this point in time. And, we may
12 leverage, we hope to leverage, to increase shareholder
13 returns. But our commitment is defined through that
14 LLC arrangement.

15 Q. So, just so I can understand the testimony, and
16 especially with reference to the questions Ms. Linowes
17 was asking you, is it the Applicant's intention and
18 commitment, let's put it in those terms, is it your
19 commitment that Brookfield and its affiliates is going
20 to construct this Project with its own money,
21 regardless of whether this -- all this stuff about
22 loans and guarantees comes into play?

23 A. (Spreyer) As I mentioned earlier, we have the funds
24 available to actually construct this Project today. We

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1 are looking to commence construction using our balance
2 sheet and those available funds that we do have at our
3 disposal. We hope to finance the Project at some point
4 in Q2. We feel very confident with our track record in
5 financing projects, both hydro and wind, that we'd be
6 able to do so in maximizing shareholder returns.

7 If events were to change that are
8 unknown at this point in time, we would look at those
9 facts and circumstances at that point in time to
10 evaluate whether or not it still made sense to complete
11 the Project. Some of those were outlined before, one
12 of which may be the ITC grants. Where, if that were to
13 be amended in some fashion, we would have to evaluate
14 the Project at that point in time. But we remain
15 committed to the Project. We would commence the
16 construction. And, in the event that something adverse
17 were to happen, we would remediate the site, if it came
18 to that point, as outlined in the Certificate. So,
19 yes, we are committed to moving forward.

20 Q. When do you think you would know that the DOE guarantee
21 or the ITC was no longer available to you? How soon do
22 you expect to find that out? Or, that it is, in fact,
23 available to you?

24 A. (Spreyer) I couldn't answer the question relative to

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 ITC, because that is an act of legislation. As far as
2 the DOE, we're working through the program right now.
3 There is a process that is -- that must be followed.
4 We anticipate being complete with that process in the
5 second quarter this year, whereby we would have greater
6 clarity as to whether or not we were included in that
7 program or not. If not, we would continue to move
8 forward with our third party financing at that point to
9 complete that.

10 Q. How far along do you expect construction to be by the
11 end of the second quarter?

12 A. (Cutter) At that point, we would have the roads
13 cleared. End of the second quarter, we'd have road
14 construction underway, lay-down area. So, it would be
15 before turbines actually arrive at the site, but much
16 of the basic civil infrastructure would be underway.

17 Q. Other than clearing, would you have completed blasting
18 and road construction work at high elevation?

19 A. (Cutter) It would be in that, depending on what the
20 spring looks like in New Hampshire this year, we'll be
21 somewhere along that point where the bulk of the road
22 and the blasting will be done.

23 Q. Okay.

24 A. (Cutter) I can't say exactly if it will be -- spill

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1 over into the July timeframe, early third quarter.

2 MR. ROTH: Okay. I don't have any
3 further questions. Thank you.

4 MS. LINOWES: Mr. Chairman, may I ask
5 one follow-up question I meant to ask?

6 CHAIRMAN BURACK: Yes, you may, Ms.
7 Linowes.

8 MS. LINOWES: Thank you.

9 BY MS. LINOWES:

10 Q. To what extent are you subject to the "made in U.S.A."
11 requirement that's part of these government programs,
12 if at all?

13 A. (Spreyer) I don't believe we're really subject to it at
14 all.

15 Q. So, you have Vestas turbines and you're a Canadian
16 company, it's not relevant?

17 A. (Spreyer) No.

18 MS. LINOWES: Thank you, Mr. Chairman.

19 CHAIRMAN BURACK: Thank you. Okay.
20 I'll now turn to members of the Committee to ask questions
21 of the panel. Director Scott.

22 DIR. SCOTT: Good morning.

23 WITNESS OSMARS: Good morning.

24 BY DIR. SCOTT:

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1 Q. I believe this will be for Mr. Spreyer, but whoever on
2 the panel is best suited, please feel free. A couple
3 quick questions for you. Has your company ever not
4 completed construction of a project that it indeed had
5 started construction?

6 A. (Osmars) I've been with the Company for about 11 years.
7 And, all wind and water projects and transmission
8 projects we've undertaken have been completed, whether
9 it's in South America, North America, Canada, U.S.

10 Q. Similarly, assuming you build this Project, is your
11 intention to maintain ownership once it's built?

12 A. (Osmars) That's correct. And, that has been our mode
13 of operation in all the other assets I just referred
14 to. We are the owner and operator, and sometimes we
15 share ownerships.

16 Q. And, lastly, for me anyways, you talked a little bit
17 with the Counsel for the Public about your desire to be
18 able to not come back to the SEC when changes in
19 ownership happen, assuming you maintain a controlling
20 interest. Would you have any issues with notifying the
21 SEC as these interests change?

22 A. (Osmars) Not at all.

23 DIR. SCOTT: Thank you.

24 CHAIRMAN BURACK: Thank you, Director

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1 Scott. Others with questions? Mr. Harrington.

2 MR. HARRINGTON: Yes, I had a couple of
3 questions.

4 BY MR. HARRINGTON:

5 Q. Just to make sure I got this correct, you are planning
6 on starting construction, if possible, in February of
7 this year?

8 A. (Cutter) That's correct.

9 Q. And, that would be before you come to conclusion on the
10 ITC and the DOE loans?

11 A. (Cutter) That's correct also.

12 A. (Spreyer) That's correct.

13 Q. Okay. And, then, what I understand is that, sometime
14 after that you would anticipate getting both the ITC
15 funding and the loan. But, if that does not occur, you
16 would have to reevaluate whether to go forward with the
17 Project at that time?

18 A. (Spreyer) In any change in circumstances, we would
19 always evaluate what's in the best interests of our
20 shareholders. So, yes, we would.

21 A. (Osmars) And, we recognize that the ITC Program has a
22 number of gates, in terms of to be eligible to qualify
23 for it. We also recognize you don't get an ITC grant
24 until you're up and operating and fully commercialized.

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1 So, we recognize that there's a risk out there. But we
2 do other projects with that --

3 (Court reporter interruption.)

4 **BY THE WITNESS:**

5 A. (Osmars) I'm sorry. We have other projects that also
6 qualify for ITC. And, we recognize there's a risk, and
7 we try to manage accordingly.

8 A. (Spreyer) And, if you don't mind, sorry. And, when
9 evaluating a project with which we're going to make an
10 investment, we recognize that those risks are inherent
11 in a project. And, we evaluate those risks when making
12 a decision. So, many of those risks that are a
13 potential, as it relates to ITC or DOE, we're well
14 aware of when going into a particular program, and we
15 make our investments based on that. So, we recognize
16 the gates and the hurdles that are necessary, and the
17 risks inherent with those.

18 **BY MR. HARRINGTON:**

19 Q. And, when is the -- there's usually some type of a
20 scheduled date associated with the 1603 funding. Does
21 construction have to be started? Completed? What's
22 the milestone you have to reach in what timeframe?

23 A. (Spreyer) There's a couple of milestones. One, you
24 have to commence construction by a date; at this point,

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1 it's December of this year. The second part of it is
2 you have to have the project completed by a reasonable
3 period of time thereafter. And, I believe, in the case
4 of wind energy, it's 2013.

5 A. (Cutter) Yes.

6 A. (Spreyer) Yes, '13, right, at this point. Which is
7 December 2013, to be clear. Sorry.

8 Q. And, your construction time is estimated at?

9 A. (Spreyer) We would be done, we're anticipating, first
10 quarter of 2012.

11 Q. Okay. So, about one year?

12 A. (Spreyer) One year or, well, almost two years earlier
13 than the deadline.

14 Q. Okay. And, there's, without going through that, well,
15 I guess I'd say "hard-to-read chart", because of all
16 the colors kind of blended together there on your
17 organization chart. But there's a whole mess of
18 different Brookfields. This Brookfield, that
19 Brookfield, something else involved here. There will,
20 if there's a certificate issued, someone needs to
21 guarantee the terms of that certificate, in other
22 words, compliance. You mentioned, for example, if the
23 Project was not completed, that you'd remediate the
24 property back to the way it was found. What

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[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 organization is actually guaranteeing the terms of the
2 Certificate, if one was granted to Brookfield?

3 A. (Spreyer) I'd have to -- I don't know off the top of my
4 head. Do you?

5 (Witness Osmars and Witness Spreyer
6 conferring.)

7 MR. PACHIOS: May I consult with the
8 witnesses? It's a legal question, really.

9 CHAIRMAN BURACK: Please take a moment
10 and consult.

11 (Atty. Pachios conferring with the
12 witnesses.)

13 CHAIRMAN BURACK: Gentlemen, are you
14 prepared to answer the question that was asked?

15 WITNESS SPREYER: We are. Thank you.

16 CHAIRMAN BURACK: Okay. Please proceed
17 then.

18 **BY THE WITNESS:**

19 A. (Spreyer) To answer the question as to whom, it would
20 be Brookfield and all of its affiliates. The
21 Application being defined as "Brookfield and all of its
22 affiliates" would define these as being included in
23 making that commitment to ensure that it's completed.

24 BY MR. HARRINGTON:

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 Q. Okay. Because our concern, obviously, is that the
2 Project, for whatever reason, gets part way done, and
3 then, you know, they find the -- whatever, the thrush's
4 cousin up there or something, and decide they can't
5 build it or you don't get the funding or whatever, and
6 we want to make sure that it gets restored to where it
7 was.

8 A. (Spreyer) I understand.

9 Q. Making sure somebody is guaranteeing that. And, is
10 that the same thing, turning to your, I guess it's the
11 Application, Page 20, at the very last sentence, when
12 you talk about changing the terms, so that -- I'll wait
13 till you get there. It's on Page 20 of I think it's
14 called the "Application". The very last sentence,
15 which, in part, reads "the SEC modify the change in
16 ownership condition to require further approvals only
17 if a proposed transaction would cause Brookfield to no
18 longer have a controlling interest in GRP." Does the
19 term "Brookfield" there mean everybody that's on the
20 page called "Proposed Structure - New Hampshire Wind
21 Farm Granite [Ridge]", with the exception of Freshet
22 Wind?

23 MR. PACHIOS: Yes.

24 **BY THE WITNESS:**

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1 A. (Spreyer) Yes.

2 BY MR. HARRINGTON:

3 Q. So, it's a collective --

4 A. (Spreyer) Exactly.

5 Q. -- of all of those things?

6 A. (Spreyer) Yes. Brookfield and all of its affiliates.
7 And, those would be considered affiliates, yes.

8 Q. Okay. And, one other question I had on one of the
9 confidential documents. On Page 2, well, let me just
10 ask you a couple of questions.

11 CHAIRMAN BURACK: I'm sorry, what's the
12 document you're referring to now?

13 MR. HARRINGTON: This is AWAG-1.

14 CHAIRMAN BURACK: IWAG-1.

15 MR. HARRINGTON: IWA, sorry.

16 CHAIRMAN BURACK: Okay. And, you're
17 going to ask this question without referring to the
18 specific number themselves?

19 MR. HARRINGTON: That is correct.

20 CHAIRMAN BURACK: Thank you.

21 BY MR. HARRINGTON:

22 Q. You explained the "P50". What is the "P99 - 1 year"
23 imply?

24 A. (Cutter) I believe that would be the expected that --

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1 the expected value identified on that page, you could
2 have a 99 percent confidence of being achieved on any
3 one year period, would be my understanding of that
4 term.

5 Q. So, is that then the net capacity factor?

6 A. (Cutter) Yes, it would be, depending if it has an
7 energy or a percentage associated with it.

8 Q. There's a percentage.

9 A. (Cutter) That would be -- the net capacity factor would
10 be expected to be that value 99 percent of the time.

11 Q. Okay. So, effectively, if you took that as averaged
12 over a year, that's the capacity factor one would take,
13 if you summed up the actual capacity over a 365 day
14 period?

15 A. (Cutter) Correct.

16 Q. And, what does "current" mean?

17 A. (Cutter) That's what's in the model. In other words, I
18 believe that, when it says "current", you could -- I
19 haven't done this model myself. But, typically, that
20 would be a place that you could toggle between
21 different values. So, the value that's in the model
22 would be represented by that "30.4".

23 A. (Spreyer) So, if I can help -- I might be able to help
24 here. There's two probabilities here. One is one

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- 1 percentage and another one is another percentage, as
2 Mike outlined. There are -- it's related to
3 probabilities. When evaluating a project, we typically
4 use P50. We look at P99, relative to getting some
5 level of sensitivity and understanding of what may be
6 some of the risks inherent with the wind study itself.
- 7 Q. So, it would be safe to say then, for the P50 number,
8 you're saying that you would -- 50 percent confidence
9 level that that number would be attained as an average
10 capacity factor for the year?
- 11 A. (Spreyer) Yes, it's -- you can expect that 50 percent
12 of the time.
- 13 Q. Okay.
- 14 A. (Spreyer) So, it's essentially an average of what might
15 be customarily expected to generate on that particular
16 item.
- 17 Q. And, then, the 99, the P99, would be one that you could
18 expect with a very high degree of probability it would
19 at least be that high?
- 20 A. (Spreyer) Yes. Exactly.
- 21 A. (Cutter) That's correct.
- 22 Q. Okay.
- 23 A. (Spreyer) So, it sets a floor.
- 24 Q. And, the numbers, going to the second page of that

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1 document, IWAG-1, Page 2, it lists a bunch of projected
2 revenues. Are those based on the P50 value?

3 A. (Spreyer) Yes, it is.

4 Q. Okay. And, I notice on the -- when you have various
5 lines here on capacity, it has "Capacity - Contracted",
6 and that's the first four years, those are numbers
7 which you already have a capacity supply obligation to
8 ISO-New England for?

9 A. (Spreyer) That's correct.

10 Q. Okay. And, then after that time, it says "Contracted",
11 "PPA", and then "Uncontracted". So, I'm assuming the
12 number that shows up under the PPA is what you've
13 agreed to sell to the utilities in Vermont?

14 A. (Spreyer) That's correct.

15 Q. And, the others you'll enter into the capacity market
16 yourself?

17 A. (Spreyer) That's right.

18 Q. Okay. Why do these numbers change so much with time?

19 A. (Spreyer) Essentially, we have a -- we have a study
20 that looks at what the potential revenue stream and the
21 price per megawatt-hour would be for those capacity.
22 That number would fluctuate over a period of time based
23 on that study. And, we apply that fluctuated number to
24 the amount of capacity being sold at that point.

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1 Q. Okay. Because it seems as if you start here with
2 looking at 2016, and the numbers go up in 2017, and
3 they're a little higher in 2018, they're higher again
4 in 2019, higher again in 2020, higher again in 2021.
5 Since the history of the Forward Capacity Market has
6 been prices falling to the floor, and, in fact, that's
7 the only thing stopping them from going lower. Why are
8 you anticipating that these revenues are going to
9 increase?

10 A. (Spreyer) Well, we look at that study. And, certainly,
11 this is 2016. They have reduced to the floor in
12 today's current environment. But, over time, there is
13 going to be a need for capacity, additional capacity in
14 New England. We believe that there is a market for
15 that capacity, and we're relying on information that we
16 have available to us to make those estimates for that
17 capacity stream, revenue stream.

18 Q. So, -- excuse me. So, your model shows the capacity
19 prices going up in the future?

20 A. (Spreyer) Yes, that's correct.

21 Q. Make a lot of generators happy, if that happens. One
22 other, just a quick look at a figure, the first one
23 under "2012". That's the -- in millions -- thousands
24 of dollars, that represents the total capacity payments

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1 you expect for the year 2012?

2 A. (Spreyer) Yes.

3 Q. Okay. And, I mean, I just did some quick math, and it
4 comes out to be, if you convert that to megawatts, it
5 seems like you're running quite a bit higher than your
6 30 -- well, than your other number that you used back
7 there as P50?

8 A. (Spreyer) Well, capacity is based on installed
9 capacity, not on megawatt-hours. So, there is a price
10 on Page 1 that shows the committed pricing.

11 Q. I'm sorry. Which section are we in on Page 1?

12 A. (Spreyer) Page 1, under the "Revenues", top right.

13 Q. Okay. Yes.

14 A. (Spreyer) You'll see "Capacity Pricing".

15 Q. Uh-huh.

16 A. (Spreyer) And, there's "ISO-New England" for years 1
17 through 4.

18 Q. Right. I see that. But my question I guess is what
19 you -- you get a capacity supply obligation based on so
20 many megawatts or kilowatts that you say you can
21 supply.

22 A. (Spreyer) Installed capacity.

23 Q. Installed capacity. And, that's going to be based on
24 some particular capacity factor?

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1 A. (Spreyer) No. It's based on the installed capacity.
2 This facility being 99 megawatts, which doesn't
3 fluctuate.

4 Q. Well, you're not getting 99 megawatts of capacity
5 supply obligation from an intermittent wind farm. It's
6 quite substantially less than that.

7 A. (Spreyer) It's based on what we contract. But it
8 doesn't fluctuate based on our actual generation, is
9 what I'm stating.

10 A. (Cutter) The payment, you're saying?

11 A. (Spreyer) Right. So, it's based on the -- it's based
12 on the installed capacity, which is a hard number, and
13 does not fluctuate over the period of time 1 through 4.

14 Q. Okay. Maybe I'm not -- maybe I'm not following your
15 logic. You have an installed capacity of 99 megawatts.
16 That is not your capacity supply obligation. No wind
17 generator receives 100 percent of nameplate.

