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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

June 27, 2011 - 1:15 p.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 2
AFTERNOON SESSION ONLY

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

PRESENT: SITE EVALUATION SUBCOMMITTEE:

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

* * *

Counsel for the Committee: Michael Iacopino, Esq.

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

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1 P R O C E E D I N G S (RESUMED AT 2:09 P.M.)

2 CHAIRMAN GETZ: Good afternoon. We're
3 back on the record. And first item of business,
4 let's turn to Mr. Webber.

5 And I believe, Mr. Mulholland, you
6 said you had one or two questions for Mr. Webber.

7 So if you could come up, Mr. Webber.
8 And I'll note for the record you're still under oath.

9 MR. WEBBER: Yes.

10 (Whereupon GORDON WEBBER was recalled
11 to the stand, having been previously
12 sworn.)

13 CHAIRMAN GETZ: Mr. Mulholland.

14 MR. MULHOLLAND: I didn't have any
15 questions for Mr. Webber. I thought it was --

16 CHAIRMAN GETZ: Oh, it was you.

17 MR. HARRINGTON: Me.

18 CHAIRMAN GETZ: Mr. Harrington.

19 QUESTIONS BY MR. HARRINGTON:

20 Q. Mr. Webber, I'll just make this pretty brief. It
21 says on your testimony that you were the former chair
22 of the select board and you were you also a member of
23 the planning board.

24 A. Correct.

1 Q. And you were there for, since 2008 until just
2 recently.

3 A. Yes.

4 Q. One of the issues that seems to come up here, and
5 there's a lot of discussion about differences of
6 opinion between the planning board and the
7 selectmen -- and I assume you're familiar with the
8 present members of the select board now?

9 A. I am.

10 Q. And, of course, one of the questions that we just
11 discussed is going to require what would appear to be
12 at least two affirmative votes by the selectmen; one,
13 which I understand may be as early as this evening,
14 to appropriate the funding to hire consultants by
15 using the no longer -- the planning person's salary
16 who is no longer working there. And a second vote
17 would be required sometime, I'm not clear of the
18 date, but sometime in the fall in order to authorize
19 a special town meeting to vote on the ordinance
20 that's being talked about.

21 Do you have any particular opinion on the
22 outcome of those votes, being you're --

23 A. Tonight's vote, if it comes tonight, I really don't
24 know. I just learned about that today.

1 The special town meeting, I believe they would
2 be in support of the residents of Antrim voting on
3 what ordinance is crafted. The only question is how
4 soon that is able to be drafted and gotten to the
5 town clerk. Keep in mind that the normal town
6 meeting is the second Tuesday in March. And you
7 can't have a town meeting -- a special town meeting
8 three months prior. So they're talking now about
9 possibly getting this in October or November. If
10 they don't get it by the first, second Tuesday of
11 December, then they can't until regular town meeting.

12 Q. So if you look -- are you familiar with Exhibit 4
13 from the planning board?

14 A. Yes.

15 Q. Do you think this schedule is realistic?

16 A. At the tech session, Ms. Pinello was asked if she
17 thought she could meet the September special town
18 meeting date, and she said absolutely. I see now
19 that it's moved to October, possibly November. So it
20 brings into question whether or not that's actually
21 going to be possible.

22 MR. HARRINGTON: Okay. Thank you.
23 That's all I had.

24 CHAIRMAN GETZ: Anything further from

1 the Committee?

2 (No verbal response)

3 CHAIRMAN GETZ: Hearing nothing, then
4 you're excused. Thank you, Mr. Webber.

5 (Whereupon the Witness was excused.)

6 CHAIRMAN GETZ: So, then, if Mr. Block
7 is already up here, if Mr. Cleland and Ms. Longgood
8 and Ms. Law would come up. Is Mr. Cleland here?

9 MS. LAW: No. I'm representing him.
10 We live together. He had to go to work.

11 CHAIRMAN GETZ: If you could swear
12 them in, and Mr. Iacopino will do the direct.

13 (Whereupon the witnesses were duly
14 sworn and cautioned by the Court Reporter.)

15 JANICE LONGGOOD, SWORN

16 ANNIE LAW, SWORN

17 RICHARD BLOCK, SWORN

18 DIRECT EXAMINATION

19 BY MR. IACOPINO:

20 Q. Starting at this end of the table, would each of you
21 please state your name for the record.

22 A. (Ms. Longgood) My name is Janice Duley Longgood,
23 156 Salmon Brook Road, Antrim, New Hampshire.

24 A. (Ms. Law) Annie Law, 43 Farmstead Road, Antrim, New

1 Hampshire. And Robert Cleland, same address.

2 A. (Mr. Block) Richard Block, 63 Loveren Mill Road,
3 Antrim, New Hampshire.

4 A. (Ms. Block) Loranne Carey Block, 63 Loveren Mill
5 Road, Antrim, New Hampshire.

6 Q. Ms. Longgood, I'm going to show you a document
7 entitled, "Testimony of Janice Duley Longgood," dated
8 May 20th, 2011. Is that your prefiled testimony in
9 this case?

10 A. (Ms. Longgood) It is.

11 Q. And is the testimony contained therein today meant to
12 be your testimony before this Committee?

13 A. (Ms. Longgood) It is.

14 Q. Do you have any changes or additions to it?

15 A. (Ms. Longgood) No.

16 Q. If you were asked the questions that are contained
17 within this document today, would you give the same
18 answers that you gave on May 20th?

19 A. (Ms. Longgood) I would.

20 Q. Thank you.

21 Ms. Law, I'll show you similarly prefiled
22 testimony dated May 20th, 2011 containing your name
23 on it. Is that your prefiled testimony in this
24 matter?

1 A. (Ms. Law) Yes, it is.

2 Q. And if you were asked the same questions today that
3 you were asked on May 20th in that prefiled written
4 testimony, would your answers be the same?

5 A. (Ms. Law) Yes, they would.

6 Q. Do you have any changes or additions?

7 A. (Ms. Law) No.

8 Q. Mr. and Mrs. Block, I have a document dated May 20th,
9 2011, entitled, "Prefiled Direct Testimony of Richard
10 Block and Loranne Carey Block." Is that your
11 prefiled testimony in this matter?

12 A. (Mr. Block) Yes, it is.

13 A. (Ms. Block) It is.

14 Q. And if each of you were asked those same questions
15 today, would you give the same answers as you gave on
16 May 20th, 2011?

17 A. (Ms. Block) I would.

18 A. (Mr. Block) I would, too.

19 Q. Do you have any changes you wish to make to that
20 testimony?

21 A. (Mr. Block) No, sir.

22 MR. IACOPINO: I don't have a copy of
23 Mr. Cleland's. But I guess he's not...

24 A. (Ms. Law) I have it right here.

1 MR. IACOPINO: I don't know how the
2 Chair wishes me to deal with that without him being
3 here.

4 CHAIRMAN GETZ: Well, I just would ask
5 if Ms. Law will adopt the testimony.

6 MS. LAW: Yes.

7 By Mr. Iacopino:

8 Q. You will adopt. So if you were asked the questions
9 asked of Mr. Cleland in this document, dated May
10 20th, 2011, you would give the same answers that he
11 gave?

12 A. (Ms. Law) Yes.

13 Q. Would you have any changes or additions?

14 A. (Ms. Law) No.

15 MR. IACOPINO: Mr. Chairman, I would
16 propose that we just mark these with the last name of
17 each witness, and as Exhibit No. 1 for that witness.

18 CHAIRMAN GETZ: Okay. We'll mark them
19 respectively as Longgood 1, Block 1, Law 1 and
20 Cleland 1.

21 MR. IACOPINO: Okay. Thank you.

22 (Longgood 1 marked for
23 identification.)

24 (Block 1 marked for identification.)

1 (Law 1 marked for identification.)

2 CHAIRMAN GETZ: Mr. Little, any
3 questions for the Panel?

4 MR. LITTLE: I have no questions for
5 the panel.

6 CHAIRMAN GETZ: Ms. Allen?

7 MS. ALLEN: No questions.

8 CHAIRMAN GETZ: Mr. Mulholland?

9 MR. MULHOLLAND: Yes. You got to me
10 quickly.

11 CROSS-EXAMINATION

12 BY MR. MULHOLLAND:

13 Q. Questions for Mr. Block, mainly.

14 At the last hearing you had asked some
15 questions, when you were doing the questioning, about
16 the American Research Group survey. Do you recall
17 what I'm talking about?

18 A. (Mr. Block) Correct. I do remember.

19 Q. And I believe you argued that it was characterized
20 inaccurately by Antrim Wind.

21 A. (Mr. Block) Yes.

22 Q. Can you explain what you meant?

23 A. (Mr. Block) Several times Antrim Wind referred to
24 this survey stating that the results showed that

1 77 percent of the voters in Antrim -- or 75 to
2 77 percent of the voters in Antrim voted in favor of
3 the wind project. And when we looked at the numbers,
4 the reality of it was that only 25 percent of
5 registered voters in Antrim had responded positively.

6 Q. How did you calculate that 25 percent?

7 A. (Mr. Block) We got the numbers by, actually --

8 Shall I defer to you? Let me have your...

9 My wife, Lorraine, actually contacted American
10 Research Group to get a copy of the results. And
11 when we finally did, it took several days, but we
12 finally got the results. The numbers they gave us
13 was that they had 618 surveys returned, and of those
14 618 surveys, 94 percent of them were actually from
15 registered voters, people registered to vote in
16 Antrim. Multiplying that through, that gives you 581
17 voters responded. They also -- their results said
18 that 75 percent of those who responded were in favor,
19 which results in 436 voters responding in favor.

20 Q. How many voters are in Antrim?

21 A. (Mr. Block) The number we were given is approximately
22 746 voters in Antrim; 436 is almost exactly
23 25 percent of that number.

24 Q. Were there --

1 (Court Reporter interjects. Multiple
2 parties speaking.)

3 A. (Mr. Block) Four hundred and thirty-six is 25 percent
4 of 1,746.

5 Q. Were any of these votes done through the Internet?

6 A. (Mr. Block) Yes, I believe they were.

7 MS. GEIGER: Mr. Chairman, I'm going
8 to object to this line of questioning. I thought the
9 purpose of cross-examination here today was to go
10 over matters presented in prefiled testimony. And
11 I'm struggling to find where these questions --

12 CHAIRMAN GETZ: These related to
13 questions he brought up in his cross. I don't see
14 this anywhere raised in the context of his direct.

15 MR. MULHOLLAND: Okay.

16 CHAIRMAN GETZ: Nothing further?

17 MR. MULHOLLAND: If I can't ask about
18 the polling, I don't have any other questions.

19 CHAIRMAN GETZ: Then, turning to Mr.
20 Froling.

21 MR. FROLING: No, thank you.

22 CHAIRMAN GETZ: Ms. Von Mertens.

23 MS. VON MERTENS: No.

24 CHAIRMAN GETZ: Mr. Webber?

1 MR. WEBBER: Yes.

2 CROSS-EXAMINATION

3 BY MR. WEBBER:

4 Q. I'd like to direct this at all of you and perhaps get
5 individual answers. You've all been opposed to the
6 SEC taking jurisdiction of this project; is that
7 correct?

8 A. (Ms. Law) Yes.

9 A. (Ms. Longgood) Correct.

10 A. (Mr. Block) Yes.

11 Q. Are you in support of the planning board taking
12 jurisdiction and overseeing this project being
13 completed?

14 A. (Ms. Law) Yes.

15 A. (Ms. Longgood) Yes.

16 Q. So you're not opposed to the project being completed;
17 is that correct?

18 A. (Mr. Block) I'd like to speak separately.

19 Q. Okay.

20 A. (Mr. Block) My opinion is, I'm still -- I have not
21 formed an opinion yet as to whether the ad hoc
22 committee's proposal will be proper. I am willing to
23 see what they come up with, and after I've seen what
24 their proposal is, I will then make a judgment as to

1 whether I support it or not.

2 Q. So, Mr. Block, in a planning board meeting where I
3 suggested that a lot of the opposition were trying to
4 delay this project indefinitely, and I said that it
5 could -- they would like to see it delayed years,
6 perhaps 10 years, I said, "Except for Mr. Block. I
7 don't think wants to see it delayed 10 years. I
8 don't think he wants to see this built ever." And
9 you stood up and said, "Yes, Mr. Webber, that's
10 correct. I don't ever want to see this project
11 built." Do you remember saying that?

12 A. (Mr. Block) I remember saying something to that
13 effect. But I was referring to the Eolian plans that
14 I've seen so far, which I think are inappropriate for
15 Antrim.

16 Q. Okay. If the SEC were to not take jurisdiction and
17 the Antrim Planning Board did, and they approved this
18 project, would any of you appeal that decision?

19 A. (Ms. Longgood) I believe the process so far that the
20 ad hoc committee has asked us to participate, has
21 asked our concerns. And I believe in the local
22 government listening to the citizenry and the people
23 that have been long-term residents, although in a
24 very sparse area. And I have faith that they will

1 design something that will be agreeable. Or at least
2 I have a lot of faith in the local government
3 listening to the local people.

4 Q. Thank you. Annie?

5 A. (Ms. Law) I agree with Jan. I have faith in the ad
6 hoc committee and in the planning board, that they
7 are capable of making a decision that is based on the
8 majority of people in town and how it will benefit
9 all of the residents.

10 Q. Okay.

11 A. (Ms. Block) Gordon, I believe you understand from the
12 very beginning our concerns are primarily about
13 siting, and siting within the rural conservation
14 district. And so anything from this point forward is
15 conjecture. We just still need to know about siting.

