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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

June 1, 2011 - 1:15 p.m. DAY 1
Public Utilities Commission
21 South Fruit Street AFTERNOON SESSION ONLY
Suite 10
Concord, New Hampshire

RE: SEC DOCKET NO. 2011-02
Petition for Jurisdiction
Over Renewable Energy Facility
Proposed By Antrim Wind Energy, LLC
(Public Hearing)

PRESENT: SITE EVALUATION SUBCOMMITTEE:
Chairman Thomas B. Getz N.H. Public Utilities Comm.
(Vice Chairman of SEC
Presiding as Chairman)
Glenn Normandeau, Exec. Dir. N.H. Fish & Game Dept.
Clifton Below, Cmsr. N.H. Public Utilities Comm.
Amy Ignatius, Cmsr. N.H. Public Utilities Comm.
Elizabeth Muzzey, Dr. N.H. Div. of Historical Res.
Harry Stewart, Dr. Water Division -DES
Robert Scott, Director Air Resources Division - DES
Brad Simpkins, Interim Dir. Div. of Forests & Lands-DRED
Michael Harrington N.H. Public Utilities Comm.

* * *

Counsel for the Committee: Michael Iacopino, Esq.

COURT REPORTER: Susan J. Robidas, LCR NO. 44

1 ALSO PRESENT:

2 Counsel for the Applicant: Susan S. Geiger, Esq.
(Antrim Wind Energy, LLC) Maureen D. Smith, Esq.
3 (Orr & Reno)

4 Counsel for the Public: Peter Roth, Esq.
5 Sr. Asst. Atty. General
Evan Mulholland, Esq.
6 Asst. Atty. General
(N.H. Dept. of Justice)

7 Reptg. the Town of Antrim: Justin C. Richardson, Esq.
(Upton & Hatfield)

8 Reptg. Antrim Planning Board: Silas Little, Esq.
9 (Fernald, Taft...)

10 Reptg. Harris Center for Conservation Education: Stephen Froling, Esq.

11 Reptg. Audubon Society of NH: Frances Von Mertens

12

13 Reptg. the Block Group: Richard Block

14 Reptg. the Allen Group: Mary Allen

15 Reptg. Gordon Webber: Pro se

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WITNESS: JOHN (Jack) B. KENWORTHY

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Good afternoon. We're
3 back on the record, and we are turning to the
4 cross-examination of Mr. Kenworthy by Ms. Allen.

5 CROSS-EXAMINATION

6 BY MS. ALLEN:

7 Q. Hi, Mr. Kenworthy. I'm Mary Allen. I'm one of the
8 intervenors, and I'm the namer, I guess, of the Allen
9 petition of the Allen intervenor group. It's a good
10 thing it's a really short name, isn't it.

11 I have a couple questions. First of all, how
12 many years' worth of wind resource analysis do you
13 have from the Tuttle Hill site?

14 A. We have been collecting wind data on site since
15 November of 2009.

16 Q. So, that would be roughly?

17 A. Approximately 18 months. A little over.

18 Q. Okay. You have a recent variance from the ZBA, the
19 most recent one for heighth and use variance, which
20 expires November 20th, 2012. How will you use that
21 data that's being collected from this point forward?
22 Or how will you --

23 A. I'm sorry. I'm not sure I understand the question.

24 Q. How will you use the three years' worth of data?

1 A. The wind data that we're collecting on the site is
2 used to make determinations with respect to the most
3 appropriate location of turbines, you know, in
4 addition to things like, you know, other site
5 constraints that may restrict where turbines can or
6 can't go to. The wind data tells us where the most
7 appropriate place to put those turbines is. It also
8 tells us about the suitability of various, different
9 types and models and sizes of turbines and what the
10 anticipated energy yields from those turbines will
11 be.

12 Q. Can you seek financing for this project with less
13 than three years' worth of wind data? And since this
14 is your first wind project, wouldn't you need roughly
15 three years of data to be getting financing?

16 A. You can seek financing with, I suppose, whatever you
17 wish. I think the more data you have, the less
18 uncertainty there is in the record. Typically, you
19 obviously measure on site, and then you correlate
20 those measurements to regional databases that date
21 back several decades to try to get an understanding
22 about what a real P90 or P99 probability scenario is,
23 that would be used in the financing component. But
24 as I have said before, I don't think three years is a

1 hard and fast rule.

2 Q. Do you know what the standard is for, or just the
3 general standard is for getting investors on board?

4 A. Well, I think that the standard is -- used to be a
5 year. Twelve months was the minimum, because
6 obviously you have to have a full cycle. To the
7 extent that you are able to get more than a year,
8 you're able to reduce that uncertainty substantially.
9 Fundamentally, the standard is really related to a
10 probability scenario more than an amount of data.
11 So, depending on the site, you may be able to get to
12 that level of certainty with more or less data. So
13 it's really not a function of -- you need 12 months
14 to understand what the seasonal variation is, and you
15 need a certain level of probability in order to get
16 financing on the project. But they're not always
17 strictly tied to time.

18 Q. Do you know what was required for the Lempster
19 project?

20 A. I do not know the details of Lempster's financing.

21 Q. And how many months' worth of bird and bat studies
22 will be completed by the time you plan to submit your
23 application to either the SEC or the Town if you were
24 given jurisdiction?

1 A. Well, we don't know what the standards or rules that
2 would apply in the town situation would be. So I
3 really can't answer that portion of the question.

4 And for the purposes of an SEC application, what
5 we have proposed and commenced is two seasons of --
6 for example: Nocturnal migratory bird studies would
7 be two complete seasons, and the same for raptor
8 migration, and the same for acoustic bat studies.

9 Q. Could you have started those studies last summer?

10 A. Well, I think certainly we could have. I think would
11 it be -- would we have considered that a prudent step
12 to take at the time? No.

13 Q. Even though you were collecting met data at that
14 point?

15 A. That's right.

16 Q. The most recent -- I'm turning now to the ZBA process
17 in town. The most recent request to the ZBA for a
18 use and area variance, didn't you finally do what you
19 should have done two years before, in 2009, when you
20 were not represented by counsel; namely, apply for
21 both use and heighth variance together for the met
22 tower in the rural conservation zone? In other
23 words, isn't this a self-inflicted injury or delay?

24 A. Isn't what a self-inflicted injury or delay?

1 Q. That you're applying, finally, two years later, for
2 what you should have been applying for in 2009 for
3 both heighth and use for the met tower. Just the met
4 tower?

5 A. I guess I'm unclear. Should have according to who?

6 Q. Should have according to -- I don't know. Who?

7 A. Well, the Town's instruction to us at the time when
8 we applied was to apply for an area variance only
9 under Article 14D of the Small Wind Energy Ordinance
10 because it dealt specifically with met towers. And
11 that was the instruction that we followed.

12 Q. Would it have been prudent at that point to seek
13 counsel to be sure that that's what you were applying
14 under?

15 A. Perhaps.

16 Q. Okay. Wasn't the met tower -- the met tower went up
17 in the fall of 2009. Wasn't it allowed to stay up
18 during the entire appeal process, allowing you to
19 continue to collect data?

20 A. The met tower is still there. It has been up since
21 we erected it.

22 Q. Well, have you lost any time collecting data because
23 of the appeal process or because of any action by a
24 town board?

1 A. Have we lost any data? No.

2 Q. Or any time collecting it. Has there been any delay?

3 A. Well, I don't know if it's customary -- I mean, I
4 suppose in other situations we've received permits
5 for a met tower in a matter of days. So I suppose
6 maybe we missed some time between June and November
7 of 2009. But subsequent to that time, data has been
8 continuously collected.

9 Q. Okay. Turning to last Friday's tech session. Last
10 Friday, during Mr. Genest's testimony, he said that
11 he wasn't sure -- and we were talking at that point
12 in terms of methodology for approaching the PILOT
13 letter or agreement. He wasn't sure if any of the
14 wind turbines or rotors would be visible from Great
15 Lake, which, as you know, is the town's primary
16 recreation area.

17 Will wind turbines, especially at the height of
18 four -- if you use the height of 475 feet, will they
19 be visible from the lake?

20 MS. GEIGER: I'm going to object to
21 this questioning. We're now venturing into the
22 substantive issues that would be reviewed by the
23 Committee, should an application be filed here. So I
24 don't know what this has to do with the limited scope

1 of today's inquiry, which is whether the SEC should
2 assert jurisdiction.

3 CHAIRMAN GETZ: Ms. Allen, what's the
4 relevance?

5 MS. ALLEN: I'm just going to
6 testimony that they had that was given during tech
7 about where the towers would be visible.

8 MS. GEIGER: Mr. Chairman, as you
9 know, during technical sessions I think there's a
10 great degree of latitude that most parties allow
11 because it is more conversational and informal
12 discovery. We didn't get a data request on that.
13 And I would have objected to it. But we were
14 obviously trying to be helpful and forthcoming. So
15 we did engage in lot of Q & A that I don't think is
16 necessarily relevant. But in an effort to be
17 cooperative, we did answer some questions.

18 CHAIRMAN GETZ: Ms. Allen, I --

19 MS. ALLEN: Could I -- maybe this is
20 an easier way out of it. Can I just ask a more
21 hypothetical: Will they be visible? Can I ask if
22 the met tower is visible from Great Lake?

23 CHAIRMAN GETZ: I'm still not sure
24 what the relevance is. I mean, just because

1 something's been asked in a discovery proceeding
2 doesn't mean it's relevant and can be pursued here.
3 The primary issue, for the most part, which has been
4 explored today, as the experience of the witness as
5 an expert to testify to his competence and what he's
6 actually said in his testimony, is there something
7 that relates to the maturity versus prematurity of
8 the petition, or is there something that's going to
9 relate to due or undue delay. So, unless you've got
10 something that's related to those issues --

11 MS. ALLEN: Okay. Then let me skip
12 on.

13 BY MS. ALLEN:

14 Q. As you know, I'm a member of the ad hoc committee
15 that is working on the proposed wind ordinances. The
16 three members of the Allen intervenor group are also
17 part of that committee.

18 You said you have little confidence in the
19 ability of our group to carry out the charge given to
20 us by the planning board. Have you ever attended any
21 ad hoc committee meetings?

22 A. No, I have not.

23 Q. Okay. Would you like to be invited to the public
24 information session that we're having on June 22nd at

1 7 p.m.? It's a more convenient time to meet. And
2 that would be roughly our sixth meeting.

3 A. Roughly your sixth meeting?

4 Q. Yes, it will be roughly our sixth meeting.

5 A. Okay. Sure. We would be happy to be invited. I
6 think we've demonstrated, over greater than two years
7 now, that we want to participate in a lot of
8 different ways in the town of Antrim. As I also
9 said -- sorry, slowing down -- in the technical
10 session, for our part, it's unclear what role the ad
11 hoc committee will have in the jurisdiction or the
12 recommendation for regulations that may or may not
13 ultimately apply to a project. Clearly, the
14 committee has decided to go forward on its on,
15 independent of the current matter before this
16 Committee. So, yes, we are willing to participate in
17 a dialog with the Town in a number of different
18 capacities. I think as it relates to trying to draft
19 regulations, pending a decision from this Committee,
20 we believe that's premature.

21 Q. That's fine. I'm just offering the invitation.

22 A. Thank you.

23 Q. Hope to see you on the 22nd.

24 Have you seen that map over there before today,

1 which is marked Allen Exhibit C?

2 A. No, I have not.

3 Q. Okay. It's part of the work that we have done so
4 far, and it's the only thing I could bring today and
5 present, since the rest of our work is in draft form.
6 And just as a quick explainer, it is a map of the
7 town of Antrim, and overlaid on that is the wind
8 resource that we have compiled from data. It is
9 also, particularly down in what would be the
10 southwest corner of town, it is the conservation
11 area. It also has all the zones, all the water
12 resources. It has the power line and it has the
13 outlines of the different zoning districts that we
14 have. This is the kind of approach that we are
15 taking, and it is what we have been charged to do, by
16 not only by the planning board, but also, according
17 to the New Hampshire R.S.A.s, it's a proper approach.
18 And I --

19 MR. RICHARDSON: Mr. Chairman, this is
20 a witness that's going to be testifying later, and
21 maybe she can talk about the exhibit then. But I'm
22 just wondering what the relevance is.

23 MS. ALLEN: Actually, I'm not called
24 for later, so --

1 CHAIRMAN GETZ: Well, let's --

2 MS. ALLEN: Okay. We have --

3 CHAIRMAN GETZ: Ms. Allen.

4 MS. ALLEN: I'm sorry.

5 CHAIRMAN GETZ: Let me -- I'm trying
6 to figure out exactly where we are. Certainly you
7 can provide an introduction to a question. But I
8 think Mr. Richardson's point is that you've got to
9 stop short of testifying.

10 MS. ALLEN: Okay.

11 CHAIRMAN GETZ: So if you could
12 explain -- if you have a question to him about this
13 exhibit, then you can set up the question.

14 MS. ALLEN: No, that's fine. But I
15 would like as part --

16 BY MS. ALLEN:

17 Q. I would like to ask as part of, you know, the
18 questions that we have about this, when some actual
19 data will be ready, will be ready from the Applicant.
20 For example: Like, do we know the name plate data
21 for the actual type of turbines that will be used,
22 including the manufacturer, the model and the rate of
23 power? When would we know that?

24 A. When would you, as an ad hoc committee, know the

1 answer to that question?

2 Q. No. When would you -- whether you're before the Town
3 or the SEC, that's what we're -- when would you be
4 prepared to have that kind of data?

5 A. Well, I think with respect to -- I've testified to
6 this I think on numerous occasions, that the final
7 turbine decisions are based on a number of factors
8 that have to do with price and availability of
9 turbines, that have to do with site suitability
10 analysis, which has to do with wind resource and
11 other environmental studies that are taking place.
12 Assuming we go forward with these studies and they go
13 to completion, so that we have information to make
14 our determination, we should be able to go forward
15 with our turbine selection in the next several
16 months, sufficient to be able to submit an
17 application.

18 Q. So, in a few months you would be able to tell -- you
19 would have that data. You would have that going into
20 the application --

21 A. Excuse me. Provided that we are allowed to or that
22 we decide to continue with our studies, so we have
23 that information.

24 Q. When would you have an engineered drawing of the

1 actual type of turbine to be used?

2 A. What do you mean by "engineered drawing"?

3 Q. An engineered drawing.

4 A. Of the turbine?

5 Q. Of the type of wind energy facility turbine.

6 A. I guess I'm not clear on the question. If you're
7 asking me if I'm going to have a technical
8 engineering drawing of the turbine, is it your
9 understanding that would be something that would be
10 typically supplied with an application?

11 Q. Yes.

12 A. Okay. Well, you know, the actual technical
13 specifications and drawings of the turbines
14 themselves, in terms of structural drawings, are not
15 necessarily something that would be submitted as part
16 of an application to install that turbine at a site.
17 The turbine's height, rotor diameter, electrical
18 generation characteristics are all things that would
19 be known at the time when a turbine selection is
20 made.

21 Q. When would you have certification of non-reflecting
22 properties of the turbine's external -- external
23 surfaces?

24 A. Again, I think we would be prepared to have all of

1 these things at the time when we are prepared to
2 submit an application, which, in the case of a
3 project that is certificated in front of SEC, would
4 be before the end of this year. In the event we do
5 not go forward with those studies, we would not be
6 able to make those selections, and hence, we will not
7 have that information.

8 Q. When would you have an engineered drawing of the
9 actual turbine location?

10 A. Same answer.

11 Q. Okay. So what you're asserting is it would be by the
12 end -- by the time you make the application to the
13 SEC, or by the end of the year.

14 A. Yes.

15 Q. Okay. When would you have an actual -- a description
16 of the actual intended use, including the energy
17 storage and connections and percentage, if any, of
18 the generation intended for sale or use by entities
19 or persons other than the applicant?

20 A. I'm not sure I understand the question.

21 Q. Okay. Let's go to another one.

22 When would you have engineered drawings or
23 electrical schematics of the actual energy storage
24 equipment or the actual facility?

1 A. The facility or energy storage equipment?

2 Q. Well, either energy storage equipment or the
3 facility.

4 A. I guess I'm a little bit confused. It seems to me
5 like you're reading off technical terms that I'm not
6 sure all of which apply to our project. We do not
7 anticipate energy storage facilities at all.

8 Interconnection facilities, as I've discussed,
9 will be a component of the comprehensive site design,
10 which we would anticipate completing prior to
11 submitting an application to the SEC before the end
12 of this year, if we continue with the studies.

13 Q. Just three more questions.

14 When would you have prepared a list of property
15 owners whose property wholly or in part lies within
16 the setback areas, and what would those setback areas
17 be?

18 A. I'm not sure that's an answerable question. In other
19 words, if I don't know what the setback areas are,
20 how can I be prepared to answer a question about it.
21 A completed application will identify all the
22 property owners within an area that are, you know, in
23 both noise and impact analysis, shadow flicker, view
24 shed analysis. There are numerous components that

1 would address elements of proximity of facilities and
2 turbines to property owners. That would be part of
3 our completed application.

4 Q. And shadow flicker modeling reports, same thing?
5 That would be part of the --

6 A. Same thing.

7 Q. Okay. And a legally enforceable agreement that the
8 Applicant shall pay for the services of all the
9 consultants for the planning board deemed to evaluate
10 the project, when would you have that agreement
11 ready, if it was the Town? Again, would it be the
12 end of the year?

13 A. No. I don't think we've made any representation that
14 we're continuing anything at all if we are in front
15 of an unknown process in front of the Town.

16 Q. Okay. Thank you.

17 A. You're welcome.

18 CHAIRMAN GETZ: Thank you. Mr. Roth.

19 CROSS-EXAMINATION

20 BY MR. ROTH:

21 Q. Mr. Kenworthy, during your earlier testimony, I
22 thought I heard you say that you were expecting the
23 turbines for this location would be under 475 feet.
24 Do you remember saying that?

1 A. Yes, I remember saying that in my testimony. And I
2 think I referred to that earlier today, that they're
3 anticipated to be under 475 feet.

4 Q. How much under 475 feet?

5 A. We don't know.

6 Q. It seems sort of an odd number to pick out, and it
7 makes me think: Are you talking about 474 feet, or
8 are you talking 400 feet? And why did you pick
9 475 feet?

10 A. I think we felt 475 feet, for the purpose of this
11 testimony, was a reasonable number under which we
12 felt the turbines would be, given the various
13 scenarios that we're considering.

14 Q. In terms of sort of just a general probability, let's
15 look at the 475 as sort of the zone. If it were
16 something like 475, wouldn't that make it the tallest
17 turbine in New Hampshire?

18 A. That may be correct. I'm not sure if that is so. I
19 believe it may be.

20 Q. Okay. Thank you.

21 Now turning to the web site that Eolian Energy
22 has at eolian-energy.dot com. I'm going to read it
23 to you. It says, We seek projects that fit the
24 definition of distributed -- and that's in italics --

1 power that is where turbines or solar facilities are
2 located in close proximity to the people that will
3 benefit from the power they generate and the jobs and
4 tax dollars they create. Smaller projects means less
5 impact and greater participation, less waste and more
6 collaboration." Are you familiar with that language
7 on your web site?

8 A. I am.

9 Q. Okay. And is "distributed" power in the industry, is
10 it typically sort of a minimum utility scale project
11 like this, or is it, in fact, you're talking about
12 something else here? Is this kind of a hybrid of a
13 distributed utility?

14 A. I think "distributed" generation can mean a number of
15 things in the industry. Certainly it is at times
16 used for more micro-scale generation, even home-scale
17 generation. I think at other times it's used for
18 projects that are in the tens of megawatts in scale.
19 So I think it can be used for a variety of things.
20 The way we typically refer to our project size is
21 "distributed utility scale."

22 Q. So that sounds like kind of a hybrid to me, anyway.

23 A. I think the term is a little vague in its use
24 generally, industry-wide.

1 Q. But as I understood "distributed," and I think you
2 captured it in the sentence, it's close proximity to
3 the people that will benefit from the power. And do
4 you expect that anybody in the town of Antrim will
5 get directly from the project power for their home?

6 A. I do expect electrons will flow to homes and
7 businesses in Antrim, yes.

8 Q. But that's generally throughout New Hampshire.
9 They're just getting it because they're in New
10 Hampshire; correct?

11 A. Well, without getting into a long discussion about
12 the kind of behavior of electrons, electrons are
13 going to flow from where they're the highest voltage
14 where they're generated to the closest load, which is
15 voltage drops. We're planning to interconnect to a
16 distribution circuit. So our reasonable
17 interpretation would be those electrons are going to
18 flow to the closest load, which would include
19 communities in that area. That's not to say we will
20 be selling power directly to Antrim households.

21 Q. And is it possible you would then turn to a power
22 purchase agreement with entities outside the state of
23 New Hampshire?

24 A. It is possible.

1 Q. Okay. Now, the second part of your web site was, in
2 the headline there, was "Working with communities and
3 landowners, equitable renewable energy. Eolian is a
4 new kind of development company. We build local
5 clean energy projects where they are wanted. So when
6 we find a quality site to develop a renewable solar
7 energy or a wind energy project, our first call is to
8 town hall.