18 A. (Spreyer) Yes. Understood. But --

19 Q. So, it's substantially less than that.

20 A. (Spreyer) What we're doing is just the price on this
21 page, times what we had sold in that contract for that
22 kilowatt.

23 Q. And, you are saying you sold 99 megawatts of capacity?

24 A. (Spreyer) No. I'm saying it's what we sold, --

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1 Q. Something less. Okay.

2 A. (Spreyer) -- and I don't know exactly what that number
3 is here, but it is a number that is multiplied by that
4 pricing, which we could actually back into.

5 Q. Okay. Well, what I'm trying to find out is, when you
6 go to, let's say, in the second page of that same
7 exhibit, IWAG-1, under the first column "2012", you
8 have a number there for "Capacity - Contracted". That
9 is the actual payment that you've got a contract with
10 with the utilities for to pay you?

11 A. (Spreyer) Correct.

12 Q. Okay. And, that was based on some amount of installed
13 capacity or qualified capacity, I guess would be the
14 correct term, --

15 A. (Spreyer) That's fine.

16 Q. -- that you went through the ISO auction on. And, what
17 I'm trying to do is find out what number you were using
18 for that, and I don't know if that's confidential or
19 not. If it is, maybe we can get it some other time.
20 Because it's just -- these numbers strike me as being
21 pretty high.

22 A. (Spreyer) We could do the mathematics, I don't -- but
23 it's the contracted price --

24 Q. Okay.

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1 A. (Spreyer) -- for what we did sell.

2 Q. And, then, after that, this is where you're assuming a
3 lower price in the market, when you get to 2016?

4 A. (Spreyer) That's right.

5 Q. And, that's why the total dollars go down?

6 A. (Spreyer) Go down, right.

7 Q. Okay. So, on Page 1, where you have "PPA (Years 5 to
8 20)" estimate, you have a price listed. That's
9 actually the price you're expecting in 2016, and a
10 somewhat higher price as revenues go up?

11 A. (Spreyer) Yes. It escalates per the contract, yes. So
12 it's a price as of day one, which is outlined on Page 1
13 that you pointed out.

14 Q. Okay.

15 A. (Spreyer) That's escalated.

16 Q. So, these numbers here that you're seeing "PPA
17 contracted", those are -- doesn't make any difference
18 what happens to the Forward Capacity Market, that's
19 what you're going to get paid?

20 A. (Spreyer) That's right. The only potential fluctuation
21 could be what is the indicie used in the escalation.
22 But the base year is contracted.

23 Q. Okay. So, this is all contracted all the way out?

24 A. (Spreyer) Right.

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1 Q. So, the only variable that's going to be based on what
2 happens in the actual auction would be the lower
3 number, which is uncontracted?

4 A. (Spreyer) That's exactly right.

5 MR. HARRINGTON: Okay. All right. I
6 just was trying to follow how those numbers came about. I
7 believe that's all I have, Mr. Chairman. Thank you.

8 CHAIRMAN BURACK: Thank you, Mr.
9 Harrington. Commissioner Campbell.

10 BY CMSR. CAMPBELL:

11 Q. Mr. Spreyer, when I compare the two pro formas that
12 have been handed to us today, and I think about what
13 our task is, which is to simply say whether Brookfield
14 has capacity to do this Project at least as strong as
15 Noble did, it strikes me that, and I just want your
16 confirmation on this, it strikes me that you are much
17 more conservative in your pro forma. For example, if
18 I'm doing any of my math correctly, it looks like we're
19 down -- you're down 20 percent less, in terms of use of
20 funds to build this than their pro forma, and that
21 you're up 45 percent in equity investment, in equity
22 injected into this Project. Are those fair
23 comparisons?

24 In other words, if we're looking at it

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1 -- we're looking at it from the SEC's position, do we
2 have somebody that's financially more sound and taking
3 a more conservative approach to the pro forma. Are
4 those accurate numbers?

5 A. (Spreyer) What we've laid out is our pro forma.

6 Q. Right.

7 A. (Spreyer) We feel very comfortable with, and feel very
8 comfortable in the fact that we believe them to be
9 accurate based on data we have today and what we know.
10 As far as comparing the two, I see where you're going.
11 I don't know enough about the Noble pro forma to make
12 mention. But there is a higher level of equity and so
13 forth.

14 Q. Well, I've read your resumé a couple of times. And, it
15 would seem to me that the numbers that you're
16 suggesting under "Sponsor Equity", for example, in a
17 smaller project is a much larger number?

18 A. (Spreyer) It is.

19 Q. You're actually putting a lot more cash on the table.
20 Is that fair to say?

21 A. (Spreyer) That is true. Yes.

22 Q. But that's our decision today. Do we have somebody
23 that's really putting more cash on the table --

24 A. (Spreyer) Yes, we are.

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[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 Q. -- for a project that they have done their own due
2 diligence on?

3 A. (Spreyer) That's right.

4 Q. The only other question I have, and maybe you can't
5 answer it without getting into a complicated analysis.
6 But, when I'm looking at the "Debt Service" on the
7 second page of your pro forma, which is the next to the
8 bottom line?

9 A. (Spreyer) Yes.

10 Q. Does that assume that you have the ITC cash injection
11 of the number that you have in your pro forma or is
12 that absent that?

13 A. (Spreyer) It does assume that we had received the ITC.
14 So, that is a debt service that we anticipate on the
15 financing as a whole.

16 Q. And, if you didn't have that debt service, if you
17 didn't have that ITC, do you think that you still would
18 pro forma in a positive over the lifecycle of this
19 Project, if that were the only variable?

20 A. (Spreyer) If I didn't have the ITC, the pretax cash
21 flows, as outlined in this cash flow model, may change
22 as it relates to the total debt service that you're
23 referring to.

24 Q. Right.

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1 A. (Spreyer) So, the numbers would be different, as far as
2 --

3 Q. But would they cash flow positive over the period, do
4 you think, because that was a fairly serious number?

5 It was just -- my quick assumption was that it would,
6 based on --

7 A. (Spreyer) I'm trying to run the quick math as well,
8 because I think so as well.

9 Q. So, in other words, when you're doing the evaluation of
10 the ITC, and whether you get it or not after you've
11 completed this, the bottom line is, you're likely to be
12 able to have a positive -- positive, profitable
13 project, you know, without it. It's, obviously, not
14 going to be -- it's in your interest and in your
15 fiduciary to take care of the shareholders to pursue
16 that eligibility, and I understand that. But it's
17 another business decision to say "we could never make
18 it profitable without it."

19 A. (Spreyer) That's right.

20 Q. And, I just don't see that in these numbers.

21 A. (Spreyer) I think you're correct. I mean, and what I
22 can see right here, just running the numbers, it would
23 be a slight positive, as you suggest. What would be,
24 with the ITC or the ITC not being available, what

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1 happens there is a reduction in returns to
2 shareholders, but it would be a positive cash flow.

3 CMSR. CAMPBELL: All right.

4 MR. HARRINGTON: Mr. Chairman, could I
5 just follow up on it and ask an additional question?

6 CHAIRMAN BURACK: Yes, you may.

7 BY MR. HARRINGTON:

8 Q. Just very quickly. As far as the ITC goes, if you
9 didn't get the ITC, would not you then be eligible for
10 Production Tax Credits along the way as well?

11 A. (Spreyer) We likely would be, yes.

12 Q. Okay. So, that's -- and, if I understand this
13 Production, the ITC is simply rolling up 20 years of
14 Production Tax Credits into a big box and handing it to
15 you, rather than getting it over as you produce
16 kilowatts?

17 A. (Spreyer) Somewhat. It's a little bit more in depth
18 than that. But you first have to qualify for the PTCs
19 to be able, to have the access to the ITC credit. So,
20 we would certify ourselves as PTC compliant. Likely
21 elect the ITC credit, and then the grant under 1603 for
22 purposes of settlement.

23 Q. Okay. And, then, just one other quick question. On
24 the very upper right-hand corner, where you have "PPA

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 Price (dollars per megawatt-hour)", there's a little
2 thing that says -- (1) that says, let me see here, it
3 says "energy and RECs with escalation in subsequent
4 years". Does that include capacity as well or is the
5 capacity price separate from that?

6 A. (Spreyer) No, that's just the energy.

7 Q. You have the energy and RECs in it. Is it your
8 assumption here that this escalation in subsequent
9 years that the RECs and the energy prices will be going
10 up separately or just cumulatively?

11 A. (Spreyer) Well, looking at the PPA?

12 Q. Yes.

13 A. (Spreyer) The PPA pricing is escalated per the
14 contract.

15 Q. Okay.

16 A. (Spreyer) The RECs would be the same --

17 Q. Okay.

18 A. (Spreyer) -- as per the contract.

19 Q. Is that fixed in the contract then?

20 A. (Spreyer) Yes. There's fixed prices in year one, and
21 then a defined escalation factor.

22 MR. HARRINGTON: Okay. Thank you.

23 That's all I had.

24 CHAIRMAN BURACK: I just want to remind

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 the witnesses, please give the panel members a chance to
2 ask their question fully before you start speaking. It's
3 very difficult for our stenographer to try to take down
4 two people speaking at once.

5 WITNESS SPREYER: Yes.

6 CHAIRMAN BURACK: So, thank you. Go
7 ahead, Commissioner.

8 VICE CHAIRMAN GETZ: Thank you, Mr.
9 Chairman.

10 BY VICE CHAIRMAN GETZ:

11 Q. I just wanted to ask a couple of questions about the
12 introductory materials, the first "Executive Summary",
13 I guess, or "introduction" you can call it, from the
14 Application. And, if I start out on Page 3 of the
15 Application, and there's a -- it's the second full
16 paragraph, third sentence talks about "Given the
17 magnitude of the Project", and it refers to the
18 "American Recovery & Reinvestment Act", which I assume
19 goes to some of these payments we've been talking about
20 with the Production Tax Credits, *etcetera*. And, then,
21 there's a sentence that says "Committee's approval of
22 the proposed transfer of Noble's interest in GRP by
23 December 31, 2010 is critical to meeting this goal."
24 And, I'm assuming that, since we're past December 31,

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1 2010, that there's -- you're still in the position to
2 qualify for the payments under ARRA, and that there's
3 still good reason for us to undertake this exercise?

4 A. (Spreyer) Yes. Since the timeframe of filing this
5 Application, there has been an extension from that
6 12/31/2010 date to 12/31/2011.

7 Q. Okay. Thank you. And, the other thing I wanted to ask
8 about is on Page 21, in the conclusion, the very last
9 sentence. And, there's a -- in the order from July 15,
10 2009, in the Granite Reliable Application, on Page 4,
11 there's a condition that says "Further ordered, that
12 the Applicant shall not commence construction as
13 "commencement of construction" is defined in RSA
14 162-H:2, III, until such time as construction financing
15 is completely in place. The Applicant shall notify the
16 Subcommittee when construction financing is in place
17 and [it] shall generally advise the Subcommittee of the
18 name and address of the lender or lenders providing
19 such financing." And, I think the thinking at that
20 time was that Noble would procure construction
21 financing for GRP and come back to the Subcommittee.

22 And, as I'm reading this last sentence,
23 it says "Brookfield also hereby provides notice that,
24 upon the closing of its acquisition of Noble's interest

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1 in GRP, its commitment to provide 100 percent of the
2 construction funding necessary to develop the Project
3 is in place."

4 So, let me make sure I understand what
5 this, basically, is a commitment by one of the other
6 affiliates to provide the construction financing off
7 the balance sheet of some other Brookfield entity or
8 otherwise, and you're notifying us now that that's
9 going to happen, and you're suggesting that that
10 satisfies this earlier condition. Have I got all that?

11 A. (Spreyer) Yes. That's correct.

12 CHAIRMAN BURACK: Commissioner Ignatius.

13 CMSR. IGNATIUS: Thank you, Mr.

14 Chairman.

15 BY CMSR. IGNATIUS:

16 Q. And, following up on the discussion just a moment ago
17 about the ITC being extended by a year, and I guess
18 that's Mr. Spreyer, is it correct that you can only
19 qualify for the ITC when you become operational?

20 A. (Spreyer) Yes. You would file the Application at that
21 point in time.

22 Q. And, when do you anticipate this project becoming
23 operational?

24 A. (Spreyer) We anticipate it in January of 2012.

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1 Q. How then do you qualify for the ITC, if it's been
2 extended until December 31st, 2011?

3 A. (Spreyer) We would have to commence construction prior
4 to December 31st of 2011. And, as long as the asset
5 made commercial operations before December 31st of
6 2013, we qualified for the program.

7 Q. All right. So, you don't need to be operational by the
8 deadline of 12/31/2011?

9 A. (Spreyer) That's correct. Just have to demonstrate
10 that you've met construction at that point in time.

11 Q. Even though the payment isn't until the operational
12 point?

13 A. (Spreyer) That's exactly right.

14 Q. Thank you. I have a couple of questions about
15 Brookfield's experience with -- specifically with wind,
16 and not with hydro. And, specifically, with wind that
17 is operational and not proposed. All right? So, with
18 those limitations, and I don't know if it's Mr. Cutter
19 who would be best to talk about --

20 A. (Cutter) You can ask the question and we'll get you the
21 best answer.

22 Q. Fair enough. Construction of wind facilities, which I
23 take it really is in Ontario, the ones that have been
24 constructed?

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1 A. (Cutter) That's correct.

2 Q. Did any construction issues arise that Brookfield had
3 to deal with?

4 A. (Osmars) Lots of them.

5 Q. Okay.

6 A. (Osmars) Lots of them, yes.

7 Q. Things that were not anticipated?

8 A. (Osmars) Yes. The one that really surprised us was,
9 and everything was a fixed price contract, both the
10 turbine suppliers and the balance-of-plant
11 constructors. And, what hit us hard was the hardness
12 of the rock in the Canadian Shield. So, Mortenson, our
13 balance-of-plant contractor, and they've done hundreds
14 of these wind farms across North America, and we went
15 to them as being one of the best in the industry, they
16 had never seen hardness of that degree on that site.
17 So, to the question that I had answered earlier about
18 "rock cuts" and ledges and that, we had a number of
19 cut-and-fill requirements, because you bring in these
20 large cranes to set the foundations and the towers and
21 the nacelles, the grades are very limited, because
22 they're very large cranes. So, we were constructing
23 almost interstate quality roads through virgin bush and
24 Precambrian Shield in the middle of winter. So, that

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1 was very, very expensive and challenging.

2 We also put the collector system in the
3 room, just to avoid cutting down additional trees,
4 making the right-of-ways that much larger. So, we had
5 to coordinate construction, winter conditions, hardness
6 of rock, and putting our balance-of-plant, our
7 collector systems within the roadbed to accommodate all
8 of that. So, unlike a hydro site, where you got one
9 site for construction, we had 126 construction sites
10 across 50,000 acres. So, very challenging that way.
11 Fortunately, having Mortenson as our partner enabled us
12 to be successful in meeting our COD dates and bringing
13 our costs in line with our approved budgets.

14 Q. And, do you anticipate similar sort of costs and time
15 because of the extreme hardness of the rock here?

16 A. (Osmars) When we looked at the contract that's in place
17 with a firm called "RMT", we specifically looked at the
18 technical requirements and the geo-tech work that had
19 been done. Having had this experience, we had hoped
20 that the contract had contemplated that, and where is
21 the risk being allocated between the balance-of-plant
22 contractor and the owner, and it's a fixed price
23 contract as well. So, between our due diligence on the
24 balance contractor and the work that had been done and

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1 the geo-tech work to support the bidding price, we feel
2 there will be challenges. We feel it's been
3 accommodated in the schedule and in pricing that has
4 been agreed to.

5 Q. Did Brookfield have any violations for any safety
6 standards or construction conditions during
7 construction of any of the Ontario projects?

8 A. (Osmars) In the Prince Wind Farm, when I was
9 accountable for it, we had no lost time injuries, we
10 had no environmental incidents, we had no charges from
11 the different ministries or the Department of Labor or
12 Lands and Forests and Natural Resources within that
13 project.

14 Q. And, once they became operational, have you had any
15 unexpected difficulties?

16 A. (Osmars) We -- There's 126 turbines operating. They
17 went COD in November of 2006 and -- October, November
18 -- October and November 2006 are the two phases. And,
19 after two years of operation, we had blades on one of
20 our turbines fail about halfway up. And, we believe
21 there was a laminating error in the manufacturing
22 process of those blades. So, of the 126 turbines that
23 we have operating, we had two blades on one given
24 turbine fail. And, they always make blades in a

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1 balanced set. So, they don't mix and match blades from
2 one turbine, they're all balanced and designed that
3 way. So, they were done. And, that has been our only
4 what we classify as a "catastrophic failure". We've
5 had regular maintenance issues, you know, in terms of
6 gearboxes, servicing them. The collector systems have
7 not been an issue. Lighting, in terms of requirements
8 for nighttime, we've had some bulb issues, trying to
9 find bulbs that would withstand the harsh environment.
10 It comes off the north shore of Lake Superior, it's
11 quite a hostile environment, similar to Granite Ridge.
12 So, we've gone back to the manufacturer looking for
13 good lighting facilities on those turbines.

14 Q. And, with the blade failures, were there any injuries
15 as a result?

16 A. (Osmars) There were not, no. In that particular -- in
17 our wind farms, we try to control access. And, I
18 notice on the Certificate there's also a requirement in
19 the Coos -- if I mispronounce it, I apologize, the Coos
20 --

21 MR. PACHIOS: "Coos".

22 **BY THE WITNESS:**

23 A. (Osmars) -- Coos agreement, thank you, there are road
24 restrictions, and we would support that, all of those

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 requirements, because we think it's in the best
2 interest of public safety.

