

1 STATE OF NEW HAMPSHIRE

2 SITE EVALUATION COMMITTEE

3

4 **April 22, 2011** - 10:33 a.m.
 5 Public Utilities Commission
 6 21 South Fruit Street
 Suite 10
 Concord, New Hampshire

7

8 **RE: SEC Docket No. 2011-02**
Petition for Jurisdiction
Over Renewable Energy Facility
Proposed by Antrim Wind
Energy, LLC.
 10 *(Public Meeting)*

11

11 **PRESENT:**

12 Thomas Burack, Cmsr.
(Presiding as Chairman)
(RECUSED)

11 **SITE EVALUATION SUBCOMMITTEE:**

Dept. of Environmental Services

13

14 Thomas Getz, Chairman
(Vice Chairman of SEC)
(Presiding as Chairman)

Public Utilities Commission

15

16 Glenn Normandeau, Exec. Dir.
 Clifton Below, Cmsr.
 Amy Ignatius, Cmsr.
 17 Elizabeth Muzzey, Dir.
 Harry Stewart, Dir.
 18 Robert Scott, Dir.
 George Bald, Cmsr.
 19 Joanne Morin, Dir.
 Brad Simpkins, Interim Dir.
 20 Michael Harrington

N.H. Fish & Game Department
 Public Utilities Commission
 Public Utilities Commission
 N.H. Div. of Historical Res.
 Water Division - DES
 Air Resources Division - DES
 Dept. of Resources & Econ. Dev.
 Office of Energy & Planning
 Div. of Forests & Lands - DRED
 Public Utilities Commission

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22 Counsel for the Committee: Michael Iacopino, Esq.

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

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ALSO PRESENT:

Reptg. the Applicant:
(Antrim Wind Energy)

Susan S. Geiger, Esq.
Rachel Goldwasser, Esq.
Richard Y. Uchida, Esq.
(Orr & Reno)

Counsel for the Public:

Peter C. L. Roth, Esq.
Senior Asst. Atty. General
N.H. Dept. of Justice

Reptg. Town of Antrim:

Michael Genest, Selectman
John Robertson, Selectman
Galen Stearns, Town Admin.

Reptg. Antrim Planning Board:

Martha Pinello
Andrew Robblee

**Reptg. Harris Center for
Conservation Education:**

Stephen Froling, Esq.

Reptg. Audubon Society of N.H.:

Frances Von Mertens

Gordon Webber, *pro se*

Robert Edwards, *pro se*

Brian Beihl & Jeanmarie White (*in absentia*), *pro se*

Barbara Gard, *pro se*

Mary Allen, *pro se*

Richard Block & Lorraine Block, *pro se*

James Hankard (*in absentia*), *pro se*
(Represented by Richard Block)

Spencer Garrett (*in absentia*) *pro se*
(Represented by Richard Block)

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ALSO PRESENT: (C o n t i n u e d)

Mark Schaefer & Brenda Schaefer (*in absentia*), *pro se*
(Represented by Richard Block)

Samuel Apkarian & Michele Apkarian (*in absentia*), *pro se*
(Represented by Richard Block)

Keith Klinger & Julie Klinger (*in absentia*), *pro se*

Elsa Voelcker, *pro se*

Annie Law, *pro se*

Robert A. Cleland, *pro se*

Janice D. Longgood, *pro se*

Marie J. Harriman, *pro se*

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1 Committee.

2 DIR. MUZZEY: Elizabeth Muzzey, Director
3 of Historical Resources and the Department of Cultural
4 Resources.

5 CMSR. IGNATIUS: Amy Ignatius,
6 Commissioner with the PUC.

7 DIR. SIMPKINS: Brad Simpkins, Interim
8 Director of Division of Forests & Lands.

9 MR. HARRINGTON: Michael Harrington, New
10 Hampshire PUC.

11 CMSR. BALD: George Bald, Commissioner,
12 Department of Resources & Economic Development.

13 CHAIRMAN BURACK: Good morning. We're
14 now ready to proceed to what is actually the second agenda
15 item for today. And, what I'd like to do first is
16 announce the docket number, which is Docket Number
17 2011-02, Petition for Jurisdiction Over Renewable Energy
18 Facility Proposed by Antrim Wind Energy, LLC. There is
19 now a procedural matter for the Public Utilities
20 Commission to address.

21 VICE CHAIRMAN GETZ: I move that, for
22 the members of the Public Utilities Commission, that we
23 designate Mike Harrington as the engineer to participate
24 on behalf of the PUC in this proceeding.

{SEC 2011-02} {04-22-11}

1 CMSR. BELOW: I second the motion.

2 CMSR. IGNATIUS: I concur.

3 VICE CHAIRMAN GETZ: I note that the
4 motion carries unanimously.

5 CHAIRMAN BURACK: Very good. Thank you.
6 I also would like to introduce, sitting to my right, is
7 Attorney Michael Iacopino, who serves as legal counsel to
8 the Committee for purposes of this proceeding.

9 MR. IACOPINO: Good morning.

10 CHAIRMAN BURACK: I'm going to first
11 provide some history and background relating to this
12 matter. On February 10, 2011, the Committee received a
13 letter from Gordon Webber, Chairman of the Board of
14 Selectmen of the Town of Antrim, Hillsborough County, New
15 Hampshire, requesting, on behalf of the Selectmen, that
16 the Committee take jurisdiction of the review, approval,
17 monitoring, and enforcement of compliance in the planning,
18 siting, construction, and operation of a renewable energy
19 facility proposed to be developed by Antrim Wind Energy,
20 LLC, and located in the Town of Antrim.

21 On March 11, 2011, Antrim Wind Energy,
22 LLC, the Petitioner, filed a Petition for Jurisdiction
23 Over Renewable Energy Facility Proposed by Antrim Wind
24 Energy, LLC, we will refer to that as the "Petition".

1 Antrim Wind Energy, LLC, proposes to site, construct, and
2 operate wind turbine facilities, which we will refer to as
3 the "Facility", to be located in the northwest portion of
4 the Town of Antrim from the east summit of Tuttle Hill to
5 the flank of Willard Mountain to the west. The Petitioner
6 asserts that the Facility will be located on a mostly
7 contiguous ridgeline running east northeast to west
8 southwest, and nearly parallel to New Hampshire Route 9,
9 which is approximately three-quarters of a mile to the
10 north.

11 The Petitioner also asserts that the
12 Facility may consist of ten turbines in the 2-megawatt
13 size class. The facility is expected to have an installed
14 nameplate capacity of greater than 5 megawatts, but less
15 than 30 megawatts. The Petition also asserts that the
16 Petitioner expects to file a full application for a
17 Certificate of Site and Facility prior to the end of 2011.

18 On April 15, 2011, the Committee
19 received a petition signed by more than 100 registered
20 voters of the Town of Antrim requesting the Committee to
21 assert jurisdiction over the Project pursuant to RSA
22 162-H. I should also note that the Committee has, in
23 addition, received a petition signed by more than 100
24 registered voters of the Town of Antrim opposing

1 jurisdiction.

2 On April 20, 2011, the Committee
3 received a second letter from the Town of Antrim Select
4 Board, signed by the Board Chairman, Michael Genest,
5 reiterating the Town's request for the Committee to assert
6 jurisdiction.

7 On April 20, 2011, the Attorney General
8 appointed Senior Assistant Attorney General Peter Roth to
9 serve as Counsel for the Public in this docket. Counsel
10 for the Public has filed a response to the Petition for
11 Jurisdiction, asserting that the matter may not yet be
12 ripe for the Committee to assert jurisdiction.

13 And, again, I apologize, Attorney Roth,
14 I neglected to introduce you earlier. But this is
15 Attorney Roth, Counsel for the Public.

16 The Committee's authority to hear and
17 determine the Petition is set forth at RSA 162-H:2, XII,
18 and RSA 162-H:4, I, and New Hampshire Code of
19 Administrative Rules, Site 203.01.

20 Notice of the Committee's consideration
21 of this docket was published in the New Hampshire Union
22 Leader on March 24, 2011, and in the Monadnock Ledger
23 Transcript on April 11 -- I'm sorry, on April 1, 2011.

24 The Committee has received 19 Motions to

1 Intervene from the following parties: And, as I name
2 these parties, I would simply ask, if there is somebody
3 here, actually, the individuals themselves, or somebody
4 here representing any of these entities, if they would
5 please just identify themselves. First, is the Antrim
6 Planning Board. Is there someone here on behalf of the
7 Antrim Planning Board?

8 MS. PINELLO: Martha Pinello, a member
9 of the Antrim Planning Board.

10 CHAIRMAN BURACK: Martha Pinello?

11 MS. PINELLO: P-i-n-e-l-l-o.

12 CHAIRMAN BURACK: Thank you. Second is
13 the Harris Center for Conservation Education?

14 MR. FROLING: Stephen Froling. I'm the
15 Corporate Counsel of the Harris Center.

16 CHAIRMAN BURACK: Thank you, sir. The
17 Audubon Society of New Hampshire?

18 MS. VON MERTENS: Francie Von Mertens,
19 Sanctuary & Land Management Committee, New Hampshire
20 Audubon.

21 CHAIRMAN BURACK: Thank you. Gordon
22 Webber?

23 (By show of hand.)

24 CHAIRMAN BURACK: Thank you. Robert L.

1 Edwards?

2 (By show of hand.)

3 CHAIRMAN BURACK: Thank you. Brian, I
4 apologize if I don't pronounce this correctly, and I hope
5 you all will correct me on any mispronunciations, Brian
6 Beihl and Jeanmarie White?

7 MR. BEIHL: Brian Beihl is here.
8 Jeanmarie White is not.

9 CHAIRMAN BURACK: Thank you, sir.
10 Barbara Gard?

11 MS. GARD: Yes.

12 CHAIRMAN BURACK: Thank you. Mary
13 Allen?

14 MS. ALLEN: Here.

15 CHAIRMAN BURACK: Thank you. James
16 Hankard?

17 MR. BLOCK: Richard Block for James
18 Hankard, B-l-o-c-k.

19 CHAIRMAN BURACK: Thank you. Mr. Block,
20 you and Lorraine Block also are --

21 MR. BLOCK: Are present, yes.

22 CHAIRMAN BURACK: You are also both
23 present. Thank you. All right. Spencer Garrett?

24 MR. BLOCK: Also Richard Block for

1 Spencer Garrett.

2 CHAIRMAN BURACK: Mark Schaefer and
3 Brenda Schaefer?

4 MR. BLOCK: Ditto.

5 CHAIRMAN BURACK: Thank you, sir.
6 Samuel E. Apkarian and Michele D. Apkarian?

7 MR. BLOCK: One more.

8 CHAIRMAN BURACK: Okay.

9 MR. BLOCK: Yes.

10 CHAIRMAN BURACK: Thank you, Mr. Block.
11 Keith Klinger and Julie Klinger?

12 MR. KLINGER: Julie is not here.

13 CHAIRMAN BURACK: But that is Keith
14 Klinger?

15 MR. KLINGER: Yes.

16 CHAIRMAN BURACK: Thank you, sir. Elsa
17 Voelcker?

18 (By show of hand.)

19 CHAIRMAN BURACK: Thank you. Annie Law?

20 (By show of hand.)

21 CHAIRMAN BURACK: Thank you. Robert A.
22 Cleland?

23 (By show of hand.)

24 CHAIRMAN BURACK: Thank you. Janice D.

1 Longgood?

2 MS. LONGGOOD: Here.

3 CHAIRMAN BURACK: Thank you. And, Maria
4 J. -- Marie J. Harriman?

5 MS. HARRIMAN: Here.

6 CHAIRMAN BURACK: Thank you. Are there
7 any others who believe that they have filed papers seeking
8 to intervene in this matter whose name I did not already
9 state?

10 (No verbal response)

11 CHAIRMAN BURACK: Very good. Thank you.
12 There is just an important procedural matter that I want
13 to just bring to everybody's attention now, because you
14 may not all be familiar with the concerns that we have.
15 In any matter involving the Site Evaluation Committee,
16 these matters are quasi-judicial proceedings. And,
17 accordingly, we must ask that there be no communications
18 on the part of any parties, either already directly
19 engaged or seeking to intervene in this proceeding, no
20 communications relating in any manner to do -- relating in
21 any manner to the matters before us in this proceeding
22 with any members of the Committee during the pendency of
23 this entire proceeding. Those would be what are known as
24 "ex parte communications", and it would simply be

1 inappropriate for members of the Committee to have
2 communications with members of the public or members of
3 the press about such matters.

4 If you have any questions or concerns at
5 any time about the proceedings, again, whether you're a
6 member of the public or a member of the press, the
7 appropriate person whom to address all such queries or
8 concerns would be Michael Iacopino, legal counsel to the
9 Committee for purposes of this proceeding.

10 I also just want to remind folks that
11 it's helpful, if you are speaking, to speak into a
12 microphone. I hope you all can hear me well enough in the
13 back. But it can be difficult sometimes, I know, for
14 people in the back, and also for folks sitting up here, to
15 hear what is being said.

16 The Petitioner has filed a lengthy
17 omnibus response to the Motions to Intervene. In
18 addition, the Committee has received a number of letters,
19 both in support of and against the Petition. It is our
20 practice to take all communications that we receive,
21 whether in writing or via e-mails, and to provide them to
22 the Secretary for the Committee, Jane Murray, and she
23 posts those regularly on the SEC website, so that all of
24 those documents are available for public viewing.

1 As a general matter, it is -- well,
2 there are specific rules for how pleadings are to be filed
3 in these proceedings. And, we just ask that, if you are
4 engaged in the proceeding and determined to be an
5 intervenor, that you follow those, those rules.

6 I now have a statement that I just wish
7 to share with everyone. Which is that, after reviewing
8 the list of parties seeking to intervene in this
9 proceeding, I determined that, due to my prior personal
10 and professional involvement, as well as, in some
11 respects, my ongoing personal involvement with one of the
12 parties seeking to intervene in this matter, specifically
13 the Audubon Society of New Hampshire, that I should
14 disqualify myself from this matter so as to avoid any
15 potential appearance of impropriety.

16 Pursuant to RSA 162-H, the Vice Chair
17 serves as Chair when the Chair is otherwise unable to do
18 so. And, accordingly, Tom Getz, the Chair of the Public
19 Utilities Commission, will serve as Chair of this
20 proceeding for all purposes with respect to Docket Number
21 2011-02.

22 So, with that, I will now excuse myself
23 and leave you, Mr. Chairman, to proceed.

24 CHAIRMAN GETZ: Okay. Good morning,

1 everyone. Let me walk through how we're going to conduct
2 the proceeding this morning. First, we'll allow the
3 Petitioner to make a presentation through counsel
4 outlining the proposed project. I recognize that we don't
5 have a formal application before us at this time, so it
6 would be helpful to the Committee if the Petitioner can
7 provide us with information generally outlining the
8 proposed facility, including any information regarding its
9 size, location, timing, and, in general, give us a view of
10 what the Applicant expects to build.

11 Thereafter, we will open to the
12 Committee members the opportunity to ask questions of the
13 Petitioner. And, those questions may be answered by the
14 Petitioner or any of their technical consultants that may
15 be present. Of course, before anyone speaks on the record
16 today, for purposes of the transcript that's being put
17 together, that you please identify yourself for the
18 record. So, to the extent that the Petitioner can answer
19 questions today, would like to get them on the record.
20 There is -- hold open the possibility that we may ask
21 questions be submitted in writing, and we'll treat those
22 as data requests and set a deadline for a response.

23 Once we have concluded with questions
24 from the Committee, then we'll address the Petitions to

1 Intervene. After we hear from the Applicant, we'll hear
2 from the Counsel for the Public, and then we'll go through
3 the list of the parties who have petitioned to intervene.
4 And, at that time, I would expect to hear briefly the
5 interests that are being affected and the basis for the
6 petition to intervene that's somewhat been set out in
7 writing by some of the parties, but in various degrees of
8 comprehensiveness by the parties. And, we also briefly
9 want to hear what the -- that party's position is, whether
10 it's in favor or not in favor of the Committee taking
11 jurisdiction of this, of this Project. And, also will
12 allow going back to the Petitioners, or anyone who has an
13 objection to a petition to intervene, then we'll allow the
14 opportunity to hear those, hear those objections. And,
15 also, as in any proceeding, we'll allow the Petitioners to
16 go last before we terminate the proceeding.

17 Let me note that the Order of Notice
18 that was issued on March 21st set out a deadline saying
19 "Any person wishing to intervene in the matter file a
20 motion to intervene on or before April 15th", and
21 objections were due by "April 21". That Order of Notice
22 also said "the Committee will consider motions to
23 intervene, if any are filed, and in [the] absence of
24 intervention, may deliberate on the merits of the

1 [Petition] or may determine that further proceedings are
2 necessary."

3 Of course, we've got numerous Petitions
4 to Intervene. I think it's unlikely that we'll be in a
5 position to deliberate on the merits of the Petition
6 today. I expect that what this proceeding will be is a
7 procedural hearing, and that what will be coming out of
8 this procedural hearing or prehearing conference will be
9 an establishment of a process for making the ultimate
10 decision on the merits of whether to take jurisdiction of
11 this Project.

12 And, I'll note as well for the record,
13 Mr. Burack covered some of this, but there was a petition
14 on February 10 by the Town of Antrim that was supplemented
15 on April 21st. There's the March 11 Petition by Antrim
16 Wind Energy, LLC. And, there's also a document, and it's
17 styled as a "Petition by 100 voters of the Town of
18 Antrim". And, all three of those petitions qualify under
19 the statute 162-H:2, Subsection VII(g) and Subsection XI.

20 So, with that, start with the Petitioner
21 for the Antrim Wind Energy, if it could make an appearance
22 for the record, and please give us the overview of the
23 Project that's being considered.

24 MS. GEIGER: Thank you, Mr. Chairman.

1 For the record, I'm Susan Geiger, from the law firm of Orr
2 & Reno, here in Concord. I represent Antrim Wind Energy,
3 LLC, the Petitioner. With me today from Orr & Reno are my
4 colleagues Rachel Goldwasser, who is seated to my
5 immediate left, and also Richard Uchida, an attorney from
6 Orr & Reno, who is seated -- well, he just introduced
7 himself. To Attorney Goldwasser's immediate left is Jack
8 Kenworthy, from Antrim Wind, and to Attorney Uchida's
9 immediate left is John Soininen of Antrim Wind. Also,
10 another representative of Antrim Wind present today is
11 Peter Mara, I believe he's seated toward the back of the
12 room.

13 Mr. Chairman, would you like us to
14 proceed or would you take other appearances?

15 CHAIRMAN GETZ: Well, let's hear from
16 the Antrim Wind first.

17 MS. GEIGER: Thank you very much.
18 Antrim Wind Energy, LLC, appreciates the opportunity to
19 speak this morning on behalf of its Petition for
20 Jurisdiction in this docket. As the Chair has recognized,
21 there are three Petitioners here today asking for the SEC
22 to assert jurisdiction over the Project. As by way of
23 background, I would note for the Committee that the
24 project attributes have been listed in the Petition that

1 we filed back in March. I think, for ease of reference,
2 if you have the Petition before you, you may want to refer
3 to a map that was attached at the back of the Petition,
4 which will show you the proposed location of the entire
5 Project, as well as the particular components of it.

6 Those components include proposed wind
7 turbines, ten of them, in the 2-megawatt category, for a
8 total of a 20 megawatt nameplate capacity for this
9 facility. As the Chair noted, because this facility is
10 lower than 30 megawatts and above 5 megawatts, there
11 exists the ability, under RSA 162-H:2, XII, the ability of
12 petitioners to come before the Site Evaluation Committee
13 to assert jurisdiction. As the Committee is aware, energy
14 facilities over 30 megawatts must come before the
15 Committee for approval.

16 The Petitioners here today are all
17 seeking the same thing. We're seeking, the Petitioners
18 who are seeking jurisdiction, are seeking regulatory
19 certainty. We're looking for certainty regarding the
20 process and standards that will be used to evaluate the
21 Antrim Wind Project. We're here today because the Site
22 Evaluation Committee process under RSA 162-H provides that
23 certainty. It provides specific timeframes and criteria
24 for permitting a renewable energy facility. It also

1 provides a fair, thorough, and comprehensive process in
2 which the project's impacts on the natural environment,
3 aesthetics, air and water quality, historic resources, and
4 public health and safety will be evaluated, in an
5 integrated and timely fashion, and in a process where all
6 interested parties are provided the opportunity to present
7 evidence or provide comments to the Committee for
8 consideration.

9 As the Committee is aware, today's
10 hearing is not about whether or not a Certificate of Site
11 and Facility should be granted. It's just about whether
12 or not the Site Evaluation Committee should exercise its
13 authority to assert jurisdiction over this facility. The
14 arguments why we believe that action is appropriate are
15 set forth in our Petition filed March 11th.

16 Those arguments include briefly the
17 following: As the Committee is aware, facilities with a
18 nameplate capacity of less than 30 megawatts may be
19 certificated by the Committee under certain circumstances,
20 and those circumstances are set out in the statute. The
21 statute, RSA 162-H:2, XII, provides that, if petitions are
22 filed, such as the ones that have been filed, and the
23 Committee determines that the facility requires a
24 certificate consistent with the findings of RSA 162-H:1,

1 then jurisdiction can be asserted. We clearly believe the
2 first criterion that I mentioned have been met.

3 As for the second criterion, it requires
4 a little bit of analysis under the statute, so please bear
5 with me. The statute that the Committee must look at is
6 set out verbatim on Page 8 of Antrim Wind's Petition.

7 And, the findings and purposes of 162-H:1 that the
8 Committee must look at include the following: The
9 Committee must look at whether or not the public's
10 interest in maintaining a balance between the environment
11 and the need for new energy facilities in New Hampshire
12 are implicated. We believe we meet that criteria.

13 Clearly, under federal and state laws that encourage the
14 development and investment in renewable energy resources,
15 such as New Hampshire's RPS statute, 362-F, renewable
16 energy facilities, like this project, clearly are needed
17 in New Hampshire.

18 The other findings and purposes that the
19 Committee must look at under RSA 162-H include avoiding
20 undue delay in the construction of needed facilities.

21 That full and timely consideration of environmental
22 consequences be provided. That developers of energy
23 facilities provide full and complete disclosure to the
24 public. And, that the State ensures that construction and

1 operation of energy facilities is treated as a significant
2 aspect of land use planning in which all environmental,
3 economic, and technical issues are resolved in an
4 integrated fashion.

5 All of these purposes are clearly
6 satisfied if the SEC invokes jurisdiction in this case.
7 Accordingly, Antrim Wind believes it has met all of the
8 statutory prerequisites for enabling the Committee to vote
9 to assert jurisdiction here.

10 In addition to the statutorily
11 requirements -- the statutorily required criteria that we
12 believe have been met, we believe that it's important for
13 the Committee to consider additional policy matters that
14 would best be served by asserting jurisdiction. Here, the
15 SEC provides a very thorough and comprehensive process, as
16 you well know. But, in addition, the appellate route from
17 decisions of this body is much more streamlined than the
18 appellate route from individual permits granted by the
19 Department of Environmental Services, which undergo an
20 additional layer of administrative review, and then go to
21 the Superior Court before they go to the Supreme Court.
22 So, the appellate considerations, I believe, are very
23 compelling for a project such as this one for seeking
24 review here at the SEC.

1 In addition, if the Commission --
2 Committee were not to assert jurisdiction, then the Antrim
3 Wind Project would be subject to not just the individual
4 permits that must be obtained from the State agencies, but
5 would also be subject to local land use ordinances and
6 processes in the Town of Antrim. Currently, the Town of
7 Antrim does not have processes or standards in place for
8 the consideration of a project of this type. Nor do we
9 believe that there are any -- any credible reasons to
10 believe that a fair process or standards would be
11 implemented any time soon.

12 And, we understand and we recognize that
13 there have been assertions made to the Committee that the
14 Planning Board is beginning an ad hoc advisory committee
15 process to develop a full ordinance for industrial wind
16 energy, and that it hopes to conclude this process with a
17 special town election either later on this year or by
18 March of 2012, that will be a year from now. However,
19 even in recognition of those intentions, our experiences
20 in Antrim with this project, just for siting the met
21 tower, which typically isn't a problem in other
22 communities, leads us to be very concerned about the
23 representations about such an ordinance, and whether or
24 not it would be passed, when it would be passed, and even

1 if it would be passed at all.

2 Over the past two years, as I've
3 indicated in our pleadings, this Project has been involved
4 with the Town of Antrim over its met tower siting.
5 Currently, the issues regarding the met tower siting are
6 the subject of two pending Superior Court cases. Those
7 are unrelated to the instant proceeding, and those cases
8 can proceed on their own path. In other words, the SEC
9 does not need to defer consideration of the jurisdictional
10 question here until the Superior Court cases are fully
11 litigated and completed. Those can go on on a separate
12 track.

13 The reason I'm mentioning that is, given
14 the issues surrounding the siting of a met tower for the
15 past two years, we are very concerned and not confident
16 that the Town of Antrim, even despite the best intentions
17 of the majority of citizens, would actually be able to
18 complete and develop and institute an ordinance that would
19 enable the Antrim Wind Project to participate in a fair
20 process, which includes appropriate standards for the
21 siting of wind energy facilities, administered by
22 officials who are familiar with the regulatory process.

23 And, with the Committee's permission,
24 what I'd like to do at this point is to turn to my

1 colleague, Richard Uchida, so that he could give you some
2 information about the processes within the Town and the
3 issues within the Town of Antrim that the Project has
4 encountered thus far, just to give you a little bit more
5 of an idea of what has transpired and, basically, the
6 reasons underlying our concerns about the Town's ability
7 to actually go forward with developing and implementing an
8 ordinance.

9 CHAIRMAN GETZ: Please.

10 MR. UCHIDA: Mr. Chairman, I'll try to
11 keep my voice up as much as possible. And, if the mike
12 doesn't make it over here -- I guess it does. Consistent
13 with Attorney Geiger's presentation, she asked me to
14 illustrate for you some of the issues that have occurred
15 in Antrim, to give you a flavor of what is happening
16 there. Not to attribute fault, but to give you a sense of
17 flavor of why we believe that the process here would be a
18 more sound process. And, I'll make these very quick, Mr.
19 Chairman.

20 During the time that we've been down in
21 front of Antrim, which has been for about two years now,
22 there has been, for example, a failure of the Building
23 Inspector to provide reasons for the denial of a building
24 permit, despite an ordinance requiring the identification

1 of reasons for a denial. Why is that significant? Well,
2 it defines what you then have to seek for relief from an
3 ordinance before the ZBA. It sets in motion certain
4 deadlines for appealing decisions of the Building
5 Inspector. That failure has led to one of the two
6 lawsuits, and is a collateral issue in a second lawsuit.

7 There was a failure or an inability to
8 provide the Zoning Board with certain correspondence from
9 the Select Board prior to a hearing, which happened to
10 favor Antrim Wind Energy, while at the same time providing
11 the ZBA with correspondence that was late, that
12 coincidentally opposed Antrim Wind Energy.

13 Antrim Wind Energy was advised to seek
14 variance relief under a wrong section or arguably wrong
15 section of the ordinance, and it spent a year in that
16 quest and has led to the second of two lawsuits.

17 In connection with some ordinance
18 amendments which were put forward to try to get the Town
19 to vote on whether there ought to be industrial wind
20 energy regulations in town, there was a failure to meet
21 certain deadlines and to properly post hearings on the
22 proposed ordinance amendments dealing with wind
23 facilities. It, unfortunately, led to the removal of
24 those ordinance amendments from the Town Ballot, and

1 denying the Town the ability to vote on the matter.