9 Now, is it fair to say that you're not getting
10 the kind of Welcome Wagon reception you might have
11 expected in the Antrim?

12 A. No. On the contrary. I think Antrim is kind of, in
13 many ways, the quintessential project for our model.
14 I think we have seen largely overwhelming support in
15 Antrim. Clearly, there has been some opposition that
16 has come out at various times in public hearings.
17 And there have been times where, in the context of
18 those public hearings, opposition has outnumbered
19 support. But throughout our project, and our very
20 first was in April 2009, making a presentation to the
21 planning board, we do feel like this is a project
22 that is vastly supported by residents in Antrim.

23 Q. And do you expect that support to continue?

24 A. We hope that it does and don't see a reason why it

1 would not.

2 Q. Okay. It says here that the first call is to the
3 town hall. Do you think some people in the town of
4 Antrim might think that now your second call is to
5 the courthouse, or perhaps to the state house?

6 A. I can't speculate on what other people may think.
7 But I believe that to draw a conclusion that we
8 wanted to go to court or were not willing to work
9 with the town of Antrim on local permitting avenues
10 would be a mischaracterization of the process.

11 Q. Okay. Now, since our motion to strike was not
12 granted this morning, I'm going to ask you a few
13 questions about your partner, Westerly. And I want
14 to turn your attention to Public Counsel Exhibit 1.
15 Do you have that in front of you?

16 A. I do not have a copy of that in front of me.

17 Q. I can't give you this one. It's marked up. Here it
18 is.

19 (Witness handed document.)

20 MR. ROTH: Does everybody else up here
21 have one?

22 MR. IACOPINO: It was passed out here
23 earlier, I think. Just give us a second. Public
24 Counsel 1 is the second amended and restated limited

1 liability company agreement. It's dated January 21,
2 2011.

3 BY MR. ROTH:

4 Q. Okay. Now, are you familiar with this document, or
5 what's left of it, in this particular form?

6 A. I am familiar with it.

7 Q. I wouldn't blame you if you didn't recognize it,
8 because it looks quite a bit different than I'm sure
9 what you're used to looking at.

10 A. I'm familiar with it.

11 Q. Now, in the first paragraph of this amended and
12 restated limited liability company, do you see that
13 above the word "recitals"?

14 A. Yeah.

15 Q. It refers to Eolian-Antrim, Inc. Who is that?

16 A. I believe we have testified to this previously.
17 Eolian-Antrim, Inc. is a Delaware corporation that is
18 owned by Eolian Renewable Energy, LLC.

19 Q. Okay. So I thought this was going to be with Eolian
20 Renewable? Is that -- was that my mistake?

21 A. I believe it may have been. I think in the testimony
22 it's clear, the ownership structure of Antrim Wind
23 Energy, LLC.

24 Q. All right. And I want to, in particular, draw your

1 attention to Paragraph 5.1.2 on Page 14. And doesn't
2 it say here that Eolian, which I believe is
3 Eolian-Antrim Energy -- or Eolian-Antrim, Inc. --
4 says is responsible for day-to-day developments,
5 including, but not limited to permitting and
6 coordinating local efforts for Antrim project;
7 correct? And we didn't get any of the definitions.
8 But "Antrim project" means this project, I assume?

9 A. That's right.

10 Q. Okay. And then it says, "And Westerly shall be
11 primarily responsible for identifying and selecting
12 equity investors and lenders for construction and
13 term financing and negotiating the terms of such
14 financing, and for negotiating the terms of the
15 turbine supply, power purchase agreements, and other
16 major commercial agreements"; correct?

17 A. That is what it says, yeah.

18 Q. So that seems to me to be the allocation of
19 responsibilities between the partners of this LLC.
20 Is that fair to say?

21 A. In part, yes.

22 Q. Well, that's what it says here. It says Westerly is
23 kind of bringing, looks like equity investors and
24 lenders and financing and the big commercial

1 agreements. And you -- and I assume you are what is,
2 in essence, Eolian -- are responsible for everything
3 else on the development side; correct?

4 A. I think this speaks pretty clearly for what these
5 respective kind of delegation of efforts are. I
6 think in reality the whole project is a collaborative
7 development effort.

8 Q. Okay. Now, has Westerly -- and setting aside the
9 principles behind it -- has Westerly ever developed a
10 wind farm?

11 A. Not that I'm aware of, no.

12 Q. And Westerly is a subsidiary, fair to say, of U.S.
13 Renewables?

14 A. Portfolio company of U.S. Renewables.

15 Q. Has U.S. Renewables ever developed a wind farm?

16 A. I don't know the answer to that.

17 Q. Would you be surprised to learn that they haven't?

18 A. Not particularly.

19 Q. And would you be surprised to learn that U.S.
20 Renewables has only got 137 or so megawatts of power
21 in actual operation?

22 A. Is that a fact? I'm not sure.

23 Q. That's what I gleaned from looking at their web site.
24 Have you looked at their web site?

1 A. I have.

2 Q. Okay. Now, in terms of your own experience in
3 developing wind, is it fair to say -- is it true that
4 the only wind turbine you have ever developed is a
5 10-kilowatt, single wind turbine in the Bahamas?

6 A. Is that the only wind turbine I have ever built?
7 Yes, that's right.

8 Q. Okay. Now, do you have your own testimony in front
9 of you, the attachment to your May 6th testimony,
10 your resume?

11 A. I do have that.

12 Q. Okay. And down there at the bottom of first page of
13 your resume you indicate Bahamas Biodiesel Limited,
14 Nassau, Bahamas, co-founder/chairman. Is that an
15 accurate statement of your role with Bahamas
16 Biodiesel?

17 A. Yes, that is true.

18 Q. Now, are you familiar with Linked In?

19 A. I am.

20 Q. Do you have a page with Linked In?

21 A. I do have a profile on Linked In.

22 Q. And can you explain why your Linked In profile does
23 not list your Bahamas Biodiesel experience?

24 A. No, I can't explain it or offer any particular reason

1 for it.

2 Q. Okay.

3 A. Thank you for pointing it out.

4 Q. Yeah, you might want to correct that.

5 Now, the last question I have for you -- and
6 this is really more a question for my own
7 education -- on January 19th, 2011, you wrote a
8 letter to the New Hampshire Secretary of State
9 Corporations Division. Do you remember that letter?

10 A. No, I don't. Seems likely that I may have written a
11 letter. But I'm not exactly sure what --

12 Q. It says, "I'm writing this letter to inform you that
13 the company has permission to use the name Antrim
14 Wind Energy, LLC for the purpose of registering as a
15 foreign limited liability company doing business in
16 New Hampshire."

17 A. Right.

18 Q. Okay. And apparently, at some point, and maybe --
19 I'm trying to get this straight. One of these
20 entities was dissolved by the secretary of state;
21 correct?

22 A. Yes. The history is, and I think we've testified to
23 some of this, is that Antrim Wind Energy, LLC was
24 initially a domestic New Hampshire single-member LLC,

1 owned entirely by Eolian Renewable Energy. We then
2 converted it to a Delaware LLC and terminated its
3 registration as a New Hampshire LLC and registered in
4 New Hampshire as Antrim Wind Energy, LLC, as a
5 foreign limited liability company. When we went to
6 register that company as a foreign company, the name
7 had been reserved under the former New Hampshire LLC,
8 and so I needed to write that letter.

9 Q. Okay. Now, that kind of gives me a bit of, you know,
10 brain aneurysm trying to understand that. But what
11 happened there? What were you trying to accomplish?

12 A. Again, I'm not entirely clear on how all this relates
13 together. But I think the purpose of -- are you
14 asking why we converted the LLC to a Delaware LLC?

15 Q. I'm trying to understand any of what you just said,
16 really. It --

17 A. Really, all it -- pardon me. It all relates to that
18 question: Why would you convert to a Delaware LLC?
19 Because once you're a Delaware LLC, you need to
20 register as a foreign LLC in New Hampshire, and you
21 need to have the right to use the name. So those
22 other two things followed from that decision.

23 Q. But didn't you already have the right to use the
24 name?

1 A. We did, as Antrim Wind Energy, LLC, a New Hampshire
2 LLC. It was really just a matter of confusion in the
3 secretary of state's office.

4 Q. So a little bit of who's on first with the secretary
5 of state?

6 A. I believe so. Easily reconciled with a letter.

7 Q. But wasn't one of the entities in New Hampshire
8 allowed to dissolve, or in fact dissolved by the
9 secretary of state?

10 A. Yes. And listen, you know, obviously we had counsel
11 do this for us. I can tell you what happened. I do
12 not know the technicalities around what happens when
13 a New Hampshire LLC converts to a Delaware LLC. I
14 believe what it actually does is it converts to
15 Delaware under the Delaware Act, and then it
16 dissolves in New Hampshire, so there aren't two
17 entities registered in one place.

18 Q. Okay. So it wasn't by any sort of omission or
19 neglect by you or --

20 A. No.

21 Q. -- your registered agent or anything like that.

22 A. Not at all.

23 Q. Now, your business has no employees right now?

24 A. Four partners.

1 Q. Four partners.

2 A. Right. Not --

3 Q. But none of them are W-2 employees?

4 A. No.

5 Q. And are they taking draws, or are they --

6 A. Yeah.

7 Q. Okay. So your office is at a location in Portsmouth;
8 correct?

9 A. That's correct.

10 Q. And is that sort of a virtual office in the building
11 at 155 Fleet Street?

12 A. I'm not entirely clear on what you mean by "virtual
13 office." We have physical office space at 155 Fleet.

14 Q. And the office space is rented in a sort of a --

15 A. A lease.

16 Q. Oh, a lease. Do you have one room, two rooms?

17 A. No, there are two large rooms in our office.

18 Q. And do you have common access to conference rooms,
19 and they run the phone system and they supply the
20 furniture and that kind of stuff?

21 A. That's right.

22 Q. Okay. Now, if you were to discover that at the end
23 of this proceeding, this procedure here -- let's say
24 that by the end of the day we don't get through all

1 the questions and we can't have another hearing until
2 August, and then after that hearing there is some
3 deliberation, the Committee makes a decision one way
4 or the other and somebody appeals and it goes to the
5 New Hampshire Supreme Court. What are you going to
6 do then? Are you going to go back to the Town and
7 try to work it out, or are you going to quit?

8 A. I can't answer that question.

9 Q. Because it sounds like if you don't get jurisdiction
10 here, you're saying you're all done. And I just find
11 that hard to believe.

12 A. Well, I think we've been pretty clear that the
13 process, in our experience in Antrim over the last
14 several years, has not given us any confidence that
15 they can either reasonably develop ordinance
16 regulations -- we've had experience with this where a
17 six-month process went awry in the past, based on the
18 action of a very few people. And that was a
19 six-month process thrown away. Now we're told
20 there's going to be a new process and that it's going
21 to enact some form of rules which are going to have
22 some guidelines. The vote on that is going to happen
23 at some point in the future, probably around nine
24 months. And we have no idea what the regulations are

1 going to be in those new rules. And in that
2 situation, we feel like it is very unwise to commit
3 to the type of investments that are required --

4 Q. Understand. But I'm trying to understand where you
5 go from here. Because it seems to me you could find
6 yourself in the same place with the Site Evaluation
7 Committee. You could find yourself looking at a
8 Supreme Court appeal that's going to take you a year.
9 And in the meantime, are you going to stop doing any
10 of your studies while it's going up to the Supreme
11 Court?

12 A. On the jurisdictional question?

13 Q. Yeah.

14 A. I don't know what we would do. I think we will have
15 to take things a step at a time. Surprises happen.

16 Q. Exactly. And if I look to your experience with the
17 Town of Frankfort in Maine, or the other community, I
18 guess it was Orford --

19 A. Orland.

20 Q. -- Orland. Pardon me, citizens of Orland.

21 You were able to work out a satisfactory
22 ordinance with the citizens of Orland. Now I heard
23 you say that you didn't think that people in New
24 Hampshire were the same as people in Maine, which I

1 think, you know, people in here might take exception
2 to.

3 But are you saying that you think it's
4 impossible for you to come up with a satisfactory
5 program in Antrim like you did with the people in the
6 small town in Maine?

7 A. First of all, I don't mean to characterize the people
8 of New Hampshire or Maine differently. I think what
9 I meant to say was they are different states, they
10 are different towns, they are different processes.
11 There is no Site Evaluation Committee equivalent in
12 the state of Maine. You will always need to be
13 working with the town on a project. I think,
14 furthermore, the town in that particular case
15 demonstrated an ability to, in our view -- because
16 really this comes down to our view in a competitive
17 marketplace to judge whether or not it is prudent to
18 make investments, to advance what we believe is a
19 very high-quality renewable energy project. And we
20 do not have that confidence in the town of Antrim.

21 Q. Isn't what you're really afraid of here, that they're
22 going to say no or they're going to put some obstacle
23 in there that's going to -- let's start with the
24 first one.

1 Aren't you really afraid that they're just going
2 to say no?

3 A. Certainly we're always concerned that we're going to
4 make investments in projects that aren't ultimately
5 going to be built. I think any developer of wind
6 energy facilities has that concern, at any level.

7 I think the question is, you know, we understand
8 from working in the town of Antrim that the large
9 majority of the town wants to see a project go
10 forward. We understand from our survey that about
11 75 percent of them indicated they were going to show
12 up to vote on an ordinance amendment in March that
13 would have allowed wind energy facilities, by right,
14 in the rural conservation district.

15 Q. How many people responded to that survey? What
16 percentage of the population in the town of Antrim
17 were in that survey? About 1 percent? Maybe less
18 than 1 percent?

19 A. Oh, no, no. It's far greater than that. We had --
20 we sent them out to every household in town. There
21 were a few omissions. We intended to reach every
22 household in town. We are aware that absolutely not
23 a hundred percent of the people got it. The survey
24 was also available online. It was conducted by

1 American Research Group. I believe we got 619
2 responses --

3 Q. And what's the population of the town of Antrim?
4 Like 2500?

5 A. Yeah, about that. So we're talking maybe 25 percent.

6 Q. Okay. And I don't want to go into the survey
7 methodology because I haven't seen the survey. But
8 would you agree with me that surveys can be pushed to
9 create a particular result that's desired?

10 A. I'm not a survey expert. I've certainly heard people
11 make that claim. I believe our survey speaks for
12 itself.

13 Q. Well, we haven't seen it. So we can't really say
14 that it speaks for itself, can we?

15 A. I can. I have seen it.

16 Q. But it's not --

17 A. I believe it speaks for itself.

18 Q. Sorry. It's not in evidence here, is it?

19 A. I do not believe that it is.

20 Q. Okay.

21 A. It may still be available online. I don't know.

22 Q. Seems like I come back to this issue about if you're
23 not afraid of the people of Antrim saying no, then
24 what is it that you're afraid of?

1 A. Because the people of Antrim don't necessarily make
2 the decisions for the town of Antrim. We've seen
3 that. The people of Antrim who have voted 75 percent
4 in support of this project, who wanted to vote in
5 March, didn't get to because of a couple people --

6 Q. So you have a select board with three people on it.
7 Two of them voted in favor of the petition. How
8 representative of the population of 2500 people in
9 Antrim is that?

10 A. You would have to ask that of the selectmen.

11 Q. I don't have any more. Thank you.

12 A. Thank you.

13 CHAIRMAN GETZ: Okay. Questions from
14 the Committee? Mr. Harrington.

15 MR. HARRINGTON: Yeah, I had a few
16 questions.

17 INTERROGATORIES BY MR. HARRINGTON:

18 Q. I guess, starting from the beginning, it sounds like
19 you've been dealing with the Town on this project now
20 for a couple of years. Was the original intent to go
21 through the permitting process with the Town?

22 A. I don't think we had a particular intent one way or
23 another. I think we went into the project
24 understanding that it may have -- that it may go

1 under local control or it may ultimately wind up in
2 front of the Site Evaluation Committee if there was a
3 petition there. But we didn't particularly know.

4 Q. So you were willing to go one way or the other,
5 depending on what the -- what happened to the
6 petitions.

7 A. Yeah. I think at that time we had not had an
8 experience in the town that would have given us the
9 level of concern we have now about local process in
10 town.

11 Q. And one thing you haven't mentioned, though there's
12 been a lot of discussion of, is scheduling and delays
13 and costs associated with delays and so forth. But
14 this being a renewable project, I wanted to bring up
15 the ARRA 1603 funding. Are you familiar with that?
16 Do you know what I'm talking about?

17 A. Yes.

18 Q. As of right now, the investment tax credits are
19 scheduled to expire at the end of the year. Based on
20 your schedule, is it safe to assume that you weren't
21 counting on investment tax credits for financing this
22 project?

23 A. That's correct. Yeah, we were not counting on a 1603
24 grant or ITC. But certainly there are tax credits

1 that are modeled in the pro forma for the project in
2 the form of the PTCs.

3 Q. You're assuming those would be continued as well, or
4 at least that part would be continued?

5 A. Yeah, certainly. That's been in place pretty much
6 continuously since the '90s. So...

7 Q. But there is no hard and fast deadline like some
8 other projects we've seen, where they have to make a
9 certain milestone by a certain date to get the
10 investment tax credit or they wouldn't be eligible
11 for it. Seems like that's not germane to this
12 project.

13 A. Well, I don't know. I mean, I think that in the case
14 of the PTC, typically, PTCs were getting extended
15 year by year, until the Recovery Act extended them
16 for three years. So I think what we would expect, if
17 you kind of carry this out, if you assume that we
18 have a project that can submit an application at the
19 end of this year -- say it's deemed complete maybe
20 beginning of next year -- we have a 9- to 12-month
21 review period in front of the Site Evaluation
22 Committee, now you're talking about 2013, pending
23 some potential for appeal and construction. So
24 that's the window if it gets extended by one year.

1 That's a 2013 project. It's much more difficult to
2 predict out beyond that one year. But yes, I do
3 think we fall within those time constraints.

4 Q. But you're not looking at a ITC hard deadline right
5 now.

6 A. Well, the 1603, I don't think in any scenario for us
7 unless it is extended for some reason, we wouldn't be
8 able to achieve.

9 Q. You're not counting on it, in other words. Okay.

10 Couple of other things. Now, the law itself,
11 which we haven't seem to be talking a lot about very
12 much today at all, it says under 16 - 162-H:2, the
13 definitions at the very end there, Section 12 says
14 basically the Committee... between 5 and 30
15 megawatts, which I think it's safe to say this
16 project will be.

17 A. Yes. Sorry.

18 Q. And so it says the Committee determines requires the
19 certificate consistent with the findings and purposes
20 set forth in RSA 162-H:1, which is the opening
21 paragraph, Declaration of Purpose. And I'm just --
22 I'd like to bring up a couple of things that seem to
23 be maybe in play here because they have to deal with
24 scheduling and a few other issues.

1 One of the first criteria in there that it talks
2 about is trying to avoid undue delays in the
3 construction of needed facilities. Now, I think
4 we've discussed quite a bit already that you feel
5 that not having the SEC take jurisdiction could add
6 to additional delays, whether they're undue or not we
7 won't even get into. But there would be additional
8 delays.

9 So why do you feel that it's the construction of
10 needed facilities? I looked in your testimony, and
11 there was very, very little reference as to why this
12 facility should be classified as, quote, needed.
13 Could you give us more information on that?

14 A. Yeah, I think it is consistent with the New
15 Hampshire's RPS to achieve 25 percent in renewables
16 by 2025. It does classify as a Class I, I believe,
17 renewable energy facility being powered a hundred
18 percent by wind energy. So we believe that that
19 speaks to the need for the facility.

20 Q. Okay. And following up on that same one, the
21 conclusion to that same paragraph is they have listed
22 a whole litany above there, which I won't read all of
23 them. It says, basically, all to assure the state
24 has adequate and reliable supply of energy in

1 conformance with sound environmental principles.

2 Do you think that not having this project would
3 result in the state of New Hampshire not having an
4 adequate and reliable supply of energy in conformance
5 with sound environmental principles?

6 A. I think that there are a number of energy supply
7 questions that are at play in front of the State of
8 New Hampshire right now, in front of the New England
9 region and the entire United States. Obviously, New
10 Hampshire gets a large portion of its power from
11 nuclear energy, a fairly large amount of its power
12 from coal and natural gas, all of which I think do
13 not have the same ability to lay claim to being in
14 accordance with sound environmental principles. And
15 so I think having an opportunity to supply clean,
16 domestically produced power from what we believe is
17 in support of the statute's claim for need, it
18 assists in the ability for the state to assure that
19 it has an adequate supply of energy in accordance
20 with sound environmental principles.

21 MR. HARRINGTON: All right. Thank
22 you. That's all I had.

23 CHAIRMAN GETZ: Other questions?
24 Commissioner Ignatius.

1 CMSR. IGNATIUS: Thank you.

2 INTERROGATORIES BY MS. IGNATIUS:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. You went through some questions with Ms. Allen about
6 the status of the project, and I won't ask you to
7 restate that. I don't mean to go through those in
8 the same way. I guess what I'm wondering is, can you
9 go further than you did in any of your answers to
10 her, because by the end of it I still felt uncertain
11 of what the status is.