3 BY CMSR. IGNATIUS:

4 Q. Shifting now to specifically to the hydro facilities in
5 New Hampshire, --

6 A. (Osmars) Yes.

7 Q. Any there any current environmental complaints against
8 any of those hydro facilities?

9 A. (Osmars) We have six on the Androscoggin, one on the
10 Pontook, and one on the Errol. We've owned the ones on
11 the Androscoggin since 2004, and the other two since
12 2006. And, we've had no issues.

13 A. (Cutter) All on the Androscoggin. But that's correct.
14 No outstanding environmental or safety issues.

15 A. (Osmars) Michael is the previous general manager for
16 those assets, before he became our Vice President of
17 Engineering.

18 Q. Thank you. On the organizational chart that is
19 attached, Mr. Spreyer, attached to your testimony, and
20 I have to say it's the most unreadable chart, in terms
21 of black print on dark blue boxes, there is one in
22 yellow, "BAIF Renewable Power Services", that has a
23 kind of floaty dashed line connecting it to Granite
24 Reliable Power. So, can you describe what it does and

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 what the relationship is, and why it's not as direct a
2 line as the others?

3 A. (Spreyer) The reason why it doesn't have a direct line
4 like the others is it does not have an ownership
5 interest in the project company. What that entity does
6 provide is, that's our services company. That would
7 provide operations and management services to the
8 asset.

9 Q. And, what are examples of the operational services it
10 would provide?

11 A. (Spreyer) Typically, we would actually employ through
12 some of those power services agreements some of the
13 management folks, so -- and system control that we
14 would actually have in our Marlborough site would be
15 providing services that would oversee these particular
16 -- well, any assets owned by this "BAIF", the BAIF
17 holding companies.

18 Q. Do you have remote monitoring of all of the turbines?

19 A. (Cutter) Yes. They would be monitored right through
20 our National System Control Center in Marlborough,
21 Massachusetts. The first couple years Vestas is under
22 contract to manage those as well. But, long term, when
23 we take ownership, and that's true for virtually all of
24 our assets, they're all managed and monitored 24/7 by

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1 our System Control Center in Marlborough.

2 Q. What local presence will you have, from an operational
3 perspective, once the units are complete and
4 operational?

5 A. (Cutter) The intention is to have probably two
6 management folks and five to six technicians that would
7 be staffed here locally. If you look, I believe, at my
8 exhibit -- or Exhibit Number 4 provides the basic
9 organizational chart by which we typically manage our
10 assets, and, in this case, an easier to read chart,
11 hopefully. The orange boxes over on the right-hand
12 side, if you're there, would be our proposed Manager of
13 Wind Operations and Wind Operations staff.

14 Q. And, then, --

15 A. (Cutter) And, then, they're supported by other
16 technical/environmental/safety specialists that are
17 part of that broader regional staff.

18 Q. And, will you have a sort of established relationship
19 with local fire and safety services in the areas where
20 the turbines are located?

21 A. (Cutter) Absolutely. In fact, part of the next couple
22 weeks' effort is, and continuing on through the
23 Project, is we'll start right out with the folks here
24 in Coos County, Local Emergency Response Preparedness

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1 Plan. We'll have that plan ready before we mobilize
2 staff to the site. Continue discussions with them on
3 equipment needs, training, coordinate training,
4 coordinate drills, in other words, the folks that will
5 be involved here from RMT will be knowledgeable of tower
6 rescue procedures that the folks here locally might not
7 have had the experience with. And, so, we'll
8 coordinate all of that and then continue that, as we do
9 with our hydro sites, with the local emergency, State
10 Police, fire, rescue agencies throughout the state.

11 CMSR. IGNATIUS: Thank you. No other
12 questions.

13 CHAIRMAN BURACK: Thank you. Other
14 questions? Commissioner Below.

15 CMSR. BELOW: I have a quick question.
16 Thank you, Mr. Chairman.

17 BY CMSR. BELOW:

18 Q. Mr. Spreyer, on Page 7 of your prefiled testimony, at
19 Line 17 you reference that the 102-megawatt Coram Wind
20 Energy Project in Tehachapi, California, was scheduled
21 to commence construction in December, last month.
22 What's the status of that?

23 A. (Spreyer) Yes, we haven't started construction at this
24 point. Mr. Osmars can provide better clarity on some

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 of the timetables for that particular project.

2 Q. Okay.

3 A. (Osmars) I'm just trying to sort in my mind all of the
4 activities going on out there. Tehachapi is a very
5 dry, arid location, and there are a number of
6 environmental requirements on streambed crossings.
7 And, so, we are now in front of the Fish & Game
8 authorities seeking permission to cross. Streambeds
9 are intermittent and they're shallow and they're
10 numerous across the sites. So, we have submitted an
11 engineering design either to go over top of them or to
12 seek approval where they believe them not to be an
13 intermittent streambed. Because it rains so
14 infrequently, they may get a bed that occurs today and
15 never used again. So, we're getting that sorted out.
16 And, we hope to have that final approval this week as
17 well. And, we hope to be in construction with both
18 these projects within about two weeks time. So, it's a
19 Fish & Game permit on streambed crossings.

20 Q. Is that a different general contractor or the same?

21 A. (Osmars) We're using Mortenson on that site. So, we've
22 gone back to Mortenson. And, the reason being that
23 we're using RMT here is we're stepping into the shoes
24 of Noble Environmental. And, we've done our assessment

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1 on RMT, and we like what we see. And, we like the idea
2 of having two preferred balance-of-plant --
3 balance-of-plant contractors that we could work with in
4 the future. So, Mortenson will be our balance-of-plant
5 contractor in Tehachapi.

6 CMSR. BELOW: Okay. Thank you.

7 CHAIRMAN BURACK: Other questions?

8 Attorney Iacopino.

9 BY MR. IACOPINO:

10 Q. Just out of curiosity, is that Tehachapi Project, is
11 that on the Sunrise Link, it's the new transmission
12 line that they just approved in California?

13 A. (Osmars) It's on -- it's connected to the wind hub,
14 which is --

15 (Court reporter interruption.)

16 **BY THE WITNESS:**

17 A. (Osmars) Yes. It is part -- the Tehachapi Project will
18 connect into the new wind hub transformer station,
19 which is part of the complete rebuild of the 500 kV
20 system in the Tehachapi area.

21 BY MR. IACOPINO:

22 Q. Okay. My questions with respect to this Project is for
23 anybody who can answer, but I suspect it's going to be
24 you, Mr. Spreyer. You have filed with the Committee,

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1 you've listed the Applicant or Joint Applicant as being
2 "Brookfield Renewable Power, Inc.", with an address of
3 Marlborough, Massachusetts. You've supplied financial
4 documents pertaining to Brookfield Renewable Power,
5 Inc., which I assume is the same company having a
6 Marlborough, Massachusetts address. And, you've also
7 submitted us this proposed structure for the ownership
8 of the Granite Reliable Power. Are all of the entities
9 contained on Exhibit Spreyer 2, which was attached to
10 your prefiled testimony, are all of these entities
11 subsidiaries of Brookfield Renewable Power, Inc.?

12 A. (Spreyer) There are some that are not. For example,
13 Freshet is not a subsidiary of Brookfield.

14 Q. Other than Freshet, are there any others that are not?

15 A. (Spreyer) The "U.S. Taxable Investors" and their
16 ownership in BAIF Number 2, towards the middle of the
17 page, do you see where?

18 Q. Yes. Right here?

19 A. (Spreyer) That would be where partners related to BAIF
20 would actually be participating. And, the "U.S.
21 Taxable Investors", that square box, would not be
22 Brookfield affiliates. And, then, there's a circle --
23 or an oval, I guess, in the top right-hand, that says
24 "Main Fund Investors".

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1 Q. Yes.

2 A. (Spreyer) Those aren't. Those would be the other
3 participants in our BAIF fund as well. So, any of our
4 participants in our BAIF fund that are not Brookfield
5 participants would not be Brookfield affiliates. But
6 the holding companies associated with BAIF are holding
7 companies that would be affiliates of Brookfield. And,
8 Brookfield actually has the general partnership and
9 management services arrangement for the BAIF fund.

10 Q. So, if they're not subsidiaries, they're companies in
11 which you have some significant management function?

12 A. (Spreyer) That's right. We would have significant
13 management function over our BAIF investment and
14 control over that, for lack of a better word, the pot
15 of funds available for construction. We make the
16 investment decisions. We make the capital calls just
17 of those participants in the fund.

18 Q. And, "BAIF Granite Holding LLC", I forget whose
19 testimony it was in, but I note that's going to be a
20 Delaware LLC, is that correct?

21 A. (Spreyer) Yes, that's right.

22 Q. Has it yet been formed?

23 A. (Spreyer) I don't believe that it has. Do you know?

24 A. (Cutter) I'm not sure.

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1 A. (Osmars) I'm not sure.

2 A. (Spreyer) I'm not sure if it's been formed as yet. It
3 would be formed at least at the point in time of
4 completion of the acquisition of Noble's interest. But
5 I couldn't answer the question whether it's been formed
6 as of today.

7 Q. And, what about with respect to "BAIF U.S. Renewable
8 Power Holdings II LLC", has that been formed yet?

9 A. (Spreyer) I believe that entity has been formed as of
10 today.

11 Q. Do you know if it's been registered to do business in
12 New Hampshire?

13 A. (Spreyer) I do not.

14 Q. In doing your due diligence for this purchase, have you
15 -- were you able to determine whether all of the
16 conditions of the High Elevation Mitigation Agreement,
17 which was a condition of the original certificate, have
18 been met?

19 A. (Cutter) Yes. It's our understanding that all of
20 those, in doing that due diligence, that all of those
21 conditions have been met. I'd have to refer back to
22 see if there were some forward-looking conditions that
23 may occur post COD and so forth as part of that. But
24 all of the conditions that we've looked at as part of

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1 the Commission's earlier order were all doable, they're
2 either done, or will take place as per the order.

3 Q. And, you have the understanding that they have to be
4 completed prior to construction above the 2,700 foot
5 level?

6 A. (Cutter) Correct.

7 Q. In addition, in the High Elevation Mitigation Agreement
8 and in the order itself, there is a condition that
9 there will be no clearing between April and August.
10 Does that condition pose any problem to your present
11 timeframe?

12 A. (Cutter) The construction schedule has taken that into
13 account. We were very careful with RMT to determine
14 that indeed they could complete their work, and the
15 schedule that they provided, according to that schedule
16 and that blackout, that's an absolute, and just --
17 there's no changes associated with that.

18 A. (Osmars) And, it's our understanding that it's "no
19 clearing or tree-cutting between April 1st and
20 August 1st." But --

21 A. (Cutter) I believe the language is "no significant
22 cutting of vegetation" between those dates.

23 Q. I think it's "clearing of the vegetation".

24 A. (Osmars) There will be other construction activity

[WITNESS PANEL: Spreyer~Cutter~Osmars]

1 going on between April 1st and August 1st, though.

2 Q. And, finally, the financial statements that you
3 provided to us were as of, I believe, June 2010. I
4 assume that you've got unaudited statements since then.
5 Has there been any significant adverse financial
6 information to be reported for Brookfield Renewable
7 Power, Inc. or any of the subsidiaries involved in this
8 particular project?

9 A. (Spreyer) Yes, you're correct that the June statements
10 are what has been provided. Since that date, we have
11 filed our September financial statements. And, we are
12 working through the year-end audit of our December 31st
13 financial statements. I can say that, as of today,
14 there are no material changes to the financial
15 condition of the business from that of June at this
16 point.

17 Q. And, no -- nothing has occurred that you have been
18 required by law or by regulation to advise your
19 shareholders of any adverse -- any adverse situation
20 with respect to any of these companies?

21 A. (Spreyer) With respect to these? The only item that I
22 think we would mention is that, in September 2010,
23 there was a dismissal of a suit that was brought
24 against a affiliate of Brookfield, in trading

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1 activities in New England, whereby information that was
2 provided by ISO-New England was incorrect. And, the
3 State of Connecticut continued to pursue that case, and
4 an administrative law judge of FERC ultimately
5 dismissed that case in September of 2010, stating that
6 there was no -- no evidence that could be found against
7 Brookfield or any of the other two parties.

8 Q. That would be a positive event for Brookfield. But any
9 adverse financial events?

10 A. (Spreyer) No adverse.

11 MR. IACOPINO: I don't have any further
12 questions. Thank you, Mr. Chairman.

13 MR. HARRINGTON: Mr. Chairman, I just
14 have one additional question.

15 CHAIRMAN BURACK: Mr. Harrington.

16 BY MR. HARRINGTON:

17 Q. Just so I get this clear, looking at the present
18 certification that was in the packet, Brookfield, and
19 when I say "Brookfield", I mean all these boxes on
20 "Proposed Structure - New Hampshire Wind Farm Granite
21 Reliable" that have the name "Brookfield" in it, they
22 are going to be the organization that guarantees all
23 the terms of the certificate and the various
24 conditions, with the exception of the one on the

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1 ownership structure, which you would request them to be
2 removed, and the fact that you were saying that you've
3 met the requirement on the commencement of construction
4 with regard to financial planning. Is that the only
5 two exceptions from what's otherwise there?

6 A. (Spreyer) Yes. As far as I know, that's the only two
7 exceptions.

8 Q. Okay. And, so, when it comes to guaranteeing
9 compliance with the certificate, Freshnet or Freshet,
10 they don't have any roll in that, other than they just
11 happen to own 25 percent of the Project, but they don't
12 have any obligation to comply with the certificate,
13 other than the fact that they're a co-owner?

14 A. (Spreyer) The only -- to answer your question a little
15 bit more precisely, if there are requirements of
16 Granite Reliable Power, LLC, to comply with the
17 certificate, that require cash or whatnot, there would
18 be a cash call of partners. To the extent that our
19 partner did not participate, Brookfield would be in a
20 -- would be in a position whereby they would be
21 contributing that cash to satisfy all arrangements.
22 So, I think that all of us have a requirement to
23 support the certificate, but Brookfield is standing by
24 Brookfield and its affiliates.

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1 Q. And, so, I guess what you're requesting then would be,
2 in the extreme case, if Freshet simply disappeared,
3 then you would just assume that 25 percent share
4 through your other, one or more of your Brookfield
5 affiliates?

6 A. (Spreyer) That would be an idea, that's correct.

7 Q. And, that would be something that would be allowable
8 without coming back to the Site Evaluation Committee
9 under what you're proposing?

10 A. (Spreyer) That's correct, yes.

11 MR. HARRINGTON: Okay. Thank you.

12 That's all I had.

13 **BY THE WITNESS:**

14 A. (Osmars) I think we were asked by the gentleman over
15 there that "would we notify", and I think the
16 notification is not a problem.

17 MR. HARRINGTON: Yes. Thank you.

18 CHAIRMAN BURACK: Thank you, gentlemen.

19 I have just a few questions here.

20 **BY CHAIRMAN BURACK:**

21 Q. First, there's been a term used multiple times, I
22 believe, but I'm not sure it's been defined. "COD", in
23 this context, what does that term refer to?

24 A. (Spreyer) That's the Commercial Operation Date.

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1 Q. And, what is that specifically?

2 A. (Spreyer) The Commercial Operation Date is the date in
3 which the facility completes its construction and is
4 turned over to, essentially, its operation phase.

5 Q. So, is that equivalent to the date on which you begin
6 generating power or is it a date that's pre -- that
7 predates the date on which you begin generating power?

8 A. (Spreyer) In certain circumstances, it may be a period
9 before we actually accept the equipment as completed,
10 whereby we're testing the equipment, whereby generation
11 could occur during a test phase. It's generally the
12 timeframe in which we accept the equipment and the
13 project as being complete, based on its standards.

14 A. (Cutter) And, there would be terms under the PPA that
15 would also define that, I believe, if we do have 19
16 turbines up and operating in order to claim commercial
17 operation.

18 Q. Thank you. What is the total cost to complete this
19 Project as you are now expecting?

20 A. (Spreyer) We're estimating it to be 229 million.

21 Q. And, has any construction activity already commenced on
22 the site itself?

23 A. (Cutter) The only construction activities, and I define
24 them as more pre-engineering and surveying activities

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1 have taken place. But no physical construction or
2 clearing for facilities has taken place.

3 Q. Has any construction off-site begun? That is, has
4 construction of turbines or other equipment that will
5 be brought to the site begun at this time?

6 A. (Cutter) No. In other words, we would have to issue a
7 notice to proceed to Vestas for them to start their
8 construction process. The RMT contract is basically
9 labor and materials. I guess I would correct that. We
10 have provided limited notices to proceed for long lead
11 time items. That, should the Project not go forward,
12 we would have some cancellation charges associated with
13 perhaps a circuit breaker or a switch or a transformer
14 that could presumably be on somebody's assembly line
15 someplace. But that would be about the extent of it.

16 Q. Thank you. There have been several questions that I
17 think have touched on this, but I think it would be
18 helpful for us to understand. If this Committee were
19 today to grant, in some form, the approvals that have
20 been requested here, what are the next major milestones
21 in this process? What activities will occur? How
22 quickly will the closing, the financial closing that's
23 been described here occur? How quickly you expect that
24 you would actually get out on site and begin

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1 construction, including clearing? And, I understood
2 from a response to a question from Attorney Iacopino
3 that you anticipate that you could cut -- conduct all
4 the necessary clearing under the restrictions involving
5 certain elevations prior to this April 1st deadline.