2 And, then, of late, a new Planning Board
3 reversed the prior actions of an old Planning Board on
4 these ordinance amendments that have been passed on to the
5 Select Board for a Special Town Meeting, without proper
6 legal notice that they were going to do that, without
7 notice to at least one of its members, who is entitled to
8 vote on the matter, and in violation, at least in our
9 belief, of a statute which passes control of those
10 amendments to the Select Board, once the Planning Board
11 votes to submit them to the Select Board for a town
12 meeting in the future.

13 My point or our point is this. I don't
14 think that anyone in Antrim is sitting there sort of
15 rubbing their hands together with evil intent saying
16 "let's make this process a mess." And, whether you agree
17 or disagree with us or the intervenors, I think that what
18 you've seen, as a result of both the petitions that have
19 been filed in front of you, as well as what you're going
20 to hear today, is that the most important thing that can
21 happen here is careful consideration of this project on
22 the merits.

23 We don't want to be in a situation like
24 we are arguably right now, where a procedural mishap

1 causes a project consideration to sort of veer off course.
2 What has become apparent to us is that the integrity of
3 the process needs to be great in order for the merits of
4 this Project to be reached. And, we see the SEC's
5 assertion of jurisdiction over the Project here as being
6 the most helpful way to address the actual merits of the
7 Project.

8 And, with that, I'm happy to answer any
9 questions you might have, but turn it back over to
10 Attorney Geiger for the remainder of her comments.

11 CHAIRMAN GETZ: Thank you.

12 MS. GEIGER: Thank you, Mr. Uchida. The
13 lack of process and standards in the Town of Antrim for
14 considering this facility or for this type of facility is
15 one of the main reasons that we are here today. Moreover,
16 it's clear, I'm sure it's clear to the Committee that, and
17 based on the filings that have been made thus far, that
18 there is a lack of unanimity within the Town of Antrim
19 over whether the Committee should assert jurisdiction and
20 about the Project in general. And, I believe it's
21 precisely for this type of situation where we find
22 ourselves today that the Legislature provided the Site
23 Evaluation Committee with the authority to assert
24 jurisdiction over facilities such as this one. We've done

1 some legislative history research, and attached to the
2 Petitioner's response to some of the intervention
3 petitions, we've provided some of it. And, the
4 legislative history reveals an intent on the part of the
5 Legislature for the SEC to assert jurisdiction over
6 smaller energy facilities that may be "blocked" at the
7 local level, for whatever reason; either blocked because
8 there's a lack of process for adequately considering them
9 or blocked because of local opposition.

10 Antrim Wind is facing that situation
11 here, as outlined in Mr. Uchida's comments. And,
12 therefore, we respectfully ask the SEC to assert
13 jurisdiction, just as it did in the Lempster Wind case.
14 In the Lempster case, we note that the Committee voted to
15 assert jurisdiction over that 24 megawatt project, absent
16 the filing of a full application for a Certificate of Site
17 and Facility. I know that there has been some comments
18 filed, I believe from the Public Counsel, as well as some
19 of the other potential intervenors have asserted, that,
20 before the Committee can make a decision on jurisdiction,
21 it must have before it a fully completed application for a
22 Certificate of Site and Facility. We submit that's an
23 erroneous position. There's nothing in RSA 162-H that
24 requires a filing of a full application, which, as the

1 Committee members know, is a substantial undertaking. I
2 believe that, you know, the records in the Lempster, the
3 Noble, and the Groton Wind cases speak for themselves, in
4 terms of the amount of information that would be required
5 for such a filing. That's an onerous undertaking, I
6 believe, and I think it's illogical for it to be required
7 here. This is, again, a procedural matter that can be
8 best addressed and well addressed at this juncture without
9 the need for a full-blown application.

10 We understand and we respect the
11 differing opinions expressed about the process and Project
12 thus far. However, as we've stated numerous times, we
13 believe RSA 162-H provides a comprehensive, rigorous, and
14 timely process for addressing all of those various
15 opinions in a fair and structured manner.

16 And, most importantly, although it's not
17 an outcome-driven process at all, the process under RSA
18 162-H provides certainty to all parties and participants,
19 regarding the process, the standards, and the other
20 matters to be considered in this Project. It also -- it
21 also, I believe most importantly, assures that the Project
22 will be reviewed in a thoughtful and impartial manner by
23 State officials who have acquired expertise in wind energy
24 siting issues by virtue of evaluations of three other wind

1 energy projects over the past few years. Invoking the SEC
2 process under RSA 162-H is the best way to ensure that the
3 Antrim Wind Project is thoroughly vetted, and that all
4 interested parties are fairly heard and considered.

5 We'd be happy to answer any questions
6 about the Project itself or any of the legal or policy
7 issues that I've presented in my introductory comments.
8 And, I thank the Committee for allowing me to present
9 them.

10 CHAIRMAN GETZ: Questions from the
11 Committee at this point? Commissioner Below.

12 CMSR. BELOW: Thank you, Mr. Chairman.
13 Could you just explain what the current status of the
14 meteorological tower is?

15 MS. GEIGER: I'm going to have to defer
16 to Attorney Uchida for that.

17 MR. UCHIDA: By way of background,
18 Mr. Below, the met tower was put up pursuant to a building
19 permit issued by the Town in October of '09, and has been
20 up since November of 2009.

21 I'm not sure if your question also sort
22 of encompasses the lawsuits, but I will say that there are
23 two lawsuits that have emanated as a result of that met
24 tower.

1 But I'll stop and ask you if you want to
2 know about those or simply are asking about the status of
3 the met tower today?

4 CMSR. BELOW: Well, in the first
5 instance, I want to know the physical status, because
6 Ms. Geiger referred to the fact that it wasn't really
7 relevant to this proceeding. But I presume that you need
8 the data from the meteorological tower to complete design
9 and planning for the Project. But you've been able to do
10 that, because you've actually been collecting the data
11 from the met tower?

12 MR. UCHIDA: That's correct.

13 CMSR. BELOW: But, with regard to the
14 lawsuits, I think you said that one was related to, well,
15 some process issues, both about the initial denial of a
16 building permit and lack of reasons. I think it would be
17 helpful just if you explain a little bit more about those
18 lawsuits, who initiated which one and what they are
19 seeking as an outcome?

20 MR. UCHIDA: Right. Thank you. There
21 is one lawsuit in Hillsborough County Superior North
22 entitled "*Richard and Loranne Block versus Town of*
23 *Antrim*". In that lawsuit, Antrim Wind is an intervenor.
24 And, that challenges the grant of a height variance to the

1 met tower by the Zoning Board. That is, the Zoning Board
2 granted a variance for the met tower to be at 198 feet,
3 where the ordinance would otherwise limit it to 150 feet.
4 And, I think, as noted by Public Counsel, that case is
5 scheduled to go to trial at the end of May. And, the
6 issue on appeal to the trial court is whether the ZBA
7 properly granted that height variance based on the
8 evidence before it.

9 There is a second lawsuit, which has
10 been brought by Antrim Wind Energy, as the Petitioners,
11 against the Town of Antrim. In that case, what happened
12 is that the Planning Board granted site plan approval for
13 the met tower. In the process of granting site plan
14 approval for the met tower, the Planning Board ruled that
15 the met tower was a public utility under the Antrim
16 ordinance, not under PUC law, but under the Antrim
17 ordinance, and that the met tower qualified as a structure
18 that was not subject to the height requirements in the
19 ordinance. That particular ruling was appealed to the
20 Zoning Board of Adjustment. The Zoning Board reversed the
21 Planning Board on those rulings, and we have appealed the
22 reversal of those rulings to the Hillsborough County
23 Superior Court. Both of those cases have been
24 consolidated together and are scheduled for trial at the

1 end of May. And, obviously, in the first case, if the
2 height variance was improperly granted, I would suspect
3 that the Blocks would want ultimately the met tower to
4 come down. In the second case, we have asked the Court to
5 affirm the Planning Board's rulings on its proper
6 interpretation of the ordinance, and, if granted, would
7 sustain the proper grant of site plan approval to the met
8 tower.

9 CMSR. BELOW: Sort of irregardless of
10 the ZBA's variance, is that correct? I mean, the second
11 suit, if Antrim Wind prevails, would moot the other
12 question on the variance?

13 MR. UCHIDA: Right. Actually, if you
14 think about it, outcomes in either of those suits would
15 probably, you know, moot the other. In other words, if
16 the height variance were properly granted, the case is
17 over. And, likewise, if the Court determined that,
18 indeed, it was a public utility and is exempt from the
19 height requirements of the ordinance, the case would be
20 over.

21 CMSR. BELOW: And, a final question.
22 Ms. Geiger, I think you've represented that you do not
23 believe that the Town of Antrim has in place the
24 appropriate zoning and/or site plan review regulations to

1 adequately review this Project or to properly review it,
2 and that's partially in reference to an enabling statute
3 that the State has, which has to do with the vote that
4 wasn't taken, on amending one or both of those ordinances.
5 Could you just elaborate a little bit more on what you
6 perceive to be the inadequacies of the local process and
7 procedures?

8 MS. GEIGER: I may need to defer to
9 Mr. Uchida on that as well. But my understanding is that,
10 at the present time, there are no ordinances or processes
11 in place for the consideration of a wind energy facility.
12 That the Town has indicated an intent to develop an ad hoc
13 committee of some sort to get together to try to develop
14 an ordinance, and then to try to convene either a Special
15 Town Meeting or a regular Town Meeting to enact an
16 ordinance. But that hasn't happened thus far.

17 MR. UCHIDA: And, if I may, Mr. Below,
18 in furtherance of that answer, there certainly are site
19 plan regulations in town. They don't address a wind
20 facility specifically. So, you can imagine just the
21 general site plan regulatory scheme that is in town to
22 evaluate this. What will happen with this ad hoc
23 committee, if I may, is that we're going to end up with an
24 ordinance that is designed around a particular project and

1 a particular project. And, that sort of runs afoul of the
2 spirit of both state and federal law, in that once a
3 project manifests itself, ordinances, regulations, rules
4 on how that project ought to be developed can't then be
5 changed, you know, mid process once this occurs. The idea
6 of local control is best argued when you've got a scheme
7 already in place that can deal with these projects
8 comprehensively. We, unfortunately, don't have that in
9 Antrim, and what will be developed will be very project
10 specific and site specific, which, frankly, we question
11 the legitimacy of that ordinance.

12 CMSR. BELOW: Okay. Thank you.

13 CHAIRMAN GETZ: Other questions?

14 Commissioner Ignatius.

15 CMSR. IGNATIUS: Thank you. Attorney
16 Geiger, there's -- in your opening, you said that the
17 Company had planned on "ten 2-megawatt turbines", correct?

18 MS. GEIGER: Right. Yes.

19 CMSR. IGNATIUS: In the Petition, there
20 is some reference to exploring the idea of 3-megawatt
21 turbines. What's the status of that today?

22 MS. GEIGER: I'm going to defer to Jack
23 Kenworthy on that question. He's one of the executive
24 officers of Antrim Wind.

1 CMSR. IGNATIUS: Thank you.

2 MR. KENWORTHY: Thank you very much. My
3 name is Jack Kenworthy from Antrim Wind Energy. We are,
4 at this time, considering a number of different turbine
5 models. I think, as you note, if it were ten turbines
6 that were 3-megawatt turbines, I think that would put us
7 at 30 megawatts, which would statutorily bring us in front
8 of the Site Evaluation Committee. I think the issue in
9 that situation is that, with the larger turbines, larger
10 rotor diameters are generally in place, which require
11 greater distances between the turbines on the ridgeline,
12 so that we wouldn't, in fact, be looking at ten 3-megawatt
13 turbines, but, if we did go down that route, it would be
14 some lesser number. And, we're still in the process, as
15 we continue to gather wind data from the site and evaluate
16 the different environmental conditions, as well as the
17 interconnection issues to PSNH transmission facilities
18 that are located nearby, to try and optimize a final
19 project size. But, certainly, in those considerations, we
20 are looking at 2-megawatt machines, we're looking at 2.3s,
21 2.5s, and perhaps even some 3-megawatt machines.

22 CMSR. IGNATIUS: A follow-up. Then, the
23 map that we've been shown that has locations, and they're
24 called "proposed turbine locations", are not finalized or

1 fixed at this point, is that correct?

2 MR. KENWORTHY: They are not final or
3 fixed, no.

4 CMSR. IGNATIUS: Thank you.

5 CHAIRMAN GETZ: Other questions? Mr.
6 Iacopino.

7 MR. IACOPINO: Can you tell the
8 Committee please, is the met tower, the existing met
9 tower, is that meant to be a permanent part of the Project
10 or is that something that is scheduled to be dismantled
11 after you've done whatever testing you need to do?

12 MR. KENWORTHY: The current met tower is
13 located on Tuttle Hill, kind of all the way in the
14 northeast part of the Project area. The building permit
15 that we obtained is for a maximum of three years. So,
16 it's intended to be a temporary tower. It's one of the
17 tilt-up 60-meter towers. So, yes, it will be removed,
18 once the data has been collected.

19 MR. IACOPINO: Does your plan call for
20 any construction of a permanent met tower in addition to
21 the turbines?

22 MR. KENWORTHY: It does not at this
23 time. But it's not to say that it may not in the future.

24 CHAIRMAN GETZ: Commissioner Below.

1 CMSR. BELOW: A further question. Sort
2 of what -- can you say with some degree of confidence what
3 the range of -- sort of what the brackets of what you
4 expect a final application would encompass, in terms of
5 size of the Project, number of -- minimum/maximum sort of
6 size or number of tower sites?

7 MR. KENWORTHY: Sure. You know, I think
8 there are a lot of things that drive kind of project size,
9 and one of them is clearly the economics. I think, when
10 we had originally started looking at this Project back in
11 2009, we had considered a smaller project area. I think,
12 as we kind of went through our evaluations of both the
13 wind data and some of the interconnection issues, cost of
14 construction, you know, what's happening in the market, it
15 became apparent to us that the Project would not be able
16 to be economically completed if it just included a smaller
17 project area. So, it then expanded to include additional
18 lands, which kind of brought us up onto the flank of
19 Willard Mountain, which you see on your maps there. So,
20 we anticipate utilizing that, you know, kind of full
21 extent of the ridgeline from Willard through Tuttle,
22 Tuttle Hill.

23 The maximum project size, in terms of
24 megawatts of capacity that we're evaluating, will be

1 23 megawatts. And, that really is governed by capacity on
2 PSNH lines. So, our proposed point of interconnection is
3 a 34 and a half kilovolt line that's -- it's the 3140 X1
4 line that runs through a right-of-way at the base of
5 Tuttle Mountain. PSNH policy is that no more than
6 24 megawatts of generation can be placed onto a 34 and a
7 half kV line, and that X1 circuit, 3140 X1 circuit
8 currently has about --

9 (Court reporter interruption.)

10 MR. KENWORTHY: Oh, I'm sorry. I
11 apologize. Sorry. The line is their 3140 X1 circuit,
12 which already has about just less than a megawatt of
13 generation on it. So, that is kind of the technical
14 maximum. We don't anticipate that the Project would ever
15 be large enough to warrant an interconnection to the 115
16 kilovolt line that also runs through that right-of-way.
17 So, that would be our maximum. We are studying ten
18 2.3-megawatt turbines in a configuration that will kind of
19 meet those requirements.

20 If we were to determine that we may be
21 able to get better performance out of seven 3-megawatt
22 turbines, we may go to a configuration that looked like
23 seven 3-megawatt turbines, still encompassing the entire
24 ridge, you know, which would include about a mile and a

1 half of new road to access the ridgeline, and then about
2 two and a half miles of actual ridgeline road, with
3 interconnection facilities anticipated to be kind of a
4 direct tap right to the -- adjacent to the right-of-way.

5 So, you know, between seven and ten
6 turbines I think is the range across that ridge. We have
7 -- we lease just under 2,000 acres of property in Antrim,
8 as you can see on those maps, but that's full parcel
9 leases. We expect the kind of completed Project area,
10 including kind of physical impacts and buffers and
11 setbacks, to be somewhere in the vicinity of 300 acres,
12 with direct impacts, in terms of roads, foundations, work
13 pads, interconnection facilities, somewhere in the
14 vicinity of 40 acres of direct impact.

15 CMSR. BELOW: And, can you briefly
16 detail what permits you would expect to be seeking from
17 either the state or federal government?

18 MR. KENWORTHY: Sure. We have TRC, we
19 have engaged as our -- they're Eolian's engineer and
20 environmental consultants. We have been working with them
21 for more than a year now, starting back in, oh, John can
22 maybe correct me if I'm wrong, but going back several
23 months ago, we had initial scoping meetings with various
24 agencies in the state, including, and I think we have

1 detailed some of this in our initial petition, but with
2 U.S. Fish & Wildlife and New Hampshire Fish & Game, with
3 Division of Historic Resources, and I forget all the names
4 here, Natural Heritage Bureau, EPA, Army Corps, *etcetera*.

5 So, I think our expectation is that we
6 would be completing studies that are commensurate with
7 other wind facilities in New Hampshire that have come
8 before this Board. We have submitted, in almost every
9 case, kind of detailed study protocols to the agencies for
10 their review, including, obviously, things like wetlands,
11 vernal pools, archeological and architectural studies,
12 avian radar studies, acoustic bat studies, and some of
13 those studies -- many of those studies have commenced and
14 are currently underway. Additionally, we are, you know,
15 Army Corps again has been engaged on the wetlands side.
16 Am I missing anything in particular?

17 So, I think, generally, we're looking,
18 and kind of a starting point for us was to kind of
19 evaluate not just what the particular conditions of this
20 site are, but then also looking at what has been kind of
21 customary for wind facilities in the State of New
22 Hampshire that would be before the Board, in terms of
23 modeling what our study protocols are.

24 CHAIRMAN GETZ: And, a general summary

1 of that is set forth on Pages 5 and 6 of the Petition
2 filed on March 11?

3 MR. KENWORTHY: Yes.

4 CHAIRMAN GETZ: Mr. Harrington.

5 MR. HARRINGTON: Yes. We've had -- in
6 the past, we've had testimony on other projects to the
7 effect that, without the investment tax credits from the
8 federal government, that "no wind project is profitable".
9 Do you agree with that that you need those? And, if so,
10 are we going to be up against some type of a hard schedule
11 by the end of the year, when those 1603 funds are
12 scheduled to no longer be available?

13 MR. KENWORTHY: Yes. That's a fair
14 question. I think, you know, as a wind facility
15 developer, if you never, you know, if you never started to
16 do any work for the threat of the tax credits going away,
17 we wouldn't see any wind projects. It's obviously always
18 been a temporary kind of extension. The Recovery Act, in
19 2009, did extend the tax credit benefits through the end
20 of 2012. We do not anticipate that this Project would be
21 eligible for a 1603 grant, obviously, which requires
22 commencement of construction this year to the tune of
23 5 percent of the kind of total capital of the Project.
24 So, it is not our plan that we would submit for a 1603

1 grant.

2 But, certainly, there are risks
3 associated with the sunset, if they are not extended, of
4 Production Tax Credits or Investment Tax Credits, which
5 are currently set to expire at the end of 2012. I think
6 it's reasonable to assume that they will be continued in
7 some form. They have been, certainly, for a good long
8 time now, since the early '90s, with pretty broad
9 bipartisan support. And, so, we're kind of operating to a
10 certain extent under the -- you know, that they may be
11 extended. But, from our perspective also, I mean, timing
12 is important, for a variety of reasons, to be able to kind
13 of have kind of clear targets, you know, to advance the
14 Project, so that we can internally assess the risk of
15 whether or not various, you know, incentive programs may
16 be available or when we're kind of looking at turbine
17 supply agreements, power purchase agreements and other
18 things that really substantially impact a project's
19 viability.

20 MR. HARRINGTON: Yes. I guess, but to
21 make it -- if it's clear, what you're saying is that, if
22 the 1603 Investment Tax Credit or the tax grants were not
23 available for your project because it wasn't sufficiently
24 gone forward by the end of year, that you could still

1 proceed if the Production Tax Credit stayed in place?

2 MR. KENWORTHY: Yes. That's right.

3 MR. HARRINGTON: Okay. Thank you.

4 CHAIRMAN GETZ: Other questions?

5 (No verbal response)

6 CHAIRMAN GETZ: Okay. Hearing nothing,
7 then we'll move onto the Town of Antrim. Who is speaking
8 on behalf of the Town?

9 MR. GENEST: Mr. Chairman, members of
10 the Commission, thank you for hearing us today. My name
11 is Michael Genest and I am Chairman of the Antrim Board of
12 Selectmen. First, I would like to outline you a brief
13 history of how we arrived in front of you today. Just
14 over two years ago, April 2nd, 2009, the Antrim Planning
15 Board held a public hearing to hear the conceptual concept
16 for a wind farm in Antrim.

17 (Court reporter interruption.)

18 MR. GENEST: Since that time -- is that
19 better?

20 CHAIRMAN GETZ: Yes.

21 MR. PATNAUDE: Yes.

22 MR. GENEST: Since that time, over 25
23 meetings of either the Planning Board or the ZBA have
24 discussed this issue in one form or another. The Town is

1 currently a defendant in two lawsuits on decisions made by
2 the Zoning Board of Adjustment on the application to erect
3 a meteorological tower for data collection; one from
4 residents and one from the Applicant. If the SEC does not
5 take jurisdiction, this Project will most likely result in
6 further lawsuits, possibly including disagreements and
7 lawsuits between local boards.

8 To date, there have been three surveys
9 conducted, with the Town conducting two of the surveys and
10 -- to try and determine the will of the majority of the
11 Town. The first was conducted at the March 2010 Town
12 Meeting, with 93 voters responding to the survey,
13 resulting in 69 percent in favor of wind towers in the
14 Rural Conservation District. The second survey was
15 conducted during the March 2011 elections, with 533 voters
16 responding, with 63.2 percent in favor of wind towers.
17 Antrim Wind Energy contracted with American Research Group
18 to perform a town wide survey and received 416 responses,
19 with 76 percent in favor of the wind energy facility.

20 The Antrim Board of Selectmen would like
21 to strongly urge the New Hampshire Site Evaluation
22 Committee to accept jurisdiction over Docket Number
23 2011-02, Antrim Wind Energy, LLC, for the following
24 reasons: (1) Antrim's land use boards are compromised

{SEC 2011-02} {04-22-11}

1 [comprised?] of elected volunteers who are not experienced
2 in projects of this magnitude or have the required
3 technical knowledge necessary. Antrim's land use boards
4 have been aware of the potential of a wind energy facility
5 being built in town for over two years. The first
6 conceptual presentation was made to the Antrim Planning
7 Board back on April 2nd, 2009, and could have written
8 ordinances and regulations in this time. To date, this
9 has not happened, nor does it seem likely to happen in the
10 near future.

11 (2) The Planning Board, prior to the
12 2011 elections, had voted to endorse proposed zoning
13 amendments allowing wind energy facilities as a permitted
14 use in the Rural Conservation District, but, due to
15 posting errors, could not be placed on the ballot for
16 March 8, 2011 voting. The Planning Board properly posted
17 and held a public hearing on March 9th and voted 5 to 2 to
18 recommend the zoning amendments and request a Special Town
19 Meeting to allow the residents to vote on the zoning
20 amendments. This vote would have answered the question of
21 how the majority of residents feel about the proposed wind
22 facility. With new members elected to the Planning Board
23 on March 8, 2011, at their next meeting, on March 17th,
24 the March 9th actions were reconsidered and voted 4 to 2

1 not to recommend the zoning amendments, thus nullifying
2 the Special Town Meeting the Board of Selectmen had
3 approved.

4 (3) The Legislature, through RSA 162-H,
5 established a procedure for review, approval, monitoring,
6 and enforcement of compliance in the planning, siting,
7 construction of and operation of energy facilities. The
8 SEC has held hearings on multiple wind energy facilities
9 similar to the one being proposed in Antrim, and has more
10 experience and knowledge than the volunteers on Antrim's
11 land use boards.

12 The Antrim Board of Selectmen feel that,
13 because of everything stated above, that this is exactly
14 the reason that RSA 162-H:1 was established, to ensure
15 that local politics do not unduly delay the process, and
16 the SEC will impartially weigh all environmental,
17 economic, and technical issues. Thank you.

18 CHAIRMAN GETZ: Thank you. Any
19 questions from the Committee? Ms. Morin.

20 DIR. MORIN: Thank you. I wanted know
21 if any, to the extent that you know, members of your
22 Zoning or Planning Boards have availed themselves of
23 training at the Office of Energy & Planning, either
24 through their training conferences or their materials on,

1 you know, issues related to, you know, legal issues and so
2 forth, and what extent that your members have availed
3 themselves of those training opportunities?

4 MR. GENEST: I believe they have all
5 tried to attend some of the conferences and such, the
6 seminars, that's what you're talking about?

7 DIR. MORIN: Uh-huh. Yes. Or the
8 handbooks and so forth. I just wanted to know if they
9 had. And, the one coming up this June for the new
10 members.

11 MR. GENEST: I believe some are
12 scheduled to take some of the things, courses that are
13 there.

14 DIR. MORIN: Thank you.

15 MR. GENEST: And, the books are handed
16 to all the members, of course.

17 CMSR. BELOW: Thank you. Mr. Genest,
18 I'd like to just note that you also sent a letter dated
19 April 20th, noting that you're opposed to the granting of
20 the petition of the Planning Board, and cite a Supreme
21 Court --

22 (Microphone feedback interruption.)

23 CMSR. BELOW: And, you cite a Supreme
24 Court case -- and, in that letter, you cite a Supreme

1 Court case, I think suggesting a conclusion that it's the
2 Select Board that would properly represent a town, and not
3 -- and citing a case where it says "to permit contests
4 among governmental units...is to invite confusion in
5 government and a diversion of public funds from the
6 purposes for which they were entrusted."

7 Just to be clear, are you, as a
8 Petitioner, seeking, asking this Committee to take
9 jurisdiction, are you also seeking to be an intervenor on
10 behalf of the Town of Antrim in this case?

11 MR. GENEST: We thought, as a
12 Petitioner, that we would be considered as an intervenor
13 automatically.

14 CMSR. BELOW: Thank you.

15 CHAIRMAN GETZ: Okay. Any other
16 questions?

17 (No verbal response)

18 CHAIRMAN GETZ: All right. Turning to
19 -- we have a third petition that was filed on behalf of
20 100 or more citizens, and I believe it was filed along
21 with Mr. Webber's April 14 Petition to Intervene. So,
22 Mr. Webber, I'll give you the opportunity to speak to the
23 petition on behalf of the 100 or more citizens, or
24 "registered voters", I believe, is the language.

1 MR. WEBBER: Thank you. I had been a
2 selectman for three years, until March of this year. I
3 sat on the Planning Board for the past year also. Our
4 Planning Board and our Select Board are made up of
5 residents of the Town of Antrim. I'm a brick layer, we
6 have a farmer, an insurance agent, a mill worker on our
7 Board. In front of me, we have a Committee with a
8 tremendous amount of expertise. Our Select Board and our
9 Planning Boards are made up of good people, but we do not
10 have the expertise to go through a procedure like this for
11 this wind energy facility. I do not believe the Planning
12 Board has the expertise to evaluate this process. So, I
13 request that the SEC take jurisdiction for that reason.

14 I'd just like to address, in some of the
15 petitions or the letters for intervening, my letter
16 requesting jurisdiction was based on a vote at a
17 Selectboard's meeting authorizing the letter to take
18 jurisdiction.