12 The number of turbines that you anticipate to
13 have, you're still only committing to up to 10, it
14 looks as though. But do you have -- is that really
15 where you are? You don't know? It's just no more
16 than 10?

17 A. Yes. We believe that the site has a number of
18 constraints within it. One is the actual physical
19 geography of the ridge. We believe that limits the
20 number of turbines to 10, based on sector management
21 issues with turbulence from downstream wind turbines,
22 et cetera.

23 There's a further constraint, which is I think
24 on the ability for the available capacity at the

1 proposed point of interconnection, which we believe
2 to be approximately 23 megawatts as the kind of
3 maximum technical capacity.

4 So those are kind of the two known constraints
5 we have, is the size of the site and the site of the
6 facility to be able to interconnect the generation
7 resources to. Within that, it's a function of, I
8 think, optimizing what the facility design should be
9 with no -- once we have kind of the known constraints
10 from environmental and then run the kind of wind
11 optimization with those constraints in place.

12 Q. So is the ridge line, the extent of the ridge line
13 that you would be using set in your mind, and is that
14 publicly known?

15 A. Yes and yes. I believe there are -- there are a
16 couple of constraints on that. I mean, physically,
17 the ridge line continues to the southwest in town. I
18 could point it out to you. It's actually on this
19 map. There's a number of conservation lands that
20 exist on further property that abuts Mount Willard to
21 the southwest which would preclude a project from
22 extending further to the south. And further to the
23 northeast, off Tuttle Hill, the ridge line ends. So
24 there's both kind of physical and other kind of real

1 estate considerations that limit the site.

2 Q. So the uncertainty about the exact location is where
3 along that ridge line the actual turbines would be
4 located, but not in what part of Antrim, or would it
5 or would it not be on the ridge line. It's within
6 that area where exactly the final locations would be.

7 A. Yeah. No question. I mean, we have -- the project
8 will be in the project area that we leased, and that
9 is in that area of Antrim. As I think this map
10 actually demonstrates, it's the only area in Antrim
11 that has wind that would support a commercial
12 utility-scale wind facility. And it is evident on
13 that map, even though they're using the model Enbrel
14 50-meter wind data. But that bears out in our wind
15 resource analysis as well. That's where the site is
16 going to be. Again, it's possible we wind up with a
17 scenario that we have eight 2-1/2-megawatt turbines.
18 Maybe you have ten 2.05-megawatt turbines. It could
19 be -- those are the questions we don't know yet, but
20 we will have answers to, really, for the most part,
21 this summer, in advance of completing an application
22 for submission late this year.

23 Q. And the number of turbines and the size, the amount
24 they can generate, would be geared towards getting to

1 a total of somewhere around 23 megawatts?

2 A. Yeah. Yes.

3 Q. Because of that interconnection constraint.

4 A. Right.

5 Q. Do you have status in the queue, the interconnection
6 queue with ISO-New England?

7 A. We do, yes. We submitted an application in July of
8 2010.

9 Q. Go ahead.

10 A. Well, it was actually -- we submitted it to the ISO.
11 They reviewed it, determined it was a non-FERC
12 jurisdictional interconnection, and they referred it
13 to PSNH. So we've been working directly with PSNH
14 since that time.

15 Q. So you're not awaiting an ISO study of
16 interconnection?

17 A. No. Well, I mean, PSNH is -- will work with the ISO
18 on our interconnection studies which are under way.
19 And again, I think once we are able to provide PSNH
20 with the final specifics of the individual turbines,
21 they'll be able to advance their studies to the next
22 stage. But we have received our initial studies for
23 both capacity as well as protection and control. And
24 we intend to advance the next phase of those studies

1 probably commencing sometime in the middle of this
2 summer.

3 Q. Do you have any expectation for when those studies
4 might be complete? I don't mean the studies, but the
5 results of the studies.

6 A. I think they would -- we expect them to be
7 approximately six months in duration.

8 Q. So, from sometime in the summer and then counting out
9 another six months?

10 A. Yes, I believe, you know, probably by the end of this
11 year or early next year we would be close to having
12 an interconnection agreement.

13 Q. And an interconnection agreement has nothing to do
14 with purchase of power; correct?

15 A. Correct.

16 Q. That would be a separate purchase power agreement
17 that may or may not be negotiated with PSNH.

18 A. That's correct.

19 Q. And the reason you're working with PSNH on the
20 interconnection information is because PSNH lines are
21 running through Antrim.

22 A. Yes, they own the lines.

23 Q. Have you been able to identify who the abutters to
24 the project would be?

1 A. Yes. I mean, on numerous occasions we obviously have
2 reviewed property maps in town and looked at who the
3 abutting property owners are. In certain cases we
4 had to list abutters for application, for example,
5 with the meteorological tower.

6 Q. So the fact that you don't know the exact location or
7 the final number of turbines hasn't kept you from
8 identifying abutters, potential abutters.

9 A. I guess we're considering abutters to be project
10 abutters. So they abut one of the parcels that is
11 going to contain some part of the facility. And we
12 know the seven parcels that we lease, you know, and
13 who abuts those parcels. I think beyond just
14 abutters, we will begin now, once we have kind of
15 more finalized turbine locations, to go into the
16 specific studies of acoustics, flicker, visual impact
17 that affect not just abutters but, you know, other,
18 you know, proximal landowners.

19 Q. In your supplemental testimony this morning, you
20 addressed and actually amended somewhat to discuss
21 the status of the ad hoc committee membership. I'd
22 like to ask you a little more information about that.

23 In your supplemental, which is AWE3, on Page 12,
24 you stated that one of the members, Mr. Pratt, had

1 stepped down from his position on the committee. Do
2 you know why?

3 A. It is my understanding that Mr. Pratt stepped down
4 from the committee citing concerns. Mr. Pratt is a
5 professional engineer. I think he understands the
6 complexity of utility-scale wind facilities. And in
7 reviewing kind of the charge of the ad hoc committee,
8 had concerns about whether or not it would be able to
9 perform its duties to the type of standard that he as
10 a member of the professional engineering community
11 would believe that it should; and as such, I believe
12 that's the reason why he has stepped down. I think
13 that's reflected in his letter, which we have. Yes.

14 WITNESS KENWORTHY: Thank you.

15 A. This is attached to our supplemental testimony. I
16 think it's JBK-1. He details the technical issues
17 that must be dealt with, which require knowledge of
18 advantages and limitations of various types of
19 facilities, knowledge of fluid dynamics, noise
20 provocation and other disciplines, in order to
21 adequately serve the legitimate needs of the people
22 who might be affected.

23 I think it was his position, without personal
24 training or experience in those issues, and his

1 responsibilities in engineering, keep him, you know,
2 from participating on that level.

3 Q. Then you added to your testimony this morning
4 verbally that you also believed that another member,
5 Mr. Robblee, had stepped down from the ad hoc
6 committee; is that correct?

7 A. Yes.

8 Q. Actually, you had said that it was the chairman of
9 the planning board, and I think I got from elsewhere
10 that that was Mr. Robblee. But is he the current
11 chair?

12 A. Both are true, yes.

13 Q. And what is your understanding, to the extent you
14 have an understanding, of why he made that decision?

15 A. You know, honestly, this was my understanding through
16 conversations from what I've heard about his decision
17 to step down. It's fairly new information to me that
18 he has stepped down from the committee. I know that
19 Mr. Robblee, as the chair, has been at odds with a
20 number of other members of the planning board, in
21 part, I think, who are more leading the process of
22 the ad hoc committee. But, you know, specific
23 reasons about why he stepped down I don't have.

24 Q. Do you know if any new members have been named to

1 fill those two slots?

2 A. I believe, subject to check, that Mr. Pratt was
3 replaced by another planning board member, David
4 Dubois. I do not know if anybody has been assigned
5 to replace Mr. Robblee.

6 Q. That's all my questions. Thank you.

7 A. Thank you.

8 CHAIRMAN GETZ: Mr. Scott.

9 INTERROGATORIES BY DIRECTOR SCOTT:

10 Q. Good afternoon.

11 A. Good Afternoon.

12 Q. Assuming the SEC takes jurisdiction of your project,
13 do you anticipate the need to execute any agreements
14 with the Town?

15 A. Yes, we do. We have expressed interest in
16 negotiating a PILOT agreement with the Town. We've
17 actually commenced those negotiations back in the
18 early part of this year, I want to say probably the
19 January, February time frame. Had several meetings
20 with members of the selectmen and the town
21 administrator. Those went on for a time. They have
22 really been sidelined by a lot of this process for
23 the time being. But we do understand that the Town
24 remains interested in such an agreement, so we look

1 forward to picking that back up.

2 We also expect and have indicated a strong
3 interest and willingness to sit down with the Town
4 and work to reach an agreement similar to what we've
5 seen in Groton or Lempster, or other cases where
6 there's agreement between the project owner and the
7 town related to things that are kind of specific
8 concerns. So we're anticipating that as well.

9 CHAIRMAN GETZ: When you say PILOT,
10 Payment In Lieu Of Taxes?

11 WITNESS KENWORTHY: Yes. I'm sorry.

12 BY DIR. SCOTT:

13 Q. Again, assuming the SEC takes jurisdiction, is there
14 any information or studies, that type of information,
15 that you would expect to be providing to us that you
16 don't anticipate that you would -- if we didn't take
17 jurisdiction, that you feel you need to provide to
18 the Town? I can restate that if I wasn't clear.

19 A. I think I understand your question. I'm just trying
20 to think through the list of everything we anticipate
21 supplying. I mean, I think, for one, the financial,
22 technical and managerial capability of the Applicant
23 is a standard that we understand exists with a high
24 standard at the SEC process. I don't think that's

1 under the Town's purview in the same way. Certainly
2 they can require bonding, performance bonding and
3 things of that nature. But I think it's a very
4 different process. You know, studies. I think we
5 certainly would anticipate, you know, all the studies
6 that have to do with environmental impact, public
7 safety applying in a town process. I think -- I
8 believe, subject to check -- I mean, I haven't gone
9 through everything that will be required for the SEC
10 to kind of vet against whether we would also need to
11 do that in front of the Town. But certainly, as
12 we've said before, you know, it's the doing of them
13 without knowing the process that's the concern.

14 Q. Okay. Thank you.

15 Also, we're in a little bit of a unique
16 position, at least in my view, that we have the board
17 of selectmen of the town saying to take jurisdiction,
18 and here's the planning board who's asking us to at
19 least delay and not take jurisdiction. You've dealt
20 with both these entities. Can you venture an opinion
21 on why the disagreement?

22 A. Yeah, I can try. I mean, I believe that the
23 selectmen are acting -- and they can speak better to
24 this -- but in what they believe are the wishes of

1 the people of the town of Antrim. I think the
2 planning board is split on this issue. I think we've
3 submitted evidence for the record that demonstrates
4 that their meetings, and particularly recently, have
5 been very contentious, and at points really venomous
6 over the issue. I think there is an interest in some
7 instances of retaining local control potentially for
8 the ability to say no to the project, to block the
9 project. I think it's in Ms. Pinello's testimony,
10 where she points out, you know, if it is determined
11 that the use is allowed. So there's no guaranty in
12 that process that that will even be determined.

13 So I think there are different camps. I
14 think -- I don't really know, other than -- what
15 specifically, because I think the question has been
16 asked of the planning board, and particularly the
17 members who are here, you know, what is missing from
18 the SEC process. And I have not seen answers really
19 to date that help me understand what they feel like
20 is of concern if it's certificated in front of the
21 SEC with what we've already indicated we're willing
22 to do in terms of agreements directly with the Town,
23 other than potentially say no.

24 DIR. SCOTT: Thank you.

1 CHAIRMAN GETZ: Mr. Normandeau.

2 INTERROGATORIES BY DIR. NORMANDEAU:

3 Q. So this really seems to be boiling down to the fact
4 that the SEC has obviously a very clear process laid
5 out in the statute, and there doesn't appear to be
6 one for this project, at this time, anyway, in
7 Antrim. Am I correct? I mean, you could not apply
8 today for anything in town, or there is no process
9 available to you locally?

10 A. Well, I think, as even members of the planning board
11 testified to that effect, there is no suitable
12 process in the town of Antrim to review a project of
13 this nature.

14 CHAIRMAN GETZ: Other questions? Mr.
15 Harrington.

16 INTERROGATORIES BY MR. HARRINGTON:

17 Q. Yeah, just had a follow-up getting back to scheduling
18 again, in response to some of the questions from
19 Commissioner Ignatius.

20 When do you think the turbine design will be
21 finalized so that you'll know the exact make and
22 model of the turbine you're going to purchase?

23 A. I actually don't exactly know the answer to that. I
24 think that there is a possibility that we could get

1 into a situation where we submit an application with
2 a specific turbine and something may happen that we
3 need to request for a change. These are dynamic
4 markets. Turbine supply markets are dynamic --

5 Q. But you had mentioned -- excuse me. You mentioned
6 the fact that you had some estimated dates for
7 completion of the interconnection studies, which
8 can't be completed until PSNH knows the exact make
9 and model of the turbine, because they each have
10 different electrical characteristics.

11 A. Yeah, that's true. I think there's some ability to
12 have substitutions. And there are some possibilities
13 that within a substitution it may require some
14 additional study if we had to make a substitution.

15 But I think, to answer your question, in terms
16 of initially making a choice about the turbine that
17 we believe is the best suited for the project, we
18 anticipate being able to make that determination
19 sometime this fall, prior to submitting an
20 application.

21 Q. And then how much additional time after that decision
22 was made would it take PSNH to complete their
23 interconnection work to actually come to a finalized
24 interconnection agreement?

1 A. A finalized interconnection agreement? Probably six
2 to nine months.

3 Q. Okay. Thank you.

4 CHAIRMAN GETZ: Okay. Other
5 questions? Mr. Stewart.

6 INTERROGATORIES BY DIRECTOR STEWART:

7 Q. I guess my question is in the context of R.S.A.
8 162-H. One of the purposes is to evaluate this
9 question of undue delay in the construction of needed
10 facilities. And I guess I'm focusing on the phrase
11 "undue delay" and what that really means. I mean,
12 what I've heard is that we might get an application
13 in December or so to the SEC. The Town might have an
14 ordinance in March, and hence, in theory, you could
15 apply in March to the Town under a new ordinance.

16 So I'm trying to understand what the urgency is,
17 in the sense of this "undue delay" context, where --
18 you know, why is three to six months an undue delay?

19 A. There's a couple of answers. I think one is, part of
20 the reality for us is that a delay of a month, in
21 reality, is a delay of a year. Because we are not
22 willing to make the investments in the studies that
23 are required -- if it's a Town process, we are not
24 willing to make the investments in the studies that

1 would be required to submit a comprehensive permit
2 application without knowing if, as Ms. Pinello
3 testified to, it will even be an allowed use in the
4 district; what the rules and regulations and
5 timelines for review of that facility would be in the
6 context of the Town; when and whether it would
7 ultimately come to a vote in the front of the town of
8 Antrim; whether if it did come to vote, they would
9 ultimately vote it in or vote it down; and if they
10 did vote it down, we are in the same position we are
11 today, a year later, and no further along. And to
12 us, given that the selectmen of the town had
13 petitioned this Committee, a hundred residents of
14 Antrim, voting residents of Antrim, have petitioned
15 this Committee. We have petitioned this Committee.
16 The Committee has an ability to accept and review an
17 application for a facility of this type at this time.
18 We operate in a competitive marketplace where time
19 does matter. For all those reasons, we believe that
20 the process being purported to be in place by the ad
21 hoc committee and the planning board does constitute
22 an undue delay, which we believe could cause great
23 harm to this project.

24 And I guess the only other addition to that is

1 the fact that there have been several years for the
2 Town to take on an effort to work together to try and
3 enact ordinance changes that would allow this project
4 to be reviewed under local control. We've been out
5 there publicly since April of 2009. There was an
6 effort that was underway from October 2010 to
7 February 2011 to modify the ordinance. And at that
8 time we still entertained the possibility that it
9 might be a process we would go through. And that was
10 completely thrown out by the actions of a new board.
11 And I think all of that has given us reason to
12 believe that we don't trust the process to go forward
13 in a fair and reasonable way, if at all, in the town
14 of Antrim.

15 Q. One more question. Towns have the opportunity in
16 certain circumstances -- let's say the school is
17 saturated. It's full, busting at the seams. And a
18 developer comes in and proposes a thousand-unit
19 development, which would just totally, you know, blow
20 the school system in terms of its ability to deliver
21 services. And I don't have the citation, but there's
22 the ability for towns to slow development down until
23 they can get their act together, in terms of their
24 ordinances and infrastructure and so forth relative

1 to development. So why is a wind power facility
2 different than dealing with a major development
3 that's going to overwhelm the town in some other
4 fashion?

5 A. Again, the Town petitioned the SEC to assert
6 jurisdiction over this project. The residents of the
7 town of Antrim also petitioned the SEC to assert the
8 petition. And we, the Applicant, petitioned. So I
9 think that really speaks for itself, in terms of what
10 the town's -- the legislative body of the town, the
11 governing body of the town, has voiced in terms of
12 its opinion. I believe that there are several
13 members -- and there was another letter that was
14 submitted to the Committee this morning attesting to
15 the kind of character of the work and effort that's
16 been undertaken by this planning board, which I don't
17 believe is representative of the town at all. And we
18 share that opinion.

19 So it seems to us that there are a variety of
20 other scenarios under which it may be reasonable for
21 a town to take the time to enact regulations, and
22 that that's what everybody wants to do, and it's been
23 kind of fair and continuous all along. That is not
24 the process that has happened here.

1 CHAIRMAN GETZ: Director Muzzey.

2 DIR. MUZZEY: Thank you.

3 INTERROGATORIES BY DIRECTOR MUZZEY:

4 Q. A couple of minutes ago you mentioned that there was
5 no suitable process for applying to the town today
6 for this type of project. To me, that sounds as if,
7 if all of the project's development was done --
8 permitting, engineering, design -- you could begin
9 construction. Could you just clarify that question
10 as to if your project was further along in its
11 development, could you just begin construction
12 tomorrow in Antrim?

13 A. No. No, that's --

14 Q. So what process would you need to go through then?

15 A. Well, any project that would want to build something
16 that's commercial in the town of Antrim would need a
17 site plan review. So we would need to submit today
18 for a site plan review. But the use isn't allowed.
19 So it would require, ostensibly, variances for use,
20 probably variances for heighth, certainly site plan
21 approval, probably other additional permits, wetlands
22 special-use permits at the town level. It would also
23 require all of the kind of aforementioned state
24 permits that are required. And I think those

1 distinctions also speak to some of the language in
2 R.S.A. 162-H with respect to the integrated fashion
3 in which that kind of statute contemplates projects
4 like this be reviewed.

5 Q. All right. Thank you.

6 CHAIRMAN GETZ: Mr. Iacopino.

7 INTERROGATORIES BY MR. IACOPINO:

8 Q. I just wanted to clarify exactly what you have done
9 with the Town, because -- and let me take you through
10 what I understand.

11 At some point you did approach the planning
12 board with a conceptual site plan; is that correct?

13 A. No. The only site plan we gave the planning board
14 was with respect to our temporary meteorological
15 tower.

16 Q. And has every filing that you filed in the Town to
17 date dealt with meteorological towers as opposed to
18 the project itself?

19 A. Every official filing, yes. That's right. We have
20 given a number of public information sessions in the
21 town of Antrim and presented them with
22 project-related information, including, I believe,
23 the same layout that we submitted to this Committee.
24 And shared a lot of information about the project,

1 but no direct application-related filings for the
2 wind facility.

3 Q. What type of turnout came to those public information
4 meetings?

5 A. I think we've had public information sessions at The
6 Grange, for example. In February, it was probably 70
7 people.

8 Q. Have you done more than one?

9 A. That public information session in February -- we
10 have done probably some, I don't know 15, 20 meetings
11 over the last two years in various contexts. A lot
12 of them were in either the planning board site plan
13 review -- it kind of gets blurred together, honestly,
14 in my mind, in terms of which meetings all happened
15 when. But I think that was the only meeting that was
16 specifically for the purposes of discussing only the
17 wind project and had nothing to do with the
18 meteorological tower, was The Grange meeting in
19 February.

20 MR. IACOPINO: I have no further
21 questions.

22 CHAIRMAN GETZ: Anything further from
23 the Committee?

24 (No verbal response)

1 CHAIRMAN GETZ: Hearing nothing, then,
2 Ms. Geiger, any redirect?

3 MS. GEIGER: Yes, Mr. Chairman. Could
4 I take a moment to confer with the witness?

5 CHAIRMAN GETZ: Yes.

6 MS. GEIGER: Thank you.

7 REDIRECT EXAMINATION

8 BY MS. GEIGER:

9 Q. Mr. Kenworthy, you testified in response to Attorney
10 Little's cross-examination questions that the project
11 would need to obtain the same types of permits if it
12 were to proceed under the SEC process as it would in
13 a town process. Is that your testimony?