6 A. (Cutter) That's correct.

7 Q. And, I'm just looking also for confirmation and
8 clarification on that point as well. So, can you lay
9 out the basic timeline here for us going forward,
10 again, if the Committee were to approve this?

11 A. (Cutter) There are two pieces, and maybe Jason or Kim
12 can speak to the next steps, in terms of closing on the
13 PSA with Noble, so that Brookfield actually acquires
14 the Project. Once that has taken place, then we would
15 begin the process of providing notice to proceed to RMT
16 to begin its clearing operations. They have -- we've
17 given them limited notice to proceed, so that the
18 contractors and equipment is already committed to being
19 here, so that we're ready to go at the earliest
20 possible date. Our intention would be to, upon
21 clearing the legal and the financial transactions that
22 would take place, would be to commence construction by
23 February 15th.

24 A. (Osmars) So, the Purchase and Sale Agreement, we're

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1 targeting, today is January 31st, within the next eight
2 to ten business days. So, prior to that, proceed with
3 construction and the notice to proceed with the
4 balance-of-plant contractor, we would hope to complete
5 the Purchase and Sale Agreement within eight to ten
6 business days.

7 Q. Okay. Thank you. Are there any other approvals that
8 are necessary? If you receive approval from the SEC,
9 are there any other approvals to be necessary before
10 you could close or begin construction?

11 A. (Cutter) We have all the necessary permits. There are
12 some meetings scheduled this week with Fish & Game and
13 DES, I believe, as well as Coos County, to discuss
14 certain terms, review the final details of the Wetlands
15 and Terrain Alteration Permit. But my understanding is
16 that the permissions are in place, certificates are in
17 place, and we would be ready to go in accordance with
18 the terms of the order.

19 Q. Thank you. So, again, just to be clear, you're
20 anticipating that you may be starting construction,
21 including clearing activities, as early as
22 February 15th?

23 A. (Cutter) That's correct.

24 Q. Thank you. The request for us to grant, and I want to

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- 1 try to find the language here, if I can quickly, I
2 believe this is on Page 21 of the initial request here.
3 In your conclusion, you ask that we, that is the
4 Committee, "amend the condition limiting changes in
5 ownership to allow further changes so long as
6 Brookfield retains a controlling interest in GRP."
7 What I want to understand is what is intended by the
8 term "controlling interest"? That is, are you
9 referring strictly to a financial interest or does
10 "controlling interest" include both a financial
11 interest, as well as management and operation of the
12 facility, that is control of management and operation
13 of the facility?
- 14 A. (Spreyer) It's both conditions that you outlined. So,
15 both the financial, as well as management, of the
16 entity itself.
- 17 Q. So, again, just to follow up then on Director Scott's
18 earlier question. If the Committee were to ask that we
19 be notified of any proposed change, in either ownership
20 or in operation or management aspects of the facility,
21 that would not cause you a concern?
- 22 A. (Spreyer) No. No, it would not.
- 23 Q. But am I also to understand that you do not anticipate
24 any change in operation or ownership?

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1 A. (Spreyer) That's correct.

2 Q. Okay. Thank you. Bear with me just a moment longer
3 here, if you would please. On Page 11 of I believe
4 it's your testimony, Mr. Cutter, you indicate that
5 there will be a "management services agreement"?

6 A. (Cutter) Correct. I haven't found that page, but, yes.

7 Q. That would be a management services agreement between
8 Brookfield and a Brookfield operating entity?

9 A. (Cutter) And Granite, yes. So, in other words, the
10 Granite Project, as such, will not have employees
11 associated directly with it. We will, as we have in a
12 number of our other plants that we operate, contract
13 that under a management and operations agreement with
14 the Brookfield affiliate. In this case, it will be
15 very much as outlined on my Exhibit 4, the
16 organizational chart that I indicated.

17 Q. Is that an agreement that, when it is completed, you
18 would be able to just file with the Committee just as
19 an informational document? Would there be any
20 confidential aspects of that agreement?

21 A. (Cutter) Subject to check, I don't believe that there
22 would be any confidential aspects of that. Kim?

23 A. (Osmars) We have memorandums of maintenance agreements
24 with a number of our entities. I don't see any issues

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1 with it.

2 A. (Cutter) Yes.

3 CHAIRMAN BURACK: Thank you. Again,
4 that's just something we may wish to consider as a
5 condition, I was just trying to understand what its status
6 might be.

7 Any other questions at this time from
8 members of the Committee? Commissioner Ignatius.

9 CMSR. IGNATIUS: I do have one other
10 question. Thank you.

11 BY CMSR. IGNATIUS:

12 Q. The Application states that it's on behalf of
13 "Brookfield Renewable Power, Inc., and its affiliates".
14 And, when I look at the org. chart that we've -- the
15 Proposed Structure chart we've been looking at, of all
16 of the entities there, I can't find any that are called
17 "Brookfield Renewable Power, Inc." So, where does that
18 entity that is the Applicant fit into Mr. Spreyer's
19 Attachment 2, the blue --

20 A. (Spreyer) Brookfield -- oh, sorry. On the top
21 left-hand corner, the square, "Brookfield Power U.S.
22 Holding America" is a indirect 100 percent owned
23 subsidiary of Brookfield Renewable Power, Inc. So, to
24 answer your question, this 100 percent owned --

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1 indirect 100 percent owned subsidiary represents the
2 Brookfield Renewable Power, Inc., subsidiary.

3 Q. So, is that -- is there really another box above that
4 left-hand corner?

5 A. (Spreyer) Yes. There's more than one. But,
6 ultimately, you get to Brookfield Renewable Power,
7 Inc., that owns 100 percent of Brookfield Power U.S.
8 Holding America Company.

9 Q. All right. So, in that left-hand box, "BRPI" stands
10 for "Brookfield Renewable Power, Inc."

11 A. (Spreyer) Exactly. Yes, that's correct.

12 CMSR. IGNATIUS: Thank you.

13 CHAIRMAN BURACK: Any other questions?

14 (No verbal response)

15 CHAIRMAN BURACK: Okay. Attorney
16 Pachios, do you expect that you have any recross or
17 redirect of these witnesses here?

18 MR. PACHIOS: I was just thinking about
19 that. I don't think so.

20 CHAIRMAN BURACK: Very well. Thank you.
21 Okay. What I'm going to, unless any of the other parties
22 feel they have questions that have not already been
23 addressed on the record here, what I'm going to then
24 suggest that we do is we take a break in just a moment.

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1 It is now approximately 12:20. I would ask if folks could
2 try to be back here by 1:15. When we return, we'll ask
3 the parties if they wish to make any very brief closing
4 statements. I'll give you all an opportunity to do that,
5 if you wish to do so. And, then, what I'm going to ask is
6 that the Committee then enter into deliberations in this
7 proceeding.

8 Does that sound reasonable to everybody?

9 MR. KING: Mr. Chairman?

10 CHAIRMAN BURACK: Yes, Mr. King.

11 MR. KING: I notice on the agenda
12 there's "Questions from the Committee", and then it's
13 followed by "Public Comment". Are you going to entertain
14 public comment?

15 CHAIRMAN BURACK: Yes, we most certainly
16 will. Thank you for that reminder, Mr. King. Are there
17 any members of the public here at this time who expect
18 that they would like to --

19 MR. KING: I would suggest that I am a
20 member of the public.

21 CHAIRMAN BURACK: You would like to do
22 so?

23 MR. KING: For the purpose of this.

24 CHAIRMAN BURACK: Okay. And, sir, you

1 would like to do so as well?

2 MR. KING: Yes. Thank you.

3 CHAIRMAN BURACK: Okay.

4 MR. KING: I have a three-minute speech,
5 so it won't take a lot of your lunchtime.

6 CHAIRMAN BURACK: And, how long, sir, do
7 you think you would need?

8 MR. COLGAN: One minute.

9 CHAIRMAN BURACK: One minute? Why don't
10 we go ahead and take the public comment now then, if we
11 could. Why don't you proceed please.

12 MR. KING: Thank you, Mr. Chairman and
13 Committee members. I am Frederick King, the elected
14 Treasurer of Coos County. And, I am here today
15 representing the County Commissioners and myself. We are
16 in full support of the Granite Reliable/Brookfield Power
17 proposal before you and urge your rapid approval so that
18 site work can begin at once. The County is the local
19 government for the unincorporated places where this wind
20 project will be constructed. We have indicated support
21 throughout the approval process. The County delegation
22 members who approve the budgets for the unincorporated
23 places have also voted unanimously in support, as has the
24 County's Planning Board.

1 The evidence is clear. This Project
2 will provide an ongoing economic benefit to the entire
3 County. The economic study conducted by the Whittemore
4 School of Business & Economics in 2009 reported, and I
5 quote, "total benefits, including direct, indirect, and
6 induced, to the local economy from the Granite Reliable
7 Power, LLC Wind Power Project are expected to be
8 \$122 million, or \$1.2 million per megawatt over a 20-year
9 period."

10 Coos County has, for generations,
11 depended on the natural resources for our survival.
12 Today, we have the largest percentage of residents living
13 in poverty in New Hampshire, as well as the largest
14 percentage of unemployed. Our pulp and paper industry is
15 gone and it's not coming back. Coos County has the lowest
16 per capita income in the state. We need the jobs and we
17 need the taxes and we need them now.

18 The history of Coos County indicates
19 that we've always had an economic base based on our
20 natural resources. The woodlands and rivers have kept us
21 going. What often gets lost in the discussion today is
22 how the ownership of our forests have changed. Gone are
23 the brown companies of the past. The companies that owned
24 the woods, they owned the camps that the cutters lived in,

1 they owned the horses that got the pulp out, they owned
2 the -- they employed the cutters, and they ran the
3 factories that created the jobs. And, those companies
4 looked at one profit at the end of the cycle.

5 Today, our forests are owned by
6 investment companies, and more and more by government
7 entities. These companies seek to get their returns from
8 the land itself and have less ties to the communities. We
9 need to keep our commercial forests. It would seem
10 logical that leasing of sites for wind power projects
11 would allow more woodlands to remain in timber production
12 because of this additional income to the landowners.

13 As we know, there are other wind
14 projects under consideration in the North Country. Most
15 are on hold because of various considerations. However,
16 if we can take a clue from the President's speech last
17 week, relative to the future of renewable power, including
18 wind, the projections are much larger energy commodity
19 prices in the future. And, the fact that a PSNH official
20 said at a recent meeting that, and I quote, "PSNH is still
21 turning to developers of small renewable energy projects
22 in the North Country." If those things should all turn to
23 be true in the future, then we may have the need or the
24 desire and the opportunity to develop more wind projects.

1 Today, we have a company with local
2 roots, that has the funding capability, a site that is
3 acceptable to the community, necessary approvals, and a
4 market for the power. Let's take advantage of this
5 opportunity to have an operating wind farm in our county
6 that can be a model to which all future projects can be
7 compared.

8 I thank the Committee for consideration
9 of my comments.

10 CHAIRMAN BURACK: Thank you very much,
11 Mr. King. And, we appreciate those comments. I think the
12 tone and the tenor of those is that those are really a
13 closing statement, is that a fair characterization?

14 MR. KING: That's the extent of my
15 statement, and I'll now take my wife shopping.

16 (Laughter.)

17 CHAIRMAN BURACK: And, I'm sure we wish
18 we could all go with you, sir.

19 MR. KING: I wish you could, too.

20 (Laughter.)

21 CHAIRMAN BURACK: Thank you very much.
22 Sir.

23 MR. COLGAN: My name is Tom Colgan.
24 And, I'm President and CEO of Wagner Forest Management

1 based in Lyme, New Hampshire. Wagner Forest Management is
2 the manager of Freshet Wind Energy, LLC, the 25 percent
3 owner in Granite Reliable. We have done our due diligence
4 on Brookfield, which we hope and expect to be our new
5 partner in Granite Reliable. And, I can tell you we have
6 found nothing but praise and professionalism. And, it's
7 clear to us that they have both the management, the
8 technical, and the financial capability to pull this off.

9 And, given that this has been under
10 discussion for over two years now, we are all very anxious
11 to see this go forward. And, we appreciate the time and
12 the deliberations you have taken.

13 CHAIRMAN BURACK: Thank you very much,
14 Mr. Colgan. Okay. I think what we will do now is take a
15 -- we're going to take a break here to give folks a chance
16 to get lunch. I would ask everybody, if you could -- you
17 don't need to get this on the record, Steve.

18 (Whereupon a brief off-the-record
19 discussion ensued.)

20 CHAIRMAN BURACK: We'll all make an
21 effort to be back here by 1:15, if we can. And, at that
22 time, we will provide the parties, who have not already
23 had an opportunity to provide closing statements, to do
24 so, and then the Committee will deliberate. All right?

1 So, we will stand adjourned now until 1:15.

2 (Lunch recess taken at 12:29 p.m. and
3 the hearing reconvened at 1:27 p.m.)

4 CHAIRMAN BURACK: Good afternoon,
5 everyone. We will resume the proceedings in Docket Number
6 2010-03, Joint Application of Granite Reliable Power, LLC,
7 and Brookfield Power, Inc., for approval to transfer
8 equity interests in GRP.

9 I just want to speak briefly to this
10 issue of the proposed order that was submitted to us that
11 was marked as "Petitioner's Exhibit 1, and do this in the
12 context of the closing statements here that folks may want
13 to make here shortly. First, I just want to note that
14 that proposed order is not evidence in this proceeding.
15 We recognize that, in other types of proceedings, judicial
16 proceedings in particular, it's not uncommon for parties
17 to submit proposed orders. This happens routinely.
18 Having said that, in my experience, in my time serving as
19 Chairman of this Committee, I've actually never seen this
20 occur before, and it's an unusual practice with respect to
21 how the SEC typically operates.

22 So, from that standpoint, the Committee
23 may or it may not choose to look at or use any portions of
24 that order. Again, it's not a common occurrence here for

1 this Committee to see these kinds of proposed orders.
2 Accordingly, I'm not going to ask the parties to submit
3 any comments with respect to this proposed order.

4 Rather, and I apologize for the short
5 notice here, I would ask that the parties, in making your
6 closing statements, if there are any particular conditions
7 or issues that you would want us to consider in our
8 deliberations, please mention those issues or conditions
9 in your closing. And, if anybody feels they need a few
10 minutes to be able to just identify for themselves what
11 those might be before they make their closing statements,
12 please tell me now and I'll be happy to accommodate that.
13 Does anybody feel they need any additional time? Again,
14 this is really just a matter of identifying general issues
15 or conditions that you think would be important for us to
16 have in mind as we are deliberating.

17 (No verbal response)

18 CHAIRMAN BURACK: Okay. Hearing none,
19 then what I would propose is that we take closing
20 statements from the parties. And, the order of
21 presentation will be first Ms. Linowes, and then Attorney
22 Roth, Counsel for the Public, and then the Joint
23 Applicants. So, --

24 MS. LINOWES: Mr. Chairman?

1 CHAIRMAN BURACK: Yes.

2 MS. LINOWES: Would you be okay if
3 Attorney Roth went before me?

4 CHAIRMAN BURACK: That would be
5 certainly fine, if you'd like to do that, absolutely.

6 MR. ROTH: That's okay with me, too.

7 CHAIRMAN BURACK: Attorney Roth, please
8 proceed.

9 MR. ROTH: Thank you. Good afternoon,
10 Mr. Chairman, members of this Committee. When this case
11 first came to the Committee's attention a couple of years
12 ago, as you know, I had serious concerns about whether the
13 Applicant at that time had the financial capability, and
14 we litigated that issue very hard. And, I would say that,
15 had we been dealing with Brookfield at that time, it would
16 have been a very different presentation and a very
17 different case.

18 I think, clearly, with only some
19 reservations, I can say that my own due diligence has
20 satisfied me that Brookfield has sufficient managerial,
21 technical, and financial capability to construct and
22 operate this Project.

23 The concern that I have is perhaps more
24 a matter of presentation and organization than anything

1 else. And, that is trying to understand who the Applicant
2 is in this case and how do we bind them and assure
3 compliance with the Certificate. And, I think there's
4 some confusion about who it is we're talking about, and it
5 could be a fairly large universe. But it could be a large
6 universe that is populated largely by LLCs with not much
7 involved. And, so, I think it's important, in terms of
8 the Committee's deliberation and consideration, that you
9 identify, or ask the Applicant to identify, you know, the
10 ultimate John Dillinger question, "Where is the money?"
11 And, you want to be able to identify that, the source of
12 the funding, and include that source of funding into a
13 order. And, perhaps the Applicant's own assertions in
14 testimony that "the Applicant is Brookfield Renewable
15 Power, Incorporated, and all of its affiliates" is
16 sufficient, and maybe that's enough. And, the Certificate
17 can simply be conditioned upon all of them being bound by
18 the obligations and terms and conditions of the
19 Certificate.

20 Which leads me to sort of an aside, in a
21 way, with respect to their request that the condition
22 regarding written approval of transfers of interests.
23 And, I don't -- I'm not particularly bothered by that
24 condition, and I would only ask that it include that,

1 whoever it's assigned to or the rights are given to, that
2 that party be similarly bound by the terms and conditions
3 of the Certificate. It would be nice if we would limit
4 that universe of parties to affiliates of Brookfield, but
5 I understand from the testimony that that may not be
6 possible, that we may be talking about parties that aren't
7 necessarily affiliates of Brookfield. But, at the very
8 least, I think that that condition should include that
9 whoever it is is going to be bound by the Certificate and
10 essentially stand behind it the same as those who had come
11 before them.