19 CHAIRMAN GETZ: You're talking now of
20 the original February 7 letter?

21 MR. WEBBER: Yes. Yes. In many of the
22 letters requesting intervention, that vote has been -- or,
23 my letter has been questioned as to its validity.
24 Basically, it was asserted that I simply wrote the letter

1 on my own. That is not true. It was a vote by the Select
2 Board. And, as chairman at the time, I signed the letter.

3 Counsel for the Public, in his letter
4 objecting to jurisdiction by the SEC, makes reference that
5 that letter was called into question, the validity was
6 called into question. He also mentions that, in the
7 Petition, I sponsored the Petition of over 100 signatures.
8 He calls into question five of the signers; two of them
9 are my parents, one is my wife, and two are my brothers.
10 They are registered voters in Antrim. He calls into
11 question -- he makes reference to that five of the signers
12 were -- had either the same name as myself or the same
13 address. I'm curious as to why he brought that up. They
14 are registered voters.

15 There's a similar petition objecting to
16 the SEC taking jurisdiction from Antrim residents. Many
17 of those signers have similar names, have similar
18 addresses, they're married couples, brothers, sisters.
19 And, yet, Counsel for the Public makes no mention of that.
20 It just seems a little one-sided. And, I call into
21 question his reason or rationale for that.

22 In any case, as a former selectman and a
23 former Planning Board member, I don't believe that our
24 Town has the expertise to properly oversee this process.

1 And, I request that the SEC take jurisdiction. Thank you.

2 CHAIRMAN GETZ: Thank you. Any
3 questions for Mr. Webber?

4 (No verbal response)

5 CHAIRMAN GETZ: Thank you. Well, let's
6 turn now to the Counsel for the Public. Mr. Roth.

7 MR. ROTH: Thank you. I'm going to use
8 the podium today, so I can see Steve's sign. Counsel for
9 the Public's position in this case is that jurisdiction at
10 this time is basically premature and -- Counsel for the
11 Public's position in this is that jurisdiction at this
12 time is premature and not advised. And, I think the basic
13 idea is that there has to be some sort of a compelling
14 State interest in a project before the State should commit
15 to do two things. One is to override the interests and
16 governance of the local community, and the other
17 commitment that the State makes is to bring all of you out
18 of your agencies and offices to spend a tremendous amount
19 of time and effort in reviewing a project.

20 We don't have a project of a scope that
21 you know about that has been defined. So, you can't
22 really evaluate, with any certainty, whether the State
23 interest is going to be implicated by this application --
24 or, I should say the application that hasn't happened.

1 And, I will point out that the statute, while there's --
2 it could be read one of two ways, it does say that a
3 petitioner is, among the classes of petitioners, is an
4 "Applicant". And, here, we don't have an applicant. So,
5 arguably, this Petition by the Applicant is not really
6 properly brought, because Antrim Wind is not an applicant.
7 And, the statute requires one of those categories of
8 petitions to be brought by an applicant.

9 CMSR. BELOW: Could I interrupt you
10 there, Mr. Roth? Where in the statute does it say that?
11 Because the copy of the statute I'm looking at, in RSA
12 162-H:2, XI(d), says "A petition filed by the potential
13 applicant." Isn't there a distinction between a
14 "potential applicant" and an "applicant"?

15 MR. ROTH: Perhaps. But, if you look at
16 XII, it says "'Renewable energy facility" shall also
17 include electrical" -- "electric generating station
18 equipment", etcetera, "either on its own motion or by a
19 petition of the applicant or two or more petitioners as
20 defined in 162-H:2, XI." So, a "renewable energy
21 facility" is one that's described in a petition by an
22 applicant. And, I understand that XI has the word
23 "potential applicant", but the definition of the facility
24 is "applicant". So, you've got sort of drawn swords on

1 the statutory interpretation.

2 CMSR. BELOW: Thank you.

3 MR. ROTH: By and large, what I heard
4 from the petitioners and from -- "petitioners" being
5 Antrim Wind and the Antrim Select Board and the
6 petitioning Antrim citizens, is that this body is uniquely
7 prepared and qualified to review this facility and to come
8 up with a good result. And, I have no doubt that that's
9 true. But that's an argument that can always be made in
10 every single case, whether it's 5 megawatts or 1 megawatt.
11 And, therefore, I think that argument basically proves too
12 much and says nothing. Because, if that's the argument
13 that gets you in the door, then it will always be true.
14 And, then, there's really -- there's no point in having a
15 statute provide you discretion, because your expertise is
16 unquestioned.

17 And, I think that, at the same time, the
18 notion that the Planning and the Select Boards of Antrim
19 don't have the ability to do it is somewhat of a fallacy.
20 And, the reason is, is that the Select Board and the
21 Planning Board of Antrim, and the Building Inspector or
22 whatever they do, have very specific duties to fulfill.
23 Those duties do not overlap completely with what the SEC
24 would do. Those duties do not include issuing or

1 reviewing the DES permits or the Fish & Game issues or the
2 Army Corps of Engineers' jurisdiction. There's a lot of
3 expertise out there that the Town of Antrim and the people
4 of Antrim and this facility will be subjected to, without
5 you doing anything, and without having to have in the Town
6 of Antrim that kind of expertise. So that, if you don't
7 get involved, the Town of Antrim, it seems to me, will do
8 fine. They will have the expertise of the Department of
9 Environmental Services, the Fish & Game Department, the
10 U.S. Fish & Wildlife Service, the Army Corps of Engineers,
11 just to say a few. And, they are, the Town planning
12 people, are used to looking at their town and deciding
13 what they think is right for it. And, they have a way of
14 doing it, and they're trying to, you know, I'm not going
15 to comment on whether they have been successful at
16 creating an ordinance. I don't know. I haven't waded
17 into those details.

18 But it seems to me that, to suggest that
19 the Town is not capable of doing this, I think, again,
20 proves too much. Because they asked -- because the Town
21 doesn't have to be capable of doing everything that you
22 do, because there are other agencies, and they have their
23 role, and they presumably were elected because they know
24 how to do it.

1 CHAIRMAN GETZ: So, we have a case here
2 where the Town has asked us to take jurisdiction. So, we
3 shouldn't take that request on its face? We should look
4 behind that request to make some determination on their
5 capabilities? Is that what you're suggesting?

6 MR. ROTH: No. But, at the same time,
7 I'm suggesting that you shouldn't look at their assertion
8 that they're not capable either. I think one of the
9 issues that strikes me as -- is there's a little bit of
10 conflating the question of "are there petitioners?" with
11 "should you do it?" I mean, if the answer is, "if there
12 are there petitioners, therefore, you must do it." Then,
13 let's all -- let's pack up and go home now. There's
14 really no reason for this hearing.

15 But I think what you need to do is you
16 need to decide, you know, as Attorney Geiger suggests, you
17 know, policy issues, which I think goes a little bit too
18 far. But, if you're going to argue about whether the Town
19 -- whether you should do it because the Town isn't
20 capable, then, I think that you should consider that the
21 Committee does stuff that the Town doesn't have to do, and
22 the Town will manage. And, the Department of
23 Environmental Services, Fish & Game, and the others will
24 provide a great deal of expertise that they may need.

1 It also seems to me that the Petitioner,
2 Antrim Wind, is dissatisfied with the result that they're
3 getting in the Town. Which is a little bit strange, since
4 it seems to me that, based on their assertions, they have
5 a lot of fends, and they're succeeding at getting what
6 they want. It may not be pretty, and they may not like
7 the way it goes, but they are succeeding. They have their
8 met tower up. They're engaged in -- they have been
9 engaged with the Boards in sort of getting the rules
10 written in a way that works for them.

11 You know, as I say, it's not pretty,
12 it's not efficient, it's not elegant, but that's the way
13 town government is, and which brings me to another "proves
14 too much" point. To suggest that you should take
15 jurisdiction over this Project because the town way of
16 doing things is too messy or it's too complicated or too
17 time-consuming, again, every single community in this
18 state, a developer could come in here and make that claim.
19 That the town is -- the town politics are just too much
20 for them, they don't want to deal with it, they want you
21 to solve everything for them.

22 And, as I said before, if that's the
23 standard, then everybody who comes in can say "Eh, look at
24 Antrim. That was a mess. We don't want to go there. We

1 want you to do it." They can come in and say that with
2 almost any town in this state. "They don't have the
3 expertise. It's a confusing process. The rules change.
4 We're not happy with town politics." If that's the
5 standard, then you will get every project, not just the
6 ones over 30 megawatts. So, I think it's important for
7 you to be careful with what you ask for. If you give
8 jurisdiction in this, then you're opening the door,
9 essentially, for everybody to say "Town of politics are
10 messy. We don't want to go there. You're the one."

11 And, I want to point or look at the
12 question of the statutory -- the legislative history.
13 First of all, the legislative history that was provided in
14 the motion, you know, this memorandum of law provided by
15 the Petitioner, it's not a complete copy. So, I don't
16 know what else is in there, but there are pages missing.
17 Secondly, it's never been my understanding, and perhaps
18 I'm wrong about this, but it's not been my understanding
19 that witnesses before a legislative body are necessarily a
20 reliable expression of what the Legislature intended.
21 And, certainly, one -- that, even if it is, the views of
22 one legislator are not really that compelling.

23 But I want to take it on face value the
24 blocking question. It seems to me that nowhere in these

1 papers has the Petitioner alleged that anything being done
2 by the Town is unreasonable or unlawful. And, if it were,
3 they have their legal remedies. So, they're trying to
4 sort of create an equitable remedy here, where they have
5 already an equitable remedy of law. Which is, whatever
6 the remedies are for town behavior, if they don't like
7 what the Town gives them, if it's unreasonable or
8 unlawful, they can appeal it and seek redress in the
9 courts. But it has not even been alleged in the papers
10 that anything done is unreasonable or unlawful. They may
11 not like it, they may not be satisfied with the progress
12 they're making, although, again, I think that's a little
13 bit "asks too much", since they're getting what they want
14 and they seem to have a lot of friends in town. But I
15 don't see that -- they haven't alleged that anything is
16 really unreasonable or unlawful.

17 Blocking, it seems to me, if you're
18 going to take the legislative history or the opinions of
19 the member of the BIA at the committee as somehow
20 legislative history, suggests to me that there ought to be
21 -- it's not just that the Town said "no", because the Town
22 is perfectly entitled to say "no", if they think it's a
23 poor fit, and they follow their standards and they follow
24 their procedures, even if they have to design their

1 standards and procedures now. But, if they follow -- if
2 they don't do anything unreasonable or unlawful, and they
3 say "no", I mean, is that blocking? Or, is the "blocking"
4 that's being thought about here something more, something
5 like something unreasonable or unlawful? And, I submit
6 that, you know, a town should be entitled to say "no", if
7 they don't want a project. And, that can't necessarily be
8 the kind of blocking that was thought of by that witness.
9 Because, otherwise, you know, it essentially gives the
10 applicant always two bites at the apple. They can go to
11 the town. "Okay, it's not going so well. We can come
12 here."

13 There was also a mention that, in the
14 Petitioner's memorandum, that there's something about the
15 town process that's suspect. I mean, as I said before,
16 town politics, town process is not pretty, it's not
17 elegant, it's not always efficient. I didn't see what was
18 suspect about it. And, as I said, they haven't alleged
19 anything that is unreasonable or unlawful.

20 CMSR. IGNATIUS: I'm sorry. Excuse me.
21 Mr. Roth, did you say someone has claimed it's "suspect"
22 or that that's your sense of what someone's claimed?

23 MR. ROTH: No. In the memorandum of law
24 prepared by the Petitioner, in Footnote Number 3, I

1 believe it was, they said "The process by which the
2 Planning Board made the decision to withdraw its support
3 for the amendment is also suspect." And, I'm not sure
4 what it's suspicious of. But, as I said, they haven't
5 claimed that anything is unreasonable or unlawful.

6 CMSR. IGNATIUS: Thank you.

7 MR. ROTH: Now, the argument was made
8 that "it's not reasonable to require a full application
9 without jurisdiction." Well, clearly, the statute seems
10 to suggest otherwise. And, in addition, I would suggest
11 that they don't have to complete a full six volume
12 application and all the binders and everything in order to
13 get an application in so that you know what they're doing.
14 They need to produce an application form, and then they
15 get some period of time in which the Committee can decide
16 whether it's complete, and that they can supplement that
17 application, and as they do. Every project that I've been
18 involved in, they submit an application, they put out what
19 they have and they give you what they have. And, then,
20 over the process of the hearing, they tell you all kinds
21 of other additional things about it. The thing is sort of
22 a -- it's a living thing, and it changes as it goes along.

23 CHAIRMAN GETZ: Well, Mr. Roth, two
24 points. First, you say "it's clear" about the applicant,

1 but we've already had a discussion where there's at least
2 two different references in the statute to "a petition of
3 the applicant" and "a petition filed by the potential
4 applicant". So, I guess I'm not sure that it's all that
5 clear. But, with respect to the application, it seems to
6 be you're suggesting that, in order to open the door for
7 us to be able to make a decision about jurisdiction, at
8 least under your theory, is that they should at least file
9 an incomplete application, so they have met that step,
10 even though they would be not in a position -- then, we'd
11 have to what? Take jurisdiction? Consider the question
12 of whether to take jurisdiction? If we decided to take
13 jurisdiction, then say "we're denying your application,
14 because it's incomplete"? I mean, it hardly sounds like
15 an efficient process.

16 MR. ROTH: Well, I don't suggest that
17 you would deny the application because it's incomplete,
18 because they would work to fill the application to make it
19 complete within the time that is allowed to them. It
20 comes back to understanding the definition of and the
21 scope of the Project, and what is the State's interest and
22 the commitments that the State makes by doing that. If
23 you don't know exactly what this Project is going to look
24 like, and I don't mean -- I shouldn't say the word

1 "exactly". But, if you don't have an idea expressed in an
2 application how big this Project is going to be, how do
3 you measure what the State's interest is in doing this and
4 what the State's interest is in overriding the views and
5 the governance of the local community?

6 CMSR. IGNATIUS: Mr. Roth, if the
7 Project is 20 megawatts or is 22 megawatts, which I think
8 is what the discussion has been sort of the range, maybe
9 24 megawatts, how does the State's interests change? I
10 understand if it's -- we don't know if it's 2 or it's 30.
11 But, in the fairly narrow range that's been described,
12 help me understand how the State's interests would be
13 differently affected.

14 MR. ROTH: Going back to the
15 "Declaration of Purpose" of the statute in 162-H:1, the
16 role of the Site Evaluation Committee is "to maintain a
17 balance between the environment and the need for new
18 energy facilities in New Hampshire", among other things,
19 including that, you know, "undue delay", "timely
20 consideration", all the things that Attorney Geiger
21 alluded to. But, then, at the end it says "all to assure
22 that the state has an adequate and reliable supply of
23 energy in conformance with sound environmental
24 principles."

1 So that, ultimately, the question is,
2 "does the Project, in the scope that it's presented to
3 you, contribute to this ultimate goal, which is "to assure
4 that the state has an adequate and reliable supply of
5 energy in conformance with sound environmental
6 principles"?"

7 If it's only 5 megawatts, then how much
8 of a contribution does that make to the "adequate and
9 reliable supply of energy"? We've heard testimony in
10 these cases before that typically you're getting
11 30 percent capacity factor, and in another case we've had
12 testimony or evidence that said the ISO gave them like
13 10 percent of credit, in terms of that. So, if you have a
14 project that's 5 megawatts, and you only got 30 percent or
15 10 percent of that, how much electricity is that and what
16 does that do for the State of New Hampshire?

17 And, certainly, you can say "okay,
18 that's some electricity." But then you have to balance
19 that against the burdens that are on the State and all of
20 you, to be here, to sit through a week of hearings and
21 deliberations, and all the other parties having to
22 participate with, you know, 15 or 16 intervening parties,
23 it's going to be a difficult and time-consuming effort.
24 And, then, of course, you need to balance that against,

1 essentially, taking away the local jurisdiction over the
2 -- and the local control of the Project. But it's the
3 size of the Project, I think, influences the extent to
4 which you can decide that the State's -- that this Project
5 helps with this problem of the state having an "adequate
6 and reliable supply of energy".

7 CMSR. IGNATIUS: But you're not
8 suggesting that the Applicant can't decide if this is a 5
9 megawatt project or a 22 megawatt project, are you?

10 MR. ROTH: No. And, obviously, the
11 Applicant can decide that. But, in terms of whether you
12 take jurisdiction on it, you might want to think twice
13 about taking jurisdiction over a 5 megawatt project,
14 whereas doing a 22 megawatt project may seem perfectly
15 appropriate, because the balance of the conformity with
16 providing an "adequate and reliable supply of energy",
17 with the burden on the state and the burden on the Town is
18 more favorable.

19 CMSR. IGNATIUS: I understand your
20 argument. But we heard testimony this morning from the
21 Company that they're somewhere in the 20 to 22, 23 range,
22 megawatt range, no one's talking about "5". So, I'm
23 trying to understand what it is you're saying?

24 MR. ROTH: What I'm suggesting is that,

1 without an application committing to you what they're
2 building, you're just going on a Petition for
3 Jurisdiction, which I believe is, at least the way I read
4 it, retains some uncertainty about how big the Project
5 will be. An application puts that into perspective.

6 Typically, I mean, as I understand this,
7 and maybe, you know, I'm not a wind developer, but the way
8 I've seen these projects go, is the met tower is up for
9 some period of time, they develop a sense of how much the
10 site can support, then they design the project, and then
11 they come in here with an application and maps and wind
12 data that they have gathered. So, they have a very strong
13 idea that they can put down on paper what this project is
14 going to be like, when they start building it or when you
15 certificate it. Right now, they're sort of putting the
16 cart before the horse. They're saying "get involved, then
17 we'll tell you what the Project is actually going to
18 really be like." And, I think that, you know, that's why
19 I say this is really premature. We need to find -- they
20 need to find out more about what this Project is really
21 going to be like, and then come and tell you.

22 You know, the question of the time
23 delay, I look at, you know, they say "okay, we want
24 jurisdiction now, but we're not going to give you an

1 application until the end of the year." I don't
2 understand why that's necessary. Why do they need to have
3 jurisdiction now for an application they're not bringing
4 to you until the end of the year? They haven't really
5 explained that. You know, are they concerned about the
6 Town? Well, they don't have to do anything in the Town,
7 if they're going to come here with an application in
8 October or November or December. They don't have to do
9 anything in the Town for the next six or eight months.
10 They can just sit tight, collect their data, do their
11 studies, show up with an application in the fall.

12 There was some talk about whether
13 litigation risk is a reason to do this. It seems to me
14 that that argument also goes too far. There's litigation
15 out there that we've been already told is going to
16 continue regardless of whether you take jurisdiction.
17 There may be other litigation that this spawns. There's
18 no way that that can be controlled by you. You don't have
19 the power to stop litigation or interfere in litigation or
20 prevent litigation, really. Thus, the existence of
21 litigation or the curing of a litigation problem is really
22 not a reason for you to take or not take jurisdiction.
23 It's certainly not one of the reasons expressed in the
24 statute or in any of the policies that were spoken of.

1 The lack of a fair or established local
2 process. Again, you know, the Legislature knew, when it
3 wrote this statute and provided for discretionary
4 jurisdiction for projects below 30 megawatts, that town
5 processes were not always pretty. And, in that case, as I
6 said before, if you take jurisdiction in this case for
7 that reason, you're going to get it for every single case
8 that comes along. Because town processes throughout the
9 state are not predictable, they're not necessarily
10 friendly to developers; sometimes they are. Sometimes the
11 Town process goes very well for the developers.

12 So, it seems to me that this project,
13 these folks have a great bunch of talent here. You've got
14 Attorney Uchida and Attorney Geiger working very hard with
15 the Town. And, as I said, they have actually been fairly
16 successful so far.

17 There was, again, an earlier discussion
18 by Attorney Geiger about a "streamlined appellate
19 procedure". I think that, again, is the question of the
20 litigation issue. There's nothing in the statute that
21 says "you should take jurisdiction over projects like this
22 because it provides developers a streamlined appellate
23 procedure." That's just the lay of the land for people
24 who do business in the state. That, when you have to get

1 various permits from State agencies and from the towns,
2 there are different appellate procedures and different
3 ways to go. The Legislature knew that, and I think that
4 that's the background on which they operate.

5 I think I've covered all of the points
6 that I wanted to cover. And, I'd be happy to answer any
7 more questions, should anybody have any.

8 CHAIRMAN GETZ: Mr. Scott.

9 DIR. SCOTT: Thank you. Thank you,
10 Attorney Roth. Maybe you can help me. One of the things
11 I'm struggling with, and you've kind of alluded to it, is
12 -- well, let me -- I'll give you a statement and you can
13 react to it, perhaps. One of my concerns is and what I'm
14 struggling with is the Board of Selectmen, which I view as
15 the governing body of the Town, has come to us. They have
16 asked us to take jurisdiction. And, they have said "the
17 Town doesn't have expertise to do this", therefore,
18 they're asking us to do that. That's the way I understand
19 what's been asked of us. Again, are you suggesting that
20 we say they're wrong or help me with that a little bit?

21 MR. ROTH: Well, the Petition is what it
22 is, to be a bit -- to give you a logical fallacy in
23 response. But the reasons for the Petition, if they say
24 "we don't have the skill to do it", as I've said earlier,

1 I don't think that that puts it in the right perspective.
2 I don't know what skills that the Select Board is saying
3 that the Planning Board lacks. And, I suppose, I would
4 imagine that, if you heard from the Planning Board, they
5 might have a different view of it, and I'm not going to
6 speak to that. But I would be concerned that the Select
7 Board is misconstruing what its mission or what the Town's
8 mission is in going to do this, and whether it has perhaps
9 not accounted for the fact that the Department of
10 Environmental Services, the Fish & Game Department, the
11 Army Corps of Engineers, and other agencies all have a
12 great deal of expertise that will be brought to bear. And
13 that deciding whether a vernal pool impact in the Town of
14 Antrim is appropriate is not really going to be
15 necessarily up to the Planning Board. It's going to be up
16 to the Department of Environmental Services to make that
17 determination. So that there are a whole host of issues
18 that the Planning Board doesn't really have to worry
19 about, because other State agencies will cover it or
20 federal agencies will cover it in their normal, ordinary
21 business.

22 So, I would just be concerned that we
23 not take too much from the argument made that "the Town
24 doesn't have the expertise." And, again, as I said, we

1 haven't heard from the Planning Board, who I would imagine
2 were probably not very happy about that kind of a
3 statement coming from the Selectmen. But, you know,
4 again, if there's a reason not to get involved in this
5 case, that's it. So, I don't know that expertise really
6 is lacking, where you have a lot of agencies already on
7 the job.

8 DIR. SCOTT: Could I have a follow-up,
9 Mr. Chair? And, I don't think you quite said this, but I
10 guess I would ask this again as another question. To the
11 extent that an application or a partial application was
12 submitted, is it your assertion that that would help the
13 Town decide whether they had expertise?

14 MR. ROTH: No. I think that the issues
15 will be the same. But I think a partial application
16 submitted to you would help you to understand whether
17 there's a sufficient State interest in this project to do
18 it. I think the Town understands or should understand
19 what the issues are that it is -- that it would ordinarily
20 and typically be called in to deal with in its land use
21 planning. And, that it would understand also that the
22 Department of Environmental Services and all the others
23 also have their roles to play, and that's going to provide
24 expertise.

1 DIR. SCOTT: Thank you.

2 CHAIRMAN GETZ: Director Morin.

3 DIR. MORIN: Thank you. Yes. One thing
4 that I'm a little confused about, in one case you argue
5 that, if we're only accepting jurisdiction because there's
6 a petitioner, then there's no deliberation of that
7 decision, and that you would accept every case. But your
8 argument that "the Town has expertise they don't realize
9 because of the permitting process", wouldn't that argue
10 the exact opposite, saying "well, you could argue that for
11 any, any facility", and, therefore, if that was the case,
12 that there's adequate through the permitting process, and
13 those agencies that bring expertise to bear in any town,
14 then there should never be the case that a petitioner
15 would say "we don't have the expertise"? It seems like it
16 goes in the opposite direction, but for the same
17 rationale.

18 MR. ROTH: I think you point to
19 something that I think is, in a statute that we've noticed
20 has certain lack of clarity, there is a certain clarity on
21 one point. And, that is that the Legislature intended
22 there to be a presumption in favor of jurisdiction for a
23 project over 30 megawatts. In fact, it puts a binding
24 presumption, "you must come here with a project of

1 30 megawatts or more." And, a discretion, an exercise of
2 discretion, in other words, an exception, exceptional
3 cases can come here. And, so that, if you have an
4 exceptional case, and maybe the "blocking" question that
5 was raised in this legislative history, as it was called,
6 is the issue. Is there something that's unreasonable or
7 unlawful that's being done by the Town that's making this
8 happen? Or, as I suggested, is there something about this
9 particular project, in this particular place, at this
10 particular time, that meets the State's energy needs in a
11 particularly cogent way? And, I don't think we've seen
12 anything that makes this project exceptional beyond any
13 other smaller project that gets put in a small town that
14 there's a lot of noise at the town level over it.

15 CHAIRMAN GETZ: Mr. Harrington.

16 MR. HARRINGTON: Yes. Mr. Roth, I'm
17 just trying to get a few of your arguments, points clear.
18 You talk about the Petition -- you spent a lot of time
19 talking about whether there's sufficient expertise in the
20 Town to do this and so forth. But, as far as the validity
21 of the Petitions, you're not challenging that, right? Is
22 that correct?

23 MR. ROTH: The validity of the Petition?

24 MR. HARRINGTON: Well, the law states

1 that "a petition endorsed by 100 or more registered voters
2 in the host community."

3 MR. ROTH: No, sir. I'm not challenging
4 the validity of the Petition. I don't have any reason to
5 do that.

6 MR. HARRINGTON: Or "a petition endorsed
7 by the governing body of the host community"?

8 MR. ROTH: As I pointed out in my
9 response to the petition filed by the Applicant -- the
10 Non-Applicant, there have been questions raised by town
11 people in their letters to you, suggesting that maybe
12 there was something improper about the way the initial
13 letter from the Selectmen came out. Now, that's since
14 been replaced by another letter from the Select Board that
15 came out, you know, after I had written by response, and I
16 haven't really had an opportunity to evaluate that. But
17 it seems to me that somebody, you know, a couple of people
18 in the town have said "there's something screwy about the
19 way the Selectmen behaved in the February letter", and
20 they "doubt that it's valid" or something. And, so, I'm
21 just pointing that out. I don't have any reason to
22 believe that the current position of the Select Board is
23 somehow subject to other flaws. But we may hear from
24 other people in town who are going to challenge that.

1 MR. HARRINGTON: Okay. So, just so --
2 just assuming that that's the case, then, as you say, you
3 have no reason to believe, then, what you're saying is
4 that, when it comes under the part of the law that says
5 that the "Committee determines requires a certificate,
6 consistent with the findings and purposes set forth in RSA
7 162-H:1, either on its own", which is not the case at
8 least as of yet, "or by a petition of the applicant",
9 which apparently we did receive, and I think the part
10 where it talks about "a petition filed by a potential
11 applicant" and "applicant" is just simply an oversight in
12 the legislation, "or two or more petitioners as defined in
13 RSA 162-H:2", which could be the "100 registered voters in
14 the host community" and the "governing body".