14 A. I believe I testified that the studies that we have
15 listed that would need to be performed for an SEC
16 application would also need to be performed -- or
17 those permits would also need to be obtained if we
18 were permitting from the town. But additionally in
19 the town, as I stated a minute ago, we would also
20 need to have, at a minimum, not knowing what the
21 regulations would be, site plan approval and a
22 special wetlands permit, a special use -- a
23 conditional use permit for wetlands, and potentially
24 others as well, all of which we understand would be

1 independently appealable.

2 Q. But do you know what the Town process will entail for
3 reviewing the project?

4 A. No.

5 Q. Do you know what time frames the Town would intend to
6 impose if it were to be able to review the project?

7 A. No.

8 Q. Do you know with certainty what all of the required
9 studies are that you would need to submit in that
10 process?

11 A. No.

12 Q. Do you know all of the issues that the Town would
13 address if it were to obtain jurisdiction over this
14 process --

15 A. No.

16 Q. -- over the project?

17 Is there any certainty that the ad hoc committee
18 will even approve an ordinance that would allow the
19 project to be reviewed by the Town?

20 A. No.

21 Q. You were asked, I believe by Ms. Allen -- or invited
22 to attend the ad hoc committee meeting. Do you
23 remember that?

24 A. Yes.

1 Q. Have you ever been invited to do so before?

2 A. No.

3 Q. Have you ever attended any of the ad hoc committee
4 meetings?

5 A. No, we haven't. I have not.

6 Q. Why is that?

7 A. Well, we haven't been invited to date. And they're
8 at a rather tough time to get to, at 6:30 in the
9 morning. Unless there's kind of an invitation to
10 come and participate, it's challenging.

11 Q. Okay. I believe you also testified in response to
12 some -- in response to some questions on
13 cross-examination, or perhaps even in response to
14 questions by the Committee -- I apologize. I can't
15 remember who asked them. And your response referred
16 to folks in the town of Antrim being supportive of
17 the project. Do you remember that?

18 A. Yes.

19 Q. And I believe in your response you referred to a poll
20 that was taken in the town on the issue of whether
21 the residents of Antrim were in favor of a wind
22 energy project?

23 A. Yes.

24 Q. And did you submit a summary of the results of that

1 poll with our -- your, the Petitioner's response to
2 the intervention request?

3 A. Yes.

4 Q. And I'd like to show you Exhibit A to the document
5 that the Petitioner submitted in response to the
6 intervention request, which I believe everyone should
7 have a copy of.

8 MS. GEIGER: And I'd like to ask that
9 that be marked for identification as the next
10 exhibit.

11 MR. IACOPINO: Susan, this is attached
12 to your petition?

13 MS. GEIGER: Well, it's attached to
14 the Petitioner's response to intervention request.
15 It was filed on April 21st, 2011. And in Exhibit A
16 there are the results of the survey that Mr.
17 Kenworthy referenced in response to questions that
18 were asked of him regarding the Town's opinion of the
19 project.

20 MR. ROTH: Mr. Chairman, I would
21 object to the introduction of this exhibit. There's
22 no foundation for it. And the issue of whether the
23 project is popular in the community by some standard
24 conceived of by this pollster is not relevant to

1 whether the Committee should take jurisdiction. It's
2 not among any of the standards. I don't recall
3 seeing popularity among citizenry being one of the
4 standards. In fact, many energy projects are
5 notoriously unpopular. And if that were the
6 standard, very few of them would ever get built. As
7 such, I don't think it's appropriate. The only place
8 that it's appropriate is to question essentially
9 whether this is consistent with their avowed goals
10 and their avowed corporate mission, which I submit
11 the cross-examination shows it's not. I think
12 there's been enough testimony from Mr. Kenworthy
13 about the poll already on the cross-examination that
14 I asked him, and that should be sufficient. And we
15 shouldn't be delving into extrinsic evidence to
16 support his conclusion that he thinks it's popular.

17 CHAIRMAN GETZ: Well, let me deal with
18 this issue this way: First of all, I think it's an
19 appropriate subject of redirect examination, having
20 the door being opened by you, I believe, Mr. Roth, on
21 this issue. The document has already been filed with
22 the Commission as of April 21st. I don't think
23 there's a need to mark it as an exhibit in this
24 proceeding. But since it's part of the docket file,

1 the Committee can give it whatever weight that it
2 deems appropriate. So the objection is overruled.

3 And it's not going to be admitted as
4 an exhibit, but do you have any further inquiry about
5 this issue?

6 MS. GEIGER: No. Thank you, Mr.
7 Chairman. I was unclear as to whether or not the
8 pleadings that had been filed would become a part of
9 the record. It was a -- we were informed at Friday's
10 tech session that we should bring at least two copies
11 of documents that had been filed, but that hadn't as
12 yet been marked as exhibits, and that's what I did.

13 The last question I have, I believe,
14 hopefully, for Mr. Kenworthy on redirect, stems from
15 an answer that he gave in response to Committee
16 questions regarding a letter that was filed today
17 with the Committee from a woman named Cynthia
18 Crocket, which sets forth her position that the
19 Committee should assert jurisdiction over the
20 project.

21 BY MR. GEIGER:

22 Q. Do you recall that, Mr. Kenworthy?

23 A. Yes.

24 MR. LITTLE: Mr. Chairman, I object to

1 that. I mean, this is rank hearsay. I mean, the
2 person who wrote the letter is not available for
3 examination, and to have Mr. Kenworthy repeat what
4 she has put in a letter just compounds the issue. So
5 I would object to it being used as part of his
6 testimony.

7 MR. ROTH: Mr. Chairman, I'd also add
8 to the objection. And there is no signature on the
9 letter; and as such, its authenticity is completely
10 unknown.

11 CHAIRMAN GETZ: And Ms. Geiger, I'm
12 concerned about this particular letter. Well, this
13 particular letter seems to be in the same category as
14 dozens of public comments we've received under the
15 statute. We are, as a general matter, required to
16 consider public comments. But in terms of making
17 this a subject of evidence, when I think it was
18 brought up by Mr. Kenworthy himself --

19 MS. GEIGER: Right. It wasn't brought
20 up on direct. It was brought up in response to
21 questions by the Committee. I thought it might be
22 helpful for the record to actually have a copy of the
23 letter marked. But if -- and I received the letter
24 by e-mail today from Ms. Murray. So it apparently

1 has, in fact, been filed with the Committee. And if
2 it's the Committee's choice to treat it as public
3 comments, so be it. I just wanted the record to be
4 clear that the letter that Mr. Kenworthy was
5 referring to has in fact been filed with the
6 Committee. And I'll leave it at that.

7 CHAIRMAN GETZ: Yes. And it has been
8 circulated, and we'll treat it as public comment.

9 MS. GEIGER: Okay. Thank you very
10 much. I don't have any further questions. Thank
11 you.

12 CHAIRMAN GETZ: Okay. Then let's take
13 a brief recess, 10 minutes or so, hopefully, and then
14 we'll turn, Mr. Richardson, to your witness, Mr.
15 Genest.

16 MR. ROTH: Mr. Chairman, I had a
17 couple of questions for recross.

18 CHAIRMAN GETZ: On what topics?

19 MR. ROTH: On Mr. Kenworthy's
20 assertions of certainty in response to questions by
21 Attorney Geiger about the process with the Town and
22 the types of studies that the Town would require.

23 CHAIRMAN GETZ: So this is under the
24 second category of questions she asked him about what

1 he might expect would happen with the regulations
2 that might be passed next spring?

3 MR. ROTH: That's correct.

4 CHAIRMAN GETZ: And you're going to
5 ask him --

6 MR. ROTH: I'd like to ask him the
7 questions --

8 CHAIRMAN GETZ: -- how uncertain he is
9 about those things that might or might not happen?

10 MR. ROTH: No. I was going to ask him
11 about his views on certainty and studies that might
12 be required by the Site Evaluation Committee.

13 CHAIRMAN GETZ: Well, I think you may
14 be pushing the envelope, but let me hear the
15 questions.

16 MR. ROTH: Can I ask the witness the
17 questions? Thank you.

18 RECROSS-EXAMINATION

19 BY MR. ROTH:

20 Q. Mr. Kenworthy, you heard the question -- Attorney
21 Geiger asked you questions about whether you had
22 certainty about the result of the rule-making process
23 at the Town. Do you remember that question, and you
24 said, no, there was no certainty?

1 A. Yes, I remember that.

2 Q. Okay. Do you have any certainty that the Site
3 Evaluation Committee will approve your project?

4 A. No. Absolutely not. But I think they're very
5 different questions.

6 Q. But that's the question. So you don't have any
7 certainty here either; correct?

8 A. Not that they will approve a project, no.

9 Q. Okay. And you were also asked by Attorney Geiger
10 about whether you had any certainty or knowledge
11 about what standards might be required by the Town
12 once they finish their rule making; correct?

13 A. Correct.

14 Q. And your answer was, no, you didn't have any
15 certainty about that.

16 A. Correct.

17 Q. Now, do you know whether -- is there anything in the
18 Site Evaluation Committee's rules or statute that
19 dictates what surveys, what studies, what processes
20 you must do in order to satisfy their standards?

21 A. Not that I'm aware of. But there is a clear history
22 of projects of similar size and nature that have
23 submitted applications that have been accepted and
24 reviewed by this Committee that I think provides us

1 with a reasonably certain understanding about what
2 those studies and requirements would be.

3 Q. Okay. But they could --

4 A. It's not cut from clean cloth.

5 Q. They could conceivably require you to do something as
6 a condition to the petition -- or to the certificate,
7 should they grant you one, that would be new and
8 different than what you would expect; correct?

9 A. Certainly.

10 MR. ROTH: Okay. That's all.

11 CHAIRMAN GETZ: Ms. Geiger, last
12 chance.

13 MS. GEIGER: I have nothing further.
14 Thank you, Mr. Chairman.

15 CHAIRMAN GETZ: Okay. Then we'll take
16 a brief recess, and then we'll resume with the town
17 board of selectmen.

18 (Whereupon the Witness was excused.)

19 (Brief recess taken.)

20 CHAIRMAN GETZ: Okay. We're back on
21 the record, and we'll turn to the examination of Mr.
22 Genest.

23 So, Mr. Richardson, are you ready to
24 proceed?

1 MR. RICHARDSON: Yes. Let me just
2 pull one of the exhibits. Does your reporter have a
3 preference for bound or unbound copies?

4 COURT REPORTER: Bound is great.

5 CHAIRMAN GETZ: And while we're
6 waiting, let me point out two things: One is --
7 well, it'll end up being more than two. It's a
8 little after 3:00. We're going to go until 5:00.
9 We're not going to go past that today. I'm not sure
10 how optimistic I should be about how far we're going
11 to get, but it seems like we're going to have to come
12 back for another day. Our intention is to come back
13 next week. And Mr. Iacopino's taken a poll of the
14 members to see what's the best day to resume next
15 week, and I guess we'll deal with that before we
16 close the hearings for today.

17 MR. RICHARDSON: I apologize, Mr.
18 Chairman. I misplaced a document that I had
19 distributed to the parties.

20 CHAIRMAN GETZ: Off the record.

21 (Discussion off the record)

22 CHAIRMAN GETZ: We're on the record.

23 (WHEREUPON, MICHAEL GENEST was duly
24 sworn and cautioned by the Court Reporter.)

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MICHAEL GENEST, SWORN

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q. Would you please state your name for the record, please.

A. Michael Genest.

Q. And Mr. Genest, what is your role in this proceeding?

A. I'm the chairman of the Board of Selectmen for the Town of Antrim.

Q. And have you prepared testimony in this proceeding?

A. Yes, I have.

Q. There's a document in front of you that's been premarked for identification as BOS Exhibit 1. And that's the testimony that you prepared?

A. Yes, it is.

Q. And are there any omissions to that testimony?

A. Yes, there is. Actually, when we had submitted the zoning ordinances, it was our intent to submit them all. But somehow, the Article 9, which involves rural conservation district, was missing.

Q. And I'd like to show you a document we'll mark for identification. It's BOS Exhibit 2, and it's two-sided. Can you tell me what that is?

A. That's the item that was missing, Article 9, which

1 involves the rural conservation district.

2 Q. And does that -- with that supplemental exhibit, is
3 your testimony now true and accurate, to the best of
4 your knowledge?

5 A. To the best of my knowledge it is.

6 Q. And you adopt it as your testimony before the
7 Committee?

8 A. Yes.

9 Q. Okay. Thank you.

10 CHAIRMAN GETZ: Okay. We'll mark
11 Exhibits BOS 1 and 2 for identification as described
12 by Mr. Richardson.

13 (The document, as described, was
14 herewith marked as BOS Exhibit 1 and 2 for
15 identification.)

16 CHAIRMAN GETZ: And we'll turn to Ms.
17 Geiger or Ms. Smith.

18 MS. GEIGER: Maureen Smith.

19 CHAIRMAN GETZ: Ms. Smith.

20 MS. SMITH: Thank you.

21 CROSS-EXAMINATION

22 BY MS. SMITH:

23 Q. Good afternoon, Mr. Genest. My name is Maureen
24 Smith.

1 A. Good afternoon.

2 Q. The BOS Exhibit 1, I assume, includes a letter that
3 you incorporated by reference into your prefiled
4 testimony. The letter was dated April 20th, 2011; is
5 that correct?

6 A. Yes.

7 Q. Thank you. My questions will be based on both that
8 April 20th letter and your May 6, 2011 prefiled
9 testimony.

10 In the April 20th letter that you submitted to
11 the SEC on behalf of the board of selectmen, you
12 urged the SEC to assert jurisdiction over the
13 proposed wind farm that the Town has discussed with
14 Antrim Wind Energy. And in that letter you state
15 that the Antrim land-use board lacked the technical
16 expertise and knowledge to handle a project of this
17 magnitude; is that correct?

18 A. Yes.

19 Q. Could you explain to me what you meant by that
20 statement and, in particular, what you meant by "a
21 project of this magnitude"?

22 A. Well, I think the "project of this magnitude," what I
23 meant there by it, and I think what the board meant,
24 was it's just a huge project that the town of Antrim

1 had never seen something this large.

2 Q. What types of projects does the board usually review?

3 A. Developments, subdevelopments, lot line adjustments.

4 Q. Do you know what the largest project is that the
5 board has ever reviewed?

6 A. No, I don't. I believe I do recall a 24-lot
7 subdivision here a few years ago, and that was
8 considered awful large for the town of Antrim.

9 Q. Has the board ever reviewed an energy project?

10 A. Not to my knowledge.

11 Q. Have you ever reviewed an industrial-scale wind
12 energy project?

13 A. Not to my knowledge.

14 Q. In that same letter, in Paragraphs 3 and 4 you
15 mentioned the number of meetings that have been held
16 by the ZBA on the met tower, which was the precursor
17 to the wind development, and additionally at a
18 planning board meeting on wind energy. And am I to
19 understand from your mention of the number of
20 meetings that have been held, that there has been --
21 that the process has been rather slow?

22 A. Yeah, there's been a number of meetings that
23 continues to be continued.

24 Q. And do you think there's any reason to assume that

1 that would change if a wind energy application were
2 submitted to the Town?

3 A. I would be very surprised if it changed much from
4 what the current practice has been in the last year
5 or so.

6 Q. What is the basis for that opinion?

7 A. Well, it seems like an awful small minority of the
8 town continues to come to the meetings. And if they
9 are not -- if they're heard in the meetings -- that
10 the meetings -- the chair people let the people speak
11 for the most part, and then they continue to speak
12 and continue just to disrupt the meetings sometimes.
13 And the process has really been slowed down due to
14 this.

15 Q. In Paragraph 6 of the same letter, you described
16 proposed zoning amendments that would have allowed
17 wind energy facilities to be sited in the rural
18 conservation district.

19 Am I to understand that, under your current
20 regulatory regime, that the Town would have -- or
21 they would be uncertain on whether a proposed wind
22 energy facility could be sited in the rural
23 conservation district?

24 A. Well, currently, the only way one would ever be

1 permitted would be that it would have to go through
2 the ZBA with a variance.

3 Q. So is the -- was the Town's effort to address -- did
4 the Town make an effort to specifically address wind
5 energy siting in Antrim?

6 A. Yes. Actually, going into the March 2011 election,
7 it was the intent to vote on a set of ordinances that
8 would have addressed these issues. And due to a
9 clerical error, that vote never happened.

10 Q. Well, you mentioned a March 17th planning board
11 meeting in that paragraph, and I wanted to ask you a
12 few questions about that March 17th planning board
13 meeting.

14 It's my understanding from your Paragraph 6 in
15 the April 20th letter that there was a
16 reconsideration by the planning board of the ZBA and
17 planning board's intention to amend the zoning
18 ordinances. Is that correct?

19 A. Yes.

20 Q. And I have a marked exhibit, AWE 4, that I believe I
21 gave everyone a copy of, and the Committee members a
22 copy. And the title of the document is "Antrim
23 Planning Board Agenda for March 17th, 2011." Do you
24 have that document before you?

1 A. Yes, I do.

2 Q. Does that document appear to be the agenda that was
3 distributed on March 17th?

4 A. Yes.

5 Q. Could you tell me where in that document there was
6 notice that the planning board was going to
7 reconsider -- or was thinking of reconsidering a
8 proposed zoning ordinance amendment?

9 A. There was no mention of it on their agenda.

10 Q. Does that mean that there was no public notice given
11 that the plan to put on a special on the town ballot
12 was going to be reconsidered at this meeting? There
13 was no notice of that plan?

14 A. To the best of my knowledge, that's correct.

15 Q. I'd also like to direct you to Exhibit 9, AWE
16 Exhibit 9, that I already passed out.

17 MS. SMITH: And I just wanted to
18 clarify for the record that the minutes of the
19 meeting that was attached in Exhibit 4 were finalized
20 recently, and Attorney Little gave me a copy of the
21 final planning board minutes for the March 17th
22 meeting, which appear in Exhibit 9, AWE Exhibit 9.
23 So I just wanted all of the parties on the Committee
24 to have copies of the most recent.

1 MR. LITTLE: Well, I have a question.
2 I thought the only thing in Exhibit 4 was the agenda,
3 because that's all that the witness identified.

4 MS. SMITH: Exhibit 4 is the entire
5 record of the Antrim Planning Board meeting,
6 including the agenda. And Exhibit 9 is the
7 updated --

8 (Court Reporter interjects.)

9 MS. SMITH: Excuse me. Excuse me,
10 Attorney Little. Please let me finish.

11 Exhibit 9 is the record of the final
12 minutes that you provided to me this morning at the
13 hearing. So, for purposes of clarity and precision,
14 I have provided both to all of the parties and to the
15 Committee.

16 CHAIRMAN GETZ: Well, let me make sure
17 of the documents we have. So what you've marked as a
18 package as Exhibit 4 is the agenda and --

19 MS. SMITH: The agenda and attached
20 minutes in draft form.

21 CHAIRMAN GETZ: Okay. And now what we
22 have in addition as Exhibit 9 are the final minutes.

23 MS. SMITH: Final minutes. Correct.

24 MR. LITTLE: And I would move that the

1 draft minutes be deleted. They aren't reflective of
2 anything. They were not the ones that were approved
3 by the board. The ones that I gave to Attorney Smith
4 were the ones that were approved by the board. I
5 don't see why we should have draft minutes. And they
6 weren't even identified when she asked this witness
7 about them. And if I understand correctly, this
8 witness was not present at the March 17th meeting.

9 MS. SMITH: May I address that before
10 you speak? I would just like to state that I have
11 not gotten to the point of talking about the minutes.
12 And so when I do that, I will clarify that the draft
13 minutes are not to be referred to, that the final
14 minutes in Exhibit 9 are the official minutes, if
15 that is all right. And I have no objection to the
16 draft minutes being stricken. But they were passed
17 out already, and I wanted people to understand what
18 they were looking at. Everyone has copies of
19 everything. So this is for clarity purposes. This
20 is not a trick.

21 CHAIRMAN GETZ: Well, we're having a
22 tough time getting clarity --

23 MR. LITTLE: Well, I'll --

24 CHAIRMAN GETZ: Well, hold on.

1 MR. LITTLE: I'll accept her offer
2 that we just delete the draft minutes as part of
3 Exhibit 4, so that Exhibit 4 becomes a one-page
4 exhibit.

5 MS. SMITH: I assent to that.

6 CHAIRMAN GETZ: Okay.

7 MR. ROTH: Mr. Chairman, what I'm
8 concerned about is a little bit different. What I'm
9 seeing here is sort of a roundabout effort with
10 Attorney Smith's testimony about these minutes to
11 somehow challenge the validity of a decision to
12 reconsider something at the planning board level.
13 And I'm not sure what the relevance of any of that is
14 here today. And it seems to me we could spend a lot
15 of time and effort on trying to analyze whether the
16 planning board acted properly on March 17th or not.
17 But seems to me it's not a good use of the
18 Committee's or the parties' time.

19 CHAIRMAN GETZ: Well, I'm taking the
20 issue here that's being explored as the issue of
21 undue delay, which has been explored already in
22 several forms. But first of all, let's deal with the
23 evidentiary matter.