16 A. (Mr. Block) My comments are that I think it's
17 important to note that there's a difference in what's
18 being asked of the SEC and what the ad hoc committee
19 is doing. The SEC is being asked to take
20 jurisdiction over a specific project plan/idea from
21 Antrim Wind Energy. The ad hoc committee has
22 actually, in my understanding, has been formed in
23 order to look at our zoning ordinance and hopefully
24 set up some articles and regulations that will stand

1 not just for this project, but for any project in the
2 next 10, 20, 30 years. And I think that's what's
3 important, and that's what I'm considering. In my
4 mind, I'm separating what the ad hoc committee is
5 doing as a broad, blanket set of regulations
6 potential to any wind project in Antrim. And I
7 actually wish they were addressing all kinds of
8 renewable energy. But at this point, they're focused
9 on that. And what's being asked of the SEC is for
10 one specific, basically a one-shot-deal project.

11 Q. So you feel that the planning board, if given
12 jurisdiction, could do a reasonable and adequate job?

13 A. (Mr. Block) I think they have the capability of doing
14 that, yes.

15 Q. Do you believe the SEC could do that?

16 A. (Mr. Block) I believe they have shown by past history
17 that they have the expertise to do that also.

18 Q. Annie?

19 A. (Ms. Law) Yes, I believe they do. But then we lose
20 local control, and we lose any opinions that we have
21 about this particular project.

22 Q. Can you specifically address what local control
23 you'll lose?

24 A. (Ms. Law) Our ability to vote on what happens in our

1 town. If the SEC takes jurisdiction over this
2 project and they put this wind facility on Tuttle
3 Mountain and that whole ridge, then we lose total
4 control over what we can say about it or not. We
5 have no say whatsoever. And we want to maintain our
6 local control so that we can vote on what goes into
7 the rural conservation district, because we're being
8 directly affected by this.

9 Q. Okay. Thank you.

10 A. (Ms. Longgood) I believe the SEC certainly has the
11 expertise. But again, I would like to be able to
12 have input. I would like to see what the citizenry
13 of Antrim, when they have all the facts, what they
14 think, and I would like it to be brought back to the
15 local level. And maybe we'll need to come back here,
16 but I would like the opportunity. I do believe that
17 our current planning board has the expertise. The
18 prior board, with all of the public input, to me, did
19 not take anyone's opinion into account. And it was a
20 principal permitted use recommended by the planning
21 board, when we went to multiple meetings stating, you
22 know, why would you say recommended by the
23 planning -- you know, it didn't seem like any of the
24 input I heard in those discussions was reflected in

1 the ordinance, that thankfully did not get to the
2 people at that time. But I do have faith in the
3 current planning board.

4 MR. WEBBER: All right. Thank you.
5 That's all I have.

6 CHAIRMAN GETZ: Mr. Richardson.

7 MR. RICHARDSON: Really bad timing.
8 I'm eating the caramel that my client gave to me.

9 CHAIRMAN GETZ: We could move on.

10 (Laughter)

11 CROSS-EXAMINATION

12 BY MR. RICHARDSON:

13 Q. Very briefly. Mr. Block, I have a couple questions
14 for you.

15 In your testimony on Page 2, in response to what
16 is your interpretation of the status, that line
17 there, you state that the details of the proposal --
18 talking about Antrim Wind Energy -- have changed
19 numerous times over the last two years and are still
20 vague and undefined. If they are vague and
21 undefined, why did you appeal?

22 A. (Mr. Block) We were appealing the application for a
23 met tower, which was an application. This is for a
24 wind turbine facility.

1 Q. So why would you go through the time and expense to
2 appeal if you weren't sure what the project was going
3 to be on the met tower?

4 A. (Mr. Block) Because the process for the met tower was
5 that, what we were observing, was in violation of
6 Antrim zoning ordinance. And we appealed on the
7 basis that what we saw happening through that was in
8 violation of the zoning ordinance as it stands now.
9 We felt that justice needed to be served.

10 Q. And that's, I think, in your testimony. You state
11 something along those lines. You say, "We filed a
12 timely appeal for rehearing" of the ZBA decision, and
13 it says, "based on the inadequacy of AWE's
14 application and the inappropriate nature of
15 justifying their met tower under the Small Wind
16 Energy Systems section of the ordinance."

17 A. (Mr. Block) Correct.

18 Q. Do you still agree with that?

19 A. (Mr. Block) Yes.

20 Q. Okay. So the ZBA decision was inadequate and
21 inappropriate.

22 A. (Mr. Block) Yes.

23 Q. Okay. Now, the ZBA eventually granted a rehearing.

24 A. (Mr. Block) Yes.

1 Q. And that was in December of 2009? I'm on Page 3
2 again.

3 A. (Mr. Block) Okay.

4 Q. And I think you stated that in December of 2009, "the
5 ZBA granted our rehearing request, but due to many
6 delays to the rehearing process, it was not heard
7 until late summer of 2010, at which time the ZBA
8 voted to uphold this decision and grant the
9 variance."

10 A. (Mr. Block) Right.

11 Q. So that's not a very efficient process, is it?

12 A. (Mr. Block) No, it was not.

13 Q. And then after the ZBA affirmed the decision, you
14 appealed because that decision, you argued, was
15 improper; right?

16 A. (Mr. Block) Yes.

17 Q. You stated it was an improper application of the
18 ordinance, or article, inadequate proof and
19 improperly granted.

20 A. (Mr. Block) Correct.

21 Q. Okay. And so then there was finally a site plan
22 approval issued by the planning board. And you
23 appealed that?

24 A. (Mr. Block) Yes. It wasn't final, because the site

1 plan application process happened while the ZBA's
2 variance request was under appeal. That's part of
3 the reason why the inefficiency of the appeal -- in
4 that we appealed, but then before it got to hearing,
5 Antrim Wind came in with a site plan review -- that
6 whole process happened first, and then the Town was
7 able to get back to the other.

8 Q. But so, I mean, in a nutshell, I take it that it's
9 your view that the planning board, by approving the
10 site plan, did its job improperly and inadequately?

11 A. (Mr. Block) Correct, because they declared that it
12 was a public utility, and all the legal advice I had
13 had up to that point was that they are not and could
14 never be a public utility.

15 Q. Now, if the ZBA's got it wrong twice and the planning
16 board once, it's likely they could do it wrong again,
17 even if they adopt an ordinance.

18 A. That's speculation. I don't see that that's
19 necessarily true.

20 Q. Well, their record so far is three decisions, three
21 appeals.

22 A. (Ms. Block) No.

23 A. (Mr. Block) Two decisions, two appeals.

24 Q. Okay. Two decisions. So's it's 0 for 2 on getting

1 it right. The two ZBA appeals; right?

2 A. (Ms. Block) The ZBA rejected the planning board, and
3 we totally agree with what the ZBA did.

4 Q. Okay. But in terms of what the local land-use boards
5 have done, okay. So the ZBA has been appealed twice;
6 right?

7 A. (Mr. Block) Correct.

8 Q. And then the planning board issued a decision that
9 was appealed to the ZBA by you; right?

10 A. (Mr. Block) We appealed the planning board decision
11 to the ZBA. That's correct.

12 Q. Okay. And the ZBA agreed with you and sent it back
13 to the planning board; right?

14 A. (Mr. Block) No. The ZBA agreed with us and
15 overturned the planning board decision.

16 Q. Oh, overturned. Sorry.

17 So now, Antrim Wind Energy has appealed that
18 decision to the superior court.

19 A. (Mr. Block) Correct.

20 Q. So we've got basically three lawsuits going out of
21 more or less --

22 A. (Mr. Block) Two lawsuits.

23 Q. Two lawsuits out of two decisions or three decisions?

24 A. (Ms. Block) Three decisions.

1 A. (Mr. Block) Three decisions.

2 Q. That's not a very good track record, is it?

3 A. (Mr. Block) No. But if --

4 Q. Is there any reason -- sorry. I didn't mean --

5 A. (Mr. Block) I was going to say, if we -- if the
6 decisions in both cases had been opposite -- for
7 instance, if the zoning board had agreed with us and
8 overturned their original application, their original
9 granting of the variance, and we were satisfied at
10 that point, I am very sure, because it was told to us
11 that Eolian would have then appealed that to the
12 court.

13 Q. Right.

14 A. (Mr. Block) So I think we were facing court cases, no
15 matter what the decisions were.

16 Q. And that's likely to continue to be the case going
17 forward. There's nothing changed to alter that
18 dynamic that you've just described.

19 A. (Mr. Block) No. Well, there's a different planning
20 board in now. So I think a site plan review, if that
21 were -- it would be quite a different procedure. I
22 sat in on the site plan review the first time, and in
23 my opinion it was a travesty.

24 Q. Okay. Ms. Law, I didn't intend to ask you a

1 question, but when Gordon Webber just asked you if
2 you were open to having the planning board make its
3 decision, it struck me as odd, because I believe you
4 said that you were open to them making a decision
5 either way. Did I hear you correctly?

6 A. (Ms. Law) The planning board?

7 Q. The planning board.

8 A. (Ms. Law) Yes.

9 Q. In your testimony -- excuse me. In a letter that you
10 submitted earlier, I believe you said, "I don't want
11 to see Tuttle Mountain being destroyed by having it
12 blasted and desecrated to erect an industrial wind
13 farm, which will inevitably deplete the natural
14 habitat for the wildlife and birds that live here."

15 A. (Ms. Law) That's right.

16 Q. I mean, that sounds to me like you don't want this
17 project, no matter what.

18 A. (Ms. Law) I really don't.

19 Q. Okay. Thank you.

20 CHAIRMAN GETZ: Ms. Geiger.

21 MS. GEIGER: I have no questions.

22 Thank you.

23 CHAIRMAN GETZ: Questions from the
24 Committee? Mr. Harrington.

1 QUESTIONS BY MR. HARRINGTON:

2 Q. Yeah, this is, I guess, for one of the Blocks.

3 On Page 3 of your testimony, in the bottom
4 paragraph it goes through the process of what got
5 appealed to where. And it didn't seem to match up
6 with what you were just saying, so I'm trying to get
7 this straight. It says, We appealed -- We filed a
8 timely appeal for rehearing of the decision from the
9 ZBA, which the ZBA had granted a variance for the
10 building of the met tower? You have to say "Yes" or
11 "No."

12 A. (Ms. Block) Oh, I'm sorry. Yes.

13 Q. Okay. And then you requested a rehearing because you
14 disagreed with that decision.

15 A. (Ms. Block) Yes.

16 Q. And then the rehearing was -- the request was
17 granted, but it wasn't actually heard until some
18 months later, in the summer of 2010, and they
19 affirmed their original decision.

20 A. (Ms. Block) True.

21 Q. So at that point, it was the Blocks and others who
22 took the ZBA to Hillsborough County Superior Court?

23 A. (Ms. Block) Actually, it was only Richard and I who
24 took --

1 Q. So you filed an appeal?

2 A. (Ms. Block) We did.

3 A. (Mr. Block) Correct.

4 Q. So it seemed when we were talking before to Mr.
5 Webber about the wind project filing an appeal. I
6 got confused.

7 A. (Ms. Block) They did also.

8 A. (Mr. Block) In between, the planning board granted
9 them a site review. We appealed that to the ZBA.
10 The ZBA met, granted our rehearing. In their
11 rehearing, they overturned the planning board
12 decision, declaring this was, therefore, not a
13 permitted use. At that point, Eolian filed an
14 appeal. I think what happened, actually, is they
15 tried to appeal that. Their request for a rehearing
16 of that decision was turned down, at which point they
17 subsequently filed with the superior court.

18 Q. And that was on the site plan for the entire wind
19 project.

20 A. (Mr. Block) No. That was the site plan for the met
21 tower as an accessory to a public utility wind
22 turbine project.

23 Q. And what was the variance that was granted by the ZBA
24 that resulted in the met tower being built?

1 A. (Mr. Block) It was just an area variance for height,
2 for to exceed the height limits listed under the
3 Small Wind Energy article.

4 Q. And do they need both of those to get built?

5 A. (Mr. Block) Both of which?

6 Q. There was two processes there you talked about. Did
7 they have to get an affirmative decision on both
8 processes or just the one for the height?

9 A. (Mr. Block) I am totally unsure of that, because they
10 were granted their height variance. And then my
11 impression is that they decided at some point to try
12 an alternate route, and that's why they came with the
13 site plan review. And I'm not even sure exactly why
14 they decided they would do that.

15 MR. HARRINGTON: Okay. Thank you.
16 That's all I have.

17 CHAIRMAN GETZ: Anything else from the
18 Committee? Mr. Iacopino.

19 QUESTIONS BY MR. IACOPINO:

20 Q. This is for you, Mr. Block, or Mrs. Block. I
21 understand that these cases are still pending in the
22 superior court.

23 A. (Mr. Block) They are, both.

24 Q. And if you do not prevail on one or both, is it your

1 intention to appeal to the Supreme Court?

2 A. (Mr. Block) Possibly. I have not decided on that.

3 A. (Ms. Block) We need to talk about that.

4 A. (Mr. Block) We haven't even discussed it, to be
5 honest.

6 MR. IACOPINO: Okay. Thank you.

7 CHAIRMAN GETZ: Okay. Doesn't appear
8 to be any other questions for the witnesses, so
9 you're excused. Thank you, everyone.

10 (Whereupon the Witnesses were
11 excused.)

12 CHAIRMAN GETZ: At this juncture then,
13 is there any objection to striking the
14 identifications and admitting the exhibits into
15 evidence?

16 MR. LITTLE: I have no objections.

17 MR. MULHOLLAND: None.

18 CHAIRMAN GETZ: Hearing no objections,
19 then all the exhibits will be admitted into evidence.

20 CMSR. IGNATIUS: Can I just raise one
21 procedural --

22 CHAIRMAN GETZ: You're going to
23 object?

24 CMSR. IGNATIUS: I'm not going to

1 object. But it would be helpful -- because the
2 exhibits seem to have come in with odd numbering.
3 They're not sequential. We jumped from one to
4 another number without it being in order. And it may
5 have had to do with what people intended to introduce
6 and didn't ultimately use all of the ones they had
7 reserved, which is fine. I think it would be
8 helpful, though, for the record, if we maybe ask
9 counsel to put together a list of exhibits -- I don't
10 need it right now, obviously, but before we're done
11 so we have a list of exhibits that shows the
12 numbering, to make sure that when I see a gap in
13 numbering it's because that's what was intended and
14 not because I misplaced something.