15 So, it would appear, would you agree
16 then, that the requirements for making the determination
17 by the Committee have been met, and now it's up to the
18 Committee to decide, "consistent with the findings and
19 purposes set forth in Section 162-H:1" that is a -- that a
20 certificate is required. Is that where we're at? Do you
21 agree with that or are you --

22 MR. ROTH: It would appear so.

23 MR. HARRINGTON: Okay.

24 MR. ROTH: Though, I guess I do take

1 issue whether there is a "Petition by the Applicant".

2 MR. HARRINGTON: Okay. Well, leaving
3 that aside then. So, we're basically into the looking at
4 162 H:1, the "Declaration of Purpose", and determining
5 that, in this case, if it requires a certificate. And, if
6 I get your arguments, they seem to be in two-fold. One,
7 that the -- that that decision to take jurisdiction is
8 premature, and that it's not necessary for at least some
9 time, because the applicant won't be -- the potential
10 applicant would not be filing an application or ready to
11 file an application for seven or eight months from now?

12 MR. ROTH: That's correct.

13 MR. HARRINGTON: Okay.

14 MR. ROTH: And, you don't, without the
15 application, you really don't have a way to go through the
16 Declaration of Purpose and figure out how this Project is
17 going to meet these criteria.

18 MR. HARRINGTON: And, is that because
19 of, as Ms. Ignatius said, they seem to be honing in on the
20 size of something slightly less than 24 megawatts, in
21 order to tie in on the 34.5 kV line? But that you don't
22 think that's sufficient enough to look at, you'd need more
23 detail, like the exact location of the towers, the exact
24 size, the exact number?

1 MR. ROTH: Yes, because, in all the
2 other cases that we've seen here, they come in with the
3 number of turbines and their locations already determined
4 in the applications. This is a case where you don't
5 really know where the turbines are going to be or how many
6 of them there are going to be with any precision. They
7 just -- they haven't committed to that yet.

8 MR. HARRINGTON: And, in the Lempster
9 case, was there an exact presentation by the potential
10 applicant that "we are going to put each turbine in this
11 location" and all these specifics that you're looking for,
12 prior to the Committee taking jurisdiction?

13 MR. ROTH: There was an application that
14 was submitted within a couple of weeks after the -- after
15 the Applicant agreed to jurisdiction. And, in the face of
16 a petition by the Selectmen of Lempster, that was
17 uncontroverted by anyone, except the Applicant.
18 Initially, the Applicant resisted jurisdiction in that
19 case. And, the Select Board persisted. And, I believe
20 the Planning Board was on board with them in that
21 instance. And, then, ultimately, the Applicant
22 capitulated in jurisdiction. Nothing further was done for
23 a period of a few weeks afterwards, and then an
24 application came in.

1 MR. HARRINGTON: But the Site Evaluation
2 Committee made a decision to accept jurisdiction without
3 having an application?

4 MR. ROTH: Yes. That's true.

5 MR. HARRINGTON: Okay. So, that's the
6 same thing here. So, it appears then, getting back,
7 again, your arguments are two-fold. One, I guess, one is
8 that there's a timing factor, that it's premature to look
9 at this right now. And, the second one is that, without
10 additional information, whether in the form of an
11 application or something that's very specific, there's no
12 way that this Board could make the decision that a
13 certificate is required in conformance with the Section
14 162-H:1?

15 MR. ROTH: That's my argument.

16 MR. HARRINGTON: All right. Thank you.

17 MR. ROTH: And, I would just also point
18 out that I don't think that Lempster is necessarily a very
19 good precedent for this case, because very different facts
20 in play there. You had an applicant or a developer that
21 was resisting jurisdiction, and you had a consensus on the
22 part of the Town, with the Town officials, that
23 jurisdiction here was the right thing to do. And, I
24 believe at the time that, you know, there was evidence

1 taken during the jurisdictional phase, you know, hearings,
2 which involved the testimony -- there was testimony
3 submitted by the developer's people, and cross-examination
4 of those people, about the scope and size of the Project.
5 And, it was pretty well determined and known through that
6 testimony, which we don't have here, there was testimony
7 that made pretty clear to everybody in the room what the
8 Project was going to look like when it got started.

9 MR. HARRINGTON: Follow-up,
10 Mr. Chairman? You've mentioned this a couple of times now
11 about the fact that there was -- this is "contested". In
12 other words, you have some people in the town saying
13 "don't take jurisdiction", some people saying "they
14 should". There seems to be some question about the
15 ability of the Planning Board to do this. The selectmen
16 saying that "there isn't enough expertise within the town
17 to make correct judgments on it." And, apparently, the
18 other people in the town don't think that's the case. But
19 where in 162-H does it talk about that as being a basis
20 for the Committee taking jurisdiction? I can't find it.
21 Maybe there's something in there --

22 MR. ROTH: No.

23 MR. HARRINGTON: -- that talks about the
24 expertise level of the town involved should be a

1 determining factor on whether the Committee takes
2 jurisdiction.

3 MR. ROTH: It's not in there. But there
4 was a discussion by Attorney Geiger about the policies
5 behind this. And, my sense of the policies are that
6 you're making a commitment to do two things. One is to
7 commit your resources and your time and energy to do this.
8 And, you know, the other is, you're making a commitment to
9 essentially take away local control over certain aspects
10 of this. And, if there's a consensus about that from the
11 community, that's one thing. But, if you have a community
12 that's divided about it, it seems to me the policy of
13 deferring to local control, which I think the statute
14 envisions, where it has the 30-megawatt cutoff, is not
15 being furthered by stepping into a situation where there's
16 a lack of consensus in the community about your taking
17 over local control.

18 MR. HARRINGTON: Well, I guess, again,
19 the question, it seems to me, is there's nothing in the
20 statute that talks about "a popular vote" or any other
21 boards than the "governing body", which I assume we all
22 conclude is the Select Board in the Town, and "a petition
23 endorsed by 100 of more registered voters in the host
24 community", which you've already stated you agree was met.

1 That seems to be the only criteria that is supposed to be
2 allotted to the town, not 55 percent of the town or
3 72 percent or whatever. As long as those two things are
4 met, then it would appear it then goes to the Site
5 Evaluation Committee to determine if a certificate is
6 needed, consistent with the Declaration of Purpose. And,
7 we've gone beyond the step of whether we need to go to
8 circumventing local control or whether, that the action of
9 those two petitions basically move it to the next step.
10 That's what I'm trying to find out. Why -- where do you
11 think that there's something about local control that
12 we're violating, once those two things have been complied
13 with?

14 MR. ROTH: Well, because, at the bottom,
15 when you get to doing the determination under H:1, you
16 have to make a discretionary determination. And, the
17 discretionary determination should be consistent with the
18 statute. And, the statute says "all projects more than
19 30 megawatts, you must hear; a project below 30 megawatts
20 you may hear, as long as it's consistent with this
21 statutory Declaration of Purpose." But I think you have
22 to -- you can't not consider whether the purpose of the
23 statute is being met, which is, under the statute, there's
24 an understanding by the Legislature that the towns were

1 going to exercise control, with the help of the state and
2 federal agencies. Those towns were going to have --
3 exercise their local land use planning and control over
4 projects below that size. And, so, you're jumping -- you
5 know, if you have a consensus, I think you're on much --
6 much safer ground, than if you go into a situation where
7 there's not consensus on the question of local control.

8 MR. HARRINGTON: Okay. But you agree --

9 CHAIRMAN GETZ: Well, Mr. Harrington, I
10 think we've covered this area a little bit.

11 MR. HARRINGTON: Okay.

12 CHAIRMAN GETZ: Are there other
13 questions related? Commissioner Below.

14 CMSR. BELOW: Yes. Thank you. I guess,
15 not to belabor this, but I'm still a little confused about
16 your argument. Because, at the outset, you said "we
17 shouldn't override the governance of the local community."
18 And, yet, the governing body of the local community has
19 asked us to take jurisdiction, and has cited reasons why
20 they believe there would be undue delay if we didn't take
21 jurisdiction. And, you also said "the Town should be
22 entitled to say "no"." But should the Town be entitled to
23 say "yes, please take jurisdiction"? How do I reconcile
24 those?

1 MR. ROTH: Well, the question of whether
2 the Town's governing body has said "yes", I think is an
3 open one. When you look at, you know, you have dueling
4 petitions from the Planning Board and citizens, on the one
5 hand, and the Select Board and citizens on the other.
6 And, you know, if you want to weigh them on a scale, I
7 mean, it looks, from my looking at it, it seems to me that
8 there's, at best, a lack of consensus on the issue. The
9 Town made an argument based on a Supreme Court decision in
10 a *Hooksett Zoning Board of Adjustment* case, about, you
11 know, the Select Board being the only spokesman of the
12 town. And, you know, under 541-A, it's a different
13 standard, and it's people whose interests are going to be
14 affected. And, I'm not trying to weigh in on the question
15 of whether the Planning Board should be allowed to
16 intervene. But I'm suggesting to you that, as I said, if
17 you have a consensus among the people in the community
18 about doing this, you're on much safer ground, and it's
19 more consistent with, it seems to me, the statutory
20 purpose here, which is to defer to local control for
21 smaller projects and take local control for larger
22 projects.

23 CMSR. BELOW: A separate question. I
24 think you've suggested that, well, they could go ahead and

1 prepare an application, and then we could consider that,
2 then we could revisit the question of whether we should
3 assert jurisdiction on a more informed basis. But what --
4 a couple questions. One is, do you know what the
5 application requirements would be for a local land use
6 review of the project and how those compare to the
7 application requirements in our administrative rules?

8 MR. ROTH: I don't know. And, if I may,
9 just a little bit, expand. When we were talking about the
10 Lempster case a few minutes ago, and I had mentioned that
11 "there was testimony", there was sworn testimony in that
12 case that made clear what they were going to do. And,
13 maybe the answer is, you know, when we started this
14 hearing, you know, the Chairman said, you know, "this is
15 going to be sort of a procedural hearing to figure out
16 where to go to next." And, maybe the answer is to have
17 the Applicant submit some sworn testimony making more
18 concrete what they plan to do, and then have a hearing on
19 that testimony, as was done in the Lempster case.

20 CMSR. BELOW: And, one more question.
21 Which is, you also suggested that they perhaps could put
22 in an application that is not complete, and then complete
23 it within our timeframes. Do you recall what the
24 timeframe is, once an applicant files an application, and,

1 if it's found to be incomplete, how long they have to cure
2 that incompleteness?

3 MR. ROTH: I'm going somewhat from
4 memory here, but I believe that the time is 60 days. They
5 have 60 days to accept the application. And, I believe
6 acceptance is premised upon it being a complete
7 application. Because, if you look at 162-H:7, VI, "The
8 committee shall decide whether or not to accept the
9 application within 60 days of filing. If the committee
10 rejects [it] because it determines it to be
11 administratively incomplete, the applicant may choose to
12 file a new and more complete application or cure...within
13 10 days of receipt of notification of rejection."

14 CMSR. BELOW: But perhaps I could
15 refresh your memory on the Committee rules, because the
16 Legislature directed us to do a more expedited process
17 with regard to renewable energy projects. And, under Site
18 301.05(c), there's only a "30 day" timeframe after the
19 filing of an application for the Chair to determine
20 whether it's accepted as complete. And, then, under
21 Section (e) of Site 301.05, there's merely "10 days" for
22 which the Applicant needs to either complete the
23 application or essentially start over.

24 MR. ROTH: I may be mistaken about this,

1 Commissioner, but I think there's also a rule that says
2 you can waive the rule when you believe it in the interest
3 of the project to do so. So that, you know, if it were a
4 statutory issue, then you may have more trouble. But,
5 where there is a rule, typically, you can waive the rules.

6 But, again, I come back to what I said
7 before. That they haven't really explained why they think
8 jurisdiction is absolutely necessary today, when they're
9 not going to have an application to you until the end of
10 year. What is it that they hope to accomplish with that,
11 with jurisdiction for the next eight months?

12 CHAIRMAN GETZ: Mr. Iacopino.

13 MR. IACOPINO: Thank you. So, if I
14 understand your position correctly, is that the issue of
15 jurisdiction is not ripe, because we really don't have
16 enough information, and you would prefer to see that
17 information in an application?

18 MR. ROTH: An application or, as I
19 mentioned a moment ago, testimony.

20 MR. IACOPINO: Well, let's forget about
21 this case for a minute. If we were to take that position
22 or if the Committee were to take that position, aren't you
23 really undermining the ability of the Board of Selectmen
24 or Petitioners within a town to basically begin the

1 process under the statutory framework? What happens if
2 you had somebody building a 29 megawatt plant and they
3 were resisting jurisdiction of the Committee? By
4 requiring an application, aren't you really putting all
5 the control in the hands of the applicant and taking it
6 away from the community?

7 MR. ROTH: I don't see it. I mean, the
8 application only provides you the information that you
9 need to evaluate whether the purposes of 162-H:1 are being
10 met. It doesn't necessarily take any control, it just
11 gives you the information that you need to make that
12 determination. And, you can decide at that point "Okay,
13 the town's right, it shouldn't come here." Or, you can
14 decide at that point "no, it should be here." But, even
15 if the applicant is resisting, you have a petition, you
16 can proceed.

17 MR. IACOPINO: If we accept your
18 position that you need an application to proceed, and the
19 Applicant just isn't going to file one with us, you've
20 given them the control over the situation, haven't you?

21 MR. ROTH: Well, you still have
22 categories of petitioners. And, in this case, you have a
23 petition by a non-applicant. So, you would still take up
24 the issue in the face of that resistance by the

1 non-applicant with the petitions brought by the local
2 people, presumably, with some consensus to do that.

3 MR. IACOPINO: Let me ask you this. If
4 this Committee were not to take jurisdiction, who would
5 protect the residents of Stoddard and Windsor and abutting
6 communities that may have a view of these turbines they're
7 proposing?

8 MR. ROTH: The same people that protect
9 them from other instances of land use planning in the
10 neighboring communities, which is, ostensibly, the
11 planning and zoning boards of the towns around them.
12 Viewsheds are not necessarily protected by state law.
13 And, people do all kinds of things with their property, as
14 we hear from the developers all the time, that are not
15 pretty. And, to suggest that, you know, a visual impact
16 on a neighboring town should prevent a project, a
17 renewable energy project from being built, I think begs
18 the question about whether you can allow them to construct
19 cell towers or to do clear-cuts or build housing
20 developments.

21 MR. IACOPINO: And, my last question is
22 just you indicated that the assertion of the Committee's
23 discretionary jurisdiction should only be used in
24 "exceptional circumstances", basically to that. Do you

1 get any -- is there anything within the statute that leads
2 you to that conclusion that the discretion of the
3 Committee should be limited to cases where there's an
4 exception?

5 MR. ROTH: The structure of the statute
6 itself and, frankly, the comments by the so-called
7 "legislative history about blocking". That strikes me as
8 "exceptional circumstances".

9 MR. IACOPINO: But hasn't the
10 Legislature essentially said that the Committee can
11 exercise its jurisdiction on a plant as small as
12 5 megawatts?

13 MR. ROTH: Yes, it has. But you have
14 the discretion to do that. You don't have to do that.
15 So, you have to decide, "Oh, okay. Why do you have
16 discretion to do that?" Do you have discretion to do
17 that? Does that mean you should do it in every single
18 case one comes in? No. You're going to do it in cases
19 where it's appropriate with the statute, which I submit
20 the Legislature believed were exceptional circumstances by
21 the way they structured the statute.

22 CHAIRMAN GETZ: I think, at a minimum,
23 we're going to have to give Mr. Patnaude a rest in putting
24 this transcript together. And, we have two options, I

1 guess. Whether, and I know folks have come a long way,
2 and we've got at least 14 parties that we're going to have
3 the opportunity to hear from, and then a last chance for
4 the Antrim Wind Energy, LLC. So, I think we're going to
5 need to take at least a half hour for a lunch recess.
6 And, we could take longer. And, I guess that what it
7 really gets down to is, if folks who are here, you know,
8 feel that they need -- would they prefer, and just let me
9 know by show of hands, if you prefer a half hour for a
10 recess, so we can try to get through this as quickly as
11 possible, or an hour, so you can actually have a real
12 change to go out and get some lunch. So, if there's --
13 those in favor of a half hour?

14 (Show of hands.)

15 CHAIRMAN GETZ: Those in favor of an
16 hour?

17 (Show of hands.)

18 CMSR. BELOW: Forty-five minutes?

19 CHAIRMAN GETZ: Let's take a half hour
20 for a lunch recess.

21 (Whereupon a lunch recess was taken at
22 12:34 p.m. and the public meeting
23 reconvened at 1:17 p.m.)

24 CHAIRMAN GETZ: Okay. Good afternoon,

1 everyone. We're back on the record in Site Evaluation
2 Committee Docket 2011-02. And, just ask the Committee, is
3 there anything further, in terms of questions for
4 Mr. Roth?

5 (No verbal response)

6 CHAIRMAN GETZ: Okay. Hearing nothing,
7 then we'll turn to the Petitions to Intervene. And, I'll
8 go through the petitions in the order that Commissioner
9 Burack had them on his listing. And, I just want to point
10 out, we have the petitions in writing, we've read the
11 petitions. So, we don't need to hear all of the arguments
12 that are in the petitions. But, if there's anything
13 additional that you'd like to add to the petition or make
14 clear what your position is, on whether you believe the
15 Committee should or should not take jurisdiction or if you
16 have something with respect to what the appropriate legal
17 standard you believe that we should apply is, then please
18 make that known to us.

19 So, then, we'll start with the Antrim
20 Planning Board, and Ms. Pinello?

21 MS. PINELLO: Good afternoon. My name
22 is Martha Pinello. And, I'd like to introduce the
23 Chairman of the Planning Board, Andrew Robblee, who
24 arrived later. So, Andrew is also here.

1 CHAIRMAN GETZ: Good afternoon.

2 MS. PINELLO: And, I'll be speaking.

3 Thank you. Good morning, Chairman and members of the Site
4 Evaluation Committee. I'd like to thank you for this
5 opportunity to speak. As I said, my name is Martha
6 Pinello and I'm a member of the Antrim Planning Board.
7 The Antrim Planning Board is an elected board as
8 authorized under RSA 673:1. The Planning Board includes
9 six members elected by the voters, and a seventh member
10 who serves as a member of the Board of Selectmen,
11 appointed by the Board of Selectmen. The Antrim Planning
12 Board has the primary jurisdiction within the Town of
13 Antrim for planning matters. The Antrim planning
14 ordinances and site regulations are a highly nuanced
15 document reflecting land use decisions since the
16 implementation of zoning in 1973. The Town has a Master
17 Plan, an Open Space Plan, and those were adopted in 2000
18 -- June 2010 and March 2006, respectively. And, the
19 updated Master Plan includes a chapter on both
20 conservation uses and renewable energy.

21 The Antrim Planning Board opposes the
22 Site -- is opposed to the Site Evaluation Committee taking
23 jurisdiction of this potential project at this time. The
24 Planning Board began work on an industrial wind ordinance

1 in 2010. That ordinance was voted at the December 23rd,
2 2010 meeting. The Board continues its work with a
3 committee charged to develop regulations and ordinances
4 for industrial wind facilities in Antrim. And, I have the
5 Committee's charge that I'll read at the end of my
6 presentation now. This work is to be completed in six
7 months and brought to the voters for a ballot vote in the
8 Fall of 2011. Our goal is an ordinance and regulations
9 addressing industrial wind energy, which meets our
10 statutory duties and the objectives set out in RSA 162-H.

11 The Petitioners have played a full and
12 active role in these proceedings. Given our statutory
13 role and planning process, RSA 672:1, and the preemptive
14 effect of expected jurisdiction would have, we believe the
15 delay request is reasonable. Completion of an ordinance
16 and a legislative body vote will allow us to inform the
17 Site Evaluation Committee of Antrim's approach to
18 industrial wind development in accordance with RSA
19 162-H:16(d).

20 And, then, I'd like to read you the
21 charge that the Committee has. And, I apologize, I don't
22 have it with me. Excuse me. I apologize. That's what
23 happens with a lunch break. Excuse me. And, this was
24 passed on April 7th, 2011. "The Antrim Planning Board

1 will name a seven-member ad hoc committee to oversee
2 investigations of and make recommendations for
3 comprehensive oversight procedures concerning industrial
4 wind generation facilities in the Town of Antrim. The
5 Committee's work shall include the development of
6 procedures, zoning overlay plans, and criteria. The
7 development of zoning district boundaries, detailed site
8 plan review, regulations for wind energy, and suggestions
9 for matters that might be covered in the letters of
10 agreement between the Town and a wind energy developer,
11 including recommendations for project escrow accounts and
12 performance bonds. The recommendations of the ad hoc
13 committee should include at least two members of the
14 Planning Board, four members of the community, and a
15 member of the Board of Selectmen, will afford a full
16 Planning Board review, and implementation within six months
17 of the committee's action. The Antrim Planning Board will
18 deliver a final report, including its recommendations and
19 any proposed changes to the Antrim Planning Board
20 procedures, zoning ordinances, or site plan regulations to
21 the Antrim Board of Selectmen within three months of
22 receiving the ad hoc committee vote." Thank you.

23 CHAIRMAN GETZ: Questions?

24 DIR. MUZZEY: Yes, I do.

1 CHAIRMAN GETZ: Ms. Muzzey.

2 DIR. MUZZEY: Are you aware of any other
3 towns or cities in New Hampshire that have put into place
4 this type of oversight and industrial wind regulations?

5 MS. PINELLO: We've been working on just
6 that. And, we've found a number of parallels in Maine,
7 have been working with Vermont, and as far west as
8 Wisconsin and Minnesota, as we begin to pull those
9 together.

10 DIR. MUZZEY: Okay. Thank you.

11 CHAIRMAN GETZ: Other questions?

12 DIR. STEWART: Excuse me. From your
13 testimony -- well, let me ask you a question. Do you
14 believe that the Planning Board has the expertise to
15 handle this proceeding with regard to this facility?

16 MS. PINELLO: I can tell you of times
17 where the Antrim Planning Board has met with something
18 that didn't fit within our regulations or ordinances, and
19 what we chose to do about those and what those were, and
20 that might help you to make that assessment. The first
21 one would be when we didn't have Section 8 housing in
22 town, and there was a proposal for Section 8 housing. We
23 had an ad hoc committee. And, within a few months,
24 created an ordinance and an ability to be able to have

1 that built.

2 When the nuclear waste dump was proposed
3 for the State of New Hampshire, the Town of Antrim mounted
4 a very successful and succinct response to that, meeting
5 that very complex criterion of the Department of Energy.

6 An individual later -- okay. Continue?
7 A prison, a private prison was proposed in the Town of
8 Antrim, and we were able to meet that with our regulation.
9 In terms of the actual implementation of the Project, it
10 is not expected, and the Town of Antrim's Planning Board
11 does not personally implement that as afforded by the
12 voters. We've hired outside experts to provide that
13 expertise for us in the past.

14 DIR. STEWART: May I continue?

15 CHAIRMAN GETZ: Please.

16 DIR. STEWART: I actually have a
17 follow-up question, which is along those lines. Is there
18 a mechanism for the Planning Board or for the Town to hire
19 outside experts to assist the Planning Board in evaluating
20 projects such as these?

21 MS. PINELLO: Our site plan regulations
22 and ordinances have a component of that, yes, sir.

23 DIR. STEWART: So, the Planning Board
24 can hire an outside expert and, you know, perhaps bill the

1 applicant or how would that work in Antrim?

2 MS. PINELLO: That's exactly how it does
3 happen, sir. So that, when, during the site plan review
4 and during the application process, those parts are --
5 those aspects of the project are reviewed by the Planning
6 Board, in consort with the applicant.

7 DIR. STEWART: Thank you.

8 MS. PINELLO: Do you have something you
9 want to address? Andy has been on the Planning Board --

10 CHAIRMAN GETZ: Ms. Pinello, you'll have
11 to -- Mr. Patnaude is going to try to transcribe
12 everything. So, you were just turning to the Board Chair?

13 MS. PINELLO: Yes.

14 CHAIRMAN GETZ: Sir, did you have
15 something?

16 MR. ROBBLEE: I don't have anything
17 specific to say, unless there were specific questions from
18 the Committee itself.

19 CHAIRMAN GETZ: Okay. Mr. Iacopino.

20 MR. IACOPINO: Thank you. Ma'am, we've
21 heard, and I don't know all the details of it, but we've
22 heard about an ordinance that apparently was, at one point
23 or another, transferred to the Select Board, but, for one
24 reason or another, never made it on to the ballot.

1 MS. PINELLO: Yes.

2 MR. IACOPINO: Is your ad hoc committee
3 using that ordinance as their base or what's the status of
4 that?

5 MS. PINELLO: Okay. I can tell you the
6 wording of that ordinance. And, that ordinance says, I
7 believe it's -- I can't remember the exact phrase, but
8 "Industrial wind energy facilities will be allowed in the
9 Rural Conservation District." That was all that it said.

10 FROM THE FLOOR: "As a permitted use".

11 MS. PINELLO: "As a permitted use",
12 thank you.

13 FROM THE FLOOR: "Principle permitted
14 use".

15 MS. PINELLO: "Principle permitted use",
16 I'm sorry I don't have the text in front of me. It would
17 be a "principle permitted use within the Rural
18 Conservation District."

19 CHAIRMAN GETZ: Other questions?
20 Mr. Harrington.

21 MR. HARRINGTON: Yes. Maybe just out of
22 curiosity more than anything else. It seems as if, when I
23 say this as a former legislator, we always get push-back
24 from the towns when the state is trying to impose some

1 additional either spending or activity on the part of the
2 towns, and you seem to be saying "Don't take this away
3 from us. We'll spend the extra money, put in the extra
4 effort ourselves." Why is it that you feel as though that
5 -- why is the reason for that? Just leave it at that.

6 MS. PINELLO: Just one moment. Is it
7 all right if I address that?

8 MR. ROBBLEE: I would say "no".

9 MS. PINELLO: Okay. I can -- can I give
10 a history of what we've done in the past please, sir?

11 MR. ROBBLEE: I would say "no". I think
12 we voted as a board as to what we would address today, and
13 we'll leave it at that.

14 MR. HARRINGTON: Okay. Well, maybe I'll
15 rephrase the question. Why does the Town want to take
16 jurisdiction -- not have the Site Evaluation Committee
17 take jurisdiction for this?

18 MS. PINELLO: I believe, if I go back to
19 my -- our earlier statement here, the Antrim Planning
20 Board has taken responsibility for these matters since
21 1973 -- '74, excuse me.

22 MR. HARRINGTON: Okay. Well, that's not
23 answering my question, but I guess you're not going to or
24 plan to anyway.

1 MR. ROBBLEE: She is not speaking for
2 the Town either. She's speaking for the Planning Board.

3 MR. HARRINGTON: Okay. The Planning
4 Board chooses not to give an answer to my question, I
5 guess then. We'll leave it go at that.

6 CHAIRMAN GETZ: Anything further?

7 (No verbal response)

8 CHAIRMAN GETZ: Okay. Thank you,
9 Ms. Pinello. The Harris Center, Mr. Froling?

10 MR. FROLING: Thank you, Mr. Chairman,
11 members of the Committee. My name is Stephen Froling.
12 Can you hear me?

13 CHAIRMAN GETZ: Yes.

14 MR. FROLING: Okay. And, I'm the
15 Corporate Counsel of the Harris Center for Conservation
16 Education, which is based in Hancock, and is, among other
17 things, a conservation lands trust. Our grounds for
18 intervention are set forth in the petition. I can recite
19 very briefly our interests.

20 The first interest is that we own a
21 substantial amount of land, and I think it's 1,950 acres
22 within three miles of this site, which we hold for
23 conservation purposes. We use it for forestry operations.
24 We use it for recreation, low impact recreation. And, we

1 use it for habitat protection. And, our interest in that
2 connection is that we're concerned that this development
3 may affect our use and enjoyment of that land, as well as
4 the public's use and enjoyment of that land.