24 And we're going to mark for

1 identification as Exhibit 4 the single-page agenda
2 from the Antrim Planning Board, and we'll mark for
3 identification as Exhibit No. 9 what are represented
4 to be the final minutes of that meeting of March 17.
5 And I'm going to permit Ms. Smith to inquire about
6 this matter.

7 MS. SMITH: Thank you, Chairman Getz.

8 BY MS. SMITH:

9 Q. I forget where we left off, Mr. Genest. But I think
10 where I was, was that you stated there was no notice
11 in the March 17th agenda that there was going to be a
12 reconsideration of proposed zoning ordinance
13 amendments; is that correct?

14 A. Correct.

15 Q. Is it evident from your review of the minutes, the
16 final minutes in Exhibit 9, that there was, in fact,
17 a reconsideration and that the planning board
18 recommended that the zoning amendment be withdrawn
19 from the town meeting ballot?

20 A. Yes.

21 Q. Was the board of selectmen aware that this happened?

22 A. At our next meeting.

23 Q. And when was that?

24 A. The following Monday, I believe, which would have

1 been March 21st, I believe.

2 Q. And was the ballot, in fact, withdrawn from the town
3 ballot?

4 A. Yes. The planning board had actually come to our
5 meeting and we had a discussion.

6 Q. So, is it fair to say that the Town's attempt to
7 address the lack of accommodation within the Town's
8 regulatory scheme through a zoning amendment, that it
9 was reversed at the last minute?

10 A. Well, what had happened was the -- and pardon the
11 expression -- the "new planning board" -- because
12 this was after the election, and there were two new
13 members -- felt they needed more time. And they
14 wanted to rewrite the ordinance that should have been
15 voted on on March 10th. That's how it came about.
16 And the board of selectmen made the decision to grant
17 them a little more time, with the expectations of
18 having a special election no later than September.

19 Q. Have you seen progress towards that end?

20 A. In the last few weeks, I believe some marginal
21 process -- progress. But up 'til then, no.

22 Q. What's the progress that you've seen?

23 A. The ad hoc committee was finally formed and finally
24 started meeting.

1 Q. So how many meetings have the ad hoc committee had?

2 A. I believe three. I'm not a member of that committee.
3 So I think they're having their third or fourth.

4 Q. Are you aware of any draft zoning ordinances or rule
5 changes that have been presented to any members of
6 the planning board?

7 A. No. But I know there's been some discussion over
8 different ordinances that are out there that they've
9 looked at from other towns and from other states.

10 Q. So is it fair to say that the process has just begun,
11 in terms of trying to scope out how the Town would
12 regulate wind energy facilities?

13 A. Yes.

14 MR. ROTH: I'm going to object to
15 that. It seems to me this gentleman was not present
16 at any of these meetings, so it's difficult, seems to
17 me, for him to make -- to render an opinion on it
18 unless it's by complete hearsay or speculation.

19 MS. SMITH: If I could respond to
20 that? Mr. Genest stated in his prefiled testimony
21 that he was an ex officio member of the planning
22 board. And as a board selectmen, he is well aware of
23 what occurs in town official proceedings, including
24 planning board proceedings. And if I could, I will

1 question Mr. Genest on that point.

2 MR. ROTH: But apparently he hasn't
3 been at any of the meetings of this ad hoc committee.
4 And in addition, he was absent from the March 17th
5 meeting, of which he's testifying of occurrences that
6 happened in both of these places. So I think that's
7 completely inappropriate.

8 CHAIRMAN GETZ: Mr. Little.

9 MR. LITTLE: Mr. Genest is not an ex
10 officio of the planning board at this time. I think
11 Mr. Robertson is as the selectmen's representative.
12 So I'm not quite sure how Attorney Smith justifies
13 his testimony concerning matters, now that Mr.
14 Robertson is the ex officio member of the board of --
15 of the planning board, and has been, I think, since
16 the March election.

17 MR. RICHARDSON: These are all fodder
18 for cross-examination. I don't want to be here until
19 10:00 tonight. I'd like to just hear the questions.
20 And I mean, the issue that Counsel for the Public is
21 raising, both sides, I mean, it's really just
22 dragging this on forever, and I'd really like us to
23 keep the hearing moving.

24 CHAIRMAN GETZ: As I take it, the

1 questions are relevant being asked for what his
2 particular knowledge is. I don't think he's said
3 anything that would go beyond what he understands or
4 what he knows in his position as chairman of the
5 board of selectmen. So I'm going to overrule the
6 objection and permit the cross to proceed.

7 MS. SMITH: Thank you, Mr. Chairman.

8 BY MS. SMITH:

9 Q. Regarding the same March 17th proceedings and your
10 reference to the vote at that March 17th planning
11 board meeting, Mr. Genest, are you suggesting in your
12 testimony, and the April 20th letter, that there
13 would have to be a fundamental revision to the
14 existing rules for Antrim at some point in the future
15 for a wind farm to be sited in the rural conservation
16 district, which is the only location that Mr.
17 Kenworthy testified was appropriate for a wind
18 facility?

19 A. Yes.

20 Q. And do you foresee that fundamental change to the
21 regulatory structure happening within the next
22 several months?

23 A. I don't really have a good feeling on it. I feel
24 what might come forth is something that would be too

1 restrictive and that the town's people would probably
2 vote it down, and then we would be right back where
3 we are now, starting over, if they did develop an
4 ordinance to be voted on.

5 Q. So are you suggesting that it's unlikely any
6 regulatory changes would allow for a wind facility in
7 the rural conservation district? It would not
8 likely allow -- when you say "too restrictive," in
9 other words, do you think the outcome will be that
10 the wind facility could not be sited under the local
11 regulations in that area?

12 MR. ROTH: Mr. Chairman, this is
13 objectionable. This is asking for the witness to
14 produce a crystal ball and predict the future, and I
15 don't think that's appropriate.

16 CHAIRMAN GETZ: She's calling for an
17 opinion from the chair of the town board of selectmen
18 based on what he has seen and heard over the past
19 couple of years, to offer an opinion. And I'm going
20 to permit the question. So the objection is
21 overruled. And then we will determine what weight to
22 give to the evidence.

23 A. I will say again that I feel that there is a good
24 chance that the ordinance that's developed could be

1 too restrictive, and the town's people would vote it
2 down, and then we would be back to square one, as far
3 as developing an ordinance.

4 BY MS. SMITH:

5 Q. Thank you, Mr. Genest.

6 Mr. Genest, on Page 5 of your prefiled
7 testimony, you did state the Town may or may not
8 adopt a process for review of this type of project
9 and that there would still be uncertainties going
10 forward. If that were to happen, would you -- would
11 the board of selectmen still want the SEC to review
12 this project? In other words -- let me rephrase that
13 question.

14 No matter what happens at the local level,
15 whether ordinances are amended or not, is it the
16 board of selectmen's position that the SEC should
17 review this project, regardless of what happens with
18 the local zoning ordinances?

19 A. I think, regardless of what ordinances come up and
20 get passed, the board of selectmen would still feel
21 that the oversight of the SEC would only be a benefit
22 to the town.

23 Q. And what benefits do you see to the town?

24 A. As far as overseeing the project, having the

1 experience to having done them, the environmental,
2 economic and safety concerns, they have the
3 experience.

4 Q. Is the time frame set forth in R.S.A. 162-H, the
5 limitation on the amount of time for review of a
6 specific project, one of the factors that you would
7 take into account in assessing those benefits?

8 A. I think in order to keep the project moving in one
9 direction, or at least with an ultimate answer,
10 whether or not it's going to happen or not, I would
11 have to agree that, yes, that would be beneficial to
12 that.

13 Q. On page -- I'm sorry.

14 Are you aware the planning board has authorized
15 an ad hoc committee to recommend zoning changes
16 within Antrim?

17 A. Yes.

18 Q. Do you think the ad hoc committee is capable of
19 recommending such changes, based on your prefiled
20 testimony stating that the town officials lack
21 technical expertise and experience for doing such a
22 task?

23 A. I'm sure that they could put together a draft. But
24 it comes back to my feelings, personally -- and I

1 believe the select board pretty much feels the same
2 way -- that the planning board should have been the
3 ones that are creating this. The ad hoc committee is
4 just actually delaying the whole process in general.

5 Q. Getting back to the benefits to the town, on Page 5
6 and 6 of your prefiled testimony, you list a number
7 of benefits that might be lost if the wind energy
8 project does not go forward, including increased tax
9 base for the town.

10 Is your position on the benefits to the town,
11 and your opinion in your prefiled testimony, that
12 those benefits -- being the opportunity lost that
13 might occur if the SEC does not review this
14 project -- is that based on your understanding of the
15 majority of residents' position on this matter?

16 A. Yes. I think there's been a number of polls done.
17 One by Eolian, two different ones done by the Town of
18 Antrim, one by the Antrim Planning Board in 2010 of
19 March, and one recently done in March of 2011 by the
20 board of selectmen. All of those polls are showing
21 anywhere from 60 to 70 percent of the town is for,
22 and then that other 30 or 40 percent has basically
23 been split with maybe 20 percent against and
24 20 percent undecided. So it's a vast -- sure appears

1 to be a vast majority of the town is for the a
2 project in Antrim.

3 Q. And that majority for the project would mean that, if
4 an application were approved, that the Town would
5 support the approval of an application -- support the
6 construction of a facility.

7 A. I believe the Town would.

8 Q. And your testimony is, the underlying message in your
9 testimony is that the project may never get to the
10 point of being approved on a local level. So unless
11 the SEC takes jurisdiction, the majority of town
12 residents would not achieve their desire to have this
13 facility built. Is that a read of your testimony?

14 A. Those are the concerns of the board.

15 Q. If the SEC were to take jurisdiction at this time, do
16 you think that it would still have the opportunity to
17 consider any local concerns? And how would those
18 local concerns be brought to the SEC?

19 A. There's been a number of discussions that, maybe
20 instead of looking at the ordinance, that the ad hoc
21 or the planning board should be focusing on
22 regulations as much as the ordinance. And through
23 the regulations, that some of what the Town's
24 concerns could be addressed through there.

1 And then there's also the contract. I believe
2 it was mentioned by Mr. Kenworthy, perhaps -- I think
3 it was him -- that, you know, that there is a
4 contract signed with the Town. Because the biggest
5 thing that we continue to hear as the board of
6 selectmen is this "local control." And when we asked
7 the people that are crying for local control what
8 they mean, they have an awful hard time giving us a
9 specific instance. So we're kind of confused, you
10 know. Because I know the SEC would work with the
11 town, as with Lempster and Groton. That's where the
12 board of selectmen can't get a clear answer of what
13 these people that want the local control, what
14 they're actually looking for.

15 Q. So in your view, the SEC would give due consideration
16 to the local concerns, even if it were to take
17 jurisdiction?

18 A. Yeah. And it even talks about that in the, I think
19 162-H, or one of the -- it talks about the planning
20 board having some input.

21 Q. So in your view, the regulatory process within Antrim
22 could certainly go forward. And if final rules were
23 adopted or ordinances were changed, that could
24 certainly be taken into account by the Site

1 Evaluation Committee, even if they were reviewing
2 this project?

3 A. You mean the regulations that the Town of Antrim had
4 in place?

5 Q. Right. If they were to be put in place -- and that's
6 assuming that the process lays out in a timely
7 manner -- and I'm understanding from your testimony
8 that you're not so certain that that would happen; is
9 that correct?

10 A. Could you repeat that? I got lost.

11 Q. I'm sorry. That was many questions combined.

12 Do you think that the rule-making process within
13 Antrim could occur in a timely manner? I know it's
14 difficult to speculate on when and how and what.

15 A. And what you consider "timely," because, like I said,
16 it comes back to the first ordinance. If it's too
17 much regulations, the townspeople are going to vote
18 it down.

19 Q. All right. So there is no certainty at this point
20 that any rules would be applied; correct?

21 A. Correct.

22 Q. But if the rules were adopted, could the SEC take
23 those into account?

24 A. Yes.

1 Q. And would the board of selectmen participate in SEC
2 proceedings and bring those rules forward for
3 consideration?

4 A. Yes, they would. And hopefully the board of
5 selectmen and the planning board would work together
6 with the SEC to bring that forward.

7 Q. Do you think that the board of selectmen understands
8 the specifics of the project adequately to be able to
9 make a judgment on whether the SEC should assert
10 jurisdiction on this project?

11 A. I believe so.

12 Q. Is the town in the process of negotiating a Payment
13 In Lieu Of Taxes with Antrim Wind?

14 A. We have started some preliminary work on it.
15 Actually, at our last meeting we appointed a lawyer
16 and a public utilities assessor to represent us in
17 those negotiations.

18 Q. And do you have any sense of when those negotiations
19 might be completed at this point, or is it too early
20 to say?

21 A. It's too early to say at this point.

22 MS. SMITH: Could I take a moment?

23 (Pause in proceedings)

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

1 I'm all done.

2 CHAIRMAN GETZ: Okay. Thank you. Mr.
3 Webber.

4 MR. WEBBER: No questions.

5 CHAIRMAN GETZ: Mr. Froling.

6 MR. FROLING: No, thanks.

7 CHAIRMAN GETZ: And Ms. Van Mertens.

8 MS. VAN MERTENS: No questions.

9 CHAIRMAN GETZ: Mr. Little.

10 MR. LITTLE: I have a few. Thank you,
11 Mr. Chairman.

12 CROSS-EXAMINATION

13 BY MR. LITTLE:

14 Q. Mr. Genest, good afternoon. I'm Silas Little.

15 A. Good afternoon.

16 Q. And I have just a couple questions for you.

17 You're aware that when an application for site
18 plan -- or are you aware that there is a time period
19 within which the planning board must respond to a
20 completed application for site plan review?

21 A. Yes.

22 Q. And what is that time period?

23 A. I believe it's 30 days.

24 Q. Isn't it 65 days from the completed application to

1 when they must make a decision?

2 A. From the completed? Yes.

3 Q. So there is a statutory period within which the
4 planning board will -- must respond affirmatively,
5 make a decision on a completed application for a site
6 plan review, 65 days.

7 Do you know what the time period is for the SEC
8 to make a decision upon its -- a completed
9 application placed before it?

10 A. I believe it's 280.

11 Q. Now, Mr. Genest, you were the dissenter on two votes
12 that were taken by the planning board in connection
13 with -- or not by the planning board -- by the board
14 of selectmen on March 14th -- strike that.

15 There was a vote that went, Mr. Robertson and
16 Mr. Tenney in favor of the motion to hold a special
17 town meeting, and you opposed it; is that correct?

18 A. On what date was that?

19 Q. I believe it was on March -- it was March 21st, 2011.

20 A. Right. I believe it was one week following the
21 previous vote that we had taken for this special
22 election.

23 Q. Right. And then there was a second vote that was
24 taken that same evening, where it was again a

1 two-to-one vote; Mr. Robertson voting in favor and
2 Mr. Tenney voting in favor, and you dissenting to
3 rescind the vote to hold the special town meeting.

4 A. Correct.

5 Q. So, two other members of the board of selectmen were
6 in favor of the planning board taking a -- making an
7 attempt to develop a wind ordinance within the town
8 of Antrim.

9 A. Yes, I believe I discussed that when I talked about a
10 September vote. That was the plan, to make sure that
11 we could have a vote and let the people decide.

12 Q. Now, on that point, you have stated in your direct
13 testimony that there was great support for the wind
14 energy project in Antrim. You were talking about 60
15 or 70 percent?

16 A. Yeah, in the polls.

17 Q. But yet, you don't find that to be in conflict with
18 your statement that you don't think a wind energy
19 ordinance would pass?

20 A. I believe I said it could be too restrictive. That
21 would be my concern.

22 Q. Well, isn't the object of the town's ordinances to
23 develop an ordinance that is reflective of the town's
24 approach, desires?

1 A. Yes.

2 Q. And the Antrim Planning Board would be discharging
3 that function.

4 A. They would create the ordinance.

5 Q. And so you really have no basis to determine exactly
6 what this ordinance is going to look like and whether
7 it would be too restrictive.

8 A. Well, we had an ordinance that should have gone to
9 vote on March 10th. And when the new planning board
10 members got elected through that March 17th planning
11 board meeting, they felt that the ordinance that was
12 going to be voted on, on March 10th, was not
13 restrictive enough.

14 Q. And the ordinance that was going to be voted on, on
15 March 10th, just permitted a blanket use in the rural
16 conservation district. No standards or anything;
17 isn't that correct?

18 A. There was a definition of wind facility, and then it
19 was going to be a permitted use in the RCD.

20 Q. But there were no standards. It was just this is a
21 permitted use, just like a single-family house.

22 And so you're here saying that the SEC should
23 take jurisdiction of this matter because it has the
24 expertise to look at the particulars of the

1 application; is that correct?

2 A. That's correct.

3 Q. And you don't see any conflict between that assertion
4 and the fact that you were supporting an ordinance
5 that would have allowed this use as a matter of
6 right, with no performance standards?

7 A. I think that was with the hope of the SEC taking
8 over. We put our application in to the SEC back in
9 February.

10 Q. So you were basically trying to undercut the Town of
11 Antrim's attempts at zoning, even in February, with a
12 very broad amendment to the zoning ordinance.

13 A. No. I would say we were protecting the people of
14 Antrim by having jurisdiction over, from a committee
15 that has done this type of thing.

16 Q. Well, on that point, you're familiar with the
17 standards to obtain a variance?

18 A. A little familiar with them. I wouldn't say I know
19 every single letter of them, but --

20 Q. Well, there are five criteria that one has to meet;
21 are there not?

22 A. Yes.

23 Q. Are you familiar with that? And one goes to the
24 value of surrounding properties. Now, that's a

1 concern that the zone board has to deal with in
2 considering a variance application, and one also the
3 SEC is arguably charged with considering? Are you --
4 could you verbalize your answer?

5 A. Are you asking questions here or not?

6 Q. Yes, I'm asking a question.

7 A. I'm a little -- am I familiar with what?

8 Q. Are you familiar with the zoning standard that there
9 can be no diminution in surrounding property values?

10 A. Yes.

11 Q. That's part of the application for variance.

12 Now, doesn't that standard, if one goes to the
13 zoning bone of the adjustment for a variance for this
14 wind farm, doesn't that give the board the ability to
15 inquire of those issues that would be presented to
16 the SEC?

17 A. The ZBA or the planning board you're talking about?

18 Q. The ZBA.

19 A. They would look at it.

20 Q. All right. So there is existing in the town of
21 Antrim today a procedure by which this project could
22 be brought forward if the Applicant had his work
23 done. They could apply for a variance. They could
24 meet the five criteria. And they could go to the

1 planning board with a complete application and expect
2 the planning board to act on that application within
3 65 days.

4 MR. RICHARDSON: I'm going to object.

5 BY MR. LITTLE:

6 Q. Is that not the case or the statute?

7 MR. RICHARDSON: This is a legal
8 conclusion, and he's put about five different
9 elements into that question. I think he ought to
10 break it down and give the witness a chance to
11 respond to each.

12 CHAIRMAN GETZ: No, I think the
13 question is fairly put. I think one problem has
14 been, I think, Mr. Little, sometimes your question
15 doesn't end with a question mark, and I'm not sure
16 Mr. Genest knows when he's supposed to --

17 MR. LITTLE: It's my flat affect.

18 CHAIRMAN GETZ: -- weigh in. But I
19 think it's a reasonable question, that is there a
20 process for the Applicant to proceed under currently.
21 Does that summarize the question?

22 MR. LITTLE: Yes.

23 A. And they could go through the ZBA.

24 BY MR. LITTLE:

1 Q. Go for a variance. And the other criteria are that
2 has to be -- cannot be contrary to public interest;
3 is that correct?

4 A. I believe that's one of the five.

5 Q. Okay. And the public interest would be environmental
6 concerns, aesthetic concerns, impact on the tax base
7 for devaluation of surrounding properties. Those are
8 all public interests; right?

9 A. Correct.

10 Q. And the third criteria is that they have to meet the
11 standard of hardship. That's your understanding;
12 correct?

13 A. Yes.

14 Q. I think none of us have much more of an understanding
15 of hardship than just the word, because both the
16 court and legislature have been having a tug of war
17 over that. So if you'll spare me, I'll just leave it
18 there.

19 The fourth criteria is there has to be
20 substantial justice; is there not?

21 A. Without them in front of me, I believe you're on
22 track.

23 Q. Now, again, if we're looking at, you know, the
24 environmental concerns, if we're looking at how this

1 fits in with the land use in the town of Antrim, this
2 allows the board to address all those issues; does it
3 not, substantial justice?

4 A. Yes, it does. What the problem --

5 Q. Private property --

6 A. What the problem here, though, is with the ZBA, is I
7 think the Town figures -- or at least the board of
8 selectmen figures that it opens up the whole appeals
9 and court case in a timely fashion issue.

10 Q. But are you saying, then, Mr. Genest -- well,
11 actually, let me just finish this.

12 And then the final one, the variance is
13 consistent with the spirit of the ordinance. That's
14 sort of a final cloud issue, if you will, on an
15 application for variance.