15 MR. IACOPINO: We will prepare one so
16 that the record is complete. Did you want us to go
17 through them now, though, before you deliberate?

18 CMSR. IGNATIUS: No. I'm all right
19 with that. Thank you.

20 CHAIRMAN GETZ: I think where --
21 correct me if I'm wrong, Mr. Iacopino, but especially
22 the board of selectmen had circulated a list but did
23 not use all of the exhibits?

24 MR. IACOPINO: Right. I don't believe

1 all the selectmen exhibits that were sent around to
2 the parties by e-mail were actually admitted.

3 MR. RICHARDSON: I think that maybe I
4 didn't have the benefit of the transcripts, and so
5 what I was operating under was some were distributed
6 to the parties at the hearing, and we never got
7 through all the witnesses. So I have a list here
8 that I'm happy to share with counsel to try to sort
9 out what's in. And if something didn't get in, then
10 it's not in.

11 MR. IACOPINO: That's fine. We'll do
12 that.

13 CHAIRMAN GETZ: Anything else from the
14 Committee?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. So then there's
17 opportunity for closing statements. Have the parties
18 discussed among themselves who will be providing the
19 closings? And we would go first with the parties who
20 are opposing jurisdiction and then go to the parties
21 who are in support of jurisdiction. So who's
22 speaking for the parties opposing jurisdiction?

23 MR. MULHOLLAND: Mr. Chairman, we've
24 discussed it, and we're going to split it up a couple

1 minutes each. And I think Attorney Little was going
2 to go at some point, and I was going to go after him.

3 MR. LITTLE: I believe the discussion
4 was, I was going to give Mr. Block -- we were going
5 to split it up so that the persons who appeared, if
6 they wished to make a statement in closing to the
7 Commission -- which would be Mr. Block, Ms. Allen,
8 Mr. Froling, possibly Ms. Von Mertens, myself and
9 then Mr. Mulholland --

10 CHAIRMAN GETZ: Okay. Well, let's --

11 MR. MULHOLLAND: And we'll hopefully
12 stay within 10 minutes.

13 CHAIRMAN GETZ: It's 2:40, so...
14 Mr. Block.

15 MR. BLOCK: All right. I've got,
16 hopefully, a short statement to read. But maybe be
17 better in front of the microphone here.

18 CLOSING STATEMENT BY MR. BLOCK:

19 MR. BLOCK: In the spring of 2009,
20 Eolian Renewable Energy, LLC, approached the Town of
21 Antrim with a proposal to place six to eight
22 industrial wind turbines on the ridge of Tuttle Hill
23 in the northwest part of town. This land is situated
24 in Antrim's rural conservation district, the largest

1 zoning division in town. This district has the most
2 restrictive controls of all the zoning districts, and
3 in 1989 was established, quote, to protect, conserve
4 and preserve the remote mountainous portions of
5 Antrim from excessive development pressures and/or
6 activities that would be detrimental to the unique
7 environmental characteristics and qualities of this
8 district and detract from the peaceful enjoyment and
9 tranquility this district affords local residents,
10 unquote. With no industrial activity permitted and
11 strict structure-height limitations, Eolian's
12 proposal was completely out of character in this
13 district. Eolian did proceed with an application to
14 our zoning board for a height variance. However,
15 since there was no place in Antrim's zoning
16 ordinance, and especially in the rural conservation
17 district, where a multi-turbine industrial wind
18 generation facility could fit, they applied for the
19 variance under the category of Antrim's Small Wind
20 Energy System zoning article, in spite of the fact
21 that this article specifically defines a small wind
22 energy system as one consisting of an individual
23 turbine generating less than 100 kilowatts of
24 electricity and with a tower height absolutely

1 limited to under 150 feet. To be granted a variance
2 from a zoning ordinance in the state of New
3 Hampshire, an applicant must satisfy each and every
4 one of five criteria. Upon first reading of Eolian's
5 variance application, it was apparent that not only
6 were the answers to the first three criteria woefully
7 inadequate, incomplete and careless, but they had not
8 even addressed the last two, leaving their responses
9 blank, as referenced earlier in our exhibit. While
10 it is questionable that the application should have
11 been accepted in this state, it was completely
12 baffling as to how a company this inept in filling
13 out a basic application form would be able to conduct
14 a business venture on the scale of a \$35- to
15 \$40-million industrial wind turbine facility. Our
16 greatest concern was that this proposed industrial
17 wind project was to the scale of something in which
18 Eolian had little or no real experience, and we were
19 very concerned that Antrim was to be a guinea pig or
20 training ground for them. They have yet to give
21 specifics as to exactly how big the turbines would
22 be, how many they intend to install, nor what the
23 exact benefits would be for the town and people of
24 Antrim.

1 The request letter written by Gordon
2 Webber back in February for the SEC to take
3 jurisdiction was highly premature and appeared to be
4 part of the political power struggle building toward
5 the March elections. Eolian was then and is still
6 now quite far from being ready to submit a
7 comprehensive proposal for a wind turbine facility in
8 Antrim. There are no completed environmental
9 studies, no engineering plans, no financial
10 projections. AWE has now submitted yet another
11 application to the ZBA, this time for both area and
12 use variances. We have appealed that based on the
13 grounds that you cannot or should not apply once
14 again for a project that's already been applied for,
15 and several other reasons.

16 The planning board ad hoc committee in
17 Antrim is actively moving forward with work on the
18 proposed amendments to our zoning ordinance. They
19 appear to be on schedule. If they're allowed to
20 complete their task in a timely manner, we will have
21 a working proposal to discuss and vote on by this
22 fall. Given the overwhelmingly strong sentiment in
23 Antrim to keep the decision-making abilities local,
24 and given the significant ground Antrim Wind will

1 have to cover, it is entirely premature for the SEC
2 to take jurisdiction, and indeed will be a waste of
3 everyone's time. Thank you.

4 CHAIRMAN GETZ: Thank you. Ms. Allen.

5 MS. ALLEN: Is this on? Can you hear
6 me?

7 CHAIRMAN GETZ: Yes.

8 CLOSING STATEMENT BY MS. ALLEN:

9 MS. ALLEN: Okay. I'm proud to live
10 in Antrim. I'm proud to live in a community that
11 understands the challenges and the gifts of local
12 control. I'm proud that 145 of my fellow citizens
13 signed our petition asking this board to give us a
14 chance to shape our town's future. The ad hoc
15 committee, of which I am a part, is writing an
16 ordinance and regulations that are going to be used
17 for the whole town. We are not rushing to judgment
18 in this work. We are not creating an ordinance that
19 would create spot zoning. We are also not creating
20 an ordinance that would be tailored to one applicant.
21 What we are doing is we are creating a good planning
22 tool that can be used for Antrim Wind Energy, or any
23 other applicant that wants to build in our town in
24 the future.

1 Going back to the wording of the
2 petition and the 145 voices that I am representing,
3 under Allen, A., the first section, we are asserting
4 that the time for this petition is not right. Our
5 first request -- the first request to the New
6 Hampshire Site Evaluation Committee for jurisdiction
7 came from the Antrim Board of Selectmen in a letter
8 received in your office February 10th, 2011. And it
9 requests oversight, quote, from that letter, if and
10 when a petition is made to construct this facility.
11 Antrim Wind Energy has not submitted an application,
12 or even a preliminary site plan for this project to
13 the Town of Antrim, the Antrim Planning Board, or the
14 Site Evaluation Committee. This project is not fully
15 developed.

16 Given these points, we're asking the
17 Site Evaluation Committee to either deny Antrim Wind
18 Energy's petition without prejudice to resubmit, or
19 that you rule that this subject -- that this issue is
20 subject to continuance under SEC procedural rule,
21 202:17, until it is ripe. Thank you.

22 CHAIRMAN GETZ: Okay. Thank you.
23 Mr. Little.

1 CLOSING STATEMENT BY MR. LITTLE:

2 MR. LITTLE: Yes. If it pleases the
3 Commission, just briefly. I think that it's
4 important to look at the legislative context. This
5 is not an area in which the Site Evaluation Committee
6 is mandated to take jurisdiction. And contrary to
7 the Laflamme case, which was a similar situation,
8 where there was less -- where they were under the
9 statutory mandate, or the Berlin case, which was also
10 under the statutory mandate, this is an amorphous
11 project. I mean, I don't know. We're not -- we're
12 sort of like just grasping at smoke. This is willow
13 in the wisp. So there's really been no demonstration
14 by this Applicant that it has an application that is
15 suitable for anybody to review. And I think that it
16 is important in the context of, you know, of this
17 Commission's exercise of jurisdiction, and in giving
18 meaning to the statute, that this Applicant be in the
19 same position that I think Laidlaw Berlin was or that
20 the project over in Lempster were, where they were
21 much more formally further along. In Laidlaw, they
22 had all their local permits. And the Commission
23 looked at that and considered that. They had an
24 actual project, and they'd gone through the local

1 planning process. In the Lempster case, they said
2 they could submit one, and they did within a very
3 short period of time, not within the time periods
4 we're talking about here. There is no basis that
5 this Applicant has made that this Commission should
6 invoke jurisdiction. They are saying, well, we think
7 we're going to apply. We think we're going to do
8 these things. But there's nothing before us.

9 So I think it is premature for this
10 Commission to find there is reason for it to exercise
11 its preemptory jurisdiction here. There's nothing
12 that has been presented that justifies that. Thank
13 you.

14 CHAIRMAN GETZ: Thank you. Mr.
15 Mulholland.

16 CLOSING STATEMENT BY MR. MULHOLLAND:

17 MR. MULHOLLAND: Mr. Chairman and
18 Committee, Public Counsel filed a short brief on
19 April 20th, and we would rely partially on that. But
20 I'm just going to make a few other small points.

21 I agree with Attorney Little, that
22 this project is really unripe for this Committee to
23 take jurisdiction. We don't know what kind of
24 turbines, we don't know what the impact's going to

1 be, we don't know what the land is. All of these
2 things were present in the Laflamme petition and in
3 the Lempster case, as Attorney Little talked about.
4 You know, this isn't a case where it's sort of
5 halfway between Lempster and Berlin. It doesn't fit
6 there because we don't know what the project is yet.
7 And on top of that, we have a situation where the
8 town is split. And we have some part of the town,
9 which is the ad hoc committee and the planning board,
10 which is putting together a process to present this
11 ordinance to the town and have them vote on it, and
12 then presumably review an application, if there ever
13 is one. And they'll review it underneath that new
14 ordinance that they're planning. And, you know,
15 Public Counsel's position is that we should let that
16 happen, especially when there's pending superior
17 court appeals and all this pending work going on in
18 the town. I just don't see that there is enough
19 information for the council to make the determination
20 that they have to assert that jurisdiction on a 5- to
21 30-megawatt project, as this one is proposed to be.

22 CHAIRMAN GETZ: Well, is the focus for
23 us to determine our jurisdiction, are the facts
24 relevant to the Town's capacity? Or are the facts

1 relevant to Antrim Wind? I mean, so long as Antrim
2 Wind intends to be less than 30 megawatts, what other
3 facts do we really need to know? It seems to me that
4 the real focus is on the Town and not so much the
5 Applicant.

6 MR. MULHOLLAND: Well, I think you do
7 need to have a full application, or at least
8 something more than what you have in order to make
9 this decision. I mean, if you look at the legal
10 standard in Part 2, I think it was the 2007 amendment
11 which allowed you to do this, the 5 to 30. You have
12 to look at the impact on the environment. You have
13 to look at whether or not there's going to be a
14 delay. You have to look at whether or not the plans
15 will be fully disclosed. Some of these things we
16 don't know whether or not -- well, the environment at
17 least, we don't know what the impact's going to be
18 because we don't know what's out there yet. I think
19 that, just on that reason, I think it's unripe to try
20 to do that balance between the need for renewable
21 energy and impact on the environment without knowing
22 what the project is going to look like or what the
23 impact is going to be on what species that we don't
24 even know live there yet.

1 I think, basically, in closing, that
2 we have to wait for the application to come in to
3 determine whether or not you have jurisdiction.

4 CHAIRMAN GETZ: Okay. Thank you. Mr.
5 Richardson, Ms. Geiger, who --

6 MR. RICHARDSON: We've agreed among
7 the petitioners in favor to split it eight minutes to
8 two minutes, myself.

9 Do you have a preference as to whether
10 you go first?

11 MS. GEIGER: I can finish if --

12 MR. RICHARDSON: Okay. I'll go first,
13 and I'll try to hold to my two minutes.

14 CLOSING STATEMENT BY MR. RICHARDSON:

15 MR. RICHARDSON: The statute directs
16 in the definition of renewable energy facility to
17 look at 162-H:1 to determine whether or not a
18 facility requires a permit. The size isn't that
19 important. The things that are listed in 162-H:1 are
20 the need to balance the need for new energy
21 facilities between environmental impact, avoid undue
22 delay, preserve natural resources of the state.
23 There's criteria for economic growth, and looking at
24 the projects in an integrated manner. That's a quick

1 summary. I think all of those factors favor
2 asserting jurisdiction over this case. And as the
3 Chair has just noted, the planning board doesn't have
4 the expertise. The largest project they've seen is
5 PSNH's substation many years ago, \$7 million in
6 value. You go down the list, and it's basically
7 residential properties. They don't have an
8 ordinance. They don't have site plan regulations.
9 They can't guarantee that their ordinance will pass.
10 They can't identify who their consultants are going
11 to be to help write the ordinance. We don't even
12 know if they'll get funds for that. And we know the
13 one thing they can't guarantee is that this project
14 will not get tied up in the court system, because
15 along every step of the way it has. Mr. Block, you
16 just heard, describe the prior decisions of the
17 boards as "terrible." So, all of these things speak
18 to the integrated manner. And there isn't an
19 integrated manner now.