5 The second ground is that we hold
6 conservation easements on land that belongs to other
7 parties, principally here the Forest Society, the Nature
8 Conservancy, and Audubon Society of New Hampshire, which
9 we take as a fiduciary, it's a fiduciary trust obligation,
10 with public responsibilities involved in it. And, we have
11 an obligation in that sense to protect the conservation
12 values of that land, even though it's owned by third
13 parties. And, of that land, about I think it's
14 4,500 acres of parcels, in whole or in part, come within
15 this 3-mile radius.

16 And, the third interest is that we're a
17 long-standing conservation organization focused
18 particularly in this area. We work in eight towns, of
19 which Antrim is one. And have, over the course of 30 or
20 40 years, developed a substantial amount of expertise
21 about this land and the conservation values of land
22 surrounding it.

23 And, in that connection, they -- our
24 Petition for Intervention recites the proposal's site here

1 has been singled out in study after study after study as a
2 particular conservation interest. And, we would like to
3 be able to protect that interest as well.

4 I'd point out that we filed a Petition
5 for Intervention, our friends from Orr & Reno filed a
6 paper, and I can't remember if it says "no objection" or
7 "no comment" or something, but they're not objecting to
8 our appearing here.

9 The Chairman asked earlier what our
10 particular view was on this, on the Petition for
11 Jurisdiction. In our particular view, at this point, is
12 we'd like to see a full record. We're in the same
13 position as the Committee. We don't know whether this is
14 a good idea or a bad idea, and won't know until we see a
15 record -- a record developed. But, at that time, we'd
16 reserve the right to take a position on that issue.

17 If I could, could I spend just a couple
18 of minutes weighing in on the discussion that happened
19 this morning, particularly the role of the Committee in
20 deciding whether to grant jurisdiction or not grant
21 jurisdiction, in the second half of, is it 162-H:2, XII?
22 I think I've got that right. But, if not, I apologize.
23 On that point, we agree with Attorney Roth, that the
24 legislative scheme clearly implies that some of these

1 petitions will be granted and others won't be granted.

2 And, the question is, how do you divide the chickens from
3 the goats? Or, whatever you want to call it.

4 In that connection, I'd point out that
5 this Committee made a decision just about a year ago,
6 April 7th, 2010, in a case called the "Laflamme" case,
7 where it set out a detailed road map on that issue. It's
8 Docket 2009-03. And, what it said was that there were
9 four criteria. They are the criteria that Ms. Geiger
10 referred to this morning, but it's laid out in some detail
11 in that decision. And, for my money, that's where we
12 should go to look to see what your role is in doing this.
13 That decision clearly implies that this is a question of
14 fact or, at the very least, a question of mixed fact and
15 law, which would require evidence, you would have to have
16 an evidentiary hearing of some sort to determine those
17 issues.

18 We've had very cogent descriptions from
19 the attorneys, Attorney Geiger and Attorney Uchida this
20 morning, from various others. But I have to say that
21 those statements of fact may be reliable, they may tell
22 the whole story, they may not tell the whole story, but
23 none of them have been tested by cross-examination. And,
24 I think that's important to develop a factual record here.

1 Could I also respond to two specific
2 questions? One was raised just a few moments ago, and
3 that is "how does the Planning Board pay for all this?"
4 And, I know this not from preparing for today, but because
5 I'm on a planning board in another town. And, I'd refer
6 specifically to RSA 676:4-b, which is called "Third Party
7 Review and Inspection". And, it says "A planning board
8 reviewing a subdivision, site plan, or other land use
9 application may require the applicant to reimburse the
10 board for expenses reasonably incurred by obtaining third
11 party review and consultation during the review process."
12 That's specific statutory authority for the Planning Board
13 to make this part of their process and get the applicant
14 to pay for the outside consultants. That statute is
15 fairly recent, it didn't take effect until August of 2009.

16 Another question which came up this
17 morning was "what about the towns surrounding this?" And,
18 I don't have the citation, I will find one if it's of
19 interest on that. But all planning board considerations
20 have to start with considering a question "is this a
21 project with a regional impact?" And, if it is a project
22 with a regional impact, we are required to notify the
23 affected region. So, I would think, in this case, that
24 that would just be a matter of course. That people from

1 Stoddard or other towns that are affected by this would be
2 given notice and would be given an opportunity to
3 participate in any planning board review.

4 I'm perfectly happy to answer questions.

5 CHAIRMAN GETZ: Questions? Mr. Scott.

6 DIR. SCOTT: Yes, Mr. Froling. Just to
7 clarify -- Just to clarify, your request to intervene, is
8 it to intervene for the discussion on whether we take
9 jurisdiction or is it to -- and/or is it to intervene if
10 we do take jurisdiction?

11 MR. FROLING: It's a general request for
12 intervention, in all parts of the proceeding.

13 DIR. SCOTT: Thank you.

14 CHAIRMAN GETZ: Other questions?

15 (No verbal response)

16 CHAIRMAN GETZ: Hearing nothing --

17 MR. FROLING: Thank you very much.

18 CHAIRMAN GETZ: Thank you. The Audubon
19 Society, Ms. Von Mertens.

20 MS. VON MERTENS: I thought I was going
21 to say "good morning", but I'm going to say "good
22 afternoon". Audubon has filed its petition, and it pretty
23 much stands on its own. I'd just like to make I think two
24 additional points. The Willard Pond Wildlife Sanctuary is

1 now a direct abutter to this proposal. And, initially,
2 there were a couple of properties that buffered the
3 Project from the Wildlife Sanctuary, now, as was explained
4 this morning, the Project has gone from the northwest part
5 of Antrim south to be an abutter to Audubon's premiere
6 wildlife sanctuary. It's the only one that has a resident
7 naturalist there. And, I hope you've all been to Willard
8 Pond. It's not to be missed.

9 The map that was -- it's also an active
10 conservation, is ongoing. I think, in the last five
11 years, we've had four projects that have expanded the
12 conservation area there, in partnership with the Harris
13 Center, Fish & Game. And, the map that was attached, that
14 I saw earlier, the Granite Conservation Lands overlay,
15 takes them a while to catch up with the most current
16 conservation, so some of the areas that have -- that are
17 now legally conserved in perpetuity has not been hatched
18 on the map, I think the map that I saw.

19 The Audubon -- Michael Bartlett,
20 President of Audubon, wrote a letter to the Antrim
21 Planning Board in I think it would be December, I don't
22 have it with me. But, at that time, there were -- it was
23 part of the public hearings for the proposal to allow
24 wind, alternative energy wind facilities included as a

1 permitted use in this area. Audubon was concerned about
2 that. Wrote a letter of concern, and that zoning to allow
3 such a large impact project as a permitted use, Audubon
4 recommended a more -- a more, what word shall I use, a
5 different zoning approach, more typical, which would be a
6 special exception with a number of criteria, rather than a
7 permitted use. And, so, that letter is part of the
8 Planning Board record.

9 And, I think that's all I have to add.

10 CHAIRMAN GETZ: Any questions?

11 MR. HARRINGTON: Just one quick
12 question. Are you opposing or supporting the --

13 MS. VON MERTENS: It's the same as the
14 Harris Center intervenor. I think we don't know enough.
15 We've had a couple meetings with Eolian and -- or, Antrim
16 Wind Energy, and also with conservation groups, the Forest
17 Society, TMC, and the Harris Center. And, the sense is
18 right now, we don't know enough, what is it that we would
19 be responding to. And, so, in the event this is taken
20 over by the SEC, certainly want to have intervenor status,
21 as Antrim -- Audubon has been following this with great
22 interest for a couple years now.

23 MR. HARRINGTON: Thank you.

24 CHAIRMAN GETZ: Thank you. Mr. Webber,

1 do I take it that your earlier comments covered your
2 Petition for Intervention?

3 MR. WEBBER: Yes. I don't know if I
4 have a lot more.

5 CHAIRMAN GETZ: You're not required to.

6 MR. WEBBER: Well, I didn't look at my
7 notes before, so -- when Ms. Pinello was specifically
8 asked if she felt that the Antrim Planning Board could
9 handle the review of this Project, you may have noticed
10 that she did not answer "yes". She cited some previous
11 decisions that were made, but I'm not going to answer for
12 her, but my answer is "no". The Antrim Planning Board
13 cannot handle this. The make-up of the Antrim Planning
14 Board currently: It has two newly elected members. The
15 third, they have the Select Board member sitting as an *ex*
16 *officio*, who is a newly elected Select Board. So, there's
17 three members on the Planning Board that have three
18 meetings under their belt so far. So, they're new. Last
19 year, there were two members elected. So, of the seven
20 members, there are five that basically have very little
21 experience in this. So, I do not believe that the Antrim
22 Planning Board has the expertise to handle this Project.

23 Our Town Planner resigned yesterday.
24 So, we will be, I'm not going to speak for the Board of

1 Selectmen, but I'm going to guess that they're going to be
2 looking for a new Town Planner. But we don't have -- so,
3 we're going to lose that continuity with our Town Planner.

4 Mr. Roth mentioned that the current
5 Selectboard's recent letter supporting the SEC taking
6 jurisdiction was satisfactory to him, but he, again,
7 alluded to the fact that the previous letter that I
8 signed, which represented the Antrim Board of Selectmen,
9 was somehow invalid. And, I'm starting to resent that
10 implication. It was a vote taken at a Board of Selectmen
11 meeting. It was in the majority. And, the Board
12 maintains that position. But there's an allusion being
13 made that somehow that was not relevant.

14 And, again, in his letter objecting to
15 the jurisdiction, he appears to value one citizens
16 petition over another. And, when they both include
17 registered voters from the Town, I'm sort of at a loss to
18 explain his rationale there.

19 So, again, I feel that, quite frankly,
20 it's imperative that the SEC take jurisdiction over this.
21 Thank you.

22 MR. IACOPINO: Mr. Webber, is the
23 Committee safe in assuming that you will be the
24 spokesperson for the group of petitioners that you

1 sponsored?

2 MR. WEBBER: Yes.

3 MR. IACOPINO: Do you intend to hire
4 counsel?

5 MR. WEBBER: No.

6 CHAIRMAN GETZ: Any other questions?

7 (No verbal response)

8 CHAIRMAN GETZ: Thank you.

9 MR. ROTH: Mr. Chairman, it seems to me
10 that Mr. Webber's comments tended to repeat things he said
11 before, and perhaps a little bit out of turn, rebut things
12 that both Ms. Pinello and I said. I don't care to respond
13 to that, but I think it may be desirable for the Committee
14 to allow Ms. Pinello to respond to his claims.

15 CHAIRMAN GETZ: I think that opens up a
16 big problem, Mr. Roth, as you well know. That means
17 everybody who speaks, who says something about something
18 somebody said before, that's going to create a round
19 that's just impractical. It does give somewhat arguably
20 some advantage to people who come late in the process to
21 say something, but I think it's -- what he said was, for
22 the most part, covered ground previously laid out. So,
23 I'm not going to go back in the line-up of comments.
24 We'll just take everything under consideration that we

1 hear today, otherwise we won't be out of here until late
2 this evening.

3 So, next is Mr. Edwards.

4 MR. EDWARDS: My name is Bob Edwards.
5 I'm a resident of Antrim, and also a previous member of
6 the Planning Board, and I served two terms in the position
7 of Chairman. I'm also coming so late in the day that I've
8 had the benefit of hearing everyone's comments up until
9 now. And, to respond to Mr. Webber's comment, I
10 personally, and I'm only speaking for myself personally,
11 but I personally have no question as to the validity of
12 the letter that was originally signed by the Selectmen.

13 But the purpose of my requesting to act
14 on behalf of myself in an intervenor status was merely to
15 state my position, that I feel personally that there is a
16 lot more work to be done in the Town of Antrim in
17 developing an acceptable, well thought out ordinance
18 regarding industrial wind energy. And, being a former
19 member of the Planning Board, I feel confident that the
20 Planning Board is qualified to certain levels in
21 ascertaining and developing and presenting the merits of a
22 wind energy ordinance to the voters of the Town of Antrim.

23 I want to represent personally that I
24 think there's a lot of confusion regarding wind energy.

1 And, I think when you circulate a petition or a survey
2 that says "Are you in favor of wind energy, undecided or
3 against?" I think lots of people, in the interest of
4 fossil fuels and so forth, are going to be supportive of
5 wind energy, and it's not my position to not be in support
6 of it.

7 But it is my position that we need to do
8 more work, and I think the Planning Board should and is
9 entitled to have six months in order to develop this.
10 There is expertise on the Planning Board. There are also,
11 as recited earlier, a tremendous amount of resources
12 available and experts that can help in developing that.
13 And, by doing that, the Town itself has a voice in what
14 gets developed for the ordinance.

15 I have attended a couple of the
16 hearings. And, what I've heard at the hearings is that
17 there's a lot of -- there's still a lot of questions
18 remaining. There's uncertainty. I think there were a lot
19 of questions that were asked that were never answered.
20 And, I think there was a rush to put something together in
21 the form of an ordinance, which never did come before the
22 Town for a vote. But I would represent, from my
23 perspective, that that ordinance was not to the level that
24 it needs to be to address industrial wind energy.

1 And, when we look at that ordinance,
2 we're not looking at it just for Tuttle Mountain or for
3 this specific site. It is not site-specific, it really
4 relates to the town. So, we're doing something, I feel,
5 that is going to be -- has to be a long-range planning
6 ordinance, that we consider everything currently, but also
7 in the future.

8 I also attended the meeting of the
9 selectmen when they reached their conclusion not to hold a
10 Special Town Meeting, and the vote was 2 to 1 not to hold
11 a town meeting. And, what I heard from a member of the
12 Board of Selectmen was a charge to the Planning Board that
13 "you now must put something together and present it back
14 in a reasonable time period."

15 And, as you heard earlier in testimony
16 today, we have a new Board. And, I think that charge is
17 taken very seriously, and I think they're very sensitive
18 to the time. And, I think the spirit of that Selectmen's
19 vote, in my interpretation, was to allow the Planning
20 Board, in its present form, with the resources that it has
21 to develop an acceptable ordinance, get it back to the
22 people, so we can inform the people of truly what it
23 means, and then allow the voters of Antrim to make that
24 judgment.

1 I do think there is -- there is an
2 uninformed segment of our population in Antrim. And, I
3 think it's the Planning Board's job to keep -- to get them
4 informed and develop something that works in the spirit
5 and in the best interest of our voters.

6 So, in closing, I would just say that I
7 think it's premature to turn it over to the Committee at
8 this point. And, I would ask the Petition be denied and
9 allow the Planning Board six months in order to come up
10 with a suitable ordinance. Thank you.

11 CHAIRMAN GETZ: Thank you. Any
12 questions? Mr. Scott.

13 DIR. SCOTT: Real quick. Thank you, Mr.
14 Edwards. So, given what you just said, as far as your
15 request that we give six months and deny the Petition now,
16 at the end of six months are you saying there should be a
17 new petition if --

18 MR. EDWARDS: My personal opinion is, I
19 think a suitable ordinance can be developed. I don't -- I
20 think there's a big difference between putting together a
21 suitable ordinance for the Town to vote on and managing
22 this Project as we go forward. Where the complexities of
23 the Project are certainly, in terms of hands-on and the
24 everyday management of the operation, I think is not

1 something for the Planning Board. But I do think, to take
2 away the privilege of developing the ordinance, we should
3 have -- we should have that privilege to do so. What
4 we'll do at the end of six months recommend -- or, the
5 Board, I should say, not "we", the Board will recommend is
6 yet to be determined, I think.

7 CHAIRMAN GETZ: Anyone else?

8 MR. IACOPINO: Mr. Edwards, I'm going to
9 ask you a question, and I'm going to, actually, all of the
10 potential intervenors who are individuals that are seeking
11 to intervene listen to this question and maybe address it
12 as well, is what do you anticipate that your participation
13 as an intervenor in this process will bring? In other
14 words, going forward from today, you've told us how you
15 feel, but what do you believe that your participation as
16 an intervenor in going forward will bring? Do you intend
17 to have witnesses? Do you intend to cross-examine other
18 people? I mean, what do you intend to do as an intervenor
19 in the case?

20 MR. EDWARDS: The purpose today was only
21 to cite to the Committee what I felt was important for
22 consideration. My continuing effort would only be to
23 offer whatever I could do to assist, so that we meet those
24 guidelines in six months. And, if I can be of benefit to

1 help the Town through the Planning Board as an ad hoc
2 member, I'd be delighted to do so. It's not my intention
3 to cross-examine or witnesses, anything of that nature.

4 MR. IACOPINO: Thank you.

5 MR. EDWARDS: You're welcome.

6 CHAIRMAN GETZ: Mr. Beihl.

7 MR. BEIHL: Good afternoon, Mr. Vice
8 Chairman, ladies and gentlemen. I'd like to address the
9 last question to Mr. Edwards first. As a potential
10 intervenor, my motivation is to make sure that the Town of
11 Antrim, the residents of the Town of Antrim are fully
12 informed. And, I am going to take -- take my steps to
13 make sure that the communication lines from the Petitioner
14 and from the other players in this discussion get to the
15 voters to be able to make an informed decision.

16 The installation in question will be on
17 the hillsides of rural Antrim for 25 years or more. Its
18 footprint is over 300 acres, by admission of the
19 Petitioners. You know, had this been a factory or a
20 subdivision or cluster housing, the Town of Antrim would
21 have been allowed as much time as necessary to prepare
22 zoning to protect its interests. Two years have passed
23 and we have no application from the Petitioner. Only five
24 months have passed since the deliberation by the Planning

1 Board began on the amended zoning ordinances.

2 The Petition for the Jurisdiction from
3 the Antrim Board of Selectmen was premature. In
4 conversations with two of the Selectmen, the rationale for
5 this decision was that it was too technical for the
6 Planning Board, and it was going to end up with the SEC
7 anyway. I'm happy to say that this Project is not as
8 technical as the nuclear waste dump that was proposed in
9 the early '80s or the prison proposed for the former
10 Hawthorne College in the 1990s; both of which were
11 addressed by the Town of Antrim.

12 More time is needed to complete the
13 political process here in Antrim. And, I argue that,
14 given that the final application has yet to be submitted,
15 a denial of the Selectmen's Petition for Jurisdiction will
16 give our boards enough time to complete their task and
17 allow the citizens of Antrim to engage the process with
18 adequate information with which to make a decision.

19 Surely, common sense dictates that six
20 to ten months additional time is not too much to ask.
21 Thank you, Mr. Vice Chairman, ladies and gentlemen.

22 CHAIRMAN GETZ: Ms. Morin.

23 DIR. MORIN: Thank you, Mr. Beihl.

24 Could you say -- you say your main purpose in intervening

1 is to provide information --

2 MR. BEIHL: Yes.

3 DIR. MORIN: -- to the voters. Is there
4 anything preventing you from coming to public hearings and
5 providing that information from just listening as a
6 non-intervening member of the public?

7 MR. BEIHL: Well, one of the -- one of
8 the issues here is that we don't have sufficient
9 information. That information has not been given in
10 either application form or enough of that information
11 given in public hearings. So, you know, as a 24-year
12 resident, former Chair of the Chamber of Commerce, an
13 active conservationist and scout leader, I do have a
14 vested interest to make sure that we are an informed
15 public and that we can all make a rational decision here.

16 I am, you know, I am a supporter of wind
17 power, but I'm also a supporter of citizens' rights. And,
18 I want to make sure that the Town of Antrim, the voters of
19 Antrim have the ability to have their say. Yes, sir.

20 CHAIRMAN GETZ: Mr. Harrington.

21 MR. HARRINGTON: Yes. You and others
22 have used the term a number of times that you "have not
23 received an app" -- or, "the Town hasn't received or
24 somebody hasn't received an application." I am just

1 trying to get that part straight. I understand what an
2 application to the SEC is, because we've seen many of
3 those in the past. It's a rather involved stack of books
4 about this high [indicating], with all sorts of colored
5 pictures and graphs and maps in it. What do you --

6 (Laughter.)

7 MR. HARRINGTON: What do you envision
8 being an application to the Town? Something similar to
9 that being sent to the Planning Board, to the Selectmen,
10 whoever?

11 MR. BEIHL: Well, yes, indeed. I would.
12 And, you know, the supporters of the Petition to this
13 Committee believe that I'm not capable of understanding
14 that information. I'm one that, as a businessman, will
15 seek advice from people who do know, if I do not know the
16 answer to that question. I don't have a basis on which to
17 make a decision right now. And, I do not believe that
18 either the Planning Board, the Zoning Board of Adjustment,
19 or the Board of Selectmen have adequate information
20 either.

21 MR. HARRINGTON: So, if I understand
22 what you're saying then, you're requesting that the Town
23 be granted six to ten months to develop this zoning
24 ordinance, a more effective or completed, I guess,

1 complete the development of it, then to receive an
2 application that is at least somewhat similar to what
3 would be submitted to the SEC, and then evaluate that,
4 and, at that time, make another analysis as to whether you
5 could do it within the Town or you would want to
6 re-petition the SEC?

7 MR. BEIHL: Indeed. If we got to a six
8 or eight month extension in this process, and we were
9 deadlocked or perhaps were not capable of preparing a
10 suitable ordinance that protected the Town's rights, I
11 would support moving it to the SEC.

12 MR. HARRINGTON: Thank you.

13 CHAIRMAN GETZ: Mr. Normandeau.

14 DIR. NORMANDEAU: Just a -- I don't know
15 what happened to mine here, but just a question.
16 Apparently, this has been going around, this Project has
17 been proposed for a couple of years now.

18 MR. BEIHL: Uh-huh.

19 DIR. NORMANDEAU: What was going on
20 that, you know, that there wasn't the impetus two years
21 ago to get on with some sort of process in the Town and,
22 you know, now it seems to be imminent, if you will?

23 MR. BEIHL: Well, I must say that I do
24 not have all the -- all the data at my disposal. I was

1 under the understanding that there was a three-year period
2 in which the meteorological tower was obtaining data. So,
3 certainly, that data has not been shared with us, with the
4 public, to my knowledge, and we haven't even gotten to
5 that three-year mark yet.

6 This started to come to a head with the
7 discussions beginning in October of 2010 over changes in
8 the ordinance, and then really sped up beginning in
9 January and February. So, really, only a five-month
10 period has been termed as "rancorous" during this process.

11 In my opinion, the Planning Board didn't
12 have enough information two years ago to be able to start
13 working on that. Should they have? Yes, I would say they
14 probably should have.

15 Does that answer your question, sort of?
16 Okay.

17 CHAIRMAN GETZ: Other questions? Mr.
18 Iacopino.

19 MR. IACOPINO: Mr. Beihl, you don't own
20 property that abuts?

21 MR. BEIHL: I do not.

22 MR. IACOPINO: Okay. You agree we
23 couldn't have every citizen of Antrim intervene as a party
24 in this case, don't you?

1 MR. BEIHL: I agree.

2 MR. IACOPINO: Okay. And, I note that
3 you indicate in your petition that you signed the
4 petition, I guess it was the one that was against taking
5 jurisdiction, is that correct?

6 MR. BEIHL: Yes, sir.

7 MR. IACOPINO: Can you tell the
8 Committee why you should be granted individual
9 intervention yourself, as opposed to being a member of
10 that group, if that group is, in fact, granted
11 intervention? Because, from what I see, really, what
12 you're saying is, "I'm a good citizen of Antrim. I should
13 be granted intervention." But, if that were our standard,
14 that would mean, I don't know, is it 4,000, 5,000
15 residents in Antrim?

16 FROM THE FLOOR: Twenty-six hundred.

17 FROM THE FLOOR: Twenty-three hundred.

18 MR. IACOPINO: Whatever it is, we would
19 have that many intervenors.

20 MR. BEIHL: Uh-huh.

21 MR. IACOPINO: So, can you please tell
22 us if there's some reason why you think that you have a
23 greater claim?

24 MR. BEIHL: Well, certainly, I would not

1 be opposed to consolidation with that group of
2 petitioners. I consider myself a moderate voice in this
3 discussion. There is a -- groups on both ends that are
4 very loud. I like to think that I'm a relatively calm
5 voice in the storm, and represent a good number of Antrim
6 voters.

7 CHAIRMAN GETZ: Anything else?

8 (No verbal response)

9 CHAIRMAN GETZ: Thank you.

10 MR. BEIHL: Thank you.

11 CHAIRMAN GETZ: Ms. Gard.

12 MS. GARD: I am amongst the four people
13 here who were part of that larger group that signed the
14 Petition against Jurisdiction. I do have property in the
15 Rural Conservation District. And, apart from being a
16 member of this, I consider myself a member of this larger
17 group, as well as being a property owner. So, that I
18 think that will address your question. But I would like
19 to be grouped with the others, because I think, in Antrim,
20 I would be referred to as a "newbie". I'm only there nine
21 years. Mrs. Allen has been there 36 or 7 years.
22 Mr. Beihl, as he said, was here 24 or 5 years, and
23 Mr. Edwards for many -- 40 years. Both -- well, the other
24 three have had much greater levels of participation in

1 public affairs than I have had. So, I think that, were
2 you to group us all, those who signed the petitioners as
3 -- the petition in a consolidated group, that would
4 probably be not in any way objectionable to me.

5 I would like to tell you, however, how
6 my interest was sparked here. I, too, consider myself, in
7 general, in the abstract, a supporter of wind power. I am
8 looking forward to being able to vote on an ordinance. I
9 do think there's a role for the local municipality to have
10 a proper ordinance addressing wind power.

11 I found myself, as often happens, I
12 lived in another state, another place, and did serve on
13 public boards in that prior life. And, it always happens
14 that there's a rush to town meeting, people who are
15 amongst the non-participants, non-participating group,
16 they finally realize there's an ordinance coming up to be
17 voted on, and they actually get out the text of it and
18 read it. And, I found myself horrified to find out that
19 the ordinance that was being proposed for the Rural
20 Conservation District, which, by looking at the maps,
21 someone can correct me, has got to be 50 percent of the
22 land area of the town, was going to be treated in the way
23 that was proposed by the prior -- the proposal that did
24 not, in fact, come to town meeting. Basically, it was

1 creating an as-of-right use for any form of wind power
2 that was above 100 kilowatts.

3 So, I think there are places where wind
4 power of a certain type may be appropriate, but we don't
5 have the data for that. As Mr. Beihl suggested, as far as
6 I know, and, certainly, I have not had any exposure to the
7 data that has been collected thus far, and it is my
8 understanding that not a sufficient amount of data or
9 perhaps not data that, in the proper location, has yet
10 been fully collected. So, we don't know whether we have a
11 viable proposal, we haven't had it fully described to us,
12 and we have no application or even anything close to an
13 application.

14 And, I would point out that the Lempster
15 situation did have, within in close proximity to the SEC
16 deciding to take jurisdiction, a full application for it,
17 if you read the documents that you've got up on your
18 website. And, I think that was -- that was proper,
19 because what you're being asked to do is exercise what
20 amounts to "discretionary jurisdiction". And, when you
21 have discretion about something, you should try to have
22 all the factors that are relevant in front of you. And, I
23 don't think we have the data that would allow somebody to
24 put together a full application yet before us, we haven't

1 got the wind data in front of us, and we don't have the
2 local ordinance. So, how will you know what the views of
3 the Town of Antrim are? Are you going to take the views
4 of three well-meaning selectmen in office at the time, in
5 any given point in time, as the views of the entire town?
6 I don't think that's been your process, and I don't think
7 it should be your process.