16 Now, are you saying that the objection you have
17 to the Town of Antrim taking jurisdiction over this
18 is that people are given rights to take this matter
19 to court to challenge a decision of the planning
20 board or a decision of the ZBA? Is that the problem
21 with this process?

22 A. No, that's not the problem with the process. It's
23 just a concern that this could drag out for years and
24 years in the court system.

1 Q. Well, but that's not undue delay. That's just
2 something people are guaranteed by statute. You
3 don't want them to have those rights?

4 A. I didn't say that.

5 Q. Well, what are you trying to say, then, if you're
6 saying that you're concerned this is going to be
7 drawn out in the courts? That's not undue delay by
8 agreement then.

9 A. I'm saying with the behavior of the planning board in
10 the last two months, to think that something's going
11 to come out of there that's going to work could
12 really be a stretch. The planning board presently is
13 not functioning very well at all.

14 Q. Well, Mr. Genest, my question's related to whether
15 there is an existing process in the town of Antrim by
16 which this Applicant can obtain approval for its wind
17 energy project. There is an existing process. We
18 just went through it. They go for a variance. They
19 meet the requirements of a variance. If they're
20 successful, they go to the planning board. The
21 planning board has a 65-day window in which to
22 approve a completed application. Isn't that all a
23 correct statement? We just went through that.

24 A. I believe so.

1 Q. So we don't need to worry about whether the planning
2 board is going to propose amendments. The Applicant
3 has, right now, the key to his own dungeon. He just
4 needs to make a complete application to the Town of
5 Antrim. Is that not the case?

6 A. I guess that's your opinion.

7 Q. Well, the Applicant has made, I think, the same
8 variance application -- I mean the same application
9 for variances -- strike that -- has made an
10 application for variance for the same project
11 successfully to the Town -- successfully, as in
12 following each other -- and has been successful in
13 each of those applications. And those were variance
14 applications; were they not?

15 A. Yes.

16 Q. Thank you.

17 CHAIRMAN GETZ: Mr. Block.

18 CROSS-EXAMINATION

19 BY MR. BLOCK:

20 Q. Good afternoon, Mr. Genest.

21 A. Mr. Afternoon.

22 Q. I'd just like to clarify while we're on the topic,
23 while your mind is fresh, on this proposed amendments
24 for the ballot.

1 There was a set of amendments proposed for this
2 spring which didn't make it onto the ballot. But do
3 you feel that those zoning amendments, as they were
4 proposed, were adequate and would have served the
5 needs of Antrim had they been on the ballot and voted
6 in?

7 A. That would have been for the people to decide.

8 Q. I'm asking what you feel. Do you feel that those
9 amendments were appropriate -- were adequate?

10 A. Are we talking about all of them? One of them? I
11 mean --

12 Q. Well, let's say the ones that related to renewable
13 energy, since that's what the topic is here.

14 A. I'll come back to the answer that it was up to the
15 people to decide.

16 Q. Well, it was up to the people to decide. But that
17 wasn't my question. Let me restate it.

18 Do you feel that a one-sentence definition of "a
19 wind energy facility" and then just simply adding "as
20 a principal permitted use in a rural conserve
21 district" would be appropriate, given, if you think
22 about the completeness and the multi-page small wind
23 energy article that we have which lists many pages of
24 requirements, do you think that a simple definition

1 for "permitted use," is appropriate?

2 A. Personally, not as a member of the board of
3 selectmen? I feel that it could probably have been
4 appropriate.

5 Q. Okay. Interesting.

6 On April 20th this year, you submitted a letter
7 from the Town of Antrim to the SEC. It's part of the
8 record here. It's part of what got us started here.

9 The question I have is, doesn't this letter
10 contradict the selectmen's charge to the planning
11 board, which had met one month earlier, on
12 March 21st, when you asked them to draft a new
13 comprehensive renewable energy zoning proposal to be
14 completed by the fall? Isn't that letter
15 contradictory to that?

16 CHAIRMAN GETZ: The letter you're
17 talking about is the April 20th letter?

18 MR. BLOCK: The April 20th letter.

19 BY MR BLOCK:

20 Q. And on March 21st you charged --

21 MR. ROTH: There were two April 20th
22 letters.

23 MR. BLOCK: Okay. The one that's
24 entitled -- I had it here -- "Letter from the Town of

1 Antrim to the SEC."

2 BY MR. BLOCK:

3 Q. Right?

4 A. With the seven, eight bullets on them.

5 Q. Right, asking them to take -- basically repeating the
6 February request.

7 A. And what was the question?

8 Q. And the question is, doesn't that contradict the
9 charge you made on March 21st to the planning board,
10 where you, as a selectman, asked them to draft a new
11 comprehensive renewable energy zoning proposal, to
12 work on it and have it completed by the fall, if
13 possible?

14 A. Not necessarily. Because if they had something
15 completed and it still went to the SEC, the SEC would
16 look at what the Town had.

17 Q. I got a question: Did this letter come only from
18 you, without approval in a public meeting?

19 A. No.

20 Q. Can you tell me what public meeting it was voted on?

21 A. This was a follow-up to the original letter that we
22 sent to the SEC, I believe dated February 7th.

23 Q. That was signed by Mr. Gordon Webber. I'm asking
24 about this letter. This letter was signed by you.

1 Can you tell me at which public meeting this letter
2 was discussed before you wrote it and sent it to --

3 A. Like I said, I believe this was a follow-up to that
4 February letter and just reconfirming our position.

5 Q. So, in February the selectmen voted in a public
6 meeting that you should write a letter on April 20th
7 and send that to the SEC; is that true?

8 A. No. They voted that we were going to take a stand on
9 a particular issue.

10 Q. And the stand was taken in February. What about this
11 letter?

12 A. This is a follow-up to that decision.

13 Q. The morning that this letter came out, I called Mr.
14 Stearns, who is sitting here, the town manager, and I
15 asked him, could he tell me at what meeting this was
16 discussed. And he told me on the phone this was not
17 discussed at any public meeting. This letter, I
18 believe, was ratified by the selectmen. But it
19 wasn't ratified until the 25th, after the letter had
20 already been submitted to the SEC. Is that true?

21 A. Correct.

22 Q. Okay. So this letter came from you without --

23 A. No.

24 Q. -- being a public letter.

1 A. This letter was put together by the town
2 administrator, and the three selectmen had input in
3 it during the course of the week of what he was
4 writing.

5 Q. I was told it was --

6 MR. ROTH: Mr. Chairman, I'd like to
7 make the same objection that I made earlier when
8 questions were being asked about the March 17th
9 minutes. I just think it's taking us too far afield
10 from what's really at focus here. I'd ask that the
11 questions be limited and move on to a different
12 topic.

13 MR. BLOCK: I'll move on to the next
14 question.

15 MR. RICHARDSON: I concur with Counsel
16 for Public.

17 MR. BLOCK: Yeah, I'll move on.

18 MR. ROTH: Let the record reflect
19 that.

20 BY MR. BLOCK:

21 Q. Your testimony states on Page 6, starting at Line 14,
22 and I quote, Ironically, a defeat of Antrim Wind
23 Energy's proposal could adversely impact even the
24 Town's rural conservation district, because other

1 uses allowed in the district, such as the scattered
2 construction of single-family residences or the
3 construction of manufactured housing parks, allowed
4 by special exception, could have significantly
5 greater impacts on the values protected by the
6 district, as well as the costs to provide municipal
7 services to support such uses.

8 My question to you is, if you feel these uses
9 have had such a potential for adverse impact, then
10 why haven't you as a selectmen addressed this over
11 your last nine years in office?

12 A. Well, that would be a planning board issue, if they
13 felt that there were issues here.

14 Q. Don't the selectmen guide the planning board?

15 A. We discuss things with them, yes.

16 Q. All right. I'll drop that.

17 At a selectmen's meeting, you stated that a
18 potential PILOT -- remember we talked about PILOT
19 earlier -- arrangement with Antrim Wind Energy would
20 be in the 200,000 to 300,000 range; is that correct?
21 Is that what you said?

22 A. At a selectmen's meeting?

23 Q. At a selectmen's meeting.

24 A. Yes.

1 Q. Okay. Do you feel that that was a premature
2 statement, or do you think that was proper then?

3 A. I don't believe it was premature. It's still in the
4 ballpark.

5 Q. Okay. Are you aware that the Town of Lempster has
6 paid a PILOT of \$700,000?

7 CHAIRMAN GETZ: What's the relevance
8 of this line of inquiry?

9 MR. BLOCK: I'm just asking if he was
10 aware of that.

11 A. Well, they're not in a PILOT, so it's a whole
12 different thing up there in Lempster.

13 BY MR. BLOCK:

14 Q. I just read about their PILOT in the newspaper.
15 Okay.

16 In your testimony on Page 5, Lines 8 and 9, you
17 state, quote, The Town has had over two years to
18 adopt amendments to a zoning ordinance to provide
19 standards for review of the project.

20 Now, wasn't the March 21st meeting this year the
21 first time that you officially charged the planning
22 board with this task?

23 A. I think the previous planning board put something
24 together, and then, because of everything that had

1 happened between the March 10th election and the
2 March 21st selectmen's meeting, that that was why the
3 planning board came to the board of selectmen asking
4 for more time.

5 Q. Okay. Your testimony does go on to say, quote, Even
6 if the planning board were to present the proposal to
7 be adopted at town meeting, there is no guaranty that
8 it would pass, unquote.

9 Are you therefore saying that you're afraid that
10 there's is a possibility the voters of Antrim might
11 not approve zoning changes that would allow an
12 industrial wind facility?

13 A. No. I'm saying that, like I said earlier, that I
14 feel that it's possible the zoning ordinance could be
15 too restrictive.

16 Q. But wouldn't you agree that the will of the voters
17 should prevail, whatever is proposed?

18 A. Yes. That comes back to that March 10th meeting.
19 It's too bad it didn't happen, or the April 26th
20 meeting.

21 Q. Overall, it seems to me -- and I'm reading your
22 testimony. It seems to indicate you were already in
23 favor of seeing this proposal happen. Is this true?

24 A. I'm here representing the people of Antrim. I'm the

1 chairman of the board of selectmen. A number of
2 polls have been done that show between 60 and 70
3 percent of the town is for a project in Antrim. I'm
4 representing the people.

5 Q. Okay. Are you aware that the survey you keep relying
6 heavily upon can be interpreted a number of ways, the
7 one you're saying has 60, 70 percent, whatever it is?
8 The way I interpret it, it really shows that only
9 25 percent of Antrim voters spoke in favor of wind
10 energy in town. And I can explain that to you.

11 CHAIRMAN GETZ: Well, it's not the
12 time to testify. Ask him a question.

13 MR. BLOCK: I'm asking the question.
14 Is he aware that it can be interpreted that only
15 24 percent of Antrim voters spoke in favor of wind
16 energy in town? And I'm prepared to explain how that
17 can be interpreted like that, if you've got a
18 question on that.

19 A. I guess you can interpret poll results in a number of
20 ways.

21 BY MR. BLOCK:

22 Q. Yes, you can. Okay.

23 The selectmen's straw poll, for instance, which
24 is submitted, I guess, right here, it's part of your

1 Board of Selectmen Exhibit 8, that straw poll of
2 March 8th, 2011, do you think that was a valid
3 vote -- a valid poll expressing the opinions of the
4 people of Antrim? The second package on that is what
5 I'm talking about.

6 MR. RICHARDSON: Mr. Chairman, just
7 for clarity, I intended to put that in through a
8 different witness. So I've given it to the parties.
9 I haven't given it to the Committee. So I have the
10 document that he's referring to. It hasn't been
11 marked for I.D. yet.

12 CHAIRMAN GETZ: Well, it would be
13 helpful if we have it.

14 MR. BLOCK: I will wait.

15 (Pause in proceedings)

16 BY MR. BLOCK:

17 Q. All right. The selectmen's straw poll, which was
18 conducted on March 8th at the polling place on ballot
19 day, voting day, there was a table set up outside the
20 ballot, so that when people exited the polls that was
21 there to vote on. Do you consider this a valid poll
22 of the opinions of the people of Antrim?

23 A. Yes. The people had a chance to give us their
24 opinion about how they felt about this.

1 Q. Are you aware that a number of witnesses have -- saw
2 you sitting there handing people slips and saying,
3 "Here, you need to vote yes for wind"?

4 A. I find that interesting because I know I never said
5 that. So...

6 Q. Well, there were --

7 A. People can say anything. I think that would be
8 almost considered hearsay.

9 Q. Okay. I mean, there are witnesses who say that.

10 I know there was also false, misleading
11 information on the wall behind you, but --

12 CHAIRMAN GETZ: Mr. Block, I mean, you
13 filed prefiled testimony --

14 MR. BLOCK: I'll address that --

15 CHAIRMAN GETZ: You can't talk when
16 I'm talking --

17 MR. BLOCK: I'm sorry.

18 CHAIRMAN GETZ: -- or we're not going
19 to get this on the transcript.

20 MR. BLOCK: I'm sorry.

21 CHAIRMAN GETZ: You need to limit
22 yourself to questions, not to additional testimony.
23 So let's have some questions.

24 BY MR. BLOCK:

1 Q. All right. Final question then.

2 Given all these polls you say, are you aware of
3 all of the overwhelming number of testimonies against
4 the wind project at all the select board meetings,
5 all of the planning board meetings and all the ZBA
6 meetings which were attended that were public
7 meetings? Are you aware that every one of those
8 meetings were overwhelmingly -- overwhelming
9 testimony was against this?

10 A. I attended a few meetings myself where I would say
11 that that was not the case.

12 Q. So you probably were not in as many meetings as I
13 was.

14 A. Probably not.

15 Q. Probably not. All right. I rest my case. No more
16 questions.

17 CHAIRMAN GETZ: Ms. Allen.

18 Well, before we get to that, Mr.
19 Richardson, you said you were going to try to
20 introduce this for some purpose at some point?

21 MR. RICHARDSON: I was actually going
22 to cross Gordon Webber about it. But now that it's
23 been offered, I'll probably just redirect Mr. Genest
24 and then not use it for any other witness.

1 CHAIRMAN GETZ: Well, the door was
2 opened with cross already. So we will mark for
3 identification as Board of Selectmen Exhibit 8 this
4 three-page document that -- with the title "Antrim
5 Planning Board Land Use Survey."

6 (The document, as described, was
7 herewith marked as BOS Exhibit 8 for
8 identification.)

9 MS. ALLEN: If he wants to go now,
10 it's okay.

11 CHAIRMAN GETZ: No, that's...

12 CROSS-EXAMINATION

13 BY MS. ALLEN:

14 Q. Hi, Mike. No introduction needed.

15 A. Hi.

16 MS. ALLEN: I think we're losing
17 something here, and I would like to go, also, back to
18 what we're calling Allen Exhibit A. And it has
19 already been introduced to the SEC, both by -- on
20 April 20th. And it's a petition that was signed by
21 145 Antrim voters that were asking not to have
22 jurisdiction -- asking the SEC not to assert
23 jurisdiction. I have a couple questions that I'm
24 going to ask Mike, but I just want everyone to know

1 that you guys have it, just two copies of it, because
2 that's all I was told to bring because you've all
3 received it via electronic means already back in
4 April. Would it be helpful if you had one more?

5 CHAIRMAN GETZ: I just want to make
6 sure I have it. It is the original petition by you
7 asking us not to take --

8 MS. ALLEN: Right.

9 CHAIRMAN GETZ: Okay.

10 BY MS. ALLEN:

11 Q. Okay. As you know, this was signed by 145 voters in
12 the town of Antrim, and they were asking that we not
13 have the SEC take jurisdiction.

14 On the first point of the petition, it was that
15 we were asserting that the timing for this petition
16 is not right. Now, I would refer to the letter
17 that's been referred to here, the selectmen's letter
18 of February 10th, 2011, that was requesting the SEC
19 to take jurisdiction, quote, from your letter, if and
20 when an application is made, an application to
21 construct is made. Was that your understanding from
22 that letter?

23 A. What's the question? That's the letter that we sent.

24 Q. That's the letter and -- that's correct. And has any

1 application for a site plan yet been filed either
2 with the SEC, the Town of Antrim, or the Antrim
3 Planning Board?

4 A. Not to my knowledge.

5 Q. Then I guess my question is: Why are we here? If
6 that's the trigger that you wanted, if the board of
7 selectmen wanted that trigger to start this process,
8 why are we here if there has been no application
9 filed anywhere?

10 A. I believe the petition from Eolian is the one that
11 triggered the SEC to start.

12 Q. Why -- okay. So that and the petition by Mr. Webber
13 gets us here. But was this what the board of
14 adjustment -- the board of selectmen wanted, was to
15 be here before an application was ready?

16 A. I think if you read that letter, when an application
17 came in, you know, if and when an application came
18 in, that's where we wanted it.

19 Q. There is no application. Then why are we here? Can
20 you help us out with this, Mike? Because we don't
21 know why we're here and why the board of selectmen
22 have us here.

23 CHAIRMAN GETZ: Well, are you calling
24 for a conclusion of law? I mean --

1 (Court Reporter interjects.)

2 CHAIRMAN GETZ: You're asking him if
3 he wants to be here versus why are we here as a
4 matter of law I guess is what I need to understand.
5 And I think you've asked him if this is what he had
6 intended. I think his answer was basically that the
7 letter that he had filed on behalf of the Town was
8 superseded by two other things that legally have us
9 here, and then we started the proceeding based on an
10 order and notice. So, I mean, it's fair to ask him
11 is this what he wanted or --

12 MS. ALLEN: That's what I'm asking.

13 BY MS. ALLEN:

14 Q. Is this what you want?

15 MR. RICHARDSON: The witness doesn't
16 have the letter in question. Is it possible that he
17 could get a copy?

18 CHAIRMAN GETZ: The original letter
19 from --

20 MR. RICHARDSON: The February letter.
21 I assume that's what we're asking about now?

22 MS. ALLEN: The February 10th letter.

23 (Attorney Geiger hands letter to witness.)

24 A. Go back to your question?

1 BY MS. ALLEN:

2 Q. Is this what you wanted? Was this your intent, that
3 this process would start before the application was
4 submitted?

5 (Witness reviews document.)

6 A. If and when an application came in is when the board
7 of selectmen wants it to come to the SEC. I even
8 mentioned earlier, if an ordinance is created, the
9 board of selectmen at this point still feels, even
10 when the town had its ordinances, that the town would
11 be best served if it came -- if the SEC took
12 jurisdiction and worked with the planning board and
13 the Town of Antrim.

14 MS. ALLEN: Okay. I would just like
15 to direct, if I could, the Committee. We have
16 submitted this as an exhibit. And I'm hopeful that
17 since it was, you know, submitted to you as a
18 petition quite some time ago, I'm hoping the
19 Committee can take a fresh look at it again in your
20 deliberations. Thank you.

21 CHAIRMAN GETZ: Let me address this
22 issue of whether -- we're not going to mark it as an
23 exhibit. But it's been filed as a petition, and we
24 will give it the weight it's due. It's simply just

1 not an exhibit that will be introduced formally into
2 evidence.

3 MS. ALLEN: If I just could? It makes
4 three legal points about why we think this is
5 unright. And I don't want to repeat them here. It's
6 getting late. But that's why we feel it's important.

7 CHAIRMAN GETZ: And I probably should
8 have said this a whole lot earlier in the day. At
9 some point there's going to be an opportunity for a
10 closing statement to make legal arguments. To the
11 extent you want to make legal arguments or renew some
12 of the arguments that were made earlier, then we'll
13 hear that. But that's not evidence, so --

14 MS. ALLEN: That's fine. Thank you.

15 (Pause in proceedings)

16 CHAIRMAN GETZ: Mr. Roth.

17 MR. ROTH: Thank you.

18 CROSS-EXAMINATION

19 BY MR. ROTH:

20 Q. Mr. Genest, I'm going to ask you this first question
21 while I'm sitting here so I can read something from
22 here. And I'm looking at the minutes of the
23 selectmen's meeting from January 10th, 2011. And it
24 says, "Members present: Gordon Webber and Mr.

1 Tenney. Mr. Genest excused." What does that mean?

2 You were not present for that meeting?

3 A. I was not present.

4 Q. Did you review these minutes after they were made?

5 A. Yes.

6 Q. Did you subsequently vote to approve them for that
7 day?

8 A. I would not have voted on the minutes if I wasn't at
9 the meeting.

10 Q. Okay. Are you familiar with the decision that was
11 passed that day regarding supporting the SEC
12 jurisdiction?

13 A. Yes.

14 Q. And I'm going to read it to you. See if this accords
15 with your recollection.

16 The board discussed sending a letter to the Site
17 Evaluation Committee, paren, SEC, requesting that
18 they take jurisdiction of the proposed wind energy
19 project if and/or when the Antrim Wind Energy, LLC
20 submits a site plan for this project. Ms. Nelkins
21 and Ms. Duffy spoke against requesting the SEC
22 involvement. Mr. Webber motioned to petition the SEC
23 to take jurisdiction of this project. Mr. Tenney
24 seconded. Passed, two to nothing. Does that sound

1 right?