12 The other question that I think has
13 arisen is, how are they going to do the Project? Now, we
14 understand that, I mean, I think that the testimony that
15 was submitted in the Application is a little bit at odds
16 with the cross-examination testimony that we heard today.
17 And, that is that the Application really speaks of
18 Brookfield's intent to use its own equity and its own
19 funds to build the Project and start it up. And, I think
20 there's a line in the testimony that says "We're going to
21 build it, and once we start it up, then we're going to see
22 if we can refinance it." What I heard today is a little
23 bit different than that. And, I'm not totally comfortable
24 with the idea that they should proceed to begin

1 construction, and then, if they find that they don't get
2 the financing, then they can reevaluate and decide not to
3 do it anymore. I think that's a little bit -- that's not
4 consistent with what the Application says and what the
5 testimony says. And, I think that needs to be squared
6 away.

7 And, that leads me to my final comment.
8 And, that is, if there is a situation where the Project is
9 commenced, the construction is commenced, and then at some
10 point abandoned, because one of those government programs
11 doesn't come through, the question I think that the
12 Committee needs to evaluate for itself is, "are the
13 conditions in the Certificate, as it's currently written,
14 sufficient to deal with the impacts of a false start?"
15 And, I don't think we contemplated at the time two years
16 ago, when the Certificate was initially issued, that there
17 was going to be somebody who might start it, start
18 construction, and then abandon it, or stopped
19 construction. And, I'm not comfortable or confident that
20 the conditions in the certificate would satisfactorily
21 address whether, if they build roads and then stopped, do
22 they have to restore those roads or is it a
23 decommissioning event, or whatever it is. But I think
24 it's important for the Committee to look at that question

1 and decide for itself whether the Certificate conditions
2 are sufficient to protect the environment and the people
3 in New Hampshire, in the event, in the unlikely event, I
4 think, that the Applicant finds that the programs that
5 it's relying on to make this more financially viable
6 aren't going to materialize and it has to stop.

7 That being said, I think they have met
8 their burden and established that they are -- that they
9 have the requisite managerial, technical and financial
10 capability. Thank you.

11 CHAIRMAN BURACK: Thank you very much,
12 Mr. Roth. Ms. Linowes.

13 MS. LINOWES: Thank you, Mr. Chairman.
14 Two years ago when this Project was adjudicated, it was
15 very -- I made it clear my organization did not support
16 it. Still have significant concerns about it, but that's
17 not why we're here today. The important point now is that
18 the Project has been approved and it's necessary that it
19 be done in the best way possible. I, too, had concerns
20 about Noble Environmental two years ago. There was very
21 clear evidence in my mind that they did not have the
22 financial ability to move forward with this Project, and,
23 in some respects, should be grateful that they're not
24 involved. That they're proceeding with a sale of the

1 Project.

2 It's hard to say that Brookfield has not
3 met the legal requirement of a managerial, financial, and
4 technical capability. And, I have no evidence to think
5 that they cannot proceed with this Project. However, the
6 question of financing and the reliance on federal monies
7 is -- is something that needs to be taken into
8 consideration. It's -- and, I'm not sure how closely
9 followed the tax debate in December, but the extension,
10 the one year extension on the 1603 Cash Grant Program was
11 done after-the-fact. It was very close to being left on
12 the cutting floor, it was added in at the last minute.
13 So, there's no question that's going to be deliberated
14 again as Congress goes through its appropriations. Okay.
15 So, given that, there's a potential risk there on the cash
16 grant.

17 There is no guarantee that the
18 Production Tax Credit, if they were forced to fall upon
19 that as their option, is going to make this Project
20 financially viable. We can't tell from the information
21 that is sitting in front of you that that's the case.
22 It's not true that the PTC and the ITC cash grant are
23 equivalent. It is not the case, in terms of the amount of
24 money and the timing in which the money is made available.

1 So, that all being said, given that
2 Mr. King's comments and the Coos County's position has
3 been that this Project is important for economic
4 opportunities that it will bring to the County, I think
5 that it's very important that any conditions placed on
6 this also state that Brookfield keep the State of New
7 Hampshire and the Coos County abreast of those -- those
8 federal programs, and its opportunity for the federal
9 programs, and that no surprises be in place there.

10 And, with that, I'll just close. Thank
11 you.

12 CHAIRMAN BURACK: Thank you very much.
13 Okay. Attorney Pachios, do you wish to make a closing --
14 before you start, Attorney Patch, you have been silent
15 throughout all this. Do you have any kind of a closing
16 statement you wish to make here?

17 MR. PATCH: I mean, I think it's pretty
18 obvious that, as a Joint Applicant, GRP supports the
19 request and the proposed conditions, and would urge you to
20 approve it quickly. And, other than that, I'll defer to
21 Mr. Pachios.

22 CHAIRMAN BURACK: Very good. Thank you
23 very much. Attorney Pachios.

24 MR. PACHIOS: Thank you, Mr. Chairman.

1 And, we want to -- Brookfield wants to thank the entire
2 panel. We're very well aware that members of the panel
3 are spending a good part of the day here, are busy people,
4 and they have many other responsibilities. And, we're
5 sensitive to that, and we're sensitive to the fact that
6 the SEC has accommodated us in trying to have this hearing
7 in as quick a time as possible since we filed the
8 Application. And, so, we appreciate the way the State of
9 New Hampshire, and particularly the SEC, has treated us
10 with our procedural issue.

11 Second, I think that we have tried to be
12 as informative as possible, been a lot about the ITC, the
13 loan guarantees. The core issue, of course, is that a
14 certificate has already been issued to Granite Reliable.
15 What's happened here is that there is a substitute,
16 Brookfield, for Noble, and thus the question and the core
17 issue is whether Brookfield is a suitable substitute for
18 Noble in the three critical areas that you're examining,
19 which is financial capacity, technical capacity, and
20 managerial capacity. And, I think the answer is clearly
21 "yes".

22 Who is the Applicant? The Applicant is,
23 as we said, and, incidentally, I think his question or the
24 issue that Mr. Roth has raised is an important issue, as

1 to "who is the Applicant here?" It's a critical issue.
2 The Application says "Brookfield Renewable Power, Inc,"
3 that's the Applicant, along with its affiliates. But it
4 spells it out, "Brookfield Renewable Power, Inc." And,
5 the financials for Brookfield Renewable Power, Inc., which
6 is in itself, while an affiliate of the major holding
7 company in Brookfield, is a very large company. And, it's
8 described in the Application. And, they have all of these
9 power assets. And, that's Brookfield Renewable Power,
10 Inc. The financing for this project, as the record shows
11 and as the testimony here demonstrates, is internal from
12 affiliates of Brookfield Renewable Power, Inc. So, that's
13 why in the first line or sentence of the Application it
14 says "the Applicants are Granite Reliable Power and
15 Brookfield Renewable Power", and then in parentheses it
16 says "referred to herein as "Brookfield", along with its
17 affiliates." So, Brookfield Renewable Power is the power
18 company. They own all of these wind projects and hydro
19 projects and so forth. They have a huge net worth. But,
20 beyond that, they have all of these funding affiliates
21 that -- from which Brookfield Renewable Power, which is
22 going to build this, which is going to be the controlling
23 interest and the builder of this Project, acquires
24 internal funds from affiliates. That's BAIF, as an

1 example.

2 So, if Brookfield Renewable Power, which
3 is a large, very large corporation, is responsible for
4 ensuring that the certificate requirements and conditions
5 and terms are met, you have a very large and substantial
6 entity with a lot of money in the record is all of their
7 financials to rely on. So, I think it's a good question,
8 and I think the record provides a good answer to the
9 question.

10 Brookfield Renewable Power also is the
11 manager, the record shows, of these funding affiliates.
12 So that Brookfield Renewable Power, as manager, can
13 actually cause, in its capacity as a managing partner of a
14 limited partnership, cause the money to be drawn down from
15 these entities. So, I think truly you have it covered.

16 Now, I think we're on the same
17 wavelength as Mr. Roth on -- with respect to written
18 approval of transfers of interests. Obviously, if
19 Brookfield transfers its control of Granite Reliable, the
20 certificate holder, to some third party, that's got to
21 come back to you folks.

22 Secondly, we were asked, "if you don't
23 transfer control, if you maintain control, but somebody
24 else comes in, for instance, Freshet wants to sell

1 5 percent or Brookfield wants to sell 5 percent, will you
2 tell us?" And, the answer was "yes, we will notify the
3 SEC", and something more, a higher level, obviously, if
4 they sell their controlling interest.

5 Now, the issue has been raised "well,
6 what if they don't get the financing?" And, Mr. Roth
7 said, well, he thinks he's hearing two different things.
8 I believe, if you look at the record, and specifically the
9 testimony of Mr. Spreyer, that what he said is that this
10 company has made a decision to invest in this Project and
11 build it. And, they have the money to build it. That's
12 the key. They're the business people. They're the ones
13 that are risking their money. And, they have decided that
14 they want to build this Project as a 75 percent owner of
15 Granite.

16 Now, what he said about the financing
17 is, with respect to the ITC, we don't know for sure, and
18 the record will show Mr. Spreyer said this, "we don't know
19 for sure until we substantially complete the Project
20 whether we're going to get the Investment Tax Credit."
21 That's what he said. So, that has nothing to do with
22 stopping construction at, you know, 10 percent of the way
23 or 30 percent of the way or 40 percent of the way. That
24 decision has been made after they spent their money.

1 Now, with respect to financing, what he
2 said was, they intend to construct the Project. It is a
3 better business decision if, after they begin
4 construction, they can replace some of their equity by
5 leveraging a little bit some debt. That makes good sense
6 normally for business people, if they can do that, to kind
7 of have more balance in your debt/equity capital ratio.
8 That makes some sense. They would like to do that. And,
9 if they do that, they would like to obviously minimize, to
10 the extent they can, the interest rate on that debt
11 through a government guarantee. Now, that -- every
12 business in the world would do that, if the opportunity is
13 out there, you want to try to get the lowest possible
14 rate.

15 So -- but they're going ahead and
16 committing to build this Project, and they're committing
17 their money to build the Project. And, as Mr. Spreyer
18 testified, it would be probably at the earliest in the
19 second quarter, after construction starts, that they would
20 try to do some of this leveraging, improve the debt/equity
21 ratio, make it more balanced. So, they're not imprudent
22 people. They're not going to invest their money, and then
23 say "okay, now we're going to stop, because we didn't get
24 a good enough rate on the loan", or whatever. They know

1 what kind of return they need on their equity, and they're
2 convinced they can get it.

3 So, it's -- I think the bottom line is,
4 and the facts I've just outlined, it's their risk. And,
5 they have told you on the record, they're willing to risk
6 their equity, their own capital, and their investors'
7 capital. They are not imprudent people. They are, as
8 they testified, pretty conservative business people. And,
9 the record will show they are highly successful business
10 people. So, you've got to rely to some extent on the fact
11 that these folks know what they're doing. That they're
12 good business people. And, they make good investments.
13 And, they are cautious about risk-taking.

14 And, I think that, you know, all of us
15 want to, in a way, substitute our judgment and say "well,
16 do they know what they're doing? Do they know how to do
17 this?" The bottom line is, they do.

18 So, finally, I think there's one
19 question before us, as I said at the beginning of my final
20 argument, it's a core issue: Substitute these folks for
21 Noble. I read sometime ago the very excellent closing
22 argument of distinguished counsel, Public Counsel, in the
23 case last year. And, he argued to the SEC about the money
24 issue. And, it was kind of a "where's the beef?"

1 argument, to use an old phrase, and he said "they don't
2 have the money." Ladies and gentlemen of the SEC, now
3 they have the money. Thank you very much.

4 CHAIRMAN BURACK: Thank you, Attorney
5 Pachios. Okay. This will close the public portion of
6 this proceeding. And, we will now turn to deliberations
7 of the Committee.

8 And, I think it might be productive if
9 we were to have, perhaps just before we take a motion,
10 just a discussion just around the horn of general thoughts
11 and reactions with respect to the testimony that we've
12 heard and the evidence that we have before us on the
13 general issues of managerial, technical, and financial
14 capability of the Applicant. Chairman Getz.

15 VICE CHAIRMAN GETZ: Thank you,
16 Mr. Chairman. I think I want to start first about what's
17 the test that we should look at. And, I think
18 Commissioner Campbell framed what's the appropriate
19 inquiry pretty well in his earlier remarks, and I think we
20 need to be reasonably confident that Brookfield is at
21 least as capable as Noble to perform the financial,
22 managerial, and technical obligations that were expected
23 of it by the Committee when we issued the order and
24 Certificate back in July of 2009. So, I think that's the

1 starting place.

2 And, based on what I've heard, and based
3 on the closing statements, I think, not only are they at
4 least as capable, but they're more capable in a number of
5 areas. So, I would be inclined to react positively to a
6 motion today that would -- basically looking at the
7 proposal and the Application, including specifically the
8 issues that they raised about refining the condition --
9 amending the condition about ownership, and also about the
10 advance notice issue on the construction financing.

11 I did have some concern, and I think it
12 goes to the issue that Mr. Roth was speaking to, about the
13 recourse in a type of situation which he characterized as
14 the "false start". I think a lot of times what we see in
15 this types of situations, when there's a sole purpose LLC,
16 that's done for a lot of reasons. And, I think, in
17 Attorney Pachios's closing and some of what we heard
18 earlier in the testimony, it's -- I take it that the
19 Applicant is saying "your recourse is not merely to BGH,
20 which is a single purpose company, but, if there is a
21 "false start" problem, if there is a decommissioning
22 problem at some point, that we can specifically put in a
23 condition that will reach beyond BGH and include, I don't
24 know how specific we have to be, whether, I mean, and,

1 obviously, there's some affiliates, such as BAIF, which
2 has a lot of assets. But I think we can talk about how we
3 structure the condition so that there is recourse beyond
4 just the one LLC that's been created as a vehicle to
5 acquire the interest in GRP.

6 CHAIRMAN BURACK: Thank you.

7 Mr. Harrington.

8 MR. HARRINGTON: Yes. I tend to agree
9 with Chairman Getz's assessment. I think that, just by
10 what they have shown in the way of managerial/technical
11 expertise by their other facilities sort of speaks for
12 itself. They have owned and operated a number of energy
13 facilities, and I think they show they can do that pretty
14 well.

15 As far as the financials go, not only do
16 they bring their own money to the table, apparently, but
17 they also have purchase power agreements signed now that
18 weren't signed by Noble, and that presents them with a --
19 I'm going too fast -- presents them with a source of
20 revenue well into the future, out for the next 20 years,
21 which they have already agreed upon, which is an important
22 thing to have when you're building power plants these
23 days, even in a place with a big company like this one
24 that seems to have enough assets to finance it anyway.

1 So, I think, to answer the question,
2 they have more managerial and technical experience and
3 expertise than Noble had, just because they're a bigger
4 company, with more experience, and their financials are
5 certainly better off. So, I would think we'd be inclined
6 to go along with this. The only question I guess I'd have
7 is that we'd look at the two modifications they're
8 requesting. The change in ownership provision I think
9 seems to be acceptable, provided Brookfield maintains a
10 majority share. And, the commencement of construction, I
11 think they have given us notice that they have the
12 finances in place, the Purchase Power Agreement shows that
13 as well. So, I would be inclined to go along with them on
14 that as well.

15 The overall problem that keeps popping
16 up is "who or what is Brookfield?" I asked that specific
17 question, and was told that it's everybody on their chart
18 that has a "Brookfield" in it that's not -- I guess that
19 wasn't Freshet or this yellow box. So, I would say we
20 simply say, you know, "Brookfield, *et al*" and then list
21 them all, because that's what they said is going to be the
22 guarantor of the certificate conditions.

23 CHAIRMAN BURACK: Thank you. Others?
24 Director Scott.

1 DIR. SCOTT: Again, I tend to agree that
2 Brookfield has showed financial, managerial, and technical
3 expertise and has met that test, my sense. Back to this
4 issue of a ownership, and, again, I -- as it's been well
5 discussed, I think I did have concerns with that, so I do
6 recommend any conditions, should we issue a certificate,
7 include again that Brookfield would be required to notify
8 the SEC of changes of ownership. And, again, it's
9 obviously a given, too, if the controlling interest is
10 changed also. That, I think, would allow, certainly at
11 the public level, also allow visibility in any of those
12 changes. And, potentially, if there's an aggrieved party
13 with any of that, I suppose they could petition the SEC to
14 look at it. But I think that was a positive.

15 CHAIRMAN BURACK: Thank you. Others?
16 Commissioner Ignatius.

17 CMSR. IGNATIUS: Thank you,
18 Mr. Chairman. I agree with the statements that have been
19 made thus far, and are supportive of the requests that
20 have been made. I do think, though, that the issue of a
21 possible change, as time goes on, before construction or
22 before even operation, given possible changes in
23 government programs, is more important and should -- we
24 should stop and make sure we have adequate provisions in

1 place. With all respect to Attorney Pachios, that's not
2 the testimony I heard today. In the notes that I took was
3 a clear statement that, "if government programs that are
4 being anticipated as part of the financing package were to
5 change, the Company would reassess", that was the word Mr.
6 Spreyer used, "would reassess to see if it's still in the
7 financial interest of the Company to continue." I don't
8 get the sense that there's any real expectation that that
9 would happen and that there would be an abandonment of the
10 Project, but that was the statement made today. And, I
11 think we have to be certain that the terms in the existing
12 condition are strong enough -- excuse me, existing
13 certificate are strong enough or add additional conditions
14 today.