20 In terms of the criteria for
21 developing renewable facilities, needed facilities,
22 the legislature has said, in 362-F, we need these
23 things. It's unreasonable to ask Antrim Wind to
24 proceed with a \$50 million project without knowing

1 the rules in advance. The delays will kill the
2 project financing. They'll miss the opportunity to
3 bring this product to the market, and we'll just get
4 multiple lawsuits that are paid for by the town. The
5 town will lose a \$50 million investment within its
6 borders. And that's going to be good for jobs,
7 that's going to be good for the economy. It's going
8 to be good for development in the town of Antrim.
9 And the state loses a renewable energy facility.

10 So, I think, looking at all the
11 criteria, you see something that says let's do this
12 under the SEC process. And there's no reason why the
13 SEC can't integrate the views of the planning board
14 into its decision. I know this Committee has done
15 that before. I'm confident it can do that again.

16 There will be some issues that come up
17 that's on the merits of the project. This Committee
18 has demonstrated time and time again that it can
19 evaluate those, has the expertise of the agencies
20 under one roof. I think this is the very type of
21 project that the renewable amendment was written for.

22 CHAIRMAN GETZ: Before we turn there,
23 I just need to confirm one thing, if I heard
24 correctly. You didn't say that the Chair just said

1 that the board doesn't have the capacity, did you?

2 MR. RICHARDSON: I said that the Chair
3 just talked about --

4 CHAIRMAN GETZ: Well, that's what I
5 heard. I just want to make sure that that's not on
6 the record.

7 MR. RICHARDSON: I've lost my train of
8 thought. And I didn't have it written in my
9 statement, but I think it was in reference to the
10 question you asked Mr. Mulholland. I forget at this
11 point.

12 CHAIRMAN GETZ: Okay. Well, let's
13 just make sure that whatever I said, I did not intend
14 to say that the board doesn't have the capacity.
15 What I had posed was what's the focus of the inquiry
16 on the board's capacity versus the facts.

17 MR. RICHARDSON: Right. I meant to
18 argue the board doesn't have the capacity. I did not
19 mean to attribute that statement to the Chair.

20 CHAIRMAN GETZ: Okay. Good.

21 MR. RICHARDSON: What I meant to say
22 was the issue you said you have to look at.

23 CHAIRMAN GETZ: All right. We'll
24 count that time against me.

1 So, Ms. Geiger.

2 MS. GEIGER: I think I have eight
3 minutes.

4 MR. RICHARDSON: Sorry. I was worried
5 about the two minutes, so...

6 CLOSING STATEMENT BY MS. GEIGER:

7 MS. GEIGER: Thank you. Thank you
8 very much, Mr. Chairman. I think the last colloquy
9 here really demonstrates what we need to focus on
10 here. It's really not about whether the Town can
11 enact a process within the next couple of months.
12 Really, the job and the decision that the Committee
13 must make this afternoon is really set forth in
14 R.S.A. 162-H:2, XI. That basically tells you that if
15 you're confronted with a situation where you have, in
16 this case, three petitioners coming before you
17 seeking your jurisdiction over an under-30-megawatt
18 project, and you can determine that the facility
19 requires a certificate consistent with the findings
20 and purposes of 162-H:1, then you must assert
21 jurisdiction. Those findings and purposes Mr.
22 Richardson just touched upon. But I think it's
23 really important, again, bringing us back to what the
24 mission is here this afternoon. The requirement here

1 this afternoon is to look at the statute and figure
2 out whether or not this project should be
3 certificated or should be subject to the certificate
4 process under 162-H.

5 The first thing the Committee has to
6 look at is whether the public's interest in
7 maintaining a balance between the environment and the
8 need for new energy facilities in New Hampshire will
9 be met by asserting jurisdiction. Here, that's
10 clearly the case. This Committee has said in that
11 Laidlaw decision, where it denied Mr. Laflamme's
12 request for jurisdiction, said that a needed
13 facility, within the meaning of 162-H, is a clean,
14 renewable energy facility. The Committee has said
15 that "need" under the statute is something that can
16 be determined consistent with the RPS law, 162-F, and
17 in the Governor's plan to obtain at least 25 percent
18 of the state's total energy from renewable resources,
19 the so-called "25 by 25 plan." The SEC has said this
20 is what you look at when you determine need under
21 that first criterion in 162-H:1.

22 Here, unlike the Clean Power
23 Development case, where the SEC declined to invoke
24 jurisdiction because substantial environmental

1 permitting had already been underway and completed --
2 I think it was just one permit outstanding, the
3 wetland permit -- we don't have any permitting done
4 at the local level. We don't even know what the
5 standards are going to be, if in fact any standards
6 are even developed. So my client's in a quandary
7 here. It's faced with the prospect of if the SEC
8 does not assert jurisdiction of some unknown process.
9 Furthermore, even if a process, an ordinance is
10 enacted, we don't know what that is. We don't know
11 if this project would be able to meet it. So this is
12 a very, very different situation from the Laflamme
13 situation. There, the City of Berlin had
14 specifically researched and adopted a renewable
15 energy ordinance allowing for special exception
16 reviewed by the ZBA. We don't have that here yet.
17 We don't even know if we will ever get that.

18 So we don't believe it's appropriate
19 to delay, as some of the commenters here today have
20 suggested. We think a delay would be undue. And
21 that is clearly inconsistent with the provision of
22 162-H:1.

23 The second criteria that you look at,
24 the Committee must look at, is whether there will be

1 undue delay in the construction of needed renewable
2 energy facilities if the SEC process is avoided.
3 Here, I think we've given you enough information over
4 the last two days of hearings so that you can
5 appreciate that we believe that undue delay will, in
6 fact, occur if we're required to sit back and wait
7 for some decision or some process to result in the
8 town of Antrim. We don't know what that will be.
9 And waiting to see whether those standards could be
10 developed and approved by the town would result in
11 undue delay for this project.

12 It's also really important when
13 thinking about undue delay about the issue of
14 appeals. We've heard a lot about appeals today and
15 what the appellate route is for the local permitting
16 process and the individual DES permits. I think as
17 the Committee members are aware, it's pretty clear
18 that this forum is one-stop shopping. If a
19 certificate is obtained, any appeals of that
20 certificate are directly to the Supreme Court.
21 That's not the case with a local process. It's not
22 the case with the individual permitting process. The
23 individual DES permits -- as I'm sure Committee
24 Member Stewart can speak to it better than I -- but

1 those individual permits would then have to be
2 reviewed administratively by another layer of appeal
3 within the department and then go to the court
4 system. We don't have that with an SEC permit. So
5 therefore, this process will avoid undue delay.

6 The third consideration under 162-H:1
7 that the Committee must undertake is whether full and
8 timely consideration of the environmental
9 consequences of the project will be provided by the
10 SEC process. That's clearly the case. The Committee
11 has in the past -- is required by statute and has in
12 the past conducted thorough and full environmental
13 reviews of energy projects such as the one proposed
14 by my client. Interestingly enough today, we did not
15 hear from the planning board members that they had
16 hired any experts to determine any standards in their
17 ordinance for environmental issues. We heard about
18 siting, we heard about noise, and we heard about
19 setbacks. We haven't heard anything in the way of
20 hiring experts or evaluating -- putting into place
21 criteria for the evaluation of the environmental
22 consequences of this project. So it's clear that the
23 SEC process can provide or meet the criteria in 162-H
24 which requires full and timely consideration of

1 environmental consequences. We know what the
2 permitting or the certificating or adjudicative
3 process is at the SEC. We know the time frames for
4 that. They're set in statute. There's no questions
5 for the Applicant or members of the public or
6 intervenors, or Public Counsel, for that matter,
7 about the time frames. We don't have that surety in
8 terms of the town process.

9 The fourth thing that the SEC must
10 consider in deciding whether or not to assert
11 jurisdiction is whether or not the construction and
12 operation of this facility will be treated as a
13 significant aspect of land-use planning in the local
14 realm. 162-H:1 requires that all energy facilities
15 must be treated as a significant aspect of land-use
16 planning in which all environmental, economic and
17 technical issues are resolved in an integrated
18 fashion. As was demonstrated by all of the testimony
19 today, I don't think we have that integration yet.
20 We don't actually even know what that process is
21 going to be. So it's indisputable that this project
22 implicates significant land-use issues, the likes of
23 which the town of Antrim, and I'd venture to say most
24 New Hampshire towns, have never seen before. This

1 project is not a typical, locally regulated aspect
2 type of land-use planning, like a housing
3 development, a shopping mall or another industrial
4 construction project. Therefore, subjecting it to a
5 local planning board review process is not consistent
6 with the legislature's intent expressed in 162-H:1.
7 The significant land-use projects, like energy
8 projects, go through the SEC. The SEC authority
9 enables it to examine a wide range of issues, as you
10 are undoubtedly familiar. In summary, the purposes of
11 162-H will be satisfied if jurisdiction by this
12 Committee is asserted, just as the Committee did in
13 the Lempster wind facility, which was under
14 30 megawatts.

15 Additional policy and practical
16 considerations also exist for jurisdiction here.
17 It's more important, I believe, for the Committee to
18 assert jurisdiction rather than to defer to the
19 wishes of the planning board that simply wants to
20 maintain local control. Based on our experiences
21 thus far in Antrim with the project's met tower, a
22 simple met tower -- which, to my knowledge, no other
23 wind project in New Hampshire has ever had problems
24 siting a met tower -- as you've heard, we're in two

1 different superior court cases over the met tower.
2 And it's not clear when that issue is going to be
3 resolved any time soon.

4 As you've heard from Mr. Webber's
5 prefiled testimony, there's dysfunction within the
6 planning board and resignations from the ad hoc
7 committee that's supposed to be developing
8 recommendations for ordinances and rules. There's
9 disagreement between the town's governing and
10 planning bodies over the issue of jurisdiction.
11 Based on our past experiences with a failed attempt
12 to pass a simple ordinance that would have made wind
13 energy facilities a permitted use in the rural
14 conservation district, Antrim Wind is not confident
15 that, even if the ad hoc committee could complete its
16 work in a timely fashion, that any ordinance or rule
17 changes would be enacted in a timely fashion, or even
18 at all. Even if there were local process in place
19 for consideration of this project, and even if the
20 project were able to secure local permits, undue
21 delays would undoubtedly occur within the appeals
22 process as I've indicated before.

23 The lack of process at the local level
24 is a primary reason why we are here. We think it's

1 important, again, for the Committee to recognize that
2 it's not just the Applicant that wants jurisdiction.
3 The governing body of the town wants jurisdiction, as
4 do over 100 voters in the town of Antrim. While we
5 understand that some members of the planning board
6 want jurisdiction to reside here, I think it's
7 important to recognize that there's nothing in 162-H
8 that says the Committee must make a decision on
9 whether to assert jurisdiction simply because there's
10 some folks in town who want local control over the
11 project.

12 I thank you very much for your
13 attention. I realize I'm probably headed close to,
14 if not over, my eight minutes. And we would just
15 thank the Committee Members for their time and
16 attention to this matter.

17 CHAIRMAN GETZ: Okay. Thank you.

18 Well, let me suggest this to the
19 Committee: I think at this point we've got the full
20 record before us to begin deliberations. It's a
21 little after 3:00. I suspect it will take us some
22 time to work our way through deliberations. What I
23 was going to suggest, I want to talk a little bit
24 about what I think the issues are, as I would frame

1 them, see if there's some comfort with that, maybe
2 take a short recess, and then our court reporter may
3 be able to keep up with us, depending how long these
4 deliberations go.

5 But I would frame the issues this way:
6 I think first we need to look at, is the petition
7 properly filed? And in that regard, I think we're
8 looking at, effectively, 162-H:2, VIII(g)[sic] and
9 XI. So, is the question properly before us. I think
10 the record will show there was some talk through the
11 proceedings about what was filed initially by the
12 town board of selectmen and then what was filed by
13 the petitioner, and then what was filed later by Mr.
14 Webber. So let's deal with that. I think we should
15 deal with that question first.

16 Then, the second issue -- and these
17 are both, you know, preliminary issues before we get
18 to the crux of the argument. The second issue is,
19 really, and I think Mr. Little was making this
20 argument most recently in his closing, about is
21 this -- once the question's here, is it premature for
22 us to act on it? And it goes to this issue of what's
23 the status or nature of the project, and does it need
24 to be comparable to be in a position to have a

1 full-blown application before us. So I think that's
2 the second argument.

3 And then the third argument is, if
4 it's properly before us, if it's not premature, then
5 should we take jurisdiction or should jurisdiction
6 reside with the town. And then there's multiple
7 issues, I think, in framing that last question.

8 But are folks comfortable with that
9 approach to walking through it?

10 MR. HARRINGTON: I just had one -- I
11 thought you were done. I'm happy with that. I guess
12 I just had a question.

13 CHAIRMAN GETZ: And the other thing I
14 would just say as a matter of process, rather than
15 having formal motions, seconds and then discussion, I
16 think let's just take up those issues one by one, and
17 let's have a discussion about them. And then, once
18 we look like we're in a position where we can vote on
19 each of those items, then we'll just call a vote on
20 that.

21 So, Mr. Harrington.

22 MR. HARRINGTON: Yeah, this is a
23 question for counsel. I'm not sure if he has the
24 answer off the top of his head or if we have to look

1 it up.

2 But we have these two cases that are
3 pending in superior court. Now, normally if SEC had
4 jurisdiction over this, those appeals would have
5 never gotten there, I guess. So, does our taking
6 jurisdiction have any effect on those appeals, or do
7 they still have to play their way out through
8 superior court and maybe to the supreme court?