2 A. Yes.

3 Q. Okay. The first thing I want to ask you about this
4 is it says, "if and when the Antrim Wind Energy, LLC
5 submits a site plan for this project." Now, does
6 that suggest to you that the select board was looking
7 for a site plan to be, in fact, submitted to the
8 Town?

9 A. I guess you could interpret it that way, but...

10 Q. Has the select board ever had another vote to reverse
11 its decision here on January 10th?

12 A. No.

13 Q. Okay. Thank you. I'm going to move to the podium
14 now.

15 Have you ever seen a Site Evaluation Committee
16 application?

17 A. No.

18 Q. So you wouldn't know -- would you be surprised to
19 learn that there were multi volumes, binders and
20 books full of --

21 A. A lot of times they're referred to as "this high."

22 Q. Yeah. So you've heard about them. Okay.

23 And have you reviewed the Site Evaluation
24 Committee in the LaFlamme matter concerning Clean

1 Power Development?

2 A. I don't believe so.

3 Q. Okay. In there -- and I'm going to ask you about
4 some specific things that they decided and see how
5 they accord with your view of what --

6 A. Do you have a copy of that so I could take a look at
7 it?

8 Q. I only have mine that's marked up. Just bear with
9 me. I think you won't need it.

10 You had testified earlier that you're concerned
11 that the process in the town would produce a program
12 that was too restrictive. Do you remember that?

13 A. I said it was possible that the ordinance would be
14 too restrictive.

15 Q. Okay. Are you aware that the Site Evaluation
16 Committee uses as a standard that the local authority
17 provides an integrated review process to consider
18 uses -- the issues of land-use planning that relate
19 to the project?

20 A. Basically saying that the Site Evaluation Committee
21 will look at what the planning board has. That's
22 what you're saying there; right? Is that what I'm
23 hearing?

24 Q. No. Let me rephrase the question.

1 One of the considerations that the Site
2 Evaluation Committee used in the Clean Power
3 Development case was looking at the fact that the
4 City of Berlin had an integrated review process to
5 consider land-use planning that related to the
6 project. Are you surprised by that?

7 A. Not necessarily.

8 Q. And do you think that it would be unacceptable for a
9 town, such as the Town of Antrim, to incorporate
10 numerous factors pertaining to the siting and
11 construction of the project?

12 A. No.

13 Q. And do you think that would be too restrictive?

14 A. No. I think those are issues that could be dealt
15 with in the contract between the Town and the
16 developer.

17 Q. But as far as the planning board and the zoning board
18 process, do you think that that would be an
19 appropriate thing for the zoning board and the
20 planning board and the select board, or whoever else
21 participates in this process in the town, to have --
22 to consider numerous factors pertaining to the siting
23 and construction of the project?

24 A. I think I've already stated that the goal would be

1 for the planning board and the board of selectmen to
2 work with the SEC, if that's what you're asking me.

3 Q. No, that's not what I'm asking you. I'm asking you
4 would it be appropriate for us, the municipality, to
5 consider numerous factors pertaining to the siting
6 and construction of the project in their own process?

7 A. Yes.

8 Q. Okay. Because that's what this Site Evaluation
9 Committee considered in saying that the City of
10 Berlin was an okay place for Clean Power Development
11 to go.

12 Now, in addition, they considered things like
13 access. Do you think it would be appropriate for the
14 Town to consider access to the facility as one --

15 A. Back to Berlin, seeing how you keep using them as a
16 reference, so you're telling me that they had all the
17 ordinances in place and all the regulations in
18 place --

19 Q. I'm just asking the questions. You're not here to
20 ask questions.

21 MR. RICHARDSON: He's allowed to
22 clarify his answer. I think it is a fair question.
23 I wasn't involved in the Berlin case. I have no idea
24 what facts or assumptions went into this. So we're

1 in a tough spot. I'll have to look it up and figure
2 out what it says. But right now the witness is
3 trying to clarify the basis for what his answer would
4 be.

5 CHAIRMAN GETZ: And Mr. Roth, I don't
6 know if it would help or hurt to provide him a copy
7 of the order, but I think he's in good faith trying
8 to understand what you're asking him. I don't think
9 he's trying to cross-examine you. But I think he's
10 trying to understand where you're going and what the
11 question is.

12 BY MR. ROTH:

13 Q. Well, let me read this and see if I can do it this
14 way: The Committee in this decision said access to
15 the facility has been well addressed by CPD, being
16 Clean Power Development, and the City of Berlin. And
17 CPD's construction of the project has been
18 conditioned by the City on completion of a connecting
19 road between Unity Street and Shelby Street, which
20 would provide for better ingress and egress of the
21 trucking that will accompany the operation of this
22 facility.

23 Now, what does that tell you? What do you think
24 that means, in terms of the City of Berlin's control

1 over access to the site that Clean Power Development
2 was proposing?

3 A. It sounds to me like the City of Berlin had the
4 regulations and ordinances in place.

5 Q. Okay. But do you think that the City of Berlin
6 could -- or do you think that the Town of Antrim
7 could properly, if it was trying to create an
8 ordinance for a wind facility, that they could
9 include in that ordinance restrictions on access and
10 access roads?

11 A. Well, the problem is we don't have any ordinance or
12 regulations that refer to land.

13 Q. I understand. But we're trying to get to your
14 understanding about it, about the possibility that
15 the Town's ordinances would be too restrictive. I'm
16 trying to understand from you, where do you draw the
17 line on "too restrictive"? Is it access?

18 How about bonding? Do you think it would be
19 inappropriate for the Town to require bonding?

20 A. Of course not.

21 Q. Okay.

22 A. And that would be in the contract with the developer.
23 That's how it is in Lempster and in Groton, like the
24 decommissioning and stuff, bonding, it's all in that

1 contract.

2 Q. Okay. And in this decision, the Committee notes that
3 the proposed facility has been completely reviewed by
4 the city planner, the zoning board of adjustment and
5 the planning board for the City of Berlin. Do you
6 think that it would be overly restrictive to have the
7 Town of Antrim go through a process like that for an
8 energy facility in its --

9 A. We're a much smaller town than the city of Berlin.
10 So that would probably raise some concerns right off
11 for me.

12 Q. But do you think it would be inappropriate for the
13 Town of Antrim to have restrictions that required
14 review by various parties, including the zoning board
15 of adjustment and the planning board?

16 A. I'm not sure what you're asking me. I'm confused.

17 Q. What I'm asking you is if the Town of Antrim were to
18 create a rule for permitting wind energy facilities
19 within its borders, would it be too restrictive, in
20 your view, to require a review by somebody like the
21 city planner, the zoning board of adjustment and the
22 planning board?

23 A. Well, not knowing what is in the ordinance. And the
24 bottom line is if people vote it in -- if it's an

1 ordinance and the people vote for it, you listen to
2 the body. It's their choice.

3 Q. When you -- in looking at your testimony -- going
4 back to your testimony, you talked about the
5 potential benefits of the project that may be lost,
6 and you spoke about tax revenue. And did you -- in
7 coming up with your sort of back-of-the-envelope
8 figure on tax revenue that the project would bring,
9 did you include in your calculation any tax losses
10 that the Town might suffer by people seeking
11 abatements of their residential properties?

12 A. We are not that far into the process.

13 Q. Okay. So you don't really know how beneficial it
14 might be, if at all, tax-wise.

15 A. We don't have a solid number. But when abatements
16 come through, it's up to the board of selectmen to
17 approve them or not approve them. So there is a
18 process.

19 Q. But it could be that the two might cancel each other
20 out. Is it possible that --

21 A. I guess anything is possible.

22 Q. Okay. Now, you spoke in here of the Town wanting a
23 salt shed, roads and bridges, and a police station.
24 Has the petitioner, Antrim Wind, have they promised

1 you any of these things?

2 A. No.

3 Q. Have you had any discussions with them?

4 A. No.

5 Q. Do you think that the Site Evaluation Committee can
6 require them to do any of those things?

7 A. I don't believe so.

8 Q. Do you think that the Site Evaluation Committee can
9 require them to provide you backstopping for your tax
10 losses because of abatements, some sort of a price
11 guaranty?

12 A. I think the Site Evaluation Committee has an awful
13 lot of power, and if it could be proven that there
14 were property values and stuff. But to listen to
15 other decisions that have been made, there doesn't
16 seem to have been much of an effect in the other
17 towns, particularly Lempster.

18 Q. But have you reviewed the Groton decision that they
19 wrote recently?

20 A. I haven't reviewed it recently.

21 Q. So are you aware that they decided that, as I read
22 it, and you can argue with me, that they decided that
23 property values were not a matter of regional impact,
24 and therefore, they weren't going to worry about it?

1 Are you familiar with that?

2 A. That sounds familiar.

3 Q. Okay. And did you -- have you familiarized yourself
4 at all with Chief Clogston's testimony, the Plymouth
5 Fire Chief?

6 A. And that's about the fire suppressant up at the top
7 of the towers?

8 Q. No. He wanted fire equipment. Did you read any of
9 that testimony?

10 A. No, I didn't.

11 Q. Okay. All right. That's all. Thank you very much.

12 CHAIRMAN GETZ: Questions from the
13 Committee? Mr. Scott.

14 INTERROGATORIES BY DIR. SCOTT:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. I just want to understand, I guess, the governance of
18 the town and how it's organized a little bit better
19 myself.

20 Who is the governing body for the Town of
21 Antrim?

22 A. Three selectmen.

23 Q. So, does the planning board overrule decisions that
24 the board of selectmen make?

1 A. They have their realm of responsibilities and we have
2 ours.

3 Q. Thank you.

4 CHAIRMAN GETZ: Mr. Harrington.

5 INTERROGATORIES BY MR.HARRINGTON:

6 Q. Yeah. A few times you've referred to the fact that
7 you thought that an ordinance might come out that
8 would be too restrictive. And I assume by that you
9 meant it would be basically being written so that
10 this project would not be built?

11 A. Yes.

12 Q. Okay. So when you were saying "too restrictive," you
13 were meaning to the point of where it would be so
14 severe, that compliance would basically be
15 prohibitive and it wouldn't -- the project would just
16 be cancelled.

17 A. Well, it would probably be voted down, with the way
18 the Town feels. But then the process would have to
19 start all over again.

20 Q. That's what I'm trying to get to. Then the second
21 part of your statement was you thought that if people
22 perceived the ordinance as being too restrictive,
23 that they would vote it down, because most of the
24 people were in favor of seeing the wind project go

1 forward.

2 A. Correct.

3 Q. Let me establish a little bit on the timeline here.

4 There's a ad hoc working group that's been
5 established, and they have ten -- six months from
6 when to come back with something?

7 A. When we met, the board of selectmen met with them, I
8 believe it was March 24th -- excuse me -- March 21st
9 when we reconsidered, the following week. On
10 March 14th, the board of selectmen -- the old
11 planning board had recommended they wanted a special
12 town meeting, and the board of selectmen voted it in.
13 Two selectmen voted for, one abstained. The new
14 planning board with the new members met on that
15 Thursday, March 17th. They voted to rescind all the
16 ordinances and to reconsider the special town
17 meeting. Came in to our meeting, and that's when we
18 decided that they would give them -- I was very much
19 against it. But as a board, I support my board. And
20 the decision was that we would wait until September
21 and try to have a special town election in September,
22 because the town's people want a voice in this. They
23 have not had a voice on this, per se, on a ballot for
24 two years.

1 Q. So, by September there would be some type of
2 ordinance that would deal with the siting of wind
3 projects, and you would have a special election so
4 that the people of the town would then have the
5 option to vote up or down on that ordinance?

6 A. It was my understanding that we would give them time
7 to come up with a new ordinance. If they did not
8 come up with something new and they felt comfortable
9 with, we would reinsert -- the board of selectmen
10 would reinsert the old ordinance, the one that never
11 got voted on.

12 Q. And that's the one that basically --

13 A. Makes it a permitted use in the definition.

14 Q. So it just says -- make sure I get the terms correct
15 here. Basically, it says that in these locations in
16 the town, commercial wind projects would be allowed.

17 A. I believe it makes it a permitted use in the RCD.

18 Q. Okay. Now, as far as what this ad hoc committee is
19 working on, are you involved in that? Can you give
20 us an idea of when you think that work would be done?

21 A. One of our selectmen sit on that. My understanding
22 is that in order to have the September vote, which we
23 said we would, that we actually need something from
24 the planning board by the middle of August, because

1 you have a 10-day posting where you have to have the
2 meeting, and then it has to be 5 Tuesdays before you
3 can call a special election. So it actually brings
4 it back this way quite a bit. As of right now, I'm
5 not sure, you know -- I know they have done some
6 work. I don't know what they have formulated out.
7 Being the 1st of June, if we're looking for something
8 in the middle of August, and it still has to go back
9 to the planning board -- because this should come
10 from the planning board, not from an ad hoc
11 committee.

12 Q. And let's assume that were to go forward and they
13 were to come up with an ordinance that would allow
14 wind facilities with some series of guidelines or
15 restrictions or criteria they would have to meet. Is
16 it your position that, even if that went to the town
17 and it passed, that the selectmen -- or I guess you
18 said the selectmen's position on that -- but the
19 selectmen would still like to see the SEC take
20 jurisdiction, even if there was a town ordinance with
21 the various conditions and guidelines in it?

22 A. Correct.

23 Q. Okay. So it's the selectmen's position that,
24 regardless of what happens through the town

1 ordinances and planning board, the ad hoc committee,
2 that the SEC -- you're requesting the SEC take
3 jurisdiction of it anyways?

4 A. We feel the town would be best served by the SEC
5 having jurisdiction over the project.

6 Q. All right. Thank you.

7 CHAIRMAN GETZ: Anyone else? Mr.
8 Iacopino.

9 MR. IACOPINO: Thank you.

10 INTERROGATORIES BY MR. IACOPINO:

11 Q. Mr. Genest, I just want to ask a couple questions
12 about this concept of the ad hoc committee.

13 Is there an ordinance in the town of Antrim that
14 either requires or permits government action through
15 ad hoc committees?

16 A. I cannot tell you for sure. I would say I hope so.

17 Q. Well, I'm just curious, because I understand there's
18 been a couple other -- at least other testimony that
19 I've heard or read that there's been other ad hoc
20 committees on other issues. And I was just wondering
21 if there was such a rule or a law or ordinance from
22 the town that permits the Town to act or to appoint
23 these ad hoc committees. And you're not aware of --

24 A. I'm not aware, other than the ad hoc is really a

1 subcommittee of the planning board.

2 Q. But it appears to contain -- at least the present ad
3 hoc committee, from what I can read, appears to
4 contain members that are not on the planning board.

5 A. Correct.

6 MR. IACOPINO: That's the only
7 question I had.

8 CHAIRMAN GETZ: Director Normandeau.

9 INTERROGATORIES BY DIRECTOR NORMANDEAU:

10 Q. Just to ask one more question related to that. Was
11 the creation of that committee the idea of the
12 planning board or the idea of the selectmen?

13 A. The planning board's.

14 Q. And they put together whatever the membership was
15 going to be to that?

16 A. Yes, they did.

17 Q. And did you vote to approve that membership, or did
18 it just happen?

19 A. We voted at one of our meetings to put the member,
20 the select person on there. We never actually, I
21 believe, officially gave the committee our blessing.

22 CHAIRMAN GETZ: Anything further from
23 the Committee?

24 (No verbal response)

1 CHAIRMAN GETZ: Mr. Richardson, any
2 redirect?

3 MR. RICHARDSON: Yes.

4 REDIRECT EXAMINATION

5 BY MR. RICHARDSON:

6 Q. Mr. Genest, you were asked by Attorney Little whether
7 the ZBA could approve a project through the variance
8 process, and I believe you indicated that the ZBA had
9 issued a use variance. Was that your testimony?

10 A. Excuse me?

11 Q. Well, I believe Attorney Little asked you a question
12 about whether the ZBA had issued a use variance, and
13 you responded that they did.

14 A. I said they could.

15 Q. They could. Okay. But isn't it true that in the
16 case of Antrim Wind Energy, the ZBA issued a use
17 variance and then later reversed its decision and
18 denied it?

19 A. Yes. That's why we're in superior court.

20 Q. Okay. And that's concerning the met tower. That's
21 not concerning this project.

22 A. Correct.

23 Q. Okay. And there's another lawsuit in superior court
24 also related to the met tower that was brought by an

1 abutter.

2 A. Yes.

3 Q. So, two lawsuits?

4 A. Two lawsuits.

5 Q. Okay. Now, you were also asked by Attorney Little --
6 let me go through my notes here. Here it is.

7 In reference to the proposed amendment to the
8 zoning ordinance -- and I want to show you a
9 document. I believe it's gone out. I've also seen
10 it as one of the intervenor exhibits. I'm going to
11 mark this as BOS Exhibit 7. And what it is, is the
12 proposed amendment that also Committee Member
13 Harrington was asking you about.

14 (The document, as described, was
15 herewith marked as BOS Exhibit 7 for
16 identification.)

17 MR. RICHARDSON: Are there members in
18 the audience that don't have a copy? I think this
19 has gone out.

20 MR. ROTH: I don't have 7, Justin.

21 MR. RICHARDSON: Yeah? Okay.

22 And I apologize. This was an exhibit
23 that I didn't think we'd even get to today. So...

24 MR. HARRINGTON: Do we have this

1 exhibit or...

2 MR. RICHARDSON: It's right here.

3 BY MR. RICHARDSON:

4 Q. So could you explain to the Committee what this is
5 while I'm handing it out?

6 A. This is a copy of what the amendments were that we
7 were scheduled to vote on in March.

8 Q. Okay. So my question to you quickly is that the
9 question was whether or not this would create a
10 blanket use. Do you remember being asked that?

11 A. Vaguely.

12 Q. Yeah. And I believe the question you agreed to was
13 that the review would therefore become no standards,
14 and this would be reviewed, and I'll quote, "just
15 like a single-family house." Do you remember that?

16 (Witness reviews document.)

17 A. Yes.

18 Q. But even if a project like a wind farm is an allowed
19 use, so that it doesn't need a special exception,
20 there are other forms of planning board review;
21 right?

22 A. Actually, I think, I believe the major site plan
23 review was a 84-item checklist on that.

24 Q. So there's an 84-item checklist that this would have

1 to go through under site plan review.

2 So then, it wouldn't be accurate to say that
3 there would be no review at that point if this were
4 approved. It would just mean that it would be
5 allowed and wouldn't require a variance; is that
6 correct?

7 A. Correct.

8 Q. All right.

9 CHAIRMAN GETZ: Let me make sure I
10 understand the document we've marked for
11 identification as BOS Exhibit 7. So this is the
12 ballot that was withdrawn. It was never actually
13 voted on. This was --

14 MR. RICHARDSON: That's right.

15 CHAIRMAN GETZ: -- the language the
16 voters would have seen.

17 MR. RICHARDSON: There was a --

18 CHAIRMAN GETZ: That's all I need to
19 know.

20 MR. RICHARDSON: Okay. There was a
21 notice defect, so it had to be withdrawn. Otherwise,
22 there would have been a third lawsuit. So...

23 BY MR. RICHARDSON:

24 Q. And you went through the criteria with Attorney

1 Little that would be required for the issuance of a
2 variance. Do you recall that?

3 A. Right. The five items.

4 Q. Hmm-hmm. And I believe you agreed with a statement
5 about unnecessary hardship that Attorney Little made.
6 And I think he said none of us have any understanding
7 about what that means. Do you recall that?

8 A. Yes.

9 Q. Okay. Now, in fact, is a hardship one of the issues
10 that is currently pending in the superior court cases
11 on the variance?

12 A. I believe so.

13 Q. You believe so. And so the absence or not knowing
14 how to apply the ZBA standards for a variance might
15 be a difficult issue for the Town to deal with.

16 A. Yes, and I believe they were just recently changed
17 again in 2011.

18 Q. Okay. Now, who pays the cost for the town boards to
19 review all this, in terms of once things get in court
20 and they get appealed?

21 A. Well, the planning board has a legal fund planning
22 department, and the selectmen also has a legal
23 budget.

24 Q. And reviewing the met towers has already been a

1 problem for the town's legal budget, hasn't it?

2 A. Yes.

3 Q. What is that budget?

4 A. Five thousand dollars a year.

5 Q. And that is for what?

6 A. That is for the ZBA and the planning board.

7 Q. And what's the current status?

8 A. We're over budget.

9 Q. By how much?

10 A. I believe we're right around the \$5,000. But that's
11 not with any of the costs for the ZBA case, which I
12 think were estimated at around \$1200.

13 Q. Okay. Now, you were asked a question about the
14 65-day period for completion by Attorney Little. Do
15 you remember that?

16 A. Yes.

17 Q. And I believe he suggested that the project has to
18 be -- once it's determined to be completed, it has to
19 be approved in 65 days; is that right?

20 A. I believe that's what he stated, yes.

21 Q. Now, as an ex officio member of the planning board,
22 how would the planning board today decide whether or
23 not that application was complete?