15 There's a reference to a decommissioning
16 provision in the existing certificate. One usually thinks
17 of decommissioning as post operation, when everything is
18 up and built. Though, I suppose it could refer to site
19 work and things before an operational level. But, to be
20 clear, I think it's that remediation that might be
21 necessary, if road work has been undertaken, if turbines
22 are partially sited, but not fully, you know, if the site
23 work has been done, that's fairly extensive, and then no
24 project go forward, that their needs to be a clear

1 statement of obligation on the part of the developer to
2 remediate those sites.

3 And, again, I don't have any expectation
4 that's what's going to happen, don't get the sense from
5 the Company that they think that's what's going to happen,
6 but there is clearly some potential for that stated by the
7 witness today. And, if significant pieces of the
8 financing were to change, through no fault of theirs,
9 obviously, they would have to rethink it.

10 So, with that request that we -- that we
11 include a specific condition to require remediation of
12 site work and any other development, I'm not sure quite
13 what the right words are here, so don't take these
14 verbatim, in the case of the Project that's partially
15 started and then abandoned, I would be supportive of
16 granting the request.

17 CHAIRMAN BURACK: Okay. Thank you.
18 Others? Direct Muzzey.

19 DIR. MUZZEY: As have others, I agree
20 that Brookfield has shown they have the capacity to do
21 this Project and to do it well. I also, though, have
22 questions as to how to remediate a project that may not be
23 fully operational. And, also, thinking of the transfer of
24 ownership question, to have a better understanding of why

1 that condition was put on the certificate in the first
2 place, and to be sure that, if that's amended with our
3 certificate today or our approval today, that those
4 protections remain in place as Brookfield goes forward.

5 CHAIRMAN BURACK: Thank you. Others?
6 Anybody else wish to share any thoughts at this time?

7 (No verbal response)

8 CHAIRMAN BURACK: I might just offer the
9 observation that I had asked some questions along the
10 lines of "what would happen if there were a proposed
11 change of management or operational capacity?" And,
12 having thought about that further, I think the answer to
13 that question would be, if we are -- if we do grant the
14 certificate, we're granting the certificate with the
15 understanding that Brookfield is effectively under what
16 they have described here, going to become the owners and
17 operators and managers of this facility. And, if there
18 were to be a proposed change in either operational or
19 management direction here, I think that is something that
20 would need to come back to this Committee for approval,
21 because we would have to, as a Committee, would have to be
22 satisfied that, in fact, the entity proposed to take over,
23 similar to Brookfield, if we make this finding ultimately
24 here today, that they also have the requisite technical

1 and financial capabilities to be able to do that work.

2 So, by my earlier questioning, I was not
3 suggesting that we would simply expect notification in the
4 event that there were going to be a change in operational
5 and management quality here. I think we would expect that
6 that would -- that likewise would have to come back to
7 this Committee for approval.

8 Having said that, I am in general accord
9 with the discussion by the other members of the Committee
10 here today. I do feel that they have -- they have met
11 their burden with respect to a demonstration of their
12 technical, financial, and managerial capabilities here.
13 And, it really will come down to a question of specific
14 conditions that we may wish to include in an approval.
15 That's my perspective.

16 Anybody else wish to share a perspective
17 at this time?

18 (No verbal response)

19 CHAIRMAN BURACK: If not, what I would
20 propose that we do is that we take a motion, I don't think
21 a motion needs to include all of the conditions that would
22 be discussed. My suggestion is we have an initial motion
23 as to whether or not to grant the basic requested
24 approval, that is the transfer of the ownership from Noble

1 to Brookfield. Let's first get that clear. And, then,
2 let's talk about any specific additional aspects of the
3 approval that we may wish to grant, and any other
4 conditions that we may wish to place here. And, the
5 notion here would be that we will basically try to get
6 this all out on the table, have a general discussion about
7 this, in terms of the issues and the conditions that we
8 want to address. We would not attempt to wordsmith these
9 things here today, but we'd be asking our counsel to draft
10 a proposed order consistent with our decision here today,
11 that we would then all review and sign before it becomes
12 final.

13 Does that make sense to everybody?

14 (No verbal response)

15 CHAIRMAN BURACK: Does someone wish to
16 offer an initial motion then? Director Normandeau.

17 DIR. NORMANDEAU: I'd make a motion to
18 grant the Joint Application of Reliable Power, LLC and
19 Brookfield Renewable for approval to transfer equity
20 interest in Granite Reliable Power, LLC, under RSA Chapter
21 162-H.

22 DIR. SCOTT: Second.

23 CHAIRMAN BURACK: Second by Director
24 Scott. Okay. Discussion of this motion? Commissioner

1 Campbell.

2 CMSR. CAMPBELL: Does this motion, I
3 know we're going to talk about conditions, but are we
4 going to take two motions? Are we going to take this
5 issue on transfer of ownership? And, what about the issue
6 of deeming that they have met the construction financing,
7 which Commissioner Getz raised during the questioning? Is
8 that going to be, in your mind, Mr. Chairman, would that
9 be a separate motion? That's not a condition, that's --
10 in other words, they're asking two things, as I understand
11 it. One, that they own what Noble owns. And, two, that
12 they have asserted that they're going to self-finance, and
13 that we need to have a motion that deems that's accepted,
14 I think, or that it is acceptable.

15 CHAIRMAN BURACK: I think we'll take
16 that as a separate motion.

17 CMSR. CAMPBELL: Okay.

18 CHAIRMAN BURACK: I think that's
19 probably the best way for us to do this.

20 CMSR. CAMPBELL: On the first, do we
21 have a second on the first motion?

22 CHAIRMAN BURACK: Yes. Yes, we do.
23 And, Director Normandeau, can you just clarify by your
24 motion what it is that you intended to cover? That is, do

1 you intend to cover both of their requests as they're
2 enunciated on Page 21 of their Application?

3 DIR. NORMANDEAU: I'm getting advice
4 from the peanut gallery. Let me go to 21 and make sure
5 what I'm requesting here.

6 CHAIRMAN BURACK: You will see that --

7 DIR. NORMANDEAU: Actually, yes.

8 CHAIRMAN BURACK: Okay. Thank you. So,
9 it's both to approve the transfer of Noble's 75 percent
10 equity interest in GRP to Brookfield, as was described in
11 the testimony and the Application submittal, and,
12 secondly, to amend the condition limiting changes in
13 ownership to allow further changes, so long as Brookfield
14 retains a controlling interest in GRP?

15 DIR. NORMANDEAU: That's correct.

16 CHAIRMAN BURACK: Okay. Discussion?
17 Commissioner Below.

18 CMSR. BELOW: Well, I'd support that
19 motion, with the understanding that "controlling interest"
20 means both a majority ownership interest and management
21 control of GRP.

22 CHAIRMAN BURACK: Is that --

23 DIR. NORMANDEAU: That's correct.

24 CHAIRMAN BURACK: Is that correct?

1 Okay. Thank you. Any further discussion or questions
2 relating to this motion?

3 (No verbal response)

4 CHAIRMAN BURACK: Okay. Do you have --
5 no. Okay. Very good. Why don't we take a -- just a show
6 of hands on this motion here. And, then, we'll, at the
7 end of this, when we wrap it all up, we'll take a final
8 vote on the entire package as a roll call vote. So, by
9 show of hands, all who support the motion?

10 (Show of hands.)

11 CHAIRMAN BURACK: Any opposed?

12 (No show of hands.)

13 CHAIRMAN BURACK: Any abstentions?

14 (No show of hands.)

15 CHAIRMAN BURACK: Okay. Looks like we
16 have unanimous support for the motion. All right. Let's
17 now have a further discussion of specific conditions or
18 other factors that members feel need to be considered in a
19 written decision. Go ahead, Commissioner Below.

20 CMSR. BELOW: Well, there was the factor
21 of accepting that, upon closing of Brookfield's
22 acquisition of Noble's interests, that it be considered to
23 have met the requirement to have 100 percent of the
24 construction financing necessary to develop the Project in

1 place. And, I don't think that's exactly a condition, but
2 that's a further action they have requested of us. And,
3 so, I'd be prepared to move that, accept that notice upon
4 the closing, that they have the construction financing in
5 place.

6 CHAIRMAN BURACK: Is there a second?

7 CMSR. CAMPBELL: Second.

8 CHAIRMAN BURACK: Discussion of this
9 motion?

10 (No verbal response)

11 CHAIRMAN BURACK: Okay. All right.
12 Just by show of hands, all who would support this?

13 (Show of hands.)

14 CHAIRMAN BURACK: Any opposed?

15 (No show of hands.)

16 CHAIRMAN BURACK: Okay. Thank you.
17 That appears to be unanimously supported as well. Other
18 conditions? Mr. Harrington.

19 MR. HARRINGTON: Yes. One of the
20 concerns all along here, and maybe I'm just missing this,
21 going back and looking at the original order, is the
22 concept brought up by Commissioner Ignatius that the
23 project gets started, then abandoned. And, under the
24 decommissioning section, which was part of the Coos County

1 agreement, it talks in there of basically a trigger for
2 decommissioning would be "365 days not generating
3 electricity". And, then, in the actual certificate, we
4 modified that slightly and put in some caveats having to
5 do with if they have petitions, if they haven't reached
6 the 365 days, but there's a pending application or
7 petition or other request, that wouldn't kick into the
8 decommissioning.

9 But what we don't seem to have is this,
10 unless I'm missing it, this trigger that says "if you
11 never produce electricity, because you get halfway through
12 building the project and then abandoning it, maybe you put
13 in the pads and the roads, and then you decide you're not
14 going to finish it", they're doesn't seem to be a way to
15 trigger the decommissioning at that point. Because you've
16 never generated electricity to start with, so you're never
17 going to get to 365 days after that point. So, I wonder
18 if we need to close that up with something else, with a
19 date, if the project isn't completed by such and such a
20 date, or something to that effect, that the
21 decommissioning will be commenced under the terms there to
22 the extent that the project was built.

23 CHAIRMAN BURACK: Are you making this as
24 a motion or are you --

1 MR. HARRINGTON: I would guess, yeah.
2 I'm putting it out as a concept, I don't have any exact
3 words, but maybe Mr. Iacopino can help. Did we have a
4 provision in there that I'm missing that says, "if the
5 project's halfway completed, and then gets abandoned, that
6 the decommissioning kicks in"? Because the only trigger I
7 can find is the "365 days of non-production of
8 electricity".

9 CHAIRMAN BURACK: And, can you point to
10 us --

11 MR. HARRINGTON: Page 6 of the Coos
12 County Agreement, which is an attachment to the
13 Certificate. I think it's -- I don't know, I don't have
14 the numbers here. It's Coos County Agreement, --

15 MR. IACOPINO: Appendix 2.

16 MR. HARRINGTON: -- Appendix 2, Page 6.
17 And, then, there's an Appendix 3, which also addresses
18 decommissioning. And, again, it has that "365 day"
19 trigger, with a caveat that there's -- you could be more
20 leeway if there was a pending application.

21 MR. IACOPINO: Well, one, to answer your
22 question to me, Mr. Harrington, one way that you could
23 structure such a -- sort of an addition to that condition
24 is that, upon commencement, use the term "upon

1 commencement of construction as defined by the statute".
2 Once construction is commenced, the decommissioning
3 conditions go into effect, which would --

4 MR. HARRINGTON: I think I agree with
5 that, but we also have to have something that triggers it.
6 Because you start construction, the terms of the
7 decommissioning agreement goes into effect, but then, when
8 do you have to start implementing the decommissioning
9 agreement? The way it's set up now, it would be 365 days
10 after not generating power. But, if you never got to the
11 point where you're generating power, you're never going to
12 get to 365 days after that. So, there would have to be
13 some other trigger. "If the project isn't completed
14 within four years" or something like that, then --

15 MR. IACOPINO: My point is, is if the
16 initial trigger is the commencement of construction, that
17 those 365 days from the commencement of construction
18 without generating power, theoretically, the
19 decommissioning would kick in.

20 MR. HARRINGTON: Does that give them
21 enough time, though?

22 MR. IACOPINO: That I don't know. You
23 asked me how to structure it --

24 MR. HARRINGTON: I'm hearing about a

1 year or so. And, I wouldn't want to have them start
2 decommissioning because of a few days. That's not my --

3 MR. IACOPINO: Well, that's one way to
4 address your question. I'm actually looking to see if we
5 actually had addressed that in the original order itself.

6 MR. ROTH: If it would help, Counsel to
7 the Committee, there's a provision on Page 4 of the order
8 regarding revegetation of certain areas, the third from
9 the bottom paragraph. That's another provision that might
10 have some bearing on your deliberation.

11 CHAIRMAN BURACK: Thank you very much.

12 MR. IACOPINO: I don't think we actually
13 addressed sort of that initial trigger in the order.

14 CHAIRMAN BURACK: Director Scott.

15 DIR. SCOTT: I concur that there needs
16 to be a trigger. Again, I agree that a year doesn't make
17 sense. And, I would also argue, I don't think it's in
18 anybody's best interest, should the developer get
19 50 percent complete, for whatever reason, stop the
20 project, I would assume it would be of interest to
21 somebody to finish that project. And, it would be of
22 certain interest, in the interest of the state. So, I
23 wouldn't want to stand in the way of that unnecessarily.
24 So, I don't know what the timeframe would be. I'd feel

1 more comfortable with four years than I would a year.

2 CHAIRMAN BURACK: Direct Normandeau.

3 DIR. NORMANDEAU: I would agree. I
4 don't know why, I was thinking in terms of four years
5 myself. But, you know, something on the order of, if the
6 project has begun, and construction ceases for a period
7 of, you know, four years, commence, you know, the
8 decommissioning process, if you will. And, there should
9 also, I think, be some provisions in there that, should
10 abandonment happen at any stage, that, for any period of
11 time, that suitable erosion controls and this and that and
12 the other thing should be in place to stabilize things as
13 they are at the time.

14 CHAIRMAN BURACK: Director Scott.

15 DIR. SCOTT: I'm not advocating this,
16 but I will bring it up. Obviously, there's a
17 decommissioning plan which requires certain amounts of
18 money to be deposited in the outer years. I guess I'd ask
19 the open question, and, again, I think the Company has
20 shown financial viability, so I don't think this is
21 necessarily an issue we need to address. But, "should the
22 Company become financially insolvent, what happens then if
23 it's during construction?" I guess would be the question.

24 MR. HARRINGTON: Mr. Chairman, may I

1 just address that?

2 CHAIRMAN BURACK: Mr. Harrington.

3 MR. HARRINGTON: I think we, for the
4 most part, have that covered. Where we talk, in the last
5 paragraph of the "decommissioning" section of the Coos
6 County Agreement, it says "GRP shall, on an annual basis,
7 provide the County with proof", this is before year 10,
8 when the full decommissioning fund is going to be
9 financed. So, "Prior to the establishment of the full
10 Decommissioning Fund at the end of year 10, GRP shall on
11 an annual basis provide the County with proof (through
12 insurance or other means) of its financial ability to
13 carry out [the] decommissioning should it be required
14 prior to year 10." And, then, there's a caveat we added
15 to that that says "In addition to providing annual proof
16 of financial ability to carry out decommissioning should
17 it be required before 10 years, the Applicant shall
18 provide such proof to the County any time it's requested."
19 So, I think we've got that part fairly well covered.

20 Would it be out of order here to simply
21 ask the Applicant what a reasonable time from the start of
22 construction would be to have a decommissioning trigger?

23 CHAIRMAN BURACK: Commissioner Campbell.

24 CMSR. CAMPBELL: I guess I'm trying to

1 look at this motion or order that we're working to craft
2 based on what it is that's germane to the sale and to the
3 certification that construction funds are available. I'm
4 uncomfortable, even as innocuous as it seems, to start
5 exploring other permit conditions and order conditions
6 that I wasn't privy to in days and days of hearings about
7 how this was intended to be handled if construction didn't
8 go forward or where decommissioning is at. Seems to me
9 that what's germane today is, is there sufficient
10 financial strength to allow a sale to the new entity?
11 And, is the -- is their certification that they're going
12 to self-finance enough to allow us to let them go forward
13 with the construction?

14 So, again, I don't think that it's -- I
15 am uncomfortable, no matter where we start, looking at
16 other parts of the order outside of that financial
17 efficacy or viability, Mr. Chairman.

18 CHAIRMAN BURACK: Thank you,
19 Commissioner Campbell. Yes.

20 VICE CHAIRMAN GETZ: If I could just try
21 to address at least what I understand to be the
22 difference. I think what we have, the factual
23 presumptions are different. If I recall correctly from
24 the underlying certificate, I think the expectation was --

1 was that the Applicant would get construction financing in
2 place, and then would start to commence the construction.
3 And, I think what we have now is the potential that there
4 are other affiliates of Brookfield who can have the funds
5 to start construction now, need to actually start
6 construction now to qualify for some of the federal tax
7 incentives. And, I think that led to what Mr. Roth was
8 calling the "false start" problem. That they could
9 actually start some -- start some construction of some
10 sort, road clearing, whatever it might be, and then I
11 think that led to Mr. Spreyer's testimony about, if the
12 DOE funding were not available, it was, at least
13 conceivably, they might be in a position not to proceed.
14 So, there's that.

15 So, there's an exposure here that I
16 think is a little different, it may be slight. And, I
17 think what Commissioner Ignatius and others have been
18 trying to do is how to craft a condition that would
19 remediate or would be comparable to decommissioning, if
20 that set of facts ever occurred, that they would start to
21 do some work, the funding would not be there, they would
22 decide not to go forward with the Project. And, so, how
23 do we put a condition together? And, I think that's what
24 is trying to be done.