9 MR. IACOPINO: That would be up to the
10 superior court to decide. I'm not tasked with
11 providing legal advice to superior court judges. But
12 they would decide what effect this decision that you
13 all make today has on whether or not those lawsuits
14 should continue or should be dismissed. They involve
15 actions of the local land-use boards that have
16 occurred prior to any request being made of this
17 Committee. So there's no real argument to be made
18 that somehow the Committee would necessarily have
19 something to do with that. And it also depends upon
20 what we get for an application. They may come to us
21 with an application that includes installing met
22 towers. We have had wind projects that have met
23 towers as part of the project. So it depends in part
24 on what is brought before us, and it depends in part

1 on how a superior court judge interprets the
2 procedural standing of the case in the superior
3 court.

4 MR. HARRINGTON: There's no automatic
5 dismissal because the SEC took jurisdiction then.

6 MR. IACOPINO: I would hesitate to say
7 that there would be an automatic anything in the
8 superior court.

9 MR. HARRINGTON: All right. Thank
10 you.

11 CHAIRMAN GETZ: Okay. Anything else
12 before we take a brief recess?

13 (No verbal response)

14 CHAIRMAN GETZ: Okay. Then let's take
15 10 minutes.

16 (Whereupon a recess was taken at 3:15
17 p.m. and the hearing resumed at 3:31 p.m.)

18 CHAIRMAN GETZ: Okay. We're on the
19 record and beginning the deliberations of the Site
20 Evaluation Committee.

21 As I proposed before the break that we
22 would deal with first, the question of is the
23 question properly before us? Are there valid
24 petitions? And I think we started out by looking at

1 162-H:2, VII, an energy facility means, among other
2 things, under Subsection G, any other facility and
3 associated equipment that the Committee determines
4 requires a certificate, consistent with the findings
5 and purposes of R.S.A. 162-H:1, either on its own
6 motion or by petition of the Applicant, or two or
7 more petitioners, as defined in R.S.A. 162-H:2, IX
8 [sic]. And in H:2, IX [sic], it describes a
9 petitioner as meaning a person filing a petition
10 meeting any of the following conditions: A, petition
11 endorsed by 100 or more registered voters in the host
12 community or host communities; B, a petition endorsed
13 by 100 or more registered voters from abutting
14 communities; C, a petition endorsed by the governing
15 body of the host community, or two or more governing
16 bodies of abutting communities; and D, a petition
17 filed by the potential applicant.

18 So the way I understand the statute is
19 we could initiate and take the question up, or there
20 could be a petition by the Applicant that would be
21 satisfactory for us then to make a decision, or there
22 could be two or more of the petitioners, under
23 Section IX [sic]. And what we have in the record is
24 the February 7 letter from the Town of Antrim, and it

1 says in there that, "We petition the SEC to take
2 jurisdiction if and when an application is made to
3 construct the facility."

4 On March 11 we got a petition for
5 jurisdiction by the Applicant. And on April 20 we
6 got another letter from the Town of Antrim Board of
7 Selectmen stating that they would strongly urge that
8 the Site Evaluation Committee accept jurisdiction for
9 the following reasons. And I believe that decision
10 was ratified at a later meeting of the board of
11 selectmen.

12 So that's, I think, the applicable
13 law, and those are the relevant documents. Does
14 anybody have anything that they would like to speak
15 to concerning the issue of whether the question is
16 properly before us?

17 Commissioner Below.

18 CMSR. BELOW: Sure. Not to confuse
19 things too much, but there's sort of a parallel path
20 to the same result in the statute, which is under
21 162-H:2, VII(f), includes under the definition of
22 "energy facility" a renewable energy facility, which
23 has its own definition under XII of that same
24 section, which the last sentence of that section

1 says, "Renewable energy facility shall also include
2 electric generating station equipment and associated
3 facilities of 30 megawatts or less nameplate
4 capacity, but at least 5 megawatts, which the
5 Committee determines requires a certificate." And
6 then it sort of repeats the same language, consistent
7 with the findings and purposes of the statute either
8 on its own motion or by petition of the applicant, or
9 two or more petitioners, as defined in R.S.A.

10 162-H:2, XI. And the only subtle difference is that
11 it creates 4 or 5 megawatts. So it seems to be
12 saying for a renewable energy facility, if it's under
13 5 megawatts, it shouldn't be in the SEC jurisdiction.

14 I think we've had representations from
15 the potential applicant. And I note that the statute
16 under XI(d) says the petition filed by the potential
17 applicant, which kind of makes clear that it's not
18 necessarily -- you don't necessarily have an
19 applicant or a complete application, but you have a
20 potential applicant. I think the potential applicant
21 has testified that the proposed facility would be
22 greater than 5 megawatts and less than 30. So I
23 think that's one of the criteria that seems to be met
24 by the statute, as well as the petition by 100 or

1 more registered voters in the host community and the
2 governing body of the host community.

3 CHAIRMAN GETZ: So the "potential
4 applicant" language goes to the second issue
5 somewhat, doesn't it, in terms of if the question is
6 properly here, then whether there's such a thing as a
7 premature request?

8 CMSR. BELOW: Right. I mean, I think
9 throughout the statute you see things defined as "a
10 facility." I think you can only read it -- the
11 statute only makes sense if you read it as a
12 potential or proposed facility. You know, there are
13 many references in the statute that you have to
14 assume it's talking about proposed or potential,
15 because otherwise it doesn't make sense.

16 But in this case, the statute
17 specifically refers to a petition filed by the
18 "potential applicant." So I think that suggests that
19 you don't have to have a complete application before
20 you get to the question of whether there should be
21 jurisdiction or not. And quite honestly, I think
22 that's only logical, because, you know, our rules
23 define in some detail as well, you know, based on the
24 statute, what would be in an application to the SEC.

1 And that would be different than what would be in an
2 application to a local body. So it doesn't make
3 sense that you have the completed application before
4 you knew whether you were under the jurisdiction of
5 the body or not.

6 CHAIRMAN GETZ: Any other discussion?
7 Director Scott.

8 DIR. SCOTT: On the same line of
9 thought again, I noticed the same thing, that the
10 word "potential" applicant, I agree, would imply you
11 don't necessarily have to have an application in
12 hand. When I look at our rules, 102.23, it defines
13 "petition" as a request to the Committee to rule on
14 applicability of the chapter. That seems to follow
15 in line with that, that perhaps you don't have to
16 actually have a defined application in hand for us to
17 rule on applicability for a petition. And obviously
18 what we have before us is a petition.

19 CHAIRMAN GETZ: Any other discussion?

20 I think we're merging the two issues
21 together. First, are the petitions that came to us
22 properly done; and then, if they're properly done,
23 and we should be addressing this question, then is it
24 ripe for us to address the question? So, anyone

1 else?

2 Mr. Harrington.

3 MR. HARRINGTON: I disagree. I think
4 they meet the criteria as stated in the law twice:
5 Once by the petition of the 100 citizens, and the
6 other by the governing body coming from the -- well,
7 actually, three times. And then by the developer
8 itself. So...

9 CHAIRMAN GETZ: Well, if there's no
10 other discussion about that issue, why don't I --
11 I'll move the question then.

12 I would propose that we find that the
13 petitions were properly filed and that the question
14 is properly before us to determine whether to take
15 jurisdiction, dealing with that issue and not the
16 issue of whether an application is needed. I'll
17 break those out.

18 DIR. MORIN: Second.

19 CHAIRMAN GETZ: There's a second from
20 Director Morin. Any discussion?

21 CMSR. IGNATIUS: Mr. Chairman, just
22 one other thing to add. Of all of the issues that
23 have been debated during these two hearing days, I
24 don't remember any real discussion of challenging the

1 validity of signatures or questioning that those were
2 properly filed. So I think we can conclude that they
3 are -- that they meet -- I would conclude that they
4 meet the standard for the petitions in the statute.

5 CHAIRMAN GETZ: Any other discussion?

6 (No verbal response)

7 CHAIRMAN GETZ: Then, hearing none,
8 then all those in favor of the motion, please signify
9 their agreement by raising their hands.

10 (Multiple members raising hands.)

11 CHAIRMAN GETZ: Note for the record
12 that it's unanimous.

13 Okay. And then there's the second
14 question, is this issue of whether -- the question of
15 whether it's premature for us to reach the underlying
16 question of whether we should take jurisdiction or
17 not goes to this issue of whether I think, in large
18 part, the argument is that there should be a
19 application before us before we make -- before we
20 reach such a decision. And I think Commissioner
21 Below and Director Scott have pointed out, by
22 reference to the use of the language, the "potential
23 applicant" plus other language in the rules, that
24 there is not such a requirement. But is there any

1 other discussion or concern? Anything else about
2 that issue?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Well, then,
5 hearing nothing, then I would move that we find that
6 the question of whether to take jurisdiction is ripe
7 and that we should undertake to decide that question.

8 MR. HARRINGTON: Just a question on
9 that. Are we limiting -- I'm trying to figure out
10 exactly what that involves, because I see two issues
11 there: One on the face is that, is it ripe for us to
12 make a decision? But I also think that somewhere in
13 this there's got to be a step that says is this the
14 right time to make a decision, or would there be a
15 better time. Are we trying to combine those two into
16 one?

17 CHAIRMAN GETZ: Well, I'm trying to
18 get over the threshold. I think the argument is that
19 we can't take -- we shouldn't take -- consider the
20 issue until there's an application.

21 MR. HARRINGTON: Okay. So we're just
22 limiting to the fact that just because there's no
23 application at this time doesn't mean we can't
24 consider it.

1 CHAIRMAN GETZ: And then I think when
2 we get to the larger issue -- well, I suppose when we
3 get to the larger issue of should we take
4 jurisdiction, because it's a discretionary argument
5 the way it's been posed -- I don't know. Maybe it
6 sounds like you're saying there may be something
7 other than a yes or no answer to that question?

8 MR. HARRINGTON: Yeah. But I think
9 you clarified it. As long as what we're with dealing
10 here is an absence of an application, does that
11 prevent us from taking jurisdiction at this time.
12 And I guess we're saying, no, it doesn't.

13 CHAIRMAN GETZ: Well, we'll see. I
14 haven't gotten --

15 MR. HARRINGTON: Well, that's
16 basically what you're saying with your motion.

17 CHAIRMAN GETZ: Yeah.

18 MR. HARRINGTON: Then I'll second the
19 motion.

20 CHAIRMAN GETZ: Okay. All those in
21 favor, please signify their agreement by raising
22 their hands.

23 (Multiple members raising hands.)

24 CHAIRMAN GETZ: Okay. That's

1 unanimous.

2 Now we get to the crux of the issue
3 and whether we should take jurisdiction or whether
4 jurisdiction should remain in the town level. And
5 again we go back to the 162-H:2. And under XII,
6 concerning renewable energy facilities, it goes to
7 the issue of whether we determine the project
8 requires a certificate consistent with the findings
9 and purposes set forth in H:1. I won't read that
10 because it's been read many times throughout the
11 proceedings. So I guess I'd open the floor for
12 discussion or questions or issues that folks want to
13 raise in terms of either, first off, how you want to
14 address the issue, or what folks' views, particular
15 arguments for and against may be. Director Morin.

16 DIR. MORIN: I think from one
17 perspective, the petition's been brought to us at
18 this present time, and we need to look at the context
19 within the present time. And I think in terms of the
20 capacity for the Town to review a proposal at this
21 time, is that there are definitely some issues with
22 their capacity to do that. I think what's happening
23 with the ad hoc committee is very admirable, and I
24 think they're taking a real due diligence to try to

1 draft an ordinance. And that ordinance could be very
2 helpful if the SEC took jurisdiction. But it doesn't
3 exist today. And in addition, the Town is needing to
4 hire expertise to develop the ordinance. There's
5 some question in my mind as to the resources to
6 continue to hire expertise if they then took to
7 enforce that ordinance and then had a project come
8 before them.

9 So I think in terms of the capacity
10 issue and expertise, and some history here on this
11 type of a project, there's been numerous statements
12 as to some struggle with that, in terms of the size
13 of the project, this type of a project, and the
14 literal staffing at the Town level. I think that the
15 ordinance development that's going on could still be
16 considered, and I would tend to encourage the Town to
17 continue with that process. But I just don't know --
18 I want to understand how our decision is made in the
19 context of -- I would assume that we have to make it
20 based on the record now, not on what may or may not
21 be in four to six months. And I guess I pose that
22 question to the rest of the members, on whether a
23 decision has to be made in that context, which is
24 where I'm leaning towards in terms of a decision.

1 CHAIRMAN GETZ: Mr. Harrington.

2 MR. HARRINGTON: I kind of go along
3 with that. Just a couple of basic things I wanted to
4 just throw out as well.

5 There was a lot of arguments given of
6 why the SEC should take jurisdiction of that. And
7 they went through the whole list. And like you just
8 said, we don't need to read 162-H:1 again. We went
9 over all of those. But, you know, each one of those
10 arguments I felt was applicable to any 5- to
11 30-megawatt renewable energy facility; and yet, the
12 state legislature, when they passed this law, made
13 this provision optional. So I don't think we can say
14 that simply going through and saying the SEC would do
15 a good job evaluating each of these makes it
16 mandatory for us to take it. If that was the case,
17 then there wouldn't be any option. The law would say
18 anything over 5 megawatts, the SEC must take
19 jurisdiction of. In fact, it allows us to even not
20 take jurisdiction on larger things, if you go to
21 162-H:4, IV. There's a list of things that, if are
22 done, that we cannot take jurisdiction, basically
23 when existing statutes provide adequate protection of
24 the objectives of 162-H:1. So I think we have to

1 look at this from the view that it isn't automatic
2 just because they can say that all the things in
3 162-H:1 would be better, could be well addressed by
4 the SEC taking the case.