8 You've got what amounts to 100 plus
9 people saying you should take jurisdiction, you've got 100
10 -- nearly 150 people saying you shouldn't take
11 jurisdiction at this time. So, I think that you should --
12 I think the best thing you could do here is to hold
13 everybody's feet to the fire; the Planning Board, the Town
14 of Antrim, and the developer, the potential developer, and
15 say "Look, all of you need to get your acts together.
16 You're all going to need to sit down and talk about this
17 some more. And, then, if there's an impasse, a "block",
18 as the person in the legislative history put it, then
19 maybe we'll think about taking jurisdiction of this
20 decision."

21 But, until you have all the relevant
22 information, I don't really see how you can properly
23 exercise jurisdiction. The statute does not read that
24 "any project above 5 megawatts should come to the SEC."

1 If you take jurisdiction here at the first request by the
2 developer, all that's going to happen is that every --
3 every 5 megawatt and above project will come to your door
4 and say "Please, pretty please, take jurisdiction, we're
5 tired of arguing with each other." And, as someone said,
6 local politics is not -- is not, you know, it's not a
7 piece of cake. But it's funny how towns manage to get
8 along and have -- everybody has a relatively good life and
9 things get worked out. So, sometimes the best thing to do
10 is just not get involved until it becomes clear that it's
11 necessary.

12 This project is undersized. As I said,
13 what you're really being asked to do is treat a case of
14 first impression here. Because, in Lempster, everybody
15 wanted you to come and solve their problems. If you look
16 back in the papers in your dockets, you'll see that there
17 wasn't a single objection. The Town of Washington came
18 in, the Town of Lempster came in. You know, you had
19 hundreds of people, not a peep from anybody objecting to
20 jurisdiction. You don't have that here. There are people
21 in the Town of Antrim who strongly feel that they should
22 be allowed to develop an ordinance. And, by the way, I
23 would note, for future reference, that the State has not
24 developed a model ordinance for projects above

1 100 kilowatts. The Town of Antrim, by the way, is not
2 such a failed state that it does not have a small wind
3 ordinance in place.

4 So, I think -- I don't recognize the
5 town that's been described here. I think there are plenty
6 of credible reasons to believe that the Town, in six
7 months, can develop a good ordinance, but it will require
8 people working together here. If they fail to work
9 together, well, then they can all come back here in six
10 months, eight months, nine months, a year from now, and
11 ask -- and throw themselves at the mercy of the SEC. And,
12 if you choose to, you can get involved. But, until then,
13 I think it's absolutely premature. Thank you very much.

14 CHAIRMAN GETZ: Questions?

15 MR. IACOPINO: I just have one question.
16 You indicate in your petition you live in the same zoning
17 district. Do you know how far your property is from it?

18 MS. GARD: Yes. I don't know precisely,
19 but I would guess it's about -- it's more than two miles.
20 But, as I've said, the RCD is more than 50 percent of the
21 town. It's a vast part of the assets of the Town of
22 Antrim.

23 MR. IACOPINO: Thank you.

24 CHAIRMAN GETZ: Ms. Gard, just a

1 question.

2 MS. GARD: Uh-huh.

3 CHAIRMAN GETZ: I want to see if I
4 understand what appears to be the theme developing, and
5 tell me if this is a fair characterization on my part or
6 fair analysis. I think the request is "don't take --
7 don't act, that we shouldn't act on the request for
8 jurisdiction now, because the Town is in the process of
9 putting together a zoning ordinance dealing with so-called
10 "industrial wind projects". Once that ordinance is in
11 place, then the Town will be in a position to adequately
12 consider a project such as the proposed one."

13 MS. GARD: Correct. If there's a local
14 ordinance in place, the Town will be able to administer it
15 either at the local level or the same set of people will
16 come to this level and say "No, we still don't like the
17 local level, we want to opt for the SEC."

18 CHAIRMAN GETZ: And, then, you're
19 basically saying that the "we" or the Applicant should,
20 because the Applicant's not quite ready to file an
21 application --

22 MS. GARD: I'd say they're not only "not
23 quite ready", they have indicated that they would stop all
24 preparation in their latest response. Now, that part --

1 CHAIRMAN GETZ: Well, if I could --

2 MS. GARD: Yes, I'm sorry.

3 CHAIRMAN GETZ: Can I -- I want to try
4 and finish my thought here, because I'm trying to
5 understand what your position is. So that, since they're
6 not -- since the Applicant is not ready to file with us at
7 this point, then there's no harm to them --

8 MS. GARD: There's no harm. Yes. And,
9 162-H --

10 CHAIRMAN GETZ: Well, can I --

11 MS. GARD: I'm sorry.

12 CHAIRMAN GETZ: There has to be one
13 person at a time, so Mr. Patnaude can get this on the
14 record. So, then -- so, there's no harm to the Applicant
15 to wait to see if something happens in the Town, that an
16 ordinance is actually passed, and, then, whatever that
17 ordinance is would be the law that they would be subject
18 to?

19 MS. GARD: I think they still have
20 whatever rights they had before, namely, they could choose
21 to run the local route. Or, my understanding is, they
22 could still come to you. And, you still have discretion
23 to say "well, now that we understand how the project
24 really is and how it's laid out and what the developer is

1 committing to, we think, on balance, when we run through
2 all the standards in 162-H, as in Section 1, the
3 "Declaration of Purpose", we think it should be before the
4 SEC." You still have that.

5 CHAIRMAN GETZ: So, does it matter
6 whether there's an ordinance --

7 MS. GARD: Yes, it does matter. It does
8 matter. Because --

9 CHAIRMAN GETZ: You're going to have to
10 let me finish my statements.

11 MS. GARD: Yes.

12 CHAIRMAN GETZ: We'll get those on the
13 record. Then, you'll get a chance to make your
14 statements.

15 MS. GARD: I'm sorry. Yes.

16 CHAIRMAN GETZ: So, whether there's an
17 ordinance or not doesn't affect the Town's capability to
18 make a ruling or to consider this? I'm just trying to
19 figure out the Planning Board's capabilities to make some
20 judgment, and I think there's been some argument about
21 whether we need to be in or not be in based on that, and
22 how the ordinance either fixes or doesn't fix that
23 situation?

24 MS. GARD: I am no expert, I'm a

1 citizen. But the way I read what you have up on your
2 website, if an ordinance -- first of all, the best
3 expression of what the Town says about things is in the
4 Master Plan and its ordinances, its regulations. And, I,
5 for one, would like to have a vote. I would not like to
6 be foreclosed from voting on this issue at a town meeting.
7 And, I'd like to be able to vote on it, based on an
8 ordinance which makes sense, which I did not think, with
9 all due respect, the prior one did.

10 It seems to me that, if we are talking
11 about the SEC procedure, as I understand it, the SEC has
12 no obligation to follow the ordinance of the municipality,
13 but it does have an obligation to understand what the --
14 what the views of the municipality are. And, also, there
15 are provisions in the statute which allow the SEC to
16 decide that it's, you know, adequately covered or certain
17 aspects are adequately covered by municipal ordinances.
18 So, you have the full range of discretion, and you would
19 retain that in six months or eight months or ten months.
20 You have a provision in your statute, which says that, if
21 you find that federal law covers it, that municipal
22 ordinances adequately cover it, that you're allowed to
23 grant an exemption. In other words, that the SEC doesn't
24 have to deal with this part of it.

1 The other thing is that you could accord
2 great weight to the views of the local bodies and their
3 processes, if you found them pleasing. In other words,
4 that they did a -- they have done a good job, they have
5 done some of the work for you. And that, in the process,
6 they felt that they had a stake in it, that they did
7 something, you know, that they came together as a
8 community, that they made a rationed decision -- rationale
9 decision about the project before them. That they weighed
10 the energy needs, that they weighed the environmental
11 aspects. That they sought counsel where necessary and
12 appropriate.

13 I think the statute, the "under 30
14 megawatt" piece of the statute, since it's discretionary,
15 it recognizes that there will be some projects that you
16 won't want to get involved in and that there won't be any
17 need to get involved in them. And, I'm hoping, just as a
18 citizen of Antrim, that this is one of those projects.

19 CHAIRMAN GETZ: Okay. Thank you.

20 Ms. Ignatius.

21 CMSR. IGNATIUS: Thank you. A number of
22 people have said "the Site Evaluation Committee should not
23 take jurisdiction because it's important for Antrim to
24 develop an ordinance, it's important for voters to vote on

1 an ordinance." And, I'm trying to guess at what the
2 connecting links are between those two statements.
3 Because it's not a direct relationship, and so I'm trying
4 to figure out how you get from "we shouldn't take
5 jurisdiction" or "we should take jurisdiction", and --

6 MS. GARD: Because -- I'm sorry.

7 CMSR. IGNATIUS: -- and "the right of
8 the Town or the interests of the Town in developing an
9 ordinance". So, can you explain to me how those two
10 things fit together?

11 MS. GARD: And, I'm sure, if you ask,
12 you know, you could ask ten people and you might get ten
13 answers. But my answer is that, as I understand the
14 statute, once the SEC takes jurisdiction, it preempts --
15 it has no obligation whatever to listen, to follow the
16 Town ordinances. So, if there's no obligation to follow
17 them, and I understand that preemption, that's what
18 preemption is all about, basically, it's saying "okay,
19 we're the SEC, we're the State, we're here, we're going to
20 decide this. We're going to decide whether there's going
21 to be a facility in Antrim or not, and we're going to
22 decide what conditions have to be met." And, if it were
23 an enormous energy facility, with a potential to
24 contribute, you know, sort of vast quantities of

1 electricity to the state, that would be appropriate. But,
2 under the statute, this is not, as I understand it, as
3 thus far described, such a facility. This is a small one.
4 There are other small ones that may come to being in the
5 state.

6 So, it seems to me, if I were a town,
7 you know, a potential -- if I were on the Planning Board,
8 I'd say, "you know, SEC's taken jurisdiction. They don't
9 care what we have to say. Why should, you know, we're
10 citizens. You know, we have jobs. You know, why should
11 we put an hour's worth of time into developing an
12 ordinance? You know, forget it. The SEC's going to do
13 what they want anyway." And, I would hate to see that
14 happen.

15 CMSR. IGNATIUS: I would hate it if that
16 were how we operated as well. But I understand that and I
17 appreciate your answer.

18 MS. GARD: But I think that's the -- I
19 think that's the way the statute reads. If that's not
20 right, you know, I'd be glad to know it. But that's the
21 way it reads.

22 CHAIRMAN GETZ: Mr. Normandeau.

23 DIR. NORMANDEAU: So, if I'm -- excuse
24 me -- if I'm understanding this correctly, the passion

1 around this time line to let an ordinance develop is --
2 really comes down to kind of a way for the townspeople to
3 express their feelings about this, or I would hope for
4 these types of projects, and that an ordinance isn't going
5 to be designed around this one issue. But --

6 MS. GARD: No. And, I think -- yes.

7 DIR. NORMANDEAU: But it's to create an
8 expression for the Town as a whole as to how they feel
9 about these issues?

10 MS. GARD: Yes. And, even the people
11 who will end up unhappy on one side of the decision or
12 another, when ultimately it's made, they will have had
13 their day as a member of the community. And, not because
14 -- we don't want to be grouching, I don't want to see us
15 grouching ten years from now "the State made us do it."
16 "The State did this", "the State did that." And, I think,
17 since this is a project where the size is clearly under
18 30 megawatts, everybody says so, that I wouldn't -- I
19 wouldn't want to be in the position, if I were you, but,
20 then, I'm not you. So...

21 CHAIRMAN GETZ: Mr. Scott.

22 DIR. SCOTT: Thank you. Again, I'm
23 still struggling with the governance, I guess, of the
24 Town. We have before us the -- the governing body of the

1 Town has asked us to take jurisdiction. And that, just to
2 understand what your proposed process would be, are you
3 saying that, again, you'd develop a model ordinance, there
4 would be a town vote on it. Depending on the outcome of
5 that, then the Town would petition again, if need be, for
6 -- and, my question would be, in that case, if that is
7 true, so then the Board of Selectmen again would say, in
8 effect, "we really mean it this time and belief it us"?

9 MS. GARD: Well, I -- it seems to me
10 that they could, you know, it's a one-page letter that
11 starts the process off. It's not hard to gather 100
12 signatures. That's not a burden on anybody. But, by that
13 time, I might be signing on the other side, okay? If it
14 turns out that Antrim is a failed state, as some have
15 described here, which I don't believe, I don't recognize
16 the Town by these descriptions, then you might find me up
17 here asking you to take jurisdiction. But, until I'm
18 persuaded that that's the case, I think I would like to
19 see it remain in the local level.

20 DIR. SCOTT: Thank you.

21 MS. GARD: Thank you.

22 CHAIRMAN GETZ: Thank you. Ms. Allen.

23 MS. ALLEN: Hi. I'm Mary Allen. And, I
24 don't think I can say anything better than the three

1 people that have gone before me. I would, though, like to
2 speak to the Petition and my participation with it, and
3 have the Committee understand a little bit about why you
4 have 145 signatures in front of you. This did sort of
5 sneak up on us. There was some surprise. There was some
6 surprise when we read in our local newspaper that we would
7 be asked to be here today, on the 22nd. Our understanding
8 is, the way this process was going has been described by
9 Mr. Beihl, Mr. Edwards, and Ms. Gard, as something that we
10 thought was going to take roughly two to three years.
11 And, we had been working with Antrim Wind up to that
12 point. We didn't realize, actually, that the Selectmen
13 had sent in a letter. And, then, right after, the day
14 after our Town Meeting, that Antrim Wind had sent in a
15 letter and that we would be here. We thought that there
16 would be time to work on what some of us considered to be
17 a failed ordinance. We thought we would have that chance.

18 So, coming to it late, we drew up the
19 Petition. And, I would like you, at some point, to take a
20 look at the wording on that, because I would like it to
21 stand and speak for itself. It is the Petition against
22 Jurisdiction. We have only had about ten days to walk
23 around town and get people to sign onto this. And, we've
24 had careful discussions. And, I would like to represent

1 that the people who have signed this, and, essentially,
2 the four of us that are trying to speak for them today,
3 really are asking for your consideration to give us the
4 time.

5 We're very used to, in Antrim, and I'm
6 very proud of this, I have been part of this community.
7 And, you know, you can read in my letter, I was, you know,
8 on the Board of Adjustment, I've been on the -- an
9 alternate on the Planning Board, you know, all kinds of
10 other stuff. I'm currently on the School Board. We take
11 our citizen participation very seriously.

12 And, what we sense, with all due respect
13 to the Committee, is that somehow or other one of the most
14 important decisions we're going to have to make is going
15 to be taken from us. So, we're asking you for some time.
16 We're asking you to let us bring to the fullness this.

17 I have to agree with Ms. Gard. I do not
18 recognize the Town described. I do not -- I know that
19 we're fierce debaters, and I've seen this happen before,
20 where we have been at odds, but we always come back
21 together. And, we have, basically, as a group, gathered
22 around. We pushed back the prison. We pushed back a
23 nuclear waste dump. And, we embraced housing for the
24 elderly.

1 This is -- this is, you know, a history
2 that I have only participated in for 36 years, but it goes
3 back over 200 years. And, this is the way we like to
4 operate. This is what I think the State of New Hampshire
5 gives to the local community to operate with.

6 I would like to just make a couple of
7 fast points. When Antrim Wind first came to town, they
8 knew what our zoning ordinances were like. We're like
9 almost every other New Hampshire town of this size. We're
10 under 2,500 people. We did not have an address -- we did
11 not address -- and have not addressed either wind energy
12 or alternative energy. These are rather new fields. They
13 were covered in our Master Plan, which is our most recent
14 planning document that has been adopted. So, this was
15 interesting. People sort of got around it. But I have to
16 tell that the project that was first described to us two
17 years has changed. You've heard from Audubon. Now, the
18 placement of some of the wind towers is much closer to
19 their property. And, quite frankly, until I looked at the
20 filing that was made to the SEC, I didn't know that
21 the wind towers were stretching as far southwest as they
22 are. So, things have changed. People are catching up on
23 this.

24 I do believe that the Town of Antrim and

1 the Planning Board is going to be able to come up with
2 ordinances that address this. I think the Town is going
3 to have a vigorous discussion of the ordinances. I think
4 we're going to get our heads around not only wind energy,
5 but other kinds of alternative energy, because we've been
6 pushed to the front now and we have to do that.

7 I would like to ask that, if you -- I
8 would like to have you consider the weight of the
9 Petition, and the fact that you have more signers, you
10 know, signing asking you not to take jurisdiction than to
11 take jurisdiction. I know that the bar is just at 100.

12 But the four of us would like to
13 represent those voices, that's why we're asking to be, you
14 know, petitioners. And, we would like very much for you
15 to stand back, let us do what we need to do, and then,
16 hopefully, go forward with something that makes sense for
17 the Town, makes sense for the state, makes sense for, you
18 know, all of our energy needs. Thank you.

19 CHAIRMAN GETZ: Any questions? Director
20 Morin.

21 DIR. MORIN: Yes. Thank you, Ms. Allen.
22 I just wondered, do you mean to say that, if SEC does
23 decide to take jurisdiction, there would be no interested
24 -- interest in developing your ordinance? Because, as you

1 know, the SEC can still, and does, consider all local
2 ordinances in their deliberations on taking over a case.
3 So, though it may be preempted, it won't necessarily be
4 preempted, because that all -- all of that would be
5 considered in deliberations. So, would there be, if they
6 took jurisdiction, would there be no interest in an
7 ordinance? Or, may there be interest in developing the
8 ordinance such that it could be considered during the
9 deliberations, if SEC took jurisdiction?

10 MS. ALLEN: That's a very good question.
11 And, I think the sense is that we're going to go forward
12 with an ordinance one way or the other. This is
13 necessary. I mean, just, you know, we're at 2011, and
14 it's clear that all towns are going to have to start
15 taking a look at this. And, we addressed it in our Master
16 Plan. But I think the sense is going to be that, if this
17 application, this particular application is coming before
18 the SEC, and if you've had a chance to look at the map, it
19 is basically going to be taking up quite a bit of space.
20 So, I think we could be developing ordinances that would
21 find places elsewhere. I would like to know, and I think
22 this would be difficult, what's going to happen if this is
23 not where, for example, with an overlay planning ordinance
24 that we're not in complete agreement? And, I think that

1 makes it difficult. That's why I would like to see the
2 ordinance come first and the SEC come second. It makes
3 more sense that way.

4 We know this town very well, and even
5 that area. One of my things I did not put down there is I
6 was once a perambulator. And, if you guys know what that
7 is, you've got to go up and down -- somebody is smiling --
8 you have to go up and down the town boundaries. I've
9 actually been one of the few people that's walked the
10 Stoddard boundary, and it almost killed me. So, I could
11 -- I'm sorry, does that answer the question?

12 DIR. MORIN: Yes.

13 MS. ALLEN: Thank you.

14 CHAIRMAN GETZ: Any other questions?

15 (No verbal response)

16 CHAIRMAN GETZ: Thank you.

17 MS. ALLEN: Thank you.

18 CHAIRMAN GETZ: Mr. Block. And,
19 Mr. Block, you're also a signatory to the Petition that
20 was filed by Ms. Allen?

21 MR. BLOCK: Correct. And, I have a
22 question, Mr. Vice Chair and Committee. I am also here
23 representing four petitioners who could not attend today.
24 Shall I speak to them separately later or --

1 CHAIRMAN GETZ: Well, in terms of -- I
2 mean, are there different arguments that they --

3 MR. BLOCK: I would like to add one or
4 two lines, you know, on each of their benefits, and then
5 speak to -- and speak to my wife and I separately. So, --

6 CHAIRMAN GETZ: But they have already
7 filed --

8 MR. BLOCK: They have filed, that's
9 correct.

10 CHAIRMAN GETZ: -- petitions?

11 MR. BLOCK: They have.

12 CHAIRMAN GETZ: But they have asked you
13 to say something in addition?

14 MR. BLOCK: Yes. But, I mean, I
15 probably would not add much more than to reiterate what's
16 in here, and indicate how far each one of them lives
17 actually from the proposed site, but that's about it.

18 CHAIRMAN GETZ: Okay. Please proceed.

19 MR. BLOCK: Okay. And, I can just
20 speak, I'll just quickly run through the four.

21 James Hankard, who could not be here,
22 his proprietary is one and a half miles from the proposed
23 turbines. And, I know his concern is primarily for the
24 value of his property. And, that he is -- he feels that

1 one and a half mile proximity would be of great concern to
2 him, in terms of his negative impact on his overall health
3 and well-being. Spencer Garrett, his property is directly
4 abutting the first property that Antrim Wind Energy had
5 leased, and which currently has -- holds the
6 meteorological tower. He also has been a past member of
7 the Antrim Land Use Boards, and I know he's very -- he's
8 concerned and would like to see this postponed.

9 Mark and Brenda Schaefer, also their
10 property directly abuts, their house is less than one mile
11 from the proposed turbine sites, and their property is in
12 direct abutment to the leased land. They have been living
13 in the town for 27 years, and live back on a quiet dirt
14 road and moved their 27 years for the piece and quiet.
15 And, I know that's of extreme concern to them.

16 And, Samuel and Michele Apkarian, their
17 house is located just over a mile. It's across the road
18 from Tuttle Hill. But they've got a relatively new house,
19 with a very large expansive view in front, and their view
20 is completely of Tuttle Hill. So, I know that that
21 proximity is their concern. Thank you.

22 If I could speak to -- for my wife and I
23 now. By way of introduction, we own a 230 acre farm,
24 directly north of Tuttle Hill. We are across the road.

1 Every one of our 230 acres on the south sloping hill that
2 faces Tuttle, that is our view. Our living room and
3 kitchen have 8-foot picture windows and we see Tuttle
4 Hill. In the 23 years since we've lived there, between my
5 wife and I, either or both of us have served on the Antrim
6 Conservation Commission, the Open Space Committee, the
7 Contoocook and North Branch Rivers Local Advisory
8 Committee. We are both New Hampshire Coverts
9 Coordinators.

10 We have been very active in sort of
11 being involved in particularly the Rural Conservation
12 District in Antrim, since it was established in the 1989
13 revision to the zoning ordinance. In the introductory
14 paragraph, the definition of the Rural Conservation Zone,
15 it describes it as "having been established to preserve
16 and protect the remote rural regions of Antrim from
17 excessive development pressures." And, we have taken that
18 very seriously. As soon as that was established in 1989,
19 we had a hard time with the fact that it had been defined
20 as "ending at Route 9". And, without an Antrim map right
21 here, that might not be clear. But it was sort of an
22 arbitrary stop to the Rural Conservation Zone. There's a
23 portion of Route 9 north of there, right up to the town
24 line that, to us, was a clear -- clearly contiguous

1 portion of land. So, we petitioned and were successful in
2 the following year in having that added to the Rural
3 Conservation Zone. And, that is where our house is
4 located. So, we are within there. Our property, by the
5 way, is located between three-quarters and one and a half
6 miles from the proposed turbine sites.

7 Over the years, we have acted as sort
8 of, in some level, self-appointed stewards, and also
9 semi-officially, in 1999, the Society for the Protection
10 of New Hampshire Forests worked with the Nature
11 Conservancy to acquire the Loveren Mill Cedar Swamp, which
12 is across the road from us and on our road. And, when
13 they acquired that, we were involved in the hearings for
14 that and provided evidence on historical and cultural
15 artifacts there. In conjunction with that, the Forest
16 Society named us as informal stewards to oversee or to
17 keep an eye on the Loveren Mill Cedar Swamp and also the
18 adjacent land that was part of that that went to a company
19 called "Meadowsend Timberland", and were asked to kind of
20 be stewards on supervising that when they did timbering,
21 which he did and we worked closely with the forester on
22 that.

23 And, this brings me around to how we got
24 involved. When we first became aware of a proposal for a

1 potential industrial wind facility on the summit of
2 Tuttle, our initial reaction, having really no opinion at
3 that point about wind energy, our initial reaction was
4 "Wait a minute. This is an industrial use. And, the
5 Rural Conservation Zone specifically prohibits any
6 industrial activity." So, we became involved at that
7 point to try and see what this was about and to work with
8 that.

9 So, over the two years that this has
10 been through procedures with the Zoning Board and the
11 Planning Board, we have been I think at every single
12 meeting that involved -- involved Antrim Wind Energy and
13 their proposals. We were appellants in the cases for the
14 -- for the variance applications. The current court cases
15 that are in the Superior Court right now, there are two
16 cases, and one is *Antrim Wind Energy versus the Town of*
17 *Antrim*, the other is my wife and I versus the Town of
18 Antrim, where we are challenging the granting of the
19 height variance.

20 So, we feel and have been very closely
21 involved and very concerned over the last two years about
22 all this. One of the reasons that we are asking the
23 Committee to please consider not taking jurisdiction at
24 this point and waiting to see what happens is for several

1 reasons. The people of Antrim are now starting to really,
2 I feel, express an interest in being able to look at this
3 and decide and make a decision on their own. Town
4 politics, I feel, has changed drastically since March of
5 this year. You've heard there have been two new Planning
6 Board members voted in. This was done by a two-to-one
7 margin. And, we feel that this is a clear message from
8 the people of Antrim that they wanted change. That what
9 had been going before, in terms of proposals, were not
10 really necessarily in the best interest of the people of
11 Antrim. I would like to suggest that the two new members
12 of the Planning Board, although they may be new to that
13 specific board, both -- I've known them both for years,
14 and I know they both have extensive land use issues
15 experience. This would not be -- they are not neophytes
16 in any kind of process like this. So, I feel very
17 confident in our current Planning Board's ability to work
18 this out and do something that would be in the best
19 interest of Antrim.

20 There are really two issues at play here
21 that I see. And, one is this specific proposal from
22 Antrim Wind Energy for a project on Tuttle hill and down
23 to Willard Mountain. And, the other is, and maybe this is
24 an area that you, as a Board, are not really -- are not

1 really desirous of being involved with, because it's more
2 of a local issue. And, that's the potential for a general
3 proposal for zoning in Antrim for industrial renewables.
4 To me, the big difference is one is a specific project in
5 the immediate future, and the other is something that
6 potentially I see, and, as I say, I'm a very strong
7 believer in zoning and the process, it's a very long-term
8 thing. It's something that I would like to see properly
9 crafted so that it serves Antrim five years from now, ten
10 years from now, thirty years from now.

11 And, with that in mind, I would really
12 like, since Antrim Wind Energy's proposal is not something
13 that would be there in, hopefully, I mean, I don't think
14 it would be there and disappear in a couple of years, they
15 have projected at least a 25-year lifespan, and maybe
16 beyond that. So, I would think that anything they do at
17 this point should -- should fit in with whatever Antrim's
18 long range plans are, should fit in with what our zoning
19 and the townspeople think should the zoning -- the zoning
20 should be for the next thirty years or more.

21 I'm not going to get into an awful lot
22 of other things here. I know there are -- I've questioned
23 how the strength or properness at this point of our
24 selectmen being considered a true governing body for the

1 people of Antrim. I question -- when those letters on the
2 20th were issued this week, it took me by surprise,
3 because I attended the last several Planning Board -- I
4 mean, Selectmen's meetings. And, I questioned where those
5 letters came from. So, yesterday morning, I called up
6 Galen Stearns, whom I believe is present here, is our Town
7 Manager, and asked for the minutes of the last month's
8 meetings. And, I asked him specifically "can you tell me
9 at what meeting these letters were discussed and voted
10 on?" And, his response to me was that "these letters were
11 not discussed at any meeting." So, it's my impression
12 that anything that a Board of Selectmen does, actions they
13 take must be done in public and must be done in the open.
14 So, I question that, if there are letters being written by
15 them and decisions being made that are done behind closed
16 doors or done without public knowledge, I question "is
17 this" -- "does this truly represent the people of Antrim?"