1 CMSR. CAMPBELL: Okay. That's very
2 helpful. I stand corrected. That's helpful.

3 CHAIRMAN BURACK: Director Normandeau.

4 DIR. NORMANDEAU: Yes. I believe their
5 exact words were that they would have to reassess what the
6 best interest of their stockholders were. And, so,
7 recognizing that, that's -- I think it's probably -- we
8 should probably have a provision to account for that.

9 CMSR. CAMPBELL: Thank you.

10 CHAIRMAN BURACK: I might offer just a
11 thought here, I don't know if this would help advance the
12 discussion, but let me just put this out here. We heard
13 testimony to the effect that, in order to obtain the
14 Investment Tax Credit, which would certainly be a piece of
15 the financing, at least it would make the Project more
16 attractive, ultimately, they would have to be operational
17 by January 2013, that is essentially operational two years
18 from now. And, perhaps we could address this, the concern
19 that we have about the Project not getting completed in a
20 timely way or stalling, by asking that Brookfield would
21 notify the Committee by January 2013 if the Project is not
22 operational by that time, and explain to us at that time
23 why it is that they feel that the failure to be
24 operational by that date should not trigger a

1 decommissioning of the Project, pursuant to the terms of
2 the decommissioning requirements set forth in the
3 agreement with Coos County. And, that might be a way for
4 us to do this. It's not affirmatively saying that "they
5 must start decommissioning", but basically saying, "if you
6 haven't met the time line that you thought you were going
7 to meet, tell us why you shouldn't have to start
8 decommissioning."

9 MR. HARRINGTON: That would address my
10 concern. So, I think that's a very nice solution.

11 CHAIRMAN BURACK: Okay. Does that --
12 Director Muzzey.

13 DIR. MUZZEY: And, I also have a note
14 that Brookfield, in speaking with Counsel for the Public,
15 they did say that it was willing to remediate the site if
16 this type of false start happens. So, they have agreed to
17 that in conversation today.

18 CHAIRMAN BURACK: Thank you. That's
19 helpful.

20 CMSR. CAMPBELL: So, do you have that as
21 a motion?

22 CHAIRMAN BURACK: Director Morin.

23 DIR. MORIN: I just have one more
24 question, just relative to, and the trouble is it gets

1 into other conditions, in terms of a substantial delay to
2 construction, and whether you have temporary roads and
3 stabilization of temporary conditions. So, I don't know
4 if that's getting too much into technical things that
5 haven't been discussed before. But you could have a
6 situation where you have a lot of sediment, you know, you
7 could have some damaging environmental conditions because
8 you have a temporary construction situation that's not
9 stabilized. And, I don't know if that could be taken into
10 account or that's getting too much into new conditions and
11 changing an order that's already been thoroughly
12 discussed. So, --

13 CHAIRMAN BURACK: Well, it's a very good
14 question, and I'm not familiar in detail with the original
15 -- the details of the original Certificate of Site and
16 Facility. But I would expect that, in the case of
17 stormwater issues or run-off issues, that the Department
18 of Environmental Services would retain jurisdiction to be
19 able to enforce the terms of the permits that effectively
20 are being issued or have been issued as part of the
21 original Certificate. And, so, if there were to be water
22 quality violations, for example, occurring, I don't think
23 it would be necessary, in most instances, to invoke the
24 authority of the Site Evaluation Committee in order to

1 enforce those terms and conditions. I would expect that
2 the Department of Environmental Services or, in certain
3 circumstances, even the Attorney General's Office would be
4 able to bring enforcement actions to ensure that necessary
5 measures are taken. And, of course, there could also be
6 federal enforcement authorities as well related to the
7 Project.

8 CMSR. CAMPBELL: We certainly have it on
9 I-93.

10 MR. IACOPINO: I would just point
11 something out for the Committee is that, in the Alteration
12 of Terrain Bureau conditions and in the Coos County
13 Agreement, there are, in fact, limitations on the amount
14 of disturbance at any time, at any given time. Condition
15 7 of the Alteration of Terrain Permit requires that "The
16 smallest practical area shall be disturbed during
17 construction activities." Condition 8 says that
18 "Construction shall proceed in accordance with the
19 "Overall Phasing Plan" developed by Horizons Engineering",
20 which was an exhibit that we received as part of that
21 proceeding. And, in addition, there is limitations in the
22 agreement with Coos County on "Storm Water Pollution
23 Control, at Section 10(e) of that agreement.

24 So that I guess what my only thing that

1 I would point out to the Committee is I don't think you're
2 going to have everything in the entire project in a
3 temporary phase, and then this false start situation.
4 That there is reclamation going on or remediation going on
5 as part of the overall timeline of construction. And,
6 they're only disturbing portions at a time.

7 DIR. MORIN: Can I follow up?

8 CHAIRMAN BURACK: Director Morin.

9 DIR. MORIN: Then, I think this serves
10 as a record to say that, you know, that's how we've
11 addressed that concern that there are existing permitting
12 authorities that can address that, if construction is
13 temporarily halted. And, I'm definitely comfortable with
14 that.

15 CHAIRMAN BURACK: Okay. So, I'm just
16 trying to get a sense then. Do folks feel that we need a
17 condition in here to the effect that, if they have not --
18 if the Project is not operational by January 2013, we
19 would be expecting Brookfield to provide us with
20 documentation explaining why it is that they -- they are
21 still moving forward with the Project and should not be
22 expected to begin decommissioning at that time? Is that a
23 condition that we would want to include? Director Scott.

24 DIR. SCOTT: Just in the interest of the

1 Committee's time, maybe we add six months to that, just to
2 keep us from having to go through more paperwork than we
3 need to.

4 CHAIRMAN BURACK: So, July of 2013?
5 Director Muzzey.

6 DIR. MUZZEY: Just a question, a
7 clarification. Were you using January of 2013, because
8 that's the time period, the end date for the ITC?

9 CHAIRMAN BURACK: That's correct.
10 Because I think they had given us indication that they
11 would have very strong incentive to have the Project
12 completed and to be operational by that date at the very
13 latest.

14 DIR. MUZZEY: I had written down
15 "December 2013" for that date.

16 CHAIRMAN BURACK: I'm sorry. It expires
17 in December 2013. So, in my notes, I had advanced that to
18 January 2013. So, we can -- we can pick any time from, if
19 this is what we want to go as a direction, we can pick any
20 time between January and July of 2013, perhaps, and just
21 say, "if you're not operational by then, we'd just like
22 you to tell us, you know, what your status is and why it
23 is that you shouldn't be asked to be expected to start
24 decommissioning the Project."

1 MR. IACOPINO: I'm sorry, I think we
2 have a correction to the ITC --

3 (Multiple people speaking at the same
4 time.)

5 CHAIRMAN BURACK: I'm sorry.
6 Mr. Spreyer.

7 WITNESS SPREYER: The ITC, to obtain the
8 ITC, the Project would have to reach commercial operations
9 by December 31st of 2013.

10 CHAIRMAN BURACK: By December 31st of
11 2013.

12 WITNESS SPREYER: Correct.

13 CHAIRMAN BURACK: Thank you.

14 CMSR. CAMPBELL: So, it would be July of
15 2014 under your --

16 CHAIRMAN BURACK: So, thank you for that
17 clarification, Mr. Spreyer. So, you have to be
18 operational by December 31 of 2013. So, the concept that
19 I was laying out would be more effective, I think, if we
20 were to say we would expect them to let us know sometime
21 between January and July of 2014, if they were not
22 operational by that time as to why it is they should not
23 be expected to begin decommissioning. Is that consistent
24 with people's thinking?

1 MR. HARRINGTON: Yes.

2 CHAIRMAN BURACK: Does that give us
3 comfort? What's the preference? Do we want this in
4 January or do we want this in July?

5 CMSR. CAMPBELL: July.

6 MR. HARRINGTON: July.

7 CHAIRMAN BURACK: All right.

8 CMSR. CAMPBELL: It's three and a half
9 years, compared to four.

10 CHAIRMAN BURACK: Okay. So, we would
11 ask then -- the motion would be that, if somebody wishes
12 to make this as a motion, that, if the Project is not
13 operational by, say, July 31st of --

14 CMSR. CAMPBELL: 2014.

15 DIR. MUZZEY: 2014.

16 CHAIRMAN BURACK: July 31st. I was just
17 trying to remember whether there were 30 or 31 days in the
18 month of July, but --

19 CMSR. IGNATIUS: Thirty days.

20 CHAIRMAN BURACK: Thirty days in the
21 month of July. July 30th, 2014, if they're not
22 operational by that time, they would file with us a
23 document explaining why it is that they still expect to be
24 able to get the project operational and what time frame.

1 And, if they're not, why they should not have to begin
2 decommissioning at that time.

3 DIR. SCOTT: So moved.

4 CHAIRMAN BURACK: Is there a second?

5 DIR. NORMANDEAU: Second.

6 CHAIRMAN BURACK: Any further discussion
7 of this issue? If not -- yes.

8 DIR. MORIN: Just one question on that
9 motion. It's an assumption that they would have to file
10 why they shouldn't go into decommissioning or start
11 decommissioning? It seems like there's another side to
12 that, that is it closed? I'm not sure.

13 CHAIRMAN BURACK: I was not intending it
14 to make it as an absolute hammer that they had to begin
15 decommissioning as of that date.

16 DIR. MORIN: Okay.

17 CHAIRMAN BURACK: It's really a show
18 cause is what this is all about.

19 DIR. MORIN: Okay.

20 CHAIRMAN BURACK: By show of hands, are
21 we all, in the concept, comfortable with this?

22 (Show of hands.)

23 CHAIRMAN BURACK: Any opposed?

24 (No show of hands.)

1 CHAIRMAN BURACK: Any abstentions?

2 (No show of hands.)

3 CHAIRMAN BURACK: Okay. Looks like
4 we're all comfortable on that issue. Other conditions
5 that we need to discuss or include here? Director Morin.

6 DIR. MORIN: My condition was a
7 notification of changes in ownership. I believe we talked
8 about making sure there's a public record of those
9 changes.

10 CHAIRMAN BURACK: So, it would be a
11 motion that we would expect that, prior to any changes of
12 ownership beyond those, well, and this may be a question
13 of trigger, what we want to have be the trigger here, but
14 changes in ownership, we would receive prior written
15 notification to the Chairman of the SEC of any proposed
16 changes?

17 DIR. MORIN: And, is that just a
18 notification? I think at what point, Chairman, you raised
19 the issue of, if it affected -- I'm not sure if it was
20 just affecting management control, of whether there's
21 approval or not, and I don't recall in what circumstance
22 you were talking about that.

23 CHAIRMAN BURACK: No, I think what we've
24 been talking about here really would relate solely to

1 changes in ownership, particularly the equity ownership.

2 I'm sorry? Non-controlling ownership.

3 DIR. MORIN: Okay.

4 CHAIRMAN BURACK: In other words, to the
5 extent that --

6 DIR. MORIN: Yes.

7 CHAIRMAN BURACK: -- any shares that are
8 below the 51 percent thresholds, changes in ownership of
9 those equity interests we would expect to be notified --

10 DIR. MORIN: Notification.

11 CHAIRMAN BURACK: -- in advance. Yes.

12 CMSR. BELOW: And, just to be clear,
13 that would be in -- of Granite Renewable [Reliable?]
14 Power, LLC, the ownership change, that's where we would
15 expect to be notified. Not affiliates that are up the
16 chain. If there's some different investor in one of the
17 affiliates up the chain, we don't care about that. It's
18 changes in ownership of Granite Reliable Power, LLC. And,
19 we're not -- I think the understanding with the previous
20 condition is that they would have to come back to the SEC
21 for a change in controlling interest, i.e., majority
22 ownership interest or management control of the Project,
23 i.e., Granite Reliable Power, LLC.

24 CHAIRMAN BURACK: Director Scott.

1 DIR. SCOTT: I guess I have a question.
2 And, I agree with the discussion, obviously, I think I
3 brought this up originally. But the nuance you're adding,
4 which I haven't really thought through, is in advance is
5 what you're saying. And, I'm wondering, the testimony I
6 heard is, if there's a cash call, they would go to the
7 next in the line or whatnot. So, I guess I'd question how
8 you get that in advance?

9 CHAIRMAN BURACK: And, that's a very
10 good point. That may not be practical. Maybe just be
11 that we would expect timely -- timely notice of changes in
12 ownership of the non-controlling interests in Granite
13 Reliable Power, LLC, as Clifton suggested. Director
14 Morin.

15 DIR. MORIN: My understanding that it
16 was just notification. And, then, if there was a concern,
17 someone could petition the SEC for any concern. So, I
18 thought it was a notification. So, I think it should be
19 not -- should be relative to not interfere with the course
20 of business.

21 CHAIRMAN BURACK: All right. Okay.
22 Further discussion? Mr. Harrington.

23 MR. HARRINGTON: Yes. Just as far as,
24 this question kind of come up a couple of times, who the

1 certificate is going to be actually issued to? I guess it
2 goes to Granite Reliable Power, LLC. But I notice in the
3 Application, it's been submitted jointly by Granite
4 Reliable Power, LLC, and Brookfield Renewable Power, Inc.
5 And, looking on this chart, I can't find the Brookfield
6 Renewable Power, Inc., any place. So, I'm just -- what
7 group or groups of entities are we going to be saying is
8 responsible for complying with the terms and the
9 conditions?

10 CHAIRMAN BURACK: I'd like to set that
11 question aside for a moment, if we could.

12 MR. HARRINGTON: Okay.

13 CHAIRMAN BURACK: And, we'll come back
14 to that question. I want to resolve the other issue that
15 we had on the table first here, if we could.

16 Does somebody want to, coming back to
17 the issue we just had, does somebody want to make a
18 specific motion on this condition?

19 DIR. MORIN: Well, that's fine. I
20 started it. So, we move that there be a condition for
21 notification of changes in non-controlling interests in
22 Granite Reliable.

23 CHAIRMAN BURACK: Granite Reliable
24 Power, LLC?

1 DIR. MORIN: Yes.

2 CHAIRMAN BURACK: Okay. Is there a
3 second?

4 MR. HARRINGTON: Second.

5 CHAIRMAN BURACK: Mr. Harrington.
6 Further discussion? Okay.

7 CMSR. BELOW: And, this is not prior
8 notice, it's just notice?

9 DIR. MORIN: Just notice.

10 CMSR. BELOW: Timely notice.

11 DIR. MORIN: Timely notice.

12 CHAIRMAN BURACK: As soon as they can,
13 before or after the event of --

14 DIR. MORIN: Correct. That is the
15 intent of the motion.

16 CHAIRMAN BURACK: Okay. Again, just by
17 show of hands, all who would support that?

18 (Show of hands.)

19 CHAIRMAN BURACK: Any opposed?

20 (No show of hands.)

21 CHAIRMAN BURACK: Abstentions?

22 (No show of hands.)

23 CHAIRMAN BURACK: Okay. Looks like
24 that's unanimous as well. Okay.

1 CMSR. BELOW: To Mr. Harrington's
2 question, on that chart, Exhibit Spreyer 2, in the upper
3 left corner, the reference is "U.S. Holding of BRPI", as I
4 understand it, for Brookfield Renewable Power, Inc., and
5 that's sort of the top of the chain, if you will. And, as
6 I understand it, Brookfield Renewable Power, Inc., is also
7 somehow a subsidiary of Brookfield Asset Management, which
8 is the true parent as I gather. But Brookfield Renewable
9 Power, Inc., is the one that's consolidated financial
10 statements are described and is described as the
11 Applicant, along with its affiliates. And, so, I would
12 say, you know, they're a Co-Applicant with Granite
13 Renewable [Reliable?] Power, LLC, seeking our permission
14 to change the ownership. But I would say that maybe an
15 additional condition to make clear would be that Granite
16 Renewable [Reliable?] Power, Inc., be also bound to the
17 conditions of the site -- what's it called?

18 MR. HARRINGTON: The certificate?

19 CMSR. BELOW: Right. The certificate
20 and the conditions originally approved by the SEC. So
21 that, in that way, Granite -- I mean, Brookfield Renewable
22 Power, Inc., shares in the decommissioning liability or
23 responsibility, for instance.

24 MR. HARRINGTON: Yes, that's what I was

1 trying to get at.

2 CHAIRMAN BURACK: Director Normandeau.

3 DIR. NORMANDEAU: I think my first
4 motion was to accept the Joint Application of Granite
5 Reliable and Brookfield. So, I assume the Certificate is
6 made out to both of them, and they both bear
7 responsibilities, no?

8 MR. IACOPINO: Just as a factual matter,
9 a legal matter, the Certificate was granted to Granite
10 Reliable Power, LLC, which is a limited liability company,
11 which, upon closing of the transaction with Noble, will be
12 owned by -- indirectly by Brookfield Renewable Power,
13 Inc., and Freshet; 75 percent Brookfield and its
14 affiliates and 25 percent Freshet. So that Brookfield is,
15 in fact, the Co-Applicant, Brookfield Renewable Power,
16 Inc., is sort of the collective Co-Applicant on this
17 Application.

18 CHAIRMAN BURACK: So, Mike, how would
19 this circumstance differ, for example, from the
20 circumstance that the Committee addressed recently with
21 respect to the Laidlaw proceeding? Where we had various
22 entities in a corporate structure, all of which were
23 affiliates of each other. And, I believe, in that
24 instance, to address these -- I think a similar kind of

1 concern about ensuring that we have all the parties
2 responsible for ensuring that things get done, we included
3 a condition that effectively made them all jointly liable
4 and responsible, and effectively guarantors of performance
5 under the terms of the Certificate that was issued in that
6 proceeding. Would this differ in any material way from
7 that?