5 But the other point I wanted to make
6 from that 162-H:4, IV(a) is it talks about existing
7 state, federal or municipal ordinances. And even
8 though this is the part that talks about why we
9 wouldn't take jurisdiction of something over
10 30 megawatts, it still gives us some guidance as to
11 what the legislature was thinking when they were
12 talking about existing municipal ordinances. And I
13 think what Director Morin just said was that right
14 now we have a proposed ordinance. We don't have any
15 ordinance to look at. So we have no way of knowing
16 if that ordinance is going to meet the intent of
17 162-H:1. So I think that's an issue that we need to
18 address, one way or the other, no matter how we
19 decide on this.

20 CHAIRMAN GETZ: Well, I guess I'd make
21 the one distinction. There's ordinances, but not one
22 that's specific for the permits, the type of use
23 that --

24 MR. HARRINGTON: Yeah. It says

1 existing state or federal statutes, state or federal
2 agency rules, or municipal ordinances provide
3 adequate protection of the objectives of R.S.A.
4 162-H:1. My contention is those ordinances don't
5 exist in the town of Antrim at this time.

6 DIR. MUZZEY: You're reading, Mike,
7 from the part that applies to over 30 megawatts?

8 MR. HARRINGTON: Yeah. But I'm saying
9 it's not specific to this. But it may provide some
10 guidance as to the intent of the legislature.

11 CHAIRMAN GETZ: Director Normandeau.

12 DIR. NORMANDEAU: Yeah, I guess the
13 piece of this that I struggle with a little bit is,
14 while I certainly appreciate the efforts that look
15 like are happening, and the fact that there's clearly
16 a split in the town, at the same time I look at this,
17 and one of the things I see here is, you know, the
18 petition by the selectmen who, you know, at least
19 arguably, are the top executives of the town. You
20 know, I have a hard time getting past that, if you
21 will, similarly to, you know, if this was a request
22 in my own town of Portsmouth of, you know, the mayor
23 and council. I mean, it seems to me that if the --
24 given our first two decisions here, that some

1 deference be made to the request of the elected, you
2 know, executive managers of the town in question.
3 And I say that without -- you know, as everyone here
4 knows, we all understand what's actually involved in
5 going through this process. I don't think any of us
6 are, you know, beating the flag to get there. But I
7 just say I think it's a responsibility that, you
8 know, the town executives would come and request
9 this. And I give that some deference in my own mind.

10 CHAIRMAN GETZ: Director Scott.

11 DIR. SCOTT: I have similar thoughts
12 on the town itself. You know, clearly the planning
13 board is, in my opinion, asking us to reach beyond
14 the government body of the town and overrule that in
15 this case. So I'm a little bit reluctant on that
16 end. Having said that, I do note that if ordinances
17 were passed on schedule, if we had an application, it
18 would make our job a little bit easier in deciding.
19 Again, obviously, one thing we've been asked to look
20 at is does the Town have the expertise to do what
21 they need to do. Those would certainly help inform
22 that decision. I'd love to have my cake and eat it,
23 too, and find a way where we could have those things
24 before us before we rule. Having said that, I would

1 give deference to the town, lacking anything else.

2 CHAIRMAN GETZ: Director Muzzey.

3 DIR. MUZZEY: I do note that on one
4 hand the board of selectmen petitioned our Committee
5 to take jurisdiction. But on the other hand, what I
6 believe I understood from the testimony is that they
7 also asked the planning board -- gave the planning
8 board time to come up with an ordinance and created
9 this time period that this could be discussed in
10 town, I think perhaps to respond to both sides of the
11 issue. And thinking of the planning board, I think
12 they have made the case that the ad hoc committee has
13 made progress. And frankly, I would be concerned if
14 the planning board or the ad hoc committee came in --
15 and this is getting to Director Morin's point -- and
16 said we understand entirely how to create an
17 ordinance addressing industrial wind facilities, and
18 we don't need to hire consultants or experts in the
19 field to come and assist us in that. So I saw that
20 as an advantage instead of a detriment to that
21 process. So I'm feeling the same way. There seems
22 to be a lot of balls up in the air on both sides and
23 nothing real specific for us to work with.

24 CHAIRMAN GETZ: Commissioner Ignatius.

1 CMSR. IGNATIUS: Thank you. As I
2 think about this, it's hard. There's a lot of
3 emotion. There's a lot of issues. And there are
4 some accusations back and forth on this effort of the
5 ad hoc committee, on the project itself, on the
6 relationships between the different entities and
7 authority in the town. But I try to kind of put that
8 aside. And just looking at the structures in place,
9 I think this is a very different situation than what
10 we saw in Lempster, where you had a community with no
11 structure for evaluation of projects of any size. I
12 think the only regulatory authority they had was over
13 building permits and a certificate of occupancy, and
14 nothing else. And this is clearly not the case here.
15 Although the town planner's position is open, there
16 is a history of the planning role. There is an
17 active planning board, an active ZBA, and an active
18 board of selectmen, and now the ad hoc committee.
19 And it sounds like, from the testimony today, that
20 there's been a considerable amount of work being
21 done, a lot of time spent. And if we take the
22 witnesses at their word, and I wasn't given any
23 reason today not to, that the members of that ad hoc
24 committee are working to develop an ordinance and

1 working off of models in place -- ordinances in place
2 to use as a model for development of one in Antrim.
3 There is a great unknown. We've all acknowledged
4 whether that will come to fruition. But I think we
5 don't take jurisdiction lightly. And we've got to
6 have a pretty good reason to step in when you've got
7 a situation that is below the mandatory 30-megawatt
8 level. My view is the request of a town governing
9 body is important, but it doesn't mean we have to say
10 yes. And so in suggesting we give deference to the
11 Town, I think we seriously consider the request, but
12 I don't think that that means we necessarily agree
13 because there's a petition from the governing body of
14 the Town to take jurisdiction.

15 Having heard from, I guess, four town
16 officials -- Mr. Genest, Mr. Webber, Ms. Pinello and
17 Mr. Levesque -- they all seem to be thoughtful
18 people. They are all intelligent people. They seem
19 to be people of integrity. And as much as it's clear
20 there is hostility, and you can feel it in the air,
21 and it is not a good situation, I guess my conclusion
22 is that we don't have a basis to take from the Town
23 its role through the planning board process and the
24 normal select board process, and we should not take

1 jurisdiction.

2 CHAIRMAN GETZ: Mr. Harrington.

3 MR. HARRINGTON: I just wanted to
4 address something that Director Morin raised earlier
5 about the concern over resources. I think the way it
6 works is that they were going to be able to fund,
7 using the remaining salary for their town planner for
8 hiring the consultants to develop the ordinance. But
9 once the petition is actually filed, then, by state
10 law, they are able to charge the petitioner funds and
11 gets funds from them on whether to hire consultant,
12 much the way the SEC does that as well. So if it
13 came to that, they would be able to have additional
14 resources.

15 CHAIRMAN GETZ: Anyone else?

16 CMSR. BALD: Mr. Chairman, I think
17 that in light of the fact that the legislature was
18 very specific saying that if a petition was endorsed
19 by a governing body I think puts a lot of weight to
20 that, and so I'm persuaded that we should take
21 jurisdiction.

22 CHAIRMAN GETZ: Commissioner Below.

23 CMSR. BELOW: I think my concern
24 revolves around the phrase in R.S.A. 162-H:1, "that

1 undue delay in the construction of needed facilities
2 be avoided and that full and timely consideration of
3 environmental consequences be provided." And, you
4 know, part of my gut says I'd like to defer to the
5 local control. You know, I think that all other
6 things being equal, that would be preferable. But my
7 concern is that we're at the point where the
8 uncertainty of when the regulatory framework will be
9 in place, whether it will be put in place, if it
10 simply gets pushed into December, it gets flipped
11 until March until they even know what the regulation
12 may or may not be that they need to be preparing an
13 application for. And that pushes out to just about a
14 year from when this body was originally petitioned to
15 consider jurisdiction. I think that's moving into
16 the realm of undue delay for the purposes of review
17 and consideration of this, particularly in light of
18 the fact that the testimony of the governing
19 representatives of the board of selectmen, that this
20 has been known about and in the works for at least
21 two years, and they haven't gotten a regulatory
22 framework in place that they hoped to have to be able
23 to give this full consideration. So I think that
24 issue of a statutory purpose of finding the balance

1 between the environment and need for new energy
2 facilities, that is followed directly by the
3 reference that undue delay be avoided. You know, I
4 think that causes me to weigh to the side of
5 accepting jurisdiction, because then the potential
6 applicant knows what rules they have to work by and
7 can proceed to completing their studies to prepare an
8 application, and they know what the regulatory path
9 looks like at that point.

10 CHAIRMAN GETZ: I guess one question I
11 have about that approach is, does that mean that in
12 any town that has a planning board, has a zoning
13 board and ordinances, but doesn't have -- or in a
14 similar position of where Antrim is, where the only
15 way you could proceed is by getting a variance, does
16 that mean -- and I think what I'm heading towards is
17 in order for us not to be involved, there would have
18 to be like specific wind-related ordinances in town?
19 Does that follow?

20 CMSR. BELOW: I'm not sure it
21 necessarily means that there can be a situation in
22 which a variance might be required. But a general
23 variance is -- you know, it's a difficult threshold
24 to meet. And I think, you know, the legislature

1 somewhat addressed this by putting into the planning
2 statutes for municipalities reference to the fact
3 that local planning statutes should address this area
4 specifically. I think we saw some references to
5 those statutes today. But, you know, I think that is
6 a good question. Certainly, a community that has
7 gone to the effort to anticipate this kind of
8 facility, you know, it'd be easier to defer to them.
9 I think in this case, where the governing body, the
10 body charged with the provincial affairs of the
11 community, has sought jurisdiction by this body, I
12 think, to me, combined with the lack of framework
13 that fits this project weighs for jurisdiction. I
14 mean, I think if you had a community that maybe
15 didn't really quite have the regulatory framework,
16 but both the governing body and the planning bodies
17 were united and said we can deal with this, you know,
18 that might weigh towards deference to the local
19 community. But to my mind, deference to the Town of
20 Antrim at this point is deference to the position of
21 the board of selectmen. I don't think there's any
22 way we can avoid the notion that deference to the
23 Town in this case means deference to the board of
24 selectmen. Deference to the planning board is a

1 different kind of deference at this point. It's not
2 deference to the Town.

3 CHAIRMAN GETZ: Let me -- I see a
4 couple people want to weigh in. But let me -- I
5 think it's important, even though I didn't read some
6 of the full statute in ahead of time, I think to lay
7 out some of what's in the statute and to talk a
8 little bit about the two cases that are forming part
9 of our precedent. And I want to talk a little bit
10 about trying to analyze those issues before we go
11 through some additional discussion.

12 You know, we're directed to look at
13 the findings and purposes in H:1. And the relevant
14 language there goes to maintaining a balance between
15 the environment and the need for new energy
16 facilities in New Hampshire, undue delay in the
17 construction of needed facilities being avoided, full
18 and timely consideration of environmental
19 consequences be provided, planning to construct
20 facilities in the state be required to provide full
21 and complete disclosure, that the construction and
22 operation of energy facilities is treated as a
23 significant aspect of land use, and that the state
24 has an adequate and reliable supply of energy in

1 conformance with sound, environmental principles.

2 And in the Clean Power or Laflamme
3 case, the order there broke those pieces out and then
4 went and had a discussion and, among other things,
5 recognized that the project in this case was already
6 an industrial area; in terms of the issue of delay,
7 there would be greater delay by going to the Site
8 Evaluation Committee at that time; in terms of full
9 and complete disclosure, concluded that the Committee
10 review would add little to that, given what had been
11 going on; concluded that the integrated process in
12 Berlin was treated as an aspect of land use, and then
13 concluded, finally, that it's not necessary to assert
14 Committee jurisdiction.

15 The other end of the spectrum is in
16 Lempster, where we he had, you know, the question of
17 the relevant board asking us to come in. And there
18 were really no existing structures or institutions to
19 address the issue. And seems to me here, looking at
20 this, you know, we do have a case somewhere in the
21 middle. It's a smaller town than Berlin. It's a
22 small city. It has some institutions. We've been
23 asked to come in by the board of selectmen. On the
24 other hand, the current members of the planning board

1 are asking us not to come in. They're saying that
2 they do have the wherewithal to handle the questions.
3 And overriding all of this, I've been trying to get a
4 view -- I certainly agree with Commissioner Ignatius,
5 that I think there's -- there are firmly held
6 opinions, and I think they're all held in good faith.
7 And so I'm trying to look at and determine the
8 question of is this just democracy, or is this
9 dysfunction? And I'm not sure that in 200 and
10 however many years it is we've clearly drawn those
11 lines sometimes. But I think a large number of
12 well-meaning people are trying to do the right thing,
13 and we're trying to -- but have different opinions
14 and asking us to make a decision.

15 So, as Director Normandeau points out,
16 I think the first instinct is to say that the board
17 of selectmen have asked us in, so shouldn't that be
18 given some significant weight? And I think it's a
19 very close decision that we're called on to make. I
20 don't think, as a matter of law, taking or not taking
21 jurisdiction is demonstrably right. I think it's
22 a -- or wrong. I think it's a question of our
23 discretion. And so I just wanted to -- for a number
24 of reasons, I wanted to get that on the record for

1 us, for our deliberations, because at some point
2 there's going to have to be an order written that's
3 going to be subject to rehearing and appeal, and I
4 just want to make sure that we're addressing all
5 these issues in a way that is considered and
6 deliberate.