18 I can't speak -- all right. I'm not
19 going to get into that. I guess, in summary, I would just
20 say that, certainly, that Antrim Wind Energy has a
21 prerogative at a later date, when and if they do submit an
22 application, if they feel that they would be better served
23 by jurisdiction by the SEC, they certainly have the
24 prerogative to reapply at that point. And, I would

1 suggest that, at this point, again, it is very premature.
2 There is no application. The original letter from the
3 Selectmen stated that they would like the SEC to take
4 jurisdiction "when and if an application is submitted".
5 And, I would suggest that, since an application has not
6 been submitted yet, that even the premise of that letter
7 holds that the jurisdiction should happen "when and if".
8 This is not the point. This is too early. So, I thank
9 you.

10 CHAIRMAN GETZ: Questions?

11 MR. BLOCK: I can answer questions,
12 though. I'll be glad to.

13 (No verbal response)

14 CHAIRMAN GETZ: There appear to be no
15 questions. So, thank you.

16 MR. BLOCK: Thank you.

17 CHAIRMAN GETZ: Mr. Klinger.

18 MR. KLINGER: Thank you. And, thank you
19 for the opportunity of speaking to you folks today. I've
20 heard people say they're "newbies", well, that makes me
21 premature. I've only been in Antrim for maybe a year now.
22 But all through this whole process my concerns have always
23 been as follows: The township has an extensive Master
24 Plan, which, in fact, outlines specific uses for specific

1 reasons. We, as citizens, and myself as a newbie, really
2 like to embrace this. And, it's clearly defined what
3 these uses are intended for. To take the Conservation
4 Zone and rezone it, the Conservation District and rezone
5 it into a commercial zone is against the Master Plan.
6 There was a lot of effort that went for this, and it
7 should be maintained as such.

8 And, I would like to clarify some
9 issues. You folks aren't privy to the town meetings and
10 the going-ons within the Town's meetings. There is some
11 things that need to be clarified. I am, as a new person,
12 really not up to speed to do it as of yet. But, in the
13 near future, I will be. I'm not used to New Hampshire
14 state law, because I'm from out of state. And, I'm
15 working on gaining knowledge on what the SEC is required
16 in the state regulations and town regulations.

17 But, as a newcomer to this town, the
18 process which leads us to this point is exceedingly
19 questionable in my opinion. I have been involved in
20 politics pretty much two-thirds of my lifetime and never
21 seen anything to this nature, and concerns me. I think
22 this whole project has been a rush to judgment and a push,
23 for what reason I have no -- no knowledge of. And, a lot
24 of things were negated. I personally felt that the

1 Selectmen and previous Planning Board had an opportunity
2 and was more than qualified to take on doing the zoning
3 and redistricting of what was necessary, but chose not to.
4 For what reasons, again, I don't know. I have faith in
5 the new Planning Board and their expertise. None of us
6 have the expertise to know all of it. That's what we're
7 doing here today. But there are people that we can talk
8 to, excuse me, and gain the information.

9 My question is is, being a new person in
10 the State of New Hampshire, how can you go along to this
11 point, when the Town residents have no idea of the scope
12 or magnitude of the proposed project? How can the State
13 of New Hampshire be involved in a situation, when, again,
14 they don't have the same -- same information from the
15 Applicant? I plead ignorance to your chapters and verse,
16 because I am new. Please bear with me.

17 I bought my property where I did for
18 several reasons. It was a commercial property and located
19 one and a half miles from the proposed impact zone or in
20 the impact zone. I wasn't aware of it when I purchased
21 it. I was only aware of it in October of 2010. Which
22 didn't give me ample time to come up to speed to date.
23 After being involved in the petition drive, I found that a
24 lot of information that was supplied to pro supporters

1 were not absolutely accurate, nor were they informed to
2 the scope or magnitude of the Project, and signed a
3 newby's petition. They had no idea who I was. This
4 indicated to me that, apparently, as long as the Project's
5 been going on, there hasn't been enough information
6 leaking out to the public by our Planning Board -- by our
7 previous Planning Board and Selectmen, which is their duty
8 to do so. Which shows me negligence on that part.

9 The other thing is, is when the people
10 did attend the meetings and voice their concern and asked
11 the Selectmen and Planning Board to clearly define the
12 uses and permitted uses and what is required and what is
13 not required, they nodded their heads up and down and said
14 "Yeah. Okay. We hear you." And, they went off and voted
15 on their own. I don't believe that is due process in any
16 situation whatsoever.

17 And, every one of our majority of
18 meetings, the residents there in attendance were the --
19 the majority of the residents were in disapproval of what
20 the Selectmen wanted to do, and wanted the time to educate
21 the people and learn the magnitude of this Project, pros
22 and cons, and an opportunity to do so, to present it to
23 the public and educate them, so they can make their
24 decisions not based on hearsay. It has never given an

1 opportunity to do so. Which, in my opinion, is a personal
2 attack on my constitutional rights.

3 In closing, I would ask that the SEC do
4 not -- does not grant the Petition for Jurisdiction. That
5 removes it to the Town Planning Board and the Town
6 Selectmen and the residents of Antrim to do what they want
7 to do, to propose what they want to do. Eventually, if,
8 in fact, we cannot come to a meeting of the minds, one
9 way, shape or form, you'll all be involved in it. And, at
10 that point, we have given our best effort to do so. We
11 are not uneducated individuals living in the Town of
12 Antrim. We do not have uneducated Selectmen or Planning
13 Board members. Most of our selectmen have run businesses
14 for over 30 years successfully. That does not show
15 ignorance. It might show a little laziness in not taking
16 on the situation, but it certainly doesn't show ignorance
17 or inability.

18 And, lastly, to address the issue of
19 Lempster, in comparison to Antrim; there is no comparison
20 whatsoever. None. In town -- town planning, zoning,
21 anything, there's no similarities. So, I really contest
22 what Mr. Webber stated in his letter as "we are very
23 similar to Lempster." No offense to Lempster, but we are
24 not. And, that is my concerns. What I am asking the SEC,

1 to deny the Petition for Jurisdiction, and allow the
2 Planning Board the six or ten month time frame in order to
3 put a comprehensive study together. They have been doing
4 it for three decades in Antrim. They can do it for
5 another three decades. I have faith in the new Planning
6 Board.

7 CHAIRMAN GETZ: Any questions? Mr.
8 Iacopino.

9 MR. IACOPINO: Mr. Klinger, I'll ask you
10 the same question I asked Mr. Beihl. I understand you're
11 a concerned citizen in the Town of Antrim. But the issue
12 that's before the Committee right now is whether you
13 should be permitted to intervene as a party in this
14 proceeding. And, is there anything else that you can tell
15 us about any right, claim, title, interest, substantial
16 interest that you have that makes you different than any
17 other citizen from the Town of Antrim? Understanding, we
18 can't permit every citizen in the Town to intervene as a
19 party.

20 MR. KLINGER: Absolutely. And, I
21 understand your question clearly. Due to the economic
22 situation, two-thirds of the residents along River Road
23 were not -- had no idea the scope of the Project, what was
24 going on, and had a real misconception. I feel --

1 MR. IACOPINO: What do you mean "due to
2 the economic situation"?

3 MR. KLINGER: Most of them, husband and
4 wife work and do not get home in time to participate in
5 town functions. They have children in day care and
6 they're running around. And, frankly, at that point,
7 after doing both working and trying to get the kids to
8 bed, I can attest to what problems that is. I have
9 informed them every step. I have been privy to just about
10 every one of the town meetings since October of this year.
11 I am self-employed and I can make the time to do so. But
12 they do not. I feel that, by intervening, I have a
13 commercial piece of property, which I feel will be
14 impacted by the siting of this. And, my residents also
15 have residential property within the Rural Conservation
16 District that are exceedingly concerned about this for
17 future devaluation in case they are going to sell.

18 They have asked me to keep them informed
19 of the situation, because they do not have the time. And,
20 since I do have a vested -- personal vested interest, in
21 my wife and myself, I would like to be an intervenor,
22 because the process so far that I've seen that the Town
23 has put in front of us has required intervention.

24 MR. IACOPINO: You mentioned "River

1 Road", is that the road you live on?

2 MR. KLINGER: Yes, sir.

3 MR. IACOPINO: Okay. Thank you.

4 MR. KLINGER: Thank you.

5 CHAIRMAN GETZ: Ms. Voelcker.

6 MS. VOELCKER: Good afternoon.

7 CHAIRMAN GETZ: Good afternoon.

8 MS. VOELCKER: I'm Elsa Voelcker. I
9 live at 97 Old Pound Road, which is roughly a mile, mile
10 and a half from the met tower, which will be the first,
11 now I'm told, 475-foot tall wind power project. I have
12 gone to many of the hearings. I've been to Zoning Board
13 hearings, I've been to Planning Board hearings. And, I
14 don't pretend to understand town politics. But one thing
15 that hasn't been said today is I went to a Planning Board
16 meeting, where over half of the speakers were against
17 opening up Conservation District to an industrial use.
18 And, then, at the end, the Planning Board all just voted
19 for that very general giving industrial wind use to our
20 Conservation District, which I worked on. I've lived in
21 Antrim since 1983. I helped the Blocks get more area of
22 Antrim under Conservation District. I moved there because
23 it is country, it's wild. I teach photography at Franklin
24 Pierce and St. Anselm College. I am a naturalist. I sell

1 my cards at least a dozen different outlets in this state.
2 I love where I live.

3 The swamp that I walk to every morning
4 is right under the met tower. They tell me that "you
5 won't -- "These things won't bother you. They're only
6 65 decibels. That's just like having a vacuum cleaner on
7 in your house." Would you like to live with a vacuum
8 cleaner going eight months of the year, if these are as
9 good as they say they're going to be?

10 I came to Antrim, I bought my house, it
11 was a tiny cottage. We built an addition big enough for
12 my house and me and my child. We had a second child, my
13 husband left. I've raised my two kids in Antrim myself,
14 living on about 30 grand a year I make now. All the money
15 I have is in that house. And, I put on an addition so I
16 could live there with my two teenagers and not be living
17 on top of each other. Now, the money I've put into my
18 house is going to be gone.

19 They say that "it makes no impact on the
20 value of your property." But, when we look into other
21 properties, it's 25 to 50 percent I stand to lose on land
22 that's already devalued to the amount of money I have
23 invested in it. I would like to see a provision made
24 where landowners within the two-mile affected district get

1 recompensed or bought out. I want to be bought out. If
2 these things go in, I can't stand living there.

3 It's ruining the most beautiful parts of
4 our country. Nubanusit, Willard Pond, Gregg Lake, we have
5 invested a lot of money in that beach front of Gregg Lake,
6 so that we have a place to go swimming and enjoy. And,
7 instead, we're going to have four or five of those things
8 lording over us. I know Lempster. They have a beautiful
9 place to go swimming, Long Pond. You don't see one of
10 their things from there. You don't hear them from there.
11 They're all along Route 10.

12 Well, I beg to differ. This is going to
13 ruin the natural qualities of Antrim, Hancock, and
14 Stoddard. And, I just hope that you give Antrim a chance
15 to say "no" to this Project. Because I know, if you get
16 it, you will let it happen. You may say they can only put
17 up five, but it's a done deal. And, I think people should
18 know that wind energy isn't the answer. It's not the
19 answer. We have good hydropower that nobody's
20 investigated doing. Loveren Mill has a dam there already.
21 Hydropower is so much more efficient than wind.

22 I think the whole thing needs to be
23 looked at. Why is Holland defunding their wind projects
24 now? Because they're making more CO2 than they were

1 before they went in for wind. Wind energy is not the
2 answer. Thank you.

3 CHAIRMAN GETZ: Any questions?

4 (No verbal response)

5 CHAIRMAN GETZ: Thank you. Ms. Law.

6 MS. LAW: Good afternoon. Thank you for
7 letting me speak. I am an intervenor, because I live
8 directly across the valley from Tuttle Mountain. I live
9 on top of Windsor Mountain. We built our house in 1988.
10 In my mind, it's heaven. It's quiet, it's peaceful. We
11 see wild birds, we see wild animals. I love the wildlife,
12 I love the Rural Conservation District where I live.

13 I would like to ask you not to take
14 jurisdiction over this right now. Let the new Planning
15 Board have a chance to change the ordinances of the zoning
16 ordinances for the Rural Conservation District. We do
17 have ordinances in place, and they are being changed. I
18 think it's premature to have you take over this Project,
19 since they don't have an application in yet, Antrim Wind
20 Energy.

21 They came into our town two years ago to
22 put up a met tower. And, we've been to almost every
23 single meeting, with the Zoning Board, the Planning Board,
24 the Select Board. We were never allowed to speak about

1 wind towers, we were only allowed to speak about the met
2 towers. But, as soon as that was granted, all of a sudden
3 it's all about the wind towers.

4 We would like more time to be able to
5 work on our zoning ordinances. I think we have a really
6 good new Planning Board in place right now, and we'd like
7 to give them a chance to work on that. I really would
8 like to ask you that. I'm going to make it short and
9 sweet.

10 CHAIRMAN GETZ: Thank you. Any
11 questions?

12 MR. IACOPINO: I just have a question.
13 I take it, from what you said at the beginning of your
14 statement, that you believe that you're going to be in
15 full view of --

16 MS. LAW: Absolutely.

17 MR. IACOPINO: Have you talked to any --
18 has anybody from the Applicant spoken to you about what
19 the visual impact might be from where you live?

20 MS. LAW: They don't have to. I know
21 what it's going to look like.

22 MR. IACOPINO: Well, I'm just asking if
23 they have?

24 MS. LAW: No.

1 MR. IACOPINO: Okay thank you.

2 CHAIRMAN GETZ: All right. Thank you.

3 MS. LAW: Thank you.

4 CHAIRMAN GETZ: Mr. Cleland.

5 MR. CLELAND: Good afternoon. I think
6 I'm near the end, because it looks like everybody here,
7 including the Board, is getting a little weary. So, I'm
8 not going to say too much. I think I should be an
9 intervenor because my property faces the proposed Project,
10 and I'm within one and a half miles. So, that's my view.
11 Also, Mr. Kenworthy has told me that the Project would
12 have a direct impact on my property. So, that's why I
13 think I should be an intervenor.

14 I live in Antrim, New Hampshire, because
15 it's a small town governed by the people. I like to vote,
16 I like to make decisions, and I'm intervening because I
17 don't want the SEC to take jurisdiction at this point. I
18 want to be able to vote and exercise my rights to make
19 these decisions with the Planning Board that I think is
20 very capable of what they're about to try to do. If we do
21 this and you do take it over, I feel like I am losing some
22 of my rights, and I'm not happy about that.

23 Basically, that's about what I have to
24 say. And, I think you should listen to the people. Let

1 the Town go through this, because the Town is divided.
2 And, if the Town doesn't get back together, it's always
3 going to be divided. And, none of us want that. Thank
4 you.

5 CHAIRMAN GETZ: Any questions?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. Thank you.

8 MR. IACOPINO: I have one question.

9 MR. CLELAND: Yes.

10 MR. IACOPINO: Obviously, you've told us
11 that your property is about a mile away from the site it
12 faces.

13 MR. CLELAND: Yes.

14 MR. IACOPINO: What about -- is there
15 anything about your property that makes you believe you're
16 going to --

17 MR. CLELAND: It faces the site. I see
18 the complete site of the whole ridge.

19 MR. IACOPINO: So, are you like up on
20 the same elevation?

21 MR. CLELAND: Yes. I'm on the same
22 elevation.

23 MR. IACOPINO: Thank you.

24 MR. CLELAND: Thank you.

1 CHAIRMAN GETZ: Ms. Longgood.

2 MS. LONGGOOD: My name is Janice Duley
3 Longgood. I live -- I would ask you to reference your map
4 please. I live on Salmon Brook Road. I have the last
5 electrified house on Salmon Brook Road. I consider myself
6 to be at "ground zero" of this Project. The Applicant has
7 never spoken to me. And, so, therefore, that -- I am
8 requesting intervenor status.

9 I would like the process to go back to
10 Antrim. I have felt, during the discussions that we had
11 regarding the met tower, the zoning changes, that we
12 weren't allowed full participatory democracy, we were shut
13 down many times in our discussions, that we had to, you
14 know, stay on track and we couldn't talk about certain
15 things. And, I have very strong feelings that this would
16 impact my life horribly. I don't want to be there if
17 these go up. I was born and raised in Concord, New
18 Hampshire, and I've moved out to the middle of nowhere. I
19 love it. I have an 800-foot driveway. Again, I am on a
20 beaver pond that looks up over the ridge. That it appears
21 as though my home will be surrounded with this map by
22 turbines.

23 Every other resident on Salmon Brook
24 Road signed the petition to go back to Antrim. Some of

1 them had been for Wind Energy, until they saw this map. I
2 think the map that was submitted took everyone by surprise
3 at the scope of this Project, all the way to Willard
4 Mountain.

5 I had hoped to conserve 30 acres of the
6 50 acres that I own to be part of this beautiful natural
7 area. And, it is having a direct impact and stressor on
8 my life now, and it will have a direct impact if it goes
9 through. So, I want to intervene in whatever happens as
10 you go forward as I'm a direct abutter. And, any -- I
11 guess that's it.

12 CHAIRMAN GETZ: Any questions?

13 MR. IACOPINO: I just have a -- the map
14 that we have is only a topo, so we don't actually have all
15 the roads.

16 MS. LONGGOOD: You don't. Well, I am
17 the last road before you get to Stoddard. When we
18 started, we were in the Boston Globe, back in the '70s, of
19 "No Joy in Antrim's Mudville." I was pregnant with my
20 daughter, having to walk over a mile to get up to my
21 house. We had propane lights. It's wild out there.
22 Hawks, you know, it's --

23 MR. IACOPINO: Where is your home in
24 relation to the brook itself?

1 MS. LONGGOOD: I have, if you only have
2 a topo map, the brook goes right by where my home is.
3 Where it splits, I'm on the left side. I think there's a
4 small road there. I'm the last house, and I'm in off the
5 road far enough so that I do not have a direct view of
6 even the dirt road. So, --

7 MR. IACOPINO: Thank you. Are you going
8 to draw a circle for us?

9 MS. LONGGOOD: Yes.

10 MR. IACOPINO: That would be great.

11 MS. LONGGOOD: Going to draw a circle.
12 Oh, I don't have my reading glasses.

13 UNIDENTIFIED SPEAKER: If that helps.

14 CHAIRMAN GETZ: Thank you.

15 UNIDENTIFIED SPEAKER: It's right where
16 my finger is.

17 CHAIRMAN GETZ: Any questions?

18 (No verbal response)

19 CHAIRMAN GETZ: Thank you.

20 MS. LONGGOOD: You're welcome.

21 CHAIRMAN GETZ: And, Ms. Harriman.

22 MS. HARRIMAN: I'm Marie Harriman. And,
23 the good news is, I think I'm your last person. So, I've
24 only lived in Antrim for three and a half years, this

1 round. I grew up in Antrim, my parents grew up in Antrim.
2 And, my family has been in Antrim for, oh, over 200 years.
3 I'll try to keep it as brief as possible.

4 Let me first answer the question about
5 being an intervenor. I'm here mostly to bear witness to
6 the SEC of how things have been in Antrim and how I feel
7 about this. I'm also a signatory to the Petition that
8 Mr. Webber had going around, and I have no objection to
9 being included within that class. So, that's what I have
10 to say about that.

11 I want to talk a little bit about
12 resources and just put my two cents in there. The
13 Planning Board is made up of volunteers. They meet every
14 other week, in general. And, when I think about this ad
15 hoc committee that they put together, I think of a couple
16 things. As an engineer myself, though, I'm a mechanical
17 engineer, I have an idea of what they would need to put
18 together and what kind of things they would need to
19 understand and write into our Planning Board procedures to
20 really manage this kind of a project and to deal with the
21 whole wind energy project that we're considering. I also
22 have a lot of civil engineers in my family. And, I don't
23 believe that we have the full capacity that we need in
24 Antrim to fully address this Project.

1 I think there's a lot of good-meaning
2 people, that they have a lot of energy they want to put
3 towards it. But I do believe that this would be much
4 better transferred to the SEC.

5 I think there's another issue here about
6 "undue delay". Antrim has been considering the wind
7 towers or the wind energy or met towers for about two
8 years now. And, as a lot of people have said, you know,
9 we could have been preparing for this quite a while ago.
10 There are some people who feel that all of a sudden it's
11 been thrust on them, and it's right now a very pertinent
12 issue. But I think that many of us have seen it coming.
13 And, if we had wanted to, we could have been much more
14 prepared for it than to think it's a sudden -- a sudden
15 thing we have to deal with.

16 I think that, if this stays within
17 Antrim and does not get taken over by the SEC, that Antrim
18 Wind Energy will not get a fair and expedited review
19 within Antrim. If the petition is not approved, I really
20 have to wonder if it will ever emerge from the Planning
21 Board at all.

22 I know that there have been discussions
23 within the last half hour here whether we should look at
24 it within six months or eight months before it comes back

1 to this Board. But, I have to wonder, what's the point of
2 having even that delay, if it's going to come back here?
3 Since even those folks who have been talking about it
4 think that it has a high likelihood of it. What purpose
5 does that serve for the Town of Antrim and for the New
6 Hampshire residents in general?

7 And, I also have to wonder that, if
8 Antrim does create the proper language that they want to
9 within our town, would we write that standard towards this
10 particular project? And, given how so many of the
11 meetings have been more a tool of the minority against the
12 wind energy project, if that language would actually end
13 up being against the wind energy farm, rather than for it,
14 or make it more difficult for them to address. And, I do
15 have to wonder if that's a possibility.

16 One thing that you guys have -- may not
17 have been made aware of is that some of these meetings
18 have actually had to be refereed by police officers. And,
19 that's how contentious things are. Now, that may be
20 common in many towns, I don't know. But, to me, that
21 seems like it's a little extreme.

22 And, I guess, you know, in closing, I
23 would also like to say that, although some people seem to
24 represent that there is -- it's a 50/50 split between who

1 wants what in the Town, that's not what I've heard.
2 Again, I'm on one side, there's people on another. It
3 looks to me like there's a small, very vocal minority, and
4 then there's a rather apathetic majority. Read into that
5 how you will.

6 When we look at the voting at the last
7 Planning Board members, there was a two-to-one voting for
8 the current members. But, be careful with that number,
9 because only about 600 people in the Town voted. So,
10 while that's representative of the number of people who
11 voted, it may not be representative of the whole town.
12 That's all I have.

13 CHAIRMAN GETZ: Okay. Any questions?

14 (No verbal response)

15 CHAIRMAN GETZ: Thank you. Oh.

16 DIR. MUZZEY: I had the question that
17 was similar to what has been asked of others. Is there a
18 particular reason why you feel that you should have
19 intervenor status as opposed to others in the town?

20 MS. HARRIMAN: As I said in the
21 beginning, I don't particularly need to hold on to the
22 intervenor status.

23 DIR. MUZZEY: Okay.

24 MS. HARRIMAN: I'm happy to go in with

1 that other class.

2 DIR. MUZZEY: All right. Thank you.

3 CHAIRMAN GETZ: There appear to be no
4 other questions. So, thank you. Steve, how are you
5 doing?

6 MR. PATNAUDE: Keep going.

7 CHAIRMAN GETZ: Well, let me turn to
8 some other procedural items. Mr. Genest, the Town of
9 Antrim filed an objection to the petition by the Antrim
10 Planning Board. Do you have anything to add to that or
11 any other positions on intervention?

12 MR. GENEST: I'll just stick with the
13 written, as far as the objection.

14 CHAIRMAN GETZ: And, do you have
15 anything else, in terms of what's been stated today so
16 far?

17 MR. GENEST: No. I think we're all set.

18 CHAIRMAN GETZ: Thank you.

19 MR. GENEST: Thank you.

20 CHAIRMAN GETZ: Ms. Geiger, you filed a
21 "Response to Intervention Requests" on April 21, as well
22 as a "Reply to Counsel for the Public". Do you have
23 anything to add on on the Petitions to Intervene or
24 anything to add with respect to the standard or review or

1 other items that have come up today?

2 MS. GEIGER: No. I think our position
3 is adequately set forth in the filings. Basically, we
4 would ask the Committee to carefully scrutinize all of the
5 requests for intervention under the standard articulated
6 in RSA 541-A:32, and to ensure that they -- all of the
7 folks that are seeking to intervene have articulated that
8 they have rights, duties, privileges, and immunities under
9 the law, that they need to be protected by intervention
10 standards -- status, and that their interests are not just
11 commensurate with being a member of the general public.
12 That they actually do meet the intervention standard under
13 the statute.

14 And, if individual parties are similarly
15 situated, that their participation in the docket be
16 consolidated. I think, as Attorney Iacopino has
17 indicated, to do otherwise would open up intervention to
18 just about everyone in the Town. So, we would make those
19 additional points.

20 With respect to our pleading concerning
21 a response to or a reply to Public Counsel's submission,
22 if you'd like me to take a moment, I'd be happy to address
23 that. Basically, in conjunction with that, what I would
24 ask is that I respectfully move that the comments made

1 today by Public Counsel be struck from the record. I
2 don't believe, for the reasons set out in my reply, that
3 Counsel for the Public was properly appointed under RSA
4 162-H:9. That statute is very clear on its face. It says
5 that "the attorney general shall appoint an assistant
6 attorney general as counsel for the public upon
7 notification that an application for a certificate has
8 been filed with the Site Evaluation Committee in
9 accordance with 162-H:7." I think, as everyone in the
10 room has heard several times today, no application has
11 been filed. I think the statute's pretty clear. And, I
12 think that, unfortunately, that Senior Assistant Roth has
13 been appointed in violation of the statute.

14 However, even assuming for the sake of
15 argument, that he was properly appointed, his statutory
16 duties are limited by 162-H:9 to the following: He can
17 "represent the public in seeking to protect the quality of
18 the environment and in seeking to assure an adequate
19 supply of energy."

20 We are here today on a Petition for
21 Jurisdiction. A petition to see whether the SEC will
22 assert jurisdiction. Those two statutorily prescribed
23 duties and those issues are not before the Committee
24 today. The only issue before the Committee today is

1 whether or not it should assert jurisdiction. Therefore,
2 I don't believe that Senior Assistant Attorney General
3 Roth has the authority to opine as he has. And, I
4 therefore ask that his comments be struck from the record.

5 Having said that, I'd like to take a
6 brief opportunity in rebuttal to some of the comments that
7 he made. First of all, there's nothing in RSA 162-H that
8 requires an application to be filed with a Petition for
9 Jurisdiction. And, we've indicated that before. I also
10 take strong exception to the suggestion that 162-H:2, XII,
11 should be interpreted somehow to mean that this body, the
12 SEC, must defer to the wishes of local governing bodies
13 for all facilities that are under 30 megawatts. The
14 Legislature didn't say that in the statute. The
15 Legislature has given this body the discretion to exercise
16 its authority over facilities that are between 5 and
17 30 megawatts, and that's what we're asking you to do.