8 MR. IACOPINO: Just so everybody's
9 clear, is I believe that Brookfield Renewable Power, Inc.,
10 is, in fact, financially liable under -- based upon the
11 representations that they have made to the Committee.
12 But, if you wanted to make that clear by a motion, you
13 could make a motion that's similar to what was done in
14 Laidlaw, and simply add a condition that "all the terms
15 and conditions of the Certificate are binding upon Granite
16 Reliable Power, LLC, and Brookfield Renewable Power, Inc.,
17 and its affiliates as listed in its Application."

18 CHAIRMAN BURACK: Is there a motion to
19 that effect?

20 MR. IACOPINO: But, just so you know, if
21 you were asking me this in a different context, I would be
22 telling you that Brookfield Renewable Power, Inc., is, in
23 fact, liable. So, this is just window dressing. Yes.
24 Belt and suspenders.

1 CMSR. IGNATIUS: Mr. Chairman, one
2 possibility would be to note that, in the order itself,
3 note the statements of the Applicant that it acknowledges
4 that responsibility among all of the different affiliates,
5 and not make it a specific condition. If the fear is
6 that, by stating it when you don't need to, are you
7 suggesting that, when you don't state it, it doesn't
8 exist. It could backfire on us. And, we certainly
9 wouldn't want to do that. So, maybe the wiser course is
10 to acknowledge the discussion here, the concern, and the
11 Applicant's agreement, and its recognition that Brookfield
12 Reliable Power, Inc., is also bound by the terms of the
13 Certificate would be better.

14 CHAIRMAN BURACK: Okay. Is there a
15 comfort level with that approach, not including this as a
16 specific condition, but mentioning this as Commissioner
17 Ignatius has suggested?

18 DIR. MORIN: Yes.

19 CHAIRMAN BURACK: Okay. I'm seeing
20 nodding heads all around. So, that looks like that's how
21 we will address that, that issue in the order.

22 Are there other issues or conditions
23 that the membership would like to discuss?

24 (No verbal response)

1 CHAIRMAN BURACK: I think, as the order
2 is being drafted, it is possible that other standard types
3 of conditions may occur to us and to our counsel. And, I
4 would just ask the Committee to acknowledge and agree
5 that, to the extent that any additional standard terms or
6 conditions are identified, that we would agree that they
7 would be included in a final order here.

8 MR. IACOPINO: Those types of things
9 would be things like notification of change of address and
10 things of that nature.

11 (Chairman Burack, Vice Chairman Getz and
12 Atty. Iacopino conferring.)

13 CHAIRMAN BURACK: Mr. Harrington, did
14 you have something further?

15 MR. HARRINGTON: Yes. I just wanted --
16 I assumed this is the case, but I just wanted to make sure
17 that, with the exception of the two conditions that we
18 discussed, the one about change of the ownership structure
19 and the commencement of construction based on financing,
20 all the rest of the conditions from the original order
21 will be transferred to the new one or will remain in
22 effect, whatever the correct term is?

23 CHAIRMAN BURACK: I think, from a legal
24 standpoint, the original Certificate remains in place, and

1 really what we're doing is --

2 MR. HARRINGTON: Modifying.

3 CHAIRMAN BURACK: -- modifying or
4 amending the terms of the Certificate. I want to just
5 take a moment here, before we have a final approval here
6 from the Committee of this, just to turn to Attorney
7 Pachios and just ask you, is there anything that you've
8 heard us discuss here today that, from a business
9 standpoint or a legal standpoint, would be very
10 problematic? Have we deliberated in a fashion that will
11 create something that could create unintended
12 consequences?

13 MR. PACHIOS: Could I -- I have a couple
14 of things in my head. Could we take two minutes to
15 consult with our clients about that? Let me just say
16 that, the reason I want to do that is, there are
17 conditions being put on us that were not on the original
18 owners, Noble. So, there are additional conditions on us,
19 even though we appreciate the two that you modified to
20 take away. So, I want to try to -- I've listened to you
21 discuss it, try to remember with my colleagues what the
22 conditions are, the new conditions that are going to find
23 its way into the Certificate that weren't there before.
24 And, just two minutes, I think, three minutes.

1 MR. IACOPINO: Mr. Pachios, when you do
2 that, please keep in mind that part of the reason for this
3 occurring is because there's no longer an approval of
4 financing condition that will exist. So, that's at the
5 route of why we're going through these conditions here.

6 MR. PACHIOS: I agree with Mr. Iacopino.
7 And, I would just say one thing, and this is not in the
8 form of argument. But, if we were to go and say "okay,
9 we're not going to use our money here, and we're going to
10 go and do what Noble was going to do, which is to get
11 construction financing", the same thing would happen with
12 a third party lender. You sit down with the lender and
13 say "Wait a minute, the world has changed. There's been a
14 catastrophe. We may not be able to proceed beyond the
15 first 10 percent of this project." Identical thing could
16 happen there, but I don't mean that in the form of
17 argument.

18 MR. IACOPINO: No, but that's actually
19 part of the problem, if you think about it. Because we
20 knew that they weren't going to start unless they had that
21 control by a third party lender over them. In your case,
22 it's very possible that you will start construction with
23 your own money. We have no control over that. And,
24 there's no bank to control it either. That's what started

1 these deliberations.

2 MR. PACHIOS: I agree, and I'm not
3 arguing. But a third party lender would, after there was
4 a 10 percent drawdown, if there was a catastrophe in the
5 world, would go to its debtor and say "Hey, wait. We
6 don't want you to spend more money here. There's been a
7 disaster." And, it would stop. Because the third party
8 lender doesn't want to lose its money either. That's all
9 I'm saying. It's pretty -- pretty similar. But I'm not
10 arguing. I'll take two minutes, and I'll --

11 CHAIRMAN BURACK: Please. Please take a
12 couple minutes. Thank you. We're going to stand in
13 recess for a minute.

14 DIR. SCOTT: Mr. Chair, a matter of
15 housekeeping? Will somebody be collecting the
16 confidential documents?

17 CHAIRMAN BURACK: Yes, we will.

18 (Whereupon a recess was taken at 2:47
19 p.m. and the hearing reconvened at 3:01
20 p.m.)

21 CHAIRMAN BURACK: Why don't we resume.
22 Attorney Pachios.

23 MR. PACHIOS: Thank you, Mr. Chairman.
24 And, we apologize for taking a little longer. But, as you

1 can imagine, when there's seven or eight people, it takes
2 a little bit of time. I think we understand the
3 conditions, the additional conditions you're talking
4 about. And, I think they're all right. Let me just say
5 what we understand them to be.

6 CHAIRMAN BURACK: Okay. Thank you.

7 MR. PACHIOS: One was, if we haven't
8 completed construction by the end of July 2014, to come
9 back and tell you why. And, that 2014 date was a date six
10 months after it was we said that the opportunity to get
11 these grants would close out. We've been informed by
12 Attorney Linowes, who showed us the law, that actually
13 it's December 31st, 2012, not 2013. So, the show cause
14 actually would make it even better for you. The show
15 cause would be 07/30/13, instead of 07/30/14.

16 Then, the second piece is notice of any
17 changes, even if non-controlling, just notice, even if
18 they don't change control of Granite Reliable. And,
19 that's fine. We'll notify you of that.

20 The third is who stands behind all of
21 these commitments that were made here today to abide by
22 the conditions, to abide by the elements of the
23 Certificate, and other than just Granite Reliable. And,
24 we do. And, who is "we"? I think the question was asked,

1 and I tried to cover it in my final argument. The
2 Applicant is Brookfield Renewable Power, Inc. But it's
3 the operating company in all of this. The other little
4 crushed moons in that Spreyer exhibit are just "show us
5 where the money comes from." Those -- that's the river
6 course of the money. But the operator is Brookfield
7 Renewable Power. Brookfield Renewable Power is the
8 Applicant. And, because the money comes from its
9 affiliates, the Applicants, we define "Brookfield" overall
10 as "Brookfield Renewable Power and the affiliates" with
11 the above.

12 Brookfield Renewable Power also has a
13 lot of money. But, if you put them all in, Brookfield
14 Renewable Power and its affiliates, that's the Applicant
15 here, and they have said it on the record, and they will
16 say it here again. They stand behind what they said, and
17 they said that they would ensure that the terms and
18 conditions of your Certificate would be, you know, they
19 would abide by it, or they would ensure that Granite
20 abides by it.

21 So, I think we're there. And, if those
22 are your issues, I think that's it.

23 CHAIRMAN BURACK: Thank you very much.
24 Appreciate that. All right. Let me just take a moment

1 here to try to summarize as a follow-up to Attorney
2 Pachios's comments here, just to summarize for everybody
3 where I think we are, and just want to make sure that this
4 is a fair summary. If it is, I would ask somebody to make
5 a motion to this effect, so that we can effectively
6 encapsulate everything that we've discussed here this
7 afternoon.

8 I think we have -- we have agreed,
9 consistent with the -- or, the notion here is consistent
10 with the original motion first made by Director
11 Normandeau, that we would grant the requested approval to
12 transfer the ownership, and to specifically require or to
13 -- I'm going to Page 21 of the original order here, and to
14 amend the condition limiting changes in ownership to allow
15 further changes in ownership of the non-controlling
16 interests, so long as Brookfield retains a controlling
17 interest in GRP.

18 Second, consistent with Attorney Below's
19 motion, we would --

20 CMSR. BELOW: I'm not --

21 CHAIRMAN BURACK: I'm sorry,
22 Commissioner Below's motion, who may be entitled to an
23 honorary law degree, if nothing else, to acknowledge that
24 the transfer of ownership, upon the closing of the

1 acquisition, would satisfy the commitment to provide 100
2 percent of the construction funding necessary to develop
3 the Project.

4 Then, further, a condition that, and
5 this is different from -- this is different from the date
6 we had previously agreed in our earlier discussion, but
7 that, if the Project has not been completed, that is
8 construction has not been completed by the end of July of
9 2013, that we would expect the Applicant, the Project
10 owner, GRP and Brookfield, to effectively show cause, that
11 is to explain what the status of the Project is and why it
12 is that they expect to be able to complete the Project,
13 and should not be required at that time to commence
14 decommissioning of the Project.

15 Further, and I believe this is -- well,
16 I think this is in addition to our original, to the first
17 part of this motion, that we would expect notification of
18 any change in ownership on a timely basis, and that is any
19 changes in the non-controlling interests here.

20 And, finally, we had discussed earlier
21 not making this a condition, but, given the statement just
22 made by Attorney Pachios, it seems to me that there would
23 be no harm done, so that there is absolute clarity here
24 for all concerned, that Brookfield Renewable Power, Inc.,

1 and its affiliates are expected to ensure the terms of the
2 Certificate are, in fact, abided by Granite Reliable
3 Power.

4 So, I think those are the basic terms
5 and conditions that we have discussed as the terms and
6 conditions of the Certificate. Is there any --

7 CMSR. CAMPBELL: I didn't hear you say,
8 and maybe you did and it just didn't register with me,
9 that about deeming that they meet the condition by
10 self-financing the construction, did you say that and I
11 missed it?

12 CHAIRMAN BURACK: Yes. I did mention
13 that, in reference to the --

14 CMSR. CAMPBELL: Okay.

15 CHAIRMAN BURACK: -- to the earlier
16 motion that had been made by Commissioner Below. So, I
17 think we've captured it. And, again, with the exception
18 of the last item that I mentioned, that is ensuring that
19 Brookfield Renewable Power, Inc., and its affiliates are
20 ensuring that GRP will abide by the terms of the
21 Certificate, we've taken votes, informal votes on all
22 these other aspects. So, we can wrap this all into one
23 final motion, if you like, including that provision, or we
24 can take a separate vote on that and then a wrap-up

1 motion. Commissioner Campbell.

2 CMSR. CAMPBELL: Yes, I think we should
3 have one vote to pull it together.

4 CHAIRMAN BURACK: Very good.

5 CMSR. CAMPBELL: I mean, we could deal
6 with a wrap-up vote. But, before we do that, --

7 CHAIRMAN BURACK: Yes.

8 CMSR. CAMPBELL: -- could you give me a
9 sense of your timeframe to get this order out, so we can
10 sign it, and let them go to work. Because they're under a
11 tight string, you know, if they're going mid February to
12 April 1, trying to get some work done.

13 CHAIRMAN BURACK: That's a very good and
14 important question. We have conferred with our court
15 reporter, stenographer here, Mr. Patnaude, and he has
16 informed us that he believes he can provide us with the
17 transcript of today's proceeding not later than this
18 Friday. And, so, our intention would be, as soon as we
19 have that transcript, in the meantime, Attorney Iacopino
20 would be working on a draft order, but we need to have the
21 transcript so that he has reference to the specific
22 testimony that was given in the order itself. As soon as
23 we have that, we'll be able to finalize a draft order by
24 very early next week, get it out to the Committee for

1 Committee review. And, my request would be that the
2 Committee members review the draft order within 24 hours
3 of receipt and provide any comments back to Attorney
4 Iacopino, so that we can try to issue a final written
5 order in this matter as quickly as possible next week.
6 Ideally, sometime I would hope not later than Tuesday or
7 Wednesday of next week. It could take a little longer,
8 depending on people's availability. And, are there any of
9 you who do not expect to be available early next week to
10 review a draft order?

11 (No verbal response)

12 CHAIRMAN BURACK: No? It appears that
13 everybody should be available to do so. So, that would be
14 our goal. In the meantime, obviously, we will have taken
15 a vote, assuming that we do so here shortly, to issue an
16 order on the terms that we've discussed here today. And,
17 it would just be a matter of getting the final written
18 order out. But, again, the parties will have to make
19 their own decisions as to whether they can rely in the
20 meantime on what has transpired here today to continue to
21 move forward with the actions that they discussed here
22 today.

23 Does that make sense?

24 CMSR. CAMPBELL: Thank you.

1 CHAIRMAN BURACK: Okay. I think the one
2 other piece of the -- and probably the motion that we
3 would want to include here is something I had mentioned
4 earlier, which is that, if there are any other standard
5 terms or conditions that would typically or should
6 typically be included in an order of this kind, that we
7 would include those as well.

8 So, would somebody like to make a motion
9 that would indicate the support of the Committee for
10 issuance of an order consistent with the summary that I
11 have just provided?

12 MR. HARRINGTON: So moved.

13 CHAIRMAN BURACK: Motion by Mr.
14 Harrington. Is there a second? Second by Director
15 Normandeau.

16 Is there further discussion, a
17 discussion of this motion?

18 (No verbal response)

19 CHAIRMAN BURACK: Okay. If not, I will
20 ask the Counsel, if you would just call the roll. Do you
21 have anything else, Counsel?

22 MR. IACOPINO: I would just ask, does
23 your motion include the element of the specific condition
24 that "Brookfield Renewable Power, Inc., and its affiliates

1 shall be responsible for the -- for Granite Reliable's
2 performance of the conditions of the original
3 Certificate"? Is that part of this motion?

4 CHAIRMAN BURACK: Mr. Harrington did you
5 hear that?

6 MR. HARRINGTON: Yes.

7 CHAIRMAN BURACK: That is part of this
8 motion?

9 MR. HARRINGTON: Yes.

10 CHAIRMAN BURACK: Director Normandeau,
11 your understanding is that is part of this motion? Yes?
12 Okay. Everybody understands that that is part of this
13 motion? Okay. Very good.

14 If there's no further discussion, I will
15 ask counsel to call the roll please.

16 MR. IACOPINO: Director Morin?

17 DIR. MORIN: Yes.

18 MR. IACOPINO: Director Muzzey?

19 DIR. MUZZEY: Yes.

20 MR. IACOPINO: Director Normandeau?

21 DIR. NORMANDEAU: Yes.

22 MR. IACOPINO: Director Scott?

23 DIR. SCOTT: Yea.

24 MR. IACOPINO: Commissioner Below?

1 CMSR. BELOW: Yes.

2 MR. IACOPINO: Commissioner Getz?

3 VICE CHAIRMAN GETZ: Yes.

4 MR. IACOPINO: Commissioner Ignatius?

5 CMSR. IGNATIUS: Yes.

6 MR. IACOPINO: Commissioner Campbell?

7 CMSR. CAMPBELL: Yes.

8 MR. IACOPINO: Commissioner Harrington?

9 MR. HARRINGTON: Wrong name. Yes,
10 anyways.

11 MR. IACOPINO: Mr. Chairman?

12 CHAIRMAN BURACK: Yes.

13 MR. IACOPINO: It's unanimous.

14 CHAIRMAN BURACK: The vote is unanimous.

15 So, we will proceed to issue -- get an order drafted as I
16 described. I would ask members of the Committee to please
17 provide to Attorney Iacopino copies of the exhibits that
18 were labeled as "IWAG-1" and "IWAG-2", as those contain
19 confidential information that I think it is appropriate to
20 retain in the Committee's central files as a confidential
21 document, but not in our own individual files.

22 CMSR. CAMPBELL: Do you want those back
23 now?

24 CHAIRMAN BURACK: Yes, just if you could

1 please return those. Before we adjourn, I would like to
2 thank all of the parties for their attentiveness, their
3 responsiveness to the Committee's requests and for your
4 professionalism throughout this entire proceeding. So, we
5 thank you all very much. And, we will stand adjourned.

6 **(Whereupon the hearing and deliberations**
7 **ended at 3:16 p.m.)**

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