24 A. Well, they would go through the checklist.

1 Q. Okay. This would be --

2 A. Are you talking just the application itself or the
3 actual project?

4 Q. Right. This would be a site plan application.

5 Okay. And that would be after they got a
6 variance, I presume?

7 A. And they'd have to go to the ZBA first.

8 Q. Now, in terms of developing an ordinance, Public
9 Counsel asked you, I believe, some questions about, I
10 believe it was whether the planning board had
11 consulted with others regarding the development of
12 ordinances. And I think there was a reference to the
13 town planner. Do you remember what that question was
14 about?

15 A. I thought there was something about the ad hoc
16 committee, if they had asked us whether or not they
17 supported the ad hoc.

18 Q. Okay. Well, my question, just to keep the record
19 clear: Does the town of Antrim have a town planner?

20 A. It did. Currently that position is vacant.

21 Q. Has the Town interviewed a replacement at this point?

22 A. No.

23 Q. What are this Town's plans to replace the town
24 planner? Do you know them?

1 A. We're going to sit with the planning board and the
2 ZBA and discuss. We do have a planning secretary
3 currently.

4 Q. So there is currently -- other than the board members
5 themselves who are volunteers, there's currently no
6 administrative staff person who's advising the
7 planning board on the ordinances that it would
8 develop.

9 A. No, just the secretary. And actually, she may be
10 referred to as the "planning assistant."

11 Q. You were asked about the \$200- to \$300,000 in tax
12 revenue associated with the Lempster facility. Is
13 that -- or was that with this facility?

14 A. Yeah, that was a question I think that was brought
15 up, that I brought that up at a selectmen meeting.
16 It was asked what the future potential of the PILOT
17 was.

18 Q. Okay. And then there was a discussion of abatements
19 that could be filed that would cancel out any
20 benefits. Do you recall that?

21 A. Yes.

22 Q. Have you talked with any of the municipalities, such
23 as Groton or Lempster or other towns, about what the
24 actual tax impact has been?

1 MR. LITTLE: Objection. Hearsay.
2 That's pretty far afield. It's certainly beyond --
3 you know, and it's not on any pointed question in
4 cross.

5 MR. RICHARDSON: He was asked the
6 basis for his understanding and whether or not it
7 could be offset. There's no hearsay rule here.

8 CHAIRMAN GETZ: The question was
9 directly, I think, posed by Mr. Roth in
10 cross-examination. So I think it's a fair area for
11 redirect, so I'm going to permit the question. And
12 he can testify to his particular knowledge about this
13 issue.

14 MR. LITTLE: Well, but he's not
15 testifying as to his particular knowledge. He's
16 merely repeating what I guess somebody else told him.
17 We don't even know who the person is or what their
18 qualifications are.

19 MR. RICHARDSON: We will if he
20 answers.

21 CHAIRMAN GETZ: I'll permit the
22 question.

23 A. I don't believe we talked with anybody officially.
24 I've talked with a few people up in Lempster, and

1 they said they have seen no property value reduction.
2 But they were no town officials or anything.

3 Q. Okay. So what do you think is likely to occur? I
4 think you said it was hypothetically possible that
5 the abatements could offset the tax benefits. Have
6 any opinion as to whether or not that is likely?

7 A. I think as we move forward with the negotiations on
8 the PILOT, it will be something that we will try to
9 figure into the PILOT.

10 Q. Okay. And my last question relates to something
11 Mr. Block asked. And I want to show you, if you
12 don't have it in front of you, BOS Exhibit 8. That's
13 the document that you have there. This was actually
14 distributed during another intervenor's
15 cross-examination. If it wasn't Mr. Block, I
16 apologize.

17 Could you -- now, you participated in the
18 elections in 2010 and 2011; is that right?

19 A. Yes.

20 Q. So you were familiar with the questions that were
21 asked to the voters.

22 A. Yes. This was put forth through the planning board.
23 So at a distance I was familiar.

24 Q. So if you look at Page 3 of Exhibit 8, you'll see it

1 says "Selectmen's Straw Poll Results, March 8, 2011."

2 A. Yeah.

3 Q. And if you could read and tell me if that question
4 that's there is the one that was put to the voters.

5 A. Yes. "Are you in favor of the proposed wind towers
6 in Antrim?"

7 Q. And what were the results?

8 A. Three hundred thirty-seven yes, which is 63 percent;
9 102 no, which is 19 percent; 94 undecided, which is
10 17.6 percent. And this is out of a total of 533
11 total votes cast, and the town election itself had
12 610. So we thought we had a very, very good outcome.

13 Q. So the same people that would be voting on the
14 ordinance were responding to this poll.

15 A. Yes.

16 Q. There were questions raised during cross-examination
17 about whether you make statements -- or whether the
18 box was in the wrong location. Could you explain for
19 the Committee whether anything like that happened?

20 A. It was an informal poll. It was on a piece of paper,
21 probably a quarter of a piece of paper. But there
22 was plenty of room, and there were pencils and there
23 was a box there. And anybody that wanted to do it in
24 privacy had more than enough room to go over. It

1 wasn't like we made them do it in front of us on the
2 table or anything. So if confidentiality -- if
3 anybody was concerned, I don't see where there was an
4 issue.

5 Q. And how was it made known to the voters they could
6 vote? Obviously, most of them did.

7 A. Well, we were right there when they came out the
8 door, so they kind of ran into it. But at the same
9 time, I believe it was in the paper. We let people
10 know we were going to do this to try to get a feel
11 for what the town wanted.

12 Q. Let's flip to the planning board's poll, which is
13 Page 1 of BOS 8. And I'll just ask you to read the
14 first question posed to the voters, if you agree it
15 was accurate on March 9th, 2011. What was that?

16 A. "Are you in favor of commercial wind energy?"

17 Q. Okay. And what was the results there?

18 A. Eighty-one yes, 15 no.

19 Q. And so what was the results in favor?

20 A. Eighty-four percent, I believe.

21 Q. Okay. Now, of all the polls that we've heard
22 about -- the Applicant's, I think, was 77; the
23 selectmen's, if I recall, was 63; and then this one
24 was 84 -- they've all fallen within that range?

1 A. Yes.

2 Q. Okay. And your concern is that, if an ordinance was
3 made too strict, the people that favored it might
4 have no voice at all.

5 A. Right, or they would vote it down and it would be
6 just another untimely delay. We could go through
7 this for years.

8 Q. Thank you.

9 CHAIRMAN GETZ: Anything further from
10 the Committee?

11 MR. ROTH: Mr. Chairman, I also have
12 redirect -- recross, rather.

13 MS. SMITH: I have recross as well.

14 MS. ALLEN: I have one question, too.

15 CHAIRMAN GETZ: Well, we'll see.
16 There is no right to recross. There is ability to
17 ask for recross. But I want to know what the subject
18 matter is.

19 But Mr. Harrington, what did you have?

20 MR. HARRINGTON: Yeah, it'll be fairly
21 quick.

22 INTERROGATORIES BY MR. HARRINGTON:

23 Q. Getting back to what is called Exhibit 8, which is, I
24 guess, a couple different ways, a zoning ordinance

1 amendment ballot. There's a question on there about
2 the wind energy facility. And there was a question
3 that this would make a permitted application, and
4 then there was a discussion on some 84 items that
5 would have to be reviewed or checked; is that
6 correct? Do I have that right?

7 A. Site plan review is an 84-item checklist.

8 Q. But that is a standard site plan review that's used
9 for, let's say, someone is going to build a Mini Mart
10 or a house. There's nothing specific at all about
11 wind facilities --

12 A. No.

13 Q. -- on that. Okay. Just so we're clear on that one.

14 And one other question I would ask you. If
15 there was an ordinance developed and it was passed,
16 and it had, you know, appropriate -- let's just say
17 it was appropriate, as far as the amount of
18 restrictions and guidelines and so forth like that.
19 How would the Town -- what would you picture the Town
20 doing, as far as paying for the process of getting an
21 application through that? Is there anything in your
22 budget to handle something like that now?

23 A. No. But the planning board does have the right. I
24 believe the R.S.A. allows them for peer reviews and

1 stuff, that the Applicant could pick some of that up.

2 Q. If they do have the ability.

3 A. I do believe that's...

4 Q. Okay. Thank you.

5 CHAIRMAN GETZ: Okay. Ms. Smith, what
6 are you seeking recross on?

7 MS. SMITH: May I just ask one
8 question about planning board's completeness
9 determination and the timing for that? I wanted to
10 ask Mr. Genest.

11 RECROSS-EXAMINATION

12 BY MS. SMITH:

13 Q. Do you know if there's a deadline for determining
14 whether an application to the planning board for a
15 variance or site plan review has a deadline
16 associated with it for application completeness?

17 A. I don't believe so.

18 Q. And are you aware that the SEC has a 30-day
19 completeness determination deadline?

20 A. I thought it was a little longer. No, I wasn't aware
21 it was 30 days. I thought it was was 60.

22 Q. And the completeness determination by the planning
23 board would be based on going through the 84 or so
24 item checklist; correct?

1 A. I believe that's more when the project is actually
2 being built, site plan regulations.

3 Q. Right. Under the site plan review. So there's no
4 deadline for the local review of that site plan;
5 correct?

6 A. Correct.

7 Q. Thank you.

8 CHAIRMAN GETZ: Mr. Little, did you
9 have -- what area did you want to inquire?

10 MR. LITTLE: His comments on taxes.

11 CHAIRMAN GETZ: Okay.

12 RECROSS-EXAMINATION

13 BY MR. LITTLE:

14 Q. Mr. Genest, is the selectmen's position in this
15 matter motivated by the fact that you believe this
16 will be a net tax benefit to the town of Antrim?

17 A. I think it's the overall thing that we're looking
18 for, the overall, the green, the net tax benefit. It
19 would be good for the town.

20 Q. So you have no basis to assume whether or not this
21 will actually end up benefiting the town in any
22 fiscal sense.

23 A. No, but that --

24 Q. Thank you.

1 A. -- definitely plays into the process.

2 Q. That's just your conjecture; is that correct?

3 A. Correct.

4 CHAIRMAN GETZ: Ms. Allen?

5 MS. ALLEN: I don't know exactly how
6 to do this. So guide me. I just want to --

7 CHAIRMAN GETZ: Well, you can ask --

8 MS. ALLEN: The question is about --
9 the question is about the variance, that I believe it
10 was Mr. Richardson was talking about from the met
11 tower. I just want to clarify something in the
12 record that I think is incorrect. So help me out.
13 How do I do that?

14 CHAIRMAN GETZ: Well, that's a proper
15 area for recross. So ask your question.

16 MS. ALLEN: Okay.

17 RECROSS-EXAMINATION

18 BY MS. ALLEN:

19 Q. Okay. Mike, is it your understanding that there had
20 been any use variance granted before this most recent
21 one?

22 A. Yes, there was, I believe. That's what started the
23 lawsuit, I believe.

24 Q. I would -- I am hoping maybe Mr. Block could help us

1 out here. But that's not the case, I believe. It
2 was not a use variance. We never had a use variance
3 until this last ZBA. And Mr. Block can help me here.
4 He is one of the litigants --

5 CHAIRMAN GETZ: No, he's not going to
6 be testifying here.

7 MS. ALLEN: Okay.

8 BY MS. ALLEN:

9 Q. It is our statement that you've only had one use
10 variance, and the other one was a heighth variance.
11 I think the correction is it's a heighth variance,
12 okay. And that would be an area variance and not a
13 use variance. Are we in agreement on that?

14 A. I believe we are on heighth.

15 Q. Thank you.

16 CHAIRMAN GETZ: Mr. Roth.

17 RECROSS-EXAMINATION

18 BY MR. ROTH:

19 Q. Mr. Genest, you testified that, in response to your
20 attorney's question about town planner, isn't it the
21 responsibility of the select board to hire a new town
22 planner?

23 A. Well, there's some discussion on that right now. But
24 I believe so it is.

1 Q. Okay. Now, with respect to your conversation with
2 people from Lempster, was the person you talked to in
3 Lempster Mr. Onnela?

4 A. Yes, it was. One of them.

5 Q. Do you know that Mr. Onnela is the lessor to the wind
6 farm?

7 A. Yes.

8 Q. And in fact, his property probably increased in value
9 as a result of this project having, you know,
10 machinery and the like improvements made on it?

11 A. I'm sure it did.

12 Q. Okay. And that he stands to -- he earns probably a
13 pretty decent income from those lease payments;
14 correct?

15 A. Correct.

16 Q. Yeah. And are you aware that he essentially attends
17 every hearing conducted by the State on wind farms to
18 testify on their behalf?

19 A. I'm not sure if that's true. I haven't seen him down
20 here at any of ours.

21 Q. No. So far I haven't seen him yet.

22 MR. RICHARDSON: We'll accept the
23 offer.

24 BY MR. ROTH:

1 Q. All right. My last question is with respect to the
2 BOS Exhibit 8. Now, it was said that you had 81
3 votes in favor of commercial wind energy out of, if I
4 get this right, out of 96 cast. Do you know what
5 percentage of the town's population either one of
6 those figures represents, either 81 or 95 [sic]?

7 A. I'm not sure of the question.

8 Q. How many people live in the town of Antrim?

9 A. There's 1900 registered voters, give or take.

10 Q. Okay. So let's call it 2,000.

11 A. Yeah.

12 Q. And do you know what percentage of 2,000 96 is?

13 A. Slim.

14 Q. Real small. Do you think it's vastly different
15 between 81 and 96?

16 A. I'm not sure what you're asking me for a question
17 there, sir.

18 Q. Well, I'll do a calculation and I'll ask you if you
19 think this math is correct.

20 CHAIRMAN GETZ: On the difference
21 between 81 and 96 or --

22 MR. IACOPINO: Fifteen.

23 MS. GEIGER: Registered voters, as a
24 percentage.

1 MR. LITTLE: As a percentage, a delta.

2 BY MR. ROTH:

3 Q. Would you accept, subject to check, that the
4 percentage -- that it's 4 percent of the population,
5 this 81, .04? Is that -- if you take 1900 voters --

6 A. Yeah, I understand. The other two surveys, there
7 were over 500 on both --

8 Q. But I'm asking about this one, .04. And if we take
9 96... it's .05. Can you accept that? Pretty small
10 margin of difference between them, isn't it?

11 A. As far as the percentage of people that participated
12 in the survey?

13 Q. That is in terms of the size of the population. In
14 relation to the size of the population, they're
15 almost indistinguishable, aren't they?

16 A. You're saying that 5 percent of the people
17 participated in the survey. Is that what you're
18 trying to say?

19 Q. No. I'm saying that the difference between the
20 number of people that participated in the survey and
21 the number of people who answered that question
22 favorably in relation to the population, in the one
23 case it's 4 percent -- or .04, and the other is .05.
24 It's a very small difference. There's no statistical

1 value to that, is there?

2 A. Well, I don't know. If you ask 100 people how they
3 feel about an issue, and if you get 84 percent, I'd
4 say there's a little bit of merit there, anyway.

5 Q. If you were to learn that your views were represented
6 by this tiny percentage, would you say that that was
7 an accurate expression of your opinion?

8 A. I would say I should have gone out and voted.

9 Q. Okay. Thank you.

10 CHAIRMAN GETZ: Mr. Iacopino.

11 INTERROGATORIES BY MR. IACOPINO:

12 Q. Mr. Genest, I think I already know the answer to this
13 question, but I want to make sure.

14 Is there any process in your town's procedures
15 to have a joint meeting of the ZBA and the planning
16 board for when a large project comes to the town?

17 A. I don't know if there's any actual language, but I
18 know we've met with them before. Not on a project
19 issue, but on a legal issue, the two boards have met
20 jointly.

21 Q. Is it necessary to already have a variance before you
22 can apply for a site plan review in your town, or can
23 you do the two simultaneously?

24 A. I'm not sure.

1 Q. Okay. Thank you.

2 CHAIRMAN GETZ: Seeing nothing further
3 from the Committee, then you're excused. Thank you,
4 Mr. Genest.

5 (Whereupon the Witness was excused.)

6 CHAIRMAN GETZ: Mr. Richardson, did
7 you have anything further?

8 MR. RICHARDSON: Oh, no. I'm sorry.
9 I was waiting to see if the next witness was called
10 or what happens.

11 CHAIRMAN GETZ: Well, let's -- we
12 would turn next to Mr. Webber. We don't really have
13 a lot of time before a couple members have to leave
14 at 5:00. But let's get Mr. Webber sworn and his
15 testimony adopted and at least accomplish that.

16 (WHEREUPON, GORDON WEBBER was duly
17 sworn by Mr. Iacopino.)

18 GORDON WEBBER, SWORN

19 DIRECT EXAMINATION

20 BY MR. IACOPINO:

21 Q. Please state your name for the record.

22 A. Gordon Webber.

23 Q. And Mr. Webber, are you the same Gordon Webber who
24 filed prefiled direct testimony on May 6th, 2001

1 before the New Hampshire Site Evaluation Committee in
2 this docket?

3 A. I am.

4 Q. And is this a copy of that prefiled testimony?

5 A. It is.

6 Q. And are there any changes that you need to make to
7 that prefiled testimony before it becomes part of the
8 record?

9 A. No.

10 Q. And do you offer the testimony as an exhibit?

11 A. I do.

12 MR. IACOPINO: It will be marked as
13 Webber Exhibit No. 1.

14 CHAIRMAN GETZ: So marked.

15 (Webber Exhibit 1 marked for
16 identification.)

17 Q. Thank you, Mr. Webber.

18 CHAIRMAN GETZ: Ms. Geiger, do you
19 have cross?

20 MS. GEIGER: I do.

21 CHAIRMAN GETZ: And how much?

22 MS. GEIGER: I'd say 10 or 15 minutes.

23 CHAIRMAN GETZ: Okay. Well, I don't
24 think we're -- well, let me just take a poll or a

1 survey, as it were.

2 Mr. Richardson, how much cross do you
3 have?

4 MR. RICHARDSON: I have relatively
5 little because most of the issues I intended to cover
6 through this witness, like the polls, are already out
7 there. So that's...

8 CHAIRMAN GETZ: Mr. Little, did you
9 have cross for this witness?

10 MR. LITTLE: I have a couple
11 questions. But it depends on what goes on.

12 CHAIRMAN GETZ: And I assume, Mr.
13 Roth, you'd have --

14 MR. ROTH: I have maybe the same as
15 Attorney Geiger, maybe 10 or 15 minutes.

16 CHAIRMAN GETZ: Okay. Obviously,
17 we're not going to get that done today. So, rather
18 than start with the cross-examination, since it's
19 five of five, I think we need to address when we're
20 going to reconvene. And do you have -- let's go off
21 the record.

22 (Discussion off the record.)

23 CHAIRMAN GETZ: Back on the record.

24 I guess from our perspective, we're

1 going to try to get back to a hearing, continue this
2 hearing next week. We need to nail down some
3 schedules. I'm hopeful that we can start at 9 a.m.
4 Monday morning. It's not clear to me at this point
5 how far we can go because of competing schedules.
6 But we'll have Mr. Iacopino communicate to the
7 parties more details as they become available. But
8 our intent right now is to pick up the hearings again
9 Monday morning at 9 a.m.

10 Is there anything we need to address
11 before we adjourn for the day?

12 MR. LITTLE: I don't understand the
13 Chairman's announcement. The hearings are to start
14 Monday morning at 9:00?

15 CHAIRMAN GETZ: That's our goal,
16 unless we --

17 MR. LITTLE: 'Cause I'm in court.

18 CHAIRMAN GETZ: Well, we don't have a
19 whole lot of options, given all the members who we
20 have to get together.

21 MR. LITTLE: Mr. Levesque is
22 unavailable that day, who would be a witness in the
23 order next after Mr. Webber.

24 CHAIRMAN GETZ: Well, I think we've

1 got to proceed with this. And I think what we're
2 going to have to do is have Mr. Iacopino work with
3 our schedules and have counsel stay after we adjourn
4 for the day. But, you know, we're not going to have
5 a whole lot of leeway to work around attorneys' or
6 witnesses' personal schedules. So I think -- I guess
7 I'll just to leave that to Mr. Iacopino to try to
8 push this through. But the --

9 MR. LITTLE: I wish it were a personal
10 schedule. Mine is a court schedule.

11 CHAIRMAN GETZ: I understand. But we
12 have to move ahead with this proceeding.

13 So, anything further?

14 (No verbal response)

15 CHAIRMAN GETZ: All right. Then we're
16 going to adjourn today. And I'd ask counsel and
17 spokespersons for the various parties to stay a
18 little longer to work with Mr. Iacopino to see if we
19 can come up with the best schedule we can.

20 We're adjourned for the day.

21 (WHEREUPON, Day 1 PM SESSION was
22 adjourned at 5:03 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public of
the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic notes
of these proceedings taken at the place and
on the date hereinbefore set forth, to the
best of my skill and ability under the
conditions present at the time.

I further certify that I am neither
attorney or counsel for, nor related to or
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employee of any attorney or counsel employed
in this case, nor am I financially interested
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Susan J. Robidas, LCR/RPR
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