7 So I know, Director Morin, you had
8 something before.

9 DIR. MORIN: Well, I had a question.
10 It came up during the proceedings. But is there --
11 and this is a legal question totally. This is
12 outside my expertise. But is there a way to continue
13 or hold off direct decisions to let some process
14 happen through October or so, to see if, depending on
15 how the process goes with trying to develop a
16 reasonable process, so that there would be better
17 assurance that there would not be undue delay?
18 Because I think that's what's bothering me. I think
19 there's a lot of people doing some very good work.
20 And I agree with the characterization. I think
21 everyone is very sincere about what they're trying to
22 do. I don't think that's a question. I think
23 there's some very strong expertise working on the
24 problem. But it's really unknown right now, I think,

1 as to the ability for this project to be adequately
2 reviewed in a reasonable time frame. I think we have
3 a lot of unknowns about that. So is there any way to
4 make a decision, such that we have a delay to see how
5 the process goes, and then to make a final decision
6 later in the fall? Or is that not a possibility?

7 CHAIRMAN GETZ: Well, as I understand
8 it -- look at this from two directions: One is, as I
9 understand it, there's no time limit under the
10 statute in which we are required to make a decision
11 whether to take jurisdiction or not. 162-H:14 talks
12 of temporary suspension of deliberations. And this
13 raises an issue analogous to some other issues that's
14 already come up in this case, because that says
15 relative to an application for a certificate. So I
16 guess you could argue that that only applies to that.
17 But it seems that there's just as good an argument
18 that what would apply to a certificate, in terms of
19 being permitted to suspend deliberations, would apply
20 to a decision whether to take jurisdiction or not.
21 And I think it's already been spoken to in our rules
22 that talks about continuance.

23 So I think we have the legal authority
24 to defer, continue, suspend. I guess it's a question

1 of whether to exercise that authority. And I think
2 there's been some arguments to not exercise it,
3 because that would have some -- to not put this off,
4 because it could negatively affect Antrim.

5 DIR. MORIN: And I guess, just as a
6 follow-up, and then obviously we have to go to
7 others, if that negatively affects Antrim, not taking
8 jurisdiction, I think it's even more unknown in terms
9 of the impact to Antrim, in terms of process. So I
10 guess what I'm arguing is that could be, you know,
11 ground. I don't know.

12 CHAIRMAN GETZ: Director Normandeau.

13 DIR. NORMANDEAU: I have a question
14 for you more experienced folks up there.

15 In the cases here that I've been
16 involved with, at least to my understanding, the
17 properties associated with the projects that I have
18 dealt with were either zoned for those uses or
19 unzoned. You know, in the case of GRP, that was
20 whatever it is, Coos County Planning? Is that who
21 actually makes those decisions for a situation like
22 that?

23 What I'm trying to understand is,
24 coming into an area that in fact does have zoning

1 that doesn't allow a use, or this use, does that, at
2 the start of the program, if you will, have an
3 effect? In other words, if -- you know, if I'm into
4 an unregulated piece of land or a piece of land that
5 is obviously zoned -- for example, you just mentioned
6 in Berlin it was industrial zoning, what we dealt
7 with there. But is there any -- does that carry any
8 weight at the very beginning? Because clearly, you
9 know, you could go and put applications in for all
10 sorts of places that don't allow the particular use.
11 And I just -- I don't see in the statute that that
12 is -- I mean, if it's not a consideration, it's
13 simply not a consideration. It's overridden like all
14 other local control. I'm just curious about that
15 particular point.

16 MR. IACOPINO: Okay. Let me try to
17 address the law for you. In Section 1 of our
18 enabling statute, RSA 162-H:1, one of the criteria
19 that you as a Committee are to look at is whether or
20 not, in this particular case, taking jurisdiction
21 would assist the state in ensuring that the
22 construction and operation of energy facilities is
23 treated as a significant aspect of land-use planning
24 in which all environmental, economic and technical

1 issues are resolved in an integrated fashion. So in
2 that respect, the existence or non-existence of a
3 land-use control statute, whether a planning board,
4 zoning statute, whatever, is part of what you may
5 consider. But by the same token, that land-use
6 statute does not bind you. For instance: Because a
7 town has zoned a certain use out of a certain
8 district, that does not bind you. And if you decide
9 to assert jurisdiction, you could still grant the use
10 in that zone. I mean, you do preempt the local
11 authority. I can't tell you what weight you should
12 give to any of these particular factors contained in
13 R.S.A. 162-H:1. That decision is for you all to make
14 as the people appointed by statute to be on the
15 Committee.

16 DIR. NORMANDEAU: I just wanted a
17 little clarification in my own mind on that point,
18 because, again, it wasn't clear in any of the other
19 things that I've been involved in where that was the
20 case.

21 MR. IACOPINO: And you're right. In
22 the past, there was either no zoning or it was
23 actually an encouraged use.

24 CHAIRMAN GETZ: Director Scott.

1 DIR. SCOTT: Two points. When I look
2 at the February 7th letter to us from the board of
3 selectmen, it seems rather conditional, and as been
4 noted in testimony. They asked us to take
5 jurisdiction if and when an application is made to
6 construct this facility. So I guess that would be
7 one question in my mind, is does that provide a venue
8 for waiting for an application? And two --

9 CHAIRMAN GETZ: But they followed up
10 with that on April 20th --

11 MR. HARRINGTON: In a letter.

12 DIR. SCOTT: I forgot that. Thank
13 you.

14 DIR. MUZZEY: And what was that?
15 Would you remind what that --

16 CHAIRMAN GETZ: The April 20th letter,
17 they said they urged the Committee to accept
18 jurisdiction. That's the way I read it.

19 DIR. SCOTT: And my second point --
20 hopefully it will be more valid than the first -- in
21 reference to Commissioner Ignatius' comment, clearly
22 when we talk about taking jurisdiction, there is
23 somewhat of a taking there. I understand we're
24 taking -- we could overrule local government. And I

1 understand that. But I also want to point out the
2 obvious. Here we have the board of selectmen asking
3 for our service. And at the risk of sounding like
4 the ultimate bureaucrat here, I think the SEC does
5 provide a positive service. Clearly, we have
6 commissioners and directors from most of the state
7 agencies here. There's a lot of resources and staff
8 time here when we do take a case. That, in my view,
9 is a positive that the Town is looking for. So,
10 again, there's a balance here. Clearly, the negative
11 perhaps from the Town is we could overrule something
12 that they're doing. The positive is they're asking
13 for our assistance, our resources, which is a
14 financial issue for the Town also.

15 CHAIRMAN GETZ: Other discussion? Mr.
16 Harrington.

17 MR. HARRINGTON: Yeah, I wanted to
18 address some of the points that were brought up
19 already. There was one about the undue delay to
20 start with. But if you remember, the Applicant,
21 whatever we're calling him now, the wind project
22 proposer, they said they wouldn't have an application
23 ready until the end of the year, anyways. And then
24 there's the time frames in that for the renewable

1 facility. You have 30 days to accept it, and then
2 there's 90 days for the initial response back from
3 state agencies, which pushes us out to, you know,
4 over 120 days. So we're into April before the
5 hearings would start, anyways. So I think that
6 there's still going to be that much of a delay. This
7 isn't like we take jurisdiction and they file within
8 a couple weeks here. So I think that has to be
9 looked at, that they're talking about a time frame to
10 start the hearing process probably no earlier than
11 next April. That's if everything is works as well as
12 can be expected.

13 The second thing is there was some
14 mention of they would be operating in a void for a
15 long time because the Applicant or the wind project
16 people would not know what the rules were, and they
17 wouldn't know how to address it. Well, I tend to
18 think that most of what goes into that ordinance, if
19 indeed it does get constructed and approved by the
20 town, is going to probably be based quite a bit on
21 what the Site Evaluation Committee would do, anyways,
22 and the type of things that would be brought up
23 there. But it's not going to be that they'll have to
24 wait until sometime in the end of November -- or the

1 end of October, beginning of November to read this
2 proposed ordinance. The schedule that they're
3 putting out says that the planning board adopts
4 utility-scale wind farm ordinance on August 18th.
5 Now, there's some time for public comment. But most
6 of what happens after that is just more public
7 hearings, and it's the legal process of having enough
8 notice for them to finally hold a special election.
9 So I think the waiting period here is effectively
10 going to end fairly shortly. It would be less than
11 two months they'll be able to look at the ordinance
12 and have an idea of what the requirements are going
13 to be. So I think that's an issue that kind of takes
14 care of itself.

15 And there's also been a lot of
16 discussion on the select board, that they requested
17 us here and should we defer to them. But in effect,
18 they have two trump cards on this. I mean, starting
19 tonight, they could say, if that's valid what we
20 heard, the select board could simply rule we're not
21 going to allow you to spend any of the money from
22 that planner's position to hire the expertise you
23 need to develop a good ordinance. That's probably
24 going to kill the ordinance, or at least in making an

1 effective one. But even if it didn't, the select
2 board would have a second opportunity in the fall to
3 simply say we're not going to authorize a special
4 election. And that pushes out the acceptance of the
5 ordinance by the town until at least next March.

6 I guess I would propose something
7 along with what Director Morin said, some type of a
8 system where we give the locals a chance. I mean,
9 they've shown they're willing to spend their own
10 money to hire lawyers. They're spending a lot of
11 their own time writing this ordinance, and a lot of
12 effort. I don't know what planning boards get paid,
13 but it's probably not very much, if any.

14 So I would propose we give them the
15 opportunity -- they've proposed a schedule -- and say
16 you present us with an approved ordinance by December
17 1st, and then we reconvene and evaluate that
18 ordinance against the criteria 162-H:1 and actually
19 have something to look at. And then we make that
20 decision, similar to what we did in Berlin: Is it
21 adequate to address all this? If it's not, we take
22 jurisdiction. If it is, we leave jurisdiction with
23 the town.

24 CHAIRMAN GETZ: Let me try to --

1 before people respond, let me see if -- I'll frame it
2 in a way to make sure that I understand where you're
3 going.

4 So, effectively, you're looking at the
5 findings and purposes, especially the one that goes
6 to undue delay, where we, the Committee, would take
7 jurisdiction if it appeared there was going to be
8 undue delay. But your view of what the testimony is,
9 is we don't know that yet.

10 MR. HARRINGTON: Well, what they
11 stated is that if we were to take jurisdiction, we
12 wouldn't see an application until the end of the
13 year. And based on nothing to do with this
14 particular company, but in the past, we've seen
15 sometimes that process doesn't go quite as fast as
16 anybody thinks. This is a very complicated process
17 developing that application. So we wouldn't see it
18 until the end of the year. And then, through the
19 process of the initial evaluation, the 30-day period
20 to decide whether it's going to be acceptable, and
21 then a period of up to 90 days for the state agencies
22 to do their preliminary review, before you actually
23 got to hearings you're going to be out to next March
24 or April -- that's if we were to take jurisdiction

1 today.

2 CHAIRMAN GETZ: So, basically, looking
3 at Planning Board Exhibit 4, if they weren't making
4 their checkpoints, that would --

5 MR. HARRINGTON: Right.

6 CHAIRMAN GETZ: -- that would be
7 evidence of undue delay. So defer decision and see
8 how they do on --

9 MR. HARRINGTON: Yeah. I mean,
10 obviously, the August 18th one is a key date, or if
11 it happened August 19th or maybe August 20th. But if
12 it was September 15th and they still hadn't got the
13 ordinance through the planning board, then the rest
14 of their schedule is going to fall apart. We could
15 put a number of triggers in and say, if you don't
16 reach -- this is their schedule. They're the ones
17 who said they're going to meet their schedule. So I
18 say we hold them to the schedule. If they don't meet
19 it, then we take jurisdiction. If they do meet it,
20 then we have to evaluate the ordinance when it's been
21 approved by the town. I feel very uncomfortable
22 rejecting the request for taking jurisdiction based
23 on an ordinance that we haven't seen, because we
24 don't know how thorough it's going to address all

1 these things in 162-H:1, which we had the advantage
2 of in the Berlin case because we had the town
3 ordinances in front of us.

4 CHAIRMAN GETZ: Director Muzzey, did
5 you have something?

6 DIR. MUZZEY: I was just going to
7 second some of Mr. Harrington's thoughts, that I'm
8 concerned with setting a precedent that we have seen
9 undue delay in this case when we have so many
10 well-intentioned parts of the town's government and
11 also the proposed applicant working to create a
12 project. It seems that there's still a lot to be
13 figured out, in that the project has not yet been
14 blocked; it's just people continue to work on both
15 sides to move it forward. I think we also -- I also
16 am concerned about the precedent set when we have a
17 town that is trying to make wind facilities, or some
18 sort of ordinance for a wind facility a significant
19 part of its land-use planning. I would not want them
20 to feel the state was making a judgment on their
21 ability to do so when so many folks are still working
22 so hard to do that. So, for those two parts of
23 162-H:1, the undue delays section and the significant
24 aspect of land-use planning, I remain concerned that

1 we may be setting a precedent that we don't want to.

2 MR. HARRINGTON: Mr. Chairman, I just
3 wanted to add one other thing to my original thought.
4 The other thing I forgot to mention is there's still
5 the issue of the two appeals in the superior court,
6 which apparently, from what Mr. Iacopino said, will
7 not go away automatically if we were to take
8 jurisdiction. So whatever delays may or may not be
9 caused from those could still play out, including
10 appeals to the Supreme Court on those. So, I mean,
11 any of those type of delays may be totally outside of
12 the hands of this Committee, anyways. And it's just
13 another reason that I don't think we're going to be
14 looking at delaying this if we were to accept my
15 proposal.

16 CHAIRMAN GETZ: Mr. Stewart, you tried
17 to get in a while ago.

18 DIR. STEWART: I think Mr. Harrington
19 addressed some of my main points, which was the
20 ordinance is going to have to provide adequate
21 protection of the R.S.A. 162-H:1 objectives, and
22 we're not in a position to make that judgment right
23 now. My predisposition is to lean towards, you know,
24 going with the senior executive entity of the town,

1 which is the selectmen. If we don't -- and I'm
2 waffling on this, just to be clear. We're going to
3 be making a judgment in a few months as to whether
4 this ordinance is acceptable to us. And I'm not sure
5 what the criteria in 162-H:1 is that we use for that,
6 that leaves less certainty to the Applicant. So I'm
7 sort of on the fence, still.