18 We've also submitted for your
19 information some legislative history indicating what the
20 framers of 162-H meant when they gave you that discretion.
21 Part of the reason for that discretionary authority is to
22 deal with situations such as the one you have before you.
23 Where you have a divided town, and a potential situation
24 that an applicant, such as my client, may not be able to

1 navigate a process within the Town for approval of its
2 plans. Moreover, in this situation, we have heard that
3 the Town doesn't have an ordinance in place, in place yet.
4 What some of the folks in town are asking you to do is
5 "just to hold off, trust them, and within six, eight, ten,
6 maybe ten months, maybe a year from now, they might have
7 an ordinance in place. And, then, if it doesn't work out
8 for Antrim Wind Energy, then we can come back here."

9 Well, that situation is simply not feasible for my client.

10 And, what I'd like to do at this point
11 is to turn it over to Mr. Kenworthy to tell you why delay
12 is difficult for them. And, I'm doing that for a couple
13 of reasons. Because we've heard from Public Counsel a
14 couple of times I think an invitation to do that. So, I'd
15 like to turn it over to Mr. Kenworthy so that he can
16 explain for you what a delay in these proceedings or a
17 delay in obtaining a decision from the SEC on the
18 jurisdictional question will mean for this particular
19 project.

20 MR. ROTH: Mr. Chairman, I would object
21 to this testimony being introduced at this time. This was
22 not, as far as I know, noticed as an evidentiary hearing.
23 We don't have any prefiled testimony from this witness.
24 There has been no ability to conduct discovery or

1 understand the background or prepare for cross-examination
2 of any testimony and remarks by him.

3 I would also respectfully request to
4 address Attorney Geiger's motion to strike my testimony --
5 or, not my testimony, but my remarks in argument. But I
6 only saw her response making that argument this afternoon,
7 when she presented it to us. She presented it to me this
8 morning. But I -- I could take a crack at it. But,
9 typically, a motion like that should be provided with
10 notice and a certain number of days by the responding
11 party to actually write a response. So, for the Committee
12 to address that motion today would be outside of the
13 rules. But I'm happy to make some effort to respond to
14 it.

15 But, as far as having testimony this
16 afternoon, I think it would be inappropriate.

17 CHAIRMAN GETZ: Well, two things. First
18 of all, we'll give you an opportunity to respond to the
19 motion to strike. And, I don't think it would be outside
20 our rules to hear your response today. Also, we're going
21 to allow Mr. Kenworthy to speak to the issue, when, at the
22 beginning of the hearings today, we indicated that we
23 would permit, where necessary, members other than counsel
24 for the Antrim Wind to speak. Goes to a question of what

1 weight we give it, since it's not going to be under oath
2 or sworn testimony, but we will permit the comments. And,
3 then, we'll get back to you to give your opportunity to
4 speak to the motion to strike.

5 MR. KENWORTHY: Thank you, Mr. Chairman.
6 To respond, I guess, from our perspective, with regard to
7 the question of "why a decision on the jurisdictional
8 question now is important for us to understand the
9 process?" and "why we think a delay in a decision is
10 unreasonable?" We've heard a lot of testimony today, both
11 written and oral, about the process that has taken place
12 over the last two years in Antrim, both with respect to
13 the meteorological towers, which have happened under the
14 Town's purview, and in close collaboration with the Town,
15 and also about a six month effort to enact ordinance
16 changes that would have been twice in front of the Town
17 for a vote, either up or down, depending upon how people
18 felt, and would have been subject to all the requirements
19 of the Town's site plan review regulations. Our
20 experience has kind of led us to a position where we do
21 not have a faith in the process in the Town. Such that,
22 even if an outcome were to be that an ordinance was
23 drafted that had, you know, potentially reasonable
24 regulations, we don't know that that will ever be voted

1 in. Or, if it were, if there's a fair process under which
2 we could be reviewed in the context of that ordinance.

3 So, in light of that, without a decision
4 about whether or not the SEC will assert jurisdiction or
5 if jurisdiction is denied, from our perspective, we can't
6 continue to make investments in the studies that are
7 required to get to the point where we could actually
8 submit an application. As you're aware, it's a very --
9 it's an expensive process, it's a time-consuming process,
10 and it's a time-sensitive process. Particularly now, May,
11 in particular June, April, May, June is a study-intensive
12 season, for, you know, things like vernal pools, bird
13 migrations, things that can only happen at that particular
14 time of year. So, a delay of a month or several months
15 can wind up costing a far greater period of time.

16 So, you know, unfortunately, our
17 position is that, in the absence of some clarity on what
18 the process is, which we've been trying to get, we really
19 don't have, you know, from our perspective, an ability to
20 kind of keep doing what we're doing.

21 CHAIRMAN GETZ: I think there's been a
22 number of comments today about when Antrim Wind might be
23 in a position to file an application with the SEC. And,
24 can you point me, was that stated in the March 11 filing?

1 What page was that on?

2 MS. GEIGER: I don't have the page, Mr.
3 Chairman. But I believe we indicated that it would be
4 filed by the end of this calendar year.

5 CHAIRMAN GETZ: And, that's -- is that
6 still the case?

7 MR. KENWORTHY: Yes. I think, provided
8 that there is not an undue delay, from our perspective,
9 and having some idea of what process we're under. In
10 other words, if we're able to continue the studies that we
11 have commenced, we are quite confident that, yes, we will
12 be able to submit a completed application before the end
13 of this year.

14 You know, perhaps it's useful to point
15 out that the layout that you see on that map is done based
16 on 2-foot aerial map imagery, engineered drawings. You
17 know, we didn't just draw, you know, pictures on a map.
18 We've engaged engineers and done quite a bit of study so
19 far. I think we do have some refinement to do, and part
20 of that is with additional engineering and resource
21 assessment, and part of that has to do with some of the
22 outcomes of the environmental studies that we have
23 currently underway.

24 CHAIRMAN GETZ: All right. Thank you.

1 Mr. Harrington.

2 MR. HARRINGTON: Just a follow-up
3 question on something you just said. I kind of gathered,
4 you're implying that, if the Site Evaluation Committee
5 doesn't take jurisdiction, that you will just cancel the
6 Project?

7 MR. KENWORTHY: I think that's a
8 possible outcome. I think that we would certainly stop
9 spending money on the Project, until we had some other
10 certainty about what the permitting pathway looked like,
11 and that we felt comfortable that, if we were to continue
12 to make investments and meet whatever requirements
13 existed, that there would be a fair opportunity to receive
14 a permit.

15 MR. HARRINGTON: So, should I take that
16 to mean that you expect that, if the Site Evaluation
17 Committee does not take jurisdiction, and the Town comes
18 up with this ordinance, that there would be a drastic
19 difference in the type of studies that you have to do over
20 the course of the next six months to meet the requirements
21 or the proposed requirements of the Town versus the
22 requirements of the Site Evaluation Committee?

23 MR. KENWORTHY: Honestly, I don't think
24 that, for us, is so much the issue. And, I think what

1 we've indicated to the Town is that the kind of character
2 and scope and type and number of studies is roughly
3 similar. I think that the concern that we have is a
4 matter of faith in process. And, that our experience in
5 the Town has been such that we get one decision, and a
6 week later it's overturned, one board decides one thing, a
7 month later another board decides something else. The
8 Town wants to vote on a set of issues that takes six
9 months to define, like them or not, and then that gets
10 derailed. So, I think that's the issue for us, is "can we
11 be comfortable investing in those studies without knowing
12 which process we will be evaluated under?" I think, if we
13 know that the SEC is going to be evaluating the Project,
14 we fully expect to have to go through all the rigors of
15 that process, and don't have certainty about what the
16 outcome will be, but we have faith in the process.

17 MR. HARRINGTON: Okay. I guess my point
18 would be then, if the SEC were to say, for example, "we'll
19 delay making a decision on this for, I think the time
20 frame was around eight months people were talking, to see
21 if the Town can get its act together on this ordinance and
22 actually pass something", I'm trying to determine how that
23 will be detrimental to you? You could come back in eight
24 months and simply continue with all the needed studies and

1 the bird counts and all that stuff, and then re-petition
2 this Committee and say "Okay, we gave them another shot.
3 And, we're no further along in that petitioning process
4 than we were six months ago. So, now we're requesting you
5 take jurisdiction a second time."

6 MR. KENWORTHY: Yes. I guess the risk
7 that we have is that we continue to make those investments
8 over the next eight months that you're describing, and if
9 the outcome is such that, whatever happens, the Town would
10 wind up back in front of the SEC again and the petition is
11 denied, then we're in a position where we are kind of
12 still in that process that we think is, frankly, you know,
13 largely broken. And, so, that's the concern that we have.

14 MR. HARRINGTON: All right. Thank you.

15 CHAIRMAN GETZ: Okay. Well, let me
16 address the motion by Antrim with respect to the
17 appointment of Counsel for the Public. And, I'm assuming
18 that not everybody on the Committee has actually seen the
19 -- there's a written motion that was filed dated today,
20 April 22nd?

21 MR. IACOPINO: I passed that out this
22 morning.

23 MR. HARRINGTON: Is that the one you
24 handed out this morning, Mike?

1 MR. IACOPINO: Yes.

2 FROM THE FLOOR: Certainly, the
3 intervenors haven't seen that.

4 FROM THE FLOOR: We haven't seen it
5 either.

6 CHAIRMAN GETZ: Well, first of all, I'm
7 going to concentrate on the members --

8 FROM THE FLOOR: Thank you.

9 CHAIRMAN GETZ: -- and see whether they
10 -- because they're the ones that are going to have to make
11 a judgment on the motion.

12 MR. HARRINGTON: Can we see what it
13 looks like?

14 CHAIRMAN GETZ: It's dated April 22nd.
15 It says "Petitioner's Reply to Response of Counsel for the
16 Public". And, the beginning talks to the argument made by
17 Counsel for the Public that was --

18 MS. GEIGER: I have extra copies, Mr.
19 Chairman.

20 CHAIRMAN GETZ: And, then, Paragraphs 4
21 and 5 go to the legal issue of designation or appointment
22 under 162-H:9 and the limit of the counsel's role.

23 MS. GEIGER: Mr. Chairman, I have extra
24 copies that I've circulated just now. I believe what

1 happened this morning is we brought hard copies for the
2 Bench, and I gave one to Mr. Roth before the hearing
3 started this morning, just before 9:00. I believe my
4 assistant emailed the pdf to other members of the service
5 list as is required under the rules. The only step that
6 was missing is the hard copies that we have available now.

7 CHAIRMAN GETZ: Thank you.

8 (Short pause.)

9 CHAIRMAN GETZ: Mr. Roth, I'm going to
10 give you an opportunity to respond orally at this point.
11 But, I think, given the timing of this, I'm inclined to
12 allow some period of time for a response in writing. Do
13 you have any position on that approach?

14 MR. ROTH: That's fine.

15 CHAIRMAN GETZ: Would you like the
16 opportunity to respond orally today?

17 MR. ROTH: Sure. I'd like that. Just
18 briefly.

19 CHAIRMAN GETZ: Why don't we do that,
20 and then there are some other procedural issues that we're
21 going to have to address with the members of the
22 Committee.

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

24 And, again, I did just see this paper, it was handed to me

1 this morning, and I just began to look at it perhaps ten
2 minutes ago. I try to make it my practice not to read
3 stuff that people give to me at the hearing, because it
4 seems completely unfair to present it at the date of a
5 hearing and then expect you to respond it, and not reading
6 it gives me at least a fig leaf of defense about that.
7 But I did take a glance at it and I'm prepared to say a
8 couple of things about it.

9 Starting with the argument that somehow,
10 because I have this -- my role, under H:9, is to "protect
11 the quality of the environment and seek to assure an
12 adequate supply of energy". I mean, if that phrase sounds
13 familiar, it's because that phrase is basically what is
14 encapsulated in H:1, which is the "Declaration of Purpose"
15 of the statute. And, H:1, as you remember, was what we
16 talked about a bunch this morning, in terms of "what is
17 the basis for jurisdiction of this Committee in a case
18 where the jurisdiction is not plainly set forth as, that
19 is, the above 30 megawatt mark?" So, it seems to me
20 boarding on ridiculous for the Applicant to say that the
21 jurisdictional question is off limits to me, even though
22 my very role in this proceeding is to essentially make
23 sure that the Committee stays within and complies with its
24 jurisdiction, as set forth in the Declaration of Purpose.

1 So, that's -- so, I'm starting with the second argument
2 first.

3 The other point that I would make is
4 that the non-applicant is trying to have it both ways in
5 at least two different ways. First of all, they want to
6 say "There's no application. Therefore, Counsel for the
7 Public shouldn't be appointed, shouldn't be heard." If
8 they don't have an application, then, my argument is "they
9 don't belong here either." And, frankly, if they're
10 willing to go away, so will I.

11 Secondly, throughout their applicate --
12 throughout their response to the intervention papers is --
13 it's at least once, perhaps twice, stated "intervention is
14 all fine and good, but you should remember that Counsel
15 for the Public is here to represent the people, and that
16 the people will be represented by Counsel for the Public,
17 so you don't need to worry so much about the intervention
18 stuff." So, again, they want to have it both ways. They
19 want to say "Okay, you represent the public. But, no, you
20 can't be heard on this critical issue that the public
21 wants to be heard about." So, it's just -- and, I think
22 the statute also very clearly says that I have "all the
23 rights and responsibilities of a party in a formal
24 action", essentially, I have intervenor status in this

1 case.

2 So, you know, that's, in brief, what I
3 could come up with sitting here. But I do appreciate an
4 opportunity to address the argument with a written
5 response.

6 CHAIRMAN GETZ: Okay. Thank you. Well,
7 is there any questions for Mr. Roth?

8 (No verbal response)

9 CHAIRMAN GETZ: Well, let me get back to
10 where we were at the beginning of the morning. In the
11 Order and Notice, it said today that "The Committee would
12 consider motions to intervene, if any are filed, and in
13 the absence of intervention, may deliberate on the merits
14 of the Petition or may determine that further proceedings
15 are necessary." So, I guess one fundamental question for
16 the Committee. I think I made some statements earlier
17 today that probably tipped off where I thought this might
18 go. But is there anyone on the Committee who believes
19 that we're prepared to deliberate on the merits of the
20 Petition this afternoon to take jurisdiction?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Then, I take it
23 that the alternative then is that we determine that
24 further proceedings are necessary. And, I think that

1 seems to be the general consensus of the parties. Now,
2 what we also have pending are numbers of petitions to
3 intervene. Not everyone is similarly situated, in terms
4 of the Petitioners, who are -- whether they're land
5 holders, whether they're abutters, whether they're within
6 view, whether they're within hearing. So, I think, from
7 my perspective, I don't believe we're in a position this
8 afternoon to go through and make the -- make the decisions
9 on every one of the Petitions to Intervene to fairly
10 conclude who should be permitted intervention, who should
11 not, and under what provisions of the statute.

12 So, I guess my recommendation on that
13 would be to take under advisement the Petitions to
14 Intervene. Does anybody have any concern about that
15 approach?

16 (No verbal response)

17 CHAIRMAN GETZ: Okay. And, now, we also
18 have an issue about whether the Counsel for the Public is
19 properly appointed. What I had hoped would happen is that
20 we would adjourn this hearing, and that there would be a
21 meeting among the parties and our counsel, what we would
22 term a "technical session", to try to come to some
23 agreement on a procedural schedule. And, I would still
24 like to see that occur, even recognizing that we haven't

1 addressed the Petitions to Intervene or addressed the
2 issue with respect to the propriety of Public Counsel's
3 participation in this proceeding.

4 I do think that, regardless of whether
5 -- how we rule on that particular legal issue, that
6 Mr. Roth's experience would be helpful to the process of
7 coming up with a short-term procedural schedule to put us
8 in a position to rule on whether we should grant the
9 petitions asking us to take jurisdiction. And, I would be
10 hopeful that, whatever comes out of that process, would
11 put us in a position to have a hearing in early June on
12 the question of whether we should exercise our discretion
13 to take jurisdiction in this proceeding.

14 So, that's how I would like to see
15 things proceed, as a matter of process. So, two things.
16 Are there any questions from the Committee or any thoughts
17 from our counsel?

18 (No verbal response)

19 CHAIRMAN GETZ: Do you think that covers
20 everything, Mr. Iacopino?

21 MR. IACOPINO: I think that covers
22 everything. And, I think that I'm more than happy to sit
23 here with all of the potential intervenors and the parties
24 and try to come to some schedule for sort of the

1 jumping-off points, discovery, technical sessions, issues
2 like that, between now and your target date of early June
3 for an adjudicatory hearing.

4 CHAIRMAN GETZ: And, let me also point
5 to both the statute 541-A:32 and our rule on intervention.
6 Makes it clear that conditions can be imposed on
7 participation of any intervenors to promote the efficient
8 and orderly process of the proceeding. And, I appreciate,
9 Mr. Block, you've already spoken today on behalf of a
10 number of people. And, going through the process of going
11 through the filings, it looks like quite a few of the
12 individuals that have Petitions to Intervene have also
13 signed the Allen Petition. So, it seems to me that
14 there's quite a few people in that petition that would be
15 in a position to participate as a group. So, I just would
16 ask that the parties, or the parties-to-be, work with Mr.
17 Iacopino to see if we can work that out in the technical
18 session that follows this. Because we want to make sure
19 that we have everybody get some input, but it also is done
20 in a way that provides for an orderly process. And that,
21 when we -- if there's going to be filings in writing, if
22 there's going to be testimony, if there's going to be
23 discovery or cross-examination, that, really, that we have
24 -- it's not going to be conducted by 15 different people,

1 who really have the same interests at heart, that there is
2 some coordination of those undertakings. Mr. Normandeau.

3 DIR. NORMANDEAU: Mr. Chairman, if I
4 may, as definitely a legal rookie, it would seem to me
5 that maybe Mr. Iacopino could, in that process, fully
6 inform the folks just what it really will mean to be an
7 intervenor, should this go forward in an SEC proceeding.
8 Because, you know, which is, as we who have been through
9 it know, it's much more than simply being there to testify
10 about your position. And, I think, maybe members of the
11 public might not be fully aware of what it means to be
12 totally involved in that process. That's all.

13 CHAIRMAN GETZ: And, that point is well
14 taken. I think that people may have gotten the flavor
15 today that this is a much more formal process, much more
16 judicial process than a planning board meeting or a town
17 selectboard meeting. And that, once intervention is
18 granted, there are certain obligations that go along with
19 the privileges of being a party. And, I think everyone
20 who participates should have clear in their minds whether
21 they want to -- how deeply they want to participate.
22 There's always an opportunity for making a public comment
23 or filing something in writing without being a party, but
24 "party" brings with it much more than making a comment.

1 So, I think that point is well taken.

2 Is there anything else from the
3 Committee?

4 (No verbal response)

5 MS. GEIGER: Mr. Chairman, if I may get
6 some clarification from you on the technical session, if
7 you will, that we're supposed to have. It would be
8 helpful to me to understand, when you indicated that "the
9 Committee needed to have another hearing on this matter",
10 what you meant by that. As a Petitioner, we believe we've
11 put forth enough information for the SEC to make a
12 decision, a threshold decision on whether or not to assert
13 jurisdiction. I simply don't know what more information
14 would be needed or necessary in order to move forward.

15 We certainly don't believe that, at this
16 juncture, discovery is appropriate or that further
17 technical sessions are appropriate. So, it would be very
18 helpful for us to understand, before we all leave the room
19 today as a group, what is expected of the Petitioners
20 here.

21 MR. ROTH: Mr. Chairman, if I can just
22 speak to that very briefly. And, based on my experience,
23 and I believe Susan -- Ms. Geiger was involved in that as
24 well, with the Lempster Project. And, in that case, I

1 believe that there was testimony submitted by the
2 non-applicant in that case. I don't believe that there
3 was an opportunity to conduct discovery before that, but I
4 think perhaps we were all somewhat new to that experience
5 at that time. And, I wouldn't expect there to be sort of
6 a long, drawn-out process, as there would be for an entire
7 application. But I think it would make sense to require
8 the applicant -- or, the non-applicant, excuse me, to
9 submit some testimony about their project. So that, if
10 there's an evidentiary hearing, they would be subject to
11 cross-examination on that.

12 CHAIRMAN GETZ: And, I guess I would
13 point to both the Lempster model and the Clean Power
14 Development model, in which the Committee had to make
15 decisions about whether to take jurisdiction; in one case
16 it did, in one case it didn't.

17 It seems to me, there are two sets of
18 facts that have been set in play here. One goes to
19 "what's the status of the Antrim Wind's project?" I think
20 we've heard a good deal about that, but it may be helpful
21 to have a witness available to testify to that. Though,
22 in terms of discovery, I certainly wouldn't contemplate
23 the type of discovery we would see once an application is
24 filed. To the extent a technical session, where the

1 questions were asked and answered, would, in my mind, be
2 more than suitable.

3 The other question, I think, goes to the
4 issue surrounding the Town's capabilities. And, what we
5 have, we have some arguments made by the Town of Antrim,
6 made by the Planning Board, made by others, about the
7 capabilities of the Town, and how that affects whether we
8 should or shouldn't take jurisdiction. So, I think that
9 needs to be put in -- that needs to be put in play
10 somehow.

11 So, I would like to see both of those
12 kinds of issues addressed. And, I think that's what's
13 going to inform how we exercise jurisdiction.

14 MR. ROTH: Mr. Chairman, on the latter
15 question, are you looking for testimony that the Town is
16 not capable or testimony that the Town is capable? And,
17 whose burden is it to put forth testimony like that?

18 CHAIRMAN GETZ: Well, and I think that's
19 one issue that I was hoping would get addressed in a
20 procedural setting, in a technical session. Because, you
21 know, this really hasn't been an item in dispute that the
22 Committee has had to -- has had to reconcile. Now, maybe
23 the argument is, there could be a legal argument that the
24 Town of Antrim has spoken, and that that's all we should

1 look at, which is one of my first questions to you, is
2 "what is the Committee's obligation?" Does it look to
3 what the Town has said, through its duly elected board, or
4 does it look behind it?

5 So, I think, to examine whether that is
6 a conclusion that we have to delve into at a deeper level.
7 So, I think that's something that's going to have to be --
8 I would ask counsel to try and work out with the parties
9 to see if there's a way that we can get that put before
10 us.

11 MR. ROTH: Can I suggest that there's
12 perhaps a third level of inquiry about this? And, that
13 is, going to the question of, I guess for want of a better
14 term "blocking" or "blocked". And, that is, I think it's
15 the non-applicant's burden to show that there is some need
16 for the exercise of jurisdiction in this case. And, that
17 suggests to me that, as brought up by the reference to the
18 legislative history, that that need should be precipitated
19 by blockage or blocking by the Town. And, I'm not sure
20 how to exactly phrase it, but it seems to me that that
21 ought to be part of the inquiry for the Committee in a
22 later hearing.

23 CHAIRMAN GETZ: So, you're taking the
24 position, not necessarily or could be an issue different

1 from capability, but one more of they have the capability,
2 but are exercising it improperly?

3 MR. ROTH: Something like that.

4 MR. HARRINGTON: Excuse me, Mr.
5 Chairman. Could I ask a question? I'm not following your
6 conversation. I don't know what the term "blockage"
7 means.

8 MR. ROTH: If I may, there was a
9 suggestion made by Attorney Geiger, both in her remarks
10 and in her paper, that the exercise of jurisdiction for a
11 smaller project was appropriate for the Site Evaluation
12 Committee in the event that a project was blocked by the
13 community. And, so that you would preempt that blocking
14 with an SEC jurisdiction.

15 MR. HARRINGTON: All right. Now, I
16 understand. Thank you.

17 CHAIRMAN GETZ: Did you anything
18 further, Ms. Geiger?

19 MS. GEIGER: No.

20 CHAIRMAN GETZ: Mr. Froling?

21 MR. FROLING: Yes. Could I -- I just
22 want to address that specific point, by reading a couple
23 of sentences from what I called the "Laflamme" decision
24 earlier, which you just called "Clean Power". I think

1 it's the same case.

2 CHAIRMAN GETZ: Yes.

3 MR. FROLING: And, it says on Page 7, in
4 connection with deciding whether to take or not take these
5 intermediate size projects, that, among other things,
6 "Specifically, the Committee must determine whether a
7 certificate is needed", I take that to mean "is
8 necessary", to "maintain a balance between the environment
9 and the need for new energy facilities in New Hampshire."
10 Now, I take that to mean that, if the town can provide
11 that balance, a forum to create that balance, that it's
12 not needed. Maybe I'm reading that wrong, but that's
13 certainly an argument I would like to make. And,
14 similarly, with the other four -- other three criteria,
15 these are all factual questions. Does the SEC need to
16 supplant local jurisdiction, which is the norm in New
17 Hampshire, to have local jurisdiction, in order to satisfy
18 these needs? And, those are questions of fact. That's
19 the way I read this decision. It's the way I read 162-H:1
20 as well. And, this is going to create a situation in
21 which you're going to have to understand what Antrim can
22 do and what it can't do, whether it can maintain that
23 balance. Certainly, blocking is one instance where it's
24 not maintaining a balance, it's putting the balance --

1 putting it away. But, if it can maintain the balance,
2 then you shouldn't be taking the case, and similarly with
3 Items 2, 3, and 4.

4 CHAIRMAN GETZ: Well, that's how we
5 would ultimately make our -- what decision we would make.
6 We've got to get to that point.

7 MR. FROLING: No, but this is a question
8 about whether you should take jurisdiction.

9 CHAIRMAN GETZ: Absolutely. I don't
10 think we're disagreeing.

11 MR. FROLING: Oh. Okay. I just wanted
12 to underscore that there is a substantive question to be
13 addressed at this hearing. And, whether we need discovery
14 on that, I certainly don't know enough about that to go
15 into that completely cold, in terms of asking questions
16 about what Antrim can and can't do. Maybe Mrs. Geiger
17 knows a lot more about it than I do.

18 CHAIRMAN GETZ: Well, you may be getting
19 ahead of where I'm hoping to be. My intention was to,
20 after this hearing is closed, that the parties talk about
21 the procedures that would get us to being able to have a
22 hearing to make that ultimate decision.

23 MR. FROLING: Exactly. That's what I'm
24 addressing as well.

1 CHAIRMAN GETZ: Okay. Is there any --

2 MR. ROTH: Mr. Chairman, I'm sorry. One
3 more point. And, that is, without direction from the
4 Chairman, with respect to prefiled testimony, unless
5 Attorney Geiger is willing to say now, I guess I would
6 think that the whole process would be very helpful or much
7 more productive if it was understood from the Chairman
8 that prefiled testimony would be required by a certain
9 date of anybody who wants to submit it on any of these
10 issues.

11 CHAIRMAN GETZ: Well, I think,
12 certainly, if we're going to have a hearing in June, that
13 there's going -- and my intention is that there be
14 witnesses who are going to testify. Normal procedure is
15 that there would be prefiled written testimony, and that
16 would certainly move things along more quickly. Then,
17 there would be an expectation that we would work out in
18 this technical session who would file what, when, and who
19 -- what other opportunities there would be for that, but
20 we want to do a quick schedule here on jurisdiction.

21 MR. ROTH: Thank you.

22 CHAIRMAN GETZ: All right. Steve, you
23 okay?

24 MR. PATNAUDE: Just keep going.

1 CHAIRMAN GETZ: All right. Is there
2 anything else from any of the parties or from the
3 Committee?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Then, what I
6 would expect then, Mr. Iacopino, is that you can report in
7 writing what, if there's agreement or if there's a lack of
8 agreement, hopefully, there's some agreement on what this
9 schedule would look like, and we can get to this question
10 in fairly short time.

11 So, if there's nothing else, then we'll
12 close the hearing and await a recommendation on
13 procedures. Thank you, everyone.

14 **(Whereupon the public meeting regarding**
15 **SEC 2011-02 was adjourned at 3:55 p.m.)**