8 CHAIRMAN GETZ: Well, I'm hearing some
9 sentiment for take jurisdiction, some sentiment for
10 don't take jurisdiction --

11 DIR. STEWART: That's right.

12 CHAIRMAN GETZ: -- and some sentiment
13 for let's defer a decision and evaluate what kind of
14 progress is made on the -- with the ad hoc committee.

15 DIR. STEWART: I guess the question is
16 how are we going to evaluate this ordinance when it
17 comes in, because it's going to come in here for us
18 to evaluate.

19 CHAIRMAN GETZ: Well, I'm not so sure
20 it's a question for us to evaluate the merits of the
21 ordinance, but that there is one. Because if I look
22 at if you frame the issues around do the institutions
23 exist, if that's the focus, as opposed to who the
24 people are in the positions and what does the actual

1 ordinance say, it's more that there is or is not an
2 ordinance. So I think that's kind of a --

3 DIR. STEWART: If the ordinance is not
4 consistent with the objectives of 162-H:1 -- for
5 example, if it's way too stringent -- then we're back
6 where we are now, which is, you know, a petition to
7 assert -- to take jurisdiction because the Town has
8 put too stringent a condition on a facility. It's
9 all conjecture.

10 CHAIRMAN GETZ: Director Normandeau.

11 DIR. NORMANDEAU: The other thing with
12 that is, you know, that still, from a potential
13 applicant's point of view, even if it's a great
14 ordinance, the entire panoply of appeals processes
15 becomes open, as opposed to the situation that we
16 have here at the SEC. So, from the perspective of --
17 you know, I mean, I think it would be my sort of gut
18 reaction that those appeals are going to get filed
19 even if you go in a town process. So you can only
20 assume you're usually going to have at least several
21 permits from DES and from the Town and everyone,
22 subject to their own appeal process, as opposed to
23 the system that happens under SEC jurisdiction. So,
24 from a potential applicant's point of view, I'm not

1 sure whether the Town development of that process
2 does me any good in terms of where my ultimate
3 timeline is going to be at.

4 CHAIRMAN GETZ: That may be. But I --

5 DIR. NORMANDEAU: I don't know if
6 that's for our consideration.

7 CHAIRMAN GETZ: And that raises that
8 issue in terms of delay. I think there's been a lot
9 of discussion on the record about multiple avenues
10 for rehearing and appeal if you go to the local level
11 versus if you go to the Site Evaluation Committee and
12 it's one-stop shopping and you consolidate the
13 rehearings and appeal. So that's almost -- I think
14 if you follow that argument to the endpoint, you can
15 argue that in every case that we don't take
16 jurisdiction there would be undue delay because there
17 could be multiple levels of appeal. And I think
18 that's a -- I'd be comfortable making a decision that
19 that would be a determining factor in whether we take
20 jurisdiction or not, is that there would be fewer
21 appeals to be filed.

22 Director Morin.

23 DIR. MORIN: From my standpoint, I'm
24 just trying to figure out the balance between, in

1 terms of the Applicant in addition to the selectmen
2 asking for jurisdiction, is there enough local
3 structure and capacity in order to review this in
4 accordance with the balance between environmental and
5 the need for renewable energy? And I think there's
6 been some argument made saying that it's not clear
7 that there's a process in the town that will give a
8 fair hearing in a fair and open and transparent
9 process with criteria to evaluate whether this
10 project should go forward. And that unknown can
11 cause significant delay and cost, and in terms of
12 jeopardizing viability of the project going forward
13 and getting financing.

14 So where I'm still leaning towards by
15 having a compromise and saying we would delay a
16 decision on taking jurisdiction, put some pressure on
17 the local process to come to terms with that, to
18 finish the process, to have all of the town's people
19 look at that process. You know, there would be a
20 vote, you know, if they did have -- you know, agree
21 to a special election, seeing the amount of people
22 that came out for the special election, seeing the
23 preponderance of that, that they felt that ordinance
24 was adequate and it was something they wanted to

1 adopt. And if that process continues to show that
2 there doesn't seem to be that structure can be put in
3 place locally, then there is still the fallback of
4 the SEC, so that the Applicant has some measure of
5 fairness to say, okay, the town process may work out;
6 but if not, I still have another chance to argue for
7 jurisdiction, such that I could go forward with the
8 project.

9 So it just seems like a balance of
10 interest to consider delaying a decision until the
11 fall. I'm not sure of the exact date. Mr.
12 Harrington said December 1st. But certainly to allow
13 to see if an ordinance could be passed and to see the
14 kind of support the Town has for that, to see if the
15 board and the selectmen could demonstrate that we
16 have a town process in place to give a fair
17 evaluation of a project like this, to be able to take
18 into enough criteria whether they did, and, in fact,
19 were able to hire consultants or were consultants
20 selected in a meaningful way and so forth. So it
21 seems like that compromise kind of puts in place some
22 balance and some triggers that might be useful even
23 to pushing the process along at the local level.

24 CHAIRMAN GETZ: Let me point to --

1 there's a letter filed by Antrim Wind, dated June 24.
2 Did everybody receive that? Let me just read some of
3 that into the record, just to make sure, because it
4 could have some relevance to the question of
5 deferring. But I would like to hear more about what
6 folks think of whether to defer or not to defer.

7 But this is from Ms. Geiger, dated the
8 24th, and it's a request that we deliberate the
9 outstanding issues.

10 It notes, "Antrim Wind is in need of a
11 decision on the petitions for jurisdiction as soon as
12 possible so that they can determine whether to
13 proceed with studies that must occur during the
14 summer months. If the SEC grants the petitions, the
15 clarity afforded by the SEC process will enable
16 Antrim Wind to proceed with such studies in a timely
17 fashion and to file an application with the SEC by
18 the end of this year as anticipated. In the absence
19 of such a decision in the near future, the project
20 faces great uncertainty and may not go forward on
21 schedule, or even at all."

22 So I wasn't sure if everybody had that
23 or seen that. I just wanted to put that out there.

24 So let's focus on the question of

1 whether to defer or not to defer for a moment.

2 Commissioner Below.

3 CMSR. BELOW: Yeah, I was going to say
4 that I think that was also supported by the testimony
5 that we heard on our previous date, the first day of
6 testimony on this. And I think it's important to
7 note that the statute doesn't speak to whether undue
8 delay has been created thus far, but, rather, about
9 the need to avoid undue delay in the process. So,
10 you know, I think the issue, you know, is balancing
11 the general public interest and that of the
12 developers. But the problem from the developer's
13 point of view, as they testified to, is they have to
14 keep spending and investing substantial amounts of
15 money on speculation, in effect, which is what
16 developers do. That's expected. But they have to do
17 it at the moment in preparing studies that they don't
18 know are going to be, you know, the appropriate
19 studies or not. I mean, it's possible. I don't know
20 what might be encompassed by an ordinance that hasn't
21 been produced yet or adopted. But it's possible the
22 ordinance could call for a certain number of studies
23 or a time frame for studies that's different from
24 what they might do if they go ahead and work under

1 the Site Evaluation Committee rules. So I think it's
2 not -- I don't think it's probably -- it's not just
3 an empty threat or something. I think the reality is
4 if you don't know what rules you're playing by, it's
5 difficult to continue to invest money speculatively
6 to prepare studies to meet rules that you don't know
7 which rules are applying, even though it seems common
8 sense that probably similar kinds of studies would be
9 needed, regardless of whether it's a local process or
10 a state process. But you don't know that for a fact.
11 And in fact, that's what part of what the board of
12 selectmen testimony spoke to, was that the current
13 zoning ordinance and regulations simply don't provide
14 a proper framework to review and evaluate the
15 potential benefits, impacts, cost of the project; no
16 standards of criteria to evaluate impacts on issues,
17 such as noise, aesthetics, wildlife.

18 I mean, this Committee has had some
19 experience with that, having been through three wind
20 projects. And there is rather specific criteria in
21 our rules as to what should be included in the
22 application. So, you know, I think it's difficult.
23 But I'm not sure the compromise path is really a good
24 one, saying let's put this off until early December

1 and then they can still go ahead and file. In the
2 meantime, you know, we don't know what rules we're
3 working on, so what studies are we going to complete
4 to file for what. So, you know, I think that's a
5 problem. I think that's one of the things the
6 statute tried to anticipate, and what the board of
7 selectmen, the Town governing body, the reason
8 they're asking to take it up, is so that one way or
9 another, you know, the issues can come forward and
10 get decided.

11 CHAIRMAN GETZ: Anyone else want to
12 speak to the issue of --

13 MR. HARRINGTON: I guess as far as the
14 delays go, I mean, we'd also have to look at the fact
15 that this Committee doesn't necessarily have the
16 final say. If we were to grant jurisdiction today or
17 next week or whenever, then that could be a request
18 for rehearing, which is up to 30 days, and then it
19 could be appealed to the Supreme Court. And the
20 Supreme Court appeal could take a substantial amount
21 of time. And I'm not sure, but most of what we hear
22 from these developers is they need an unappealable
23 decision for financing of some type. So I'm not sure
24 they'd be willing to go forward with the appeal going

1 to the Supreme Court hanging over their heads or
2 not. And it seems that the people from Antrim that
3 are working on this study have shown a willingness to
4 spend their own money on this. So I don't think that
5 would probably be a -- that would probably not be
6 looked at as something they wouldn't do, make that
7 appeal. So I just think that has to be taken into
8 context as well.

9 And again, we're not having to wait
10 that long. The planning board adoption schedule is
11 August 18th. I assume the ordinance would be out for
12 public view a couple weeks before that, so that the
13 Applicant would have other proposal -- the proposer
14 would have a pretty good idea of what that ordinance
15 was going to say and whether they intended to try to
16 go along with that process, or if they're going to
17 request that this Committee rejects that ordinance
18 and imposes -- takes jurisdiction of whenever that
19 time frame we come up with, the end of October,
20 beginning of November.

21 CHAIRMAN GETZ: Director Morin.

22 DIR. MORIN: To your point, Chairman
23 Getz, if we don't take jurisdiction, and make that
24 decision today, I think at that point, according to

1 the Applicant, the project may be withdrawn because
2 of the uncertainty going forward. So I think that
3 decision -- they've stated that they are not going to
4 go forward with the project, or that it's highly
5 unlikely. So the issue of delay causing some
6 financial stress with going forward with the project,
7 certainly not taking jurisdiction seems to go in that
8 direction as well.

9 And I guess I'm still struggling with
10 it, in terms of the three choices. Is the
11 capacity -- if we weren't going to consider delaying
12 taking jurisdiction or not taking jurisdiction, kind
13 of to my first point, at this time, is there the
14 capacity for a reasonable process by which the
15 project can be considered or not at the town level?
16 And I think that's in debate certainly, as to whether
17 the capacity is there at this time. I think they're
18 building capacity and very well may get to that
19 point. But I think there's some question as to
20 whether the capacity is there now. And that's why I
21 come from at least a compromise standpoint, where the
22 Applicant at least can say, if they decide to delay
23 on studies, it's not based on an unknown on whether
24 the ordinance would go through or a local process

1 would be developed. It's a fallback on that. This
2 hearing's already been held. Arguments have been
3 made. And then a decision could go forward at a
4 later time, giving them at least some surety that
5 that avenue is a distinct possibility. But that's --

6 CHAIRMAN GETZ: Director Normandeau.

7 DIR. NORMANDEAU: I've been thinking
8 about it, sitting and listening to both sides. And I
9 don't think I would be able to support the halfway
10 decision, if you will, because I see that as a way
11 that, going forward, every time we have a town with
12 some issues, with something that maybe came up
13 unexpected, I mean, it seems like we could become the
14 ultimate arbiter of zoning regulation here. And if
15 we set the precedent that we're going to review a
16 town's zoning ordinance relative to this and make the
17 decision that, yes or no, that is adequate... I don't
18 know. I'm not sure I am excited about having that be
19 the precedent we set for cases going forward. I
20 mean, I think we either, you know, do or don't. I
21 understand the argument to be made. But I think
22 that's a potential long-term problem, that we're
23 going to review your ordinances, and when you come up
24 with them in three or four months, hold a potential

1 applicant at bay and see if we agree with your
2 program or not. I'm just not sure that's the way to
3 have it happen.

4 CHAIRMAN GETZ: Mr. Harrington.

5 MR. HARRINGTON: My only comment to
6 that would be that that's in fact what we did in the
7 Berlin case and the Clean Power case. We reviewed
8 the city ordinances that were passed, and we
9 evaluated those and found they were adequate to
10 address the concerns of 162, whatever it is, H:1.
11 And, you know, that was the part of our process. So
12 I think that precedence has already been set
13 previously when we reviewed the city ordinances and
14 the regulations and stuff they set up in Berlin.

15 CHAIRMAN GETZ: Any other discussion?
16 Director Muzzey.

17 DIR. MUZZEY: I have a question,
18 probably for Mr. Iacopino, regarding sort of do we
19 have any direction from law, cases like this, where
20 we were to exert -- where we can choose to exert
21 jurisdiction, and if it's not clear whether or not
22 the purposes of 162-H:1 would be served by that, do
23 we have any direction as to whether or not we should
24 make a conservative judgment, or the opposite?

1 MR. IACOPINO: Statutorily, no. The
2 statute directs you to consider the purposes of
3 R.S.A. 162-H:1 in determining whether or not to
4 assert discretion over a renewable energy facility
5 that is less than 30 megawatts, but greater than
6 5 megawatts. The legislature has not, in that
7 statute at least, has not provided any kind of
8 guidance for you in a close case, err on the side of
9 Committee review or err on the side of local review.
10 And that's -- the legislature just hasn't spoken in
11 this particular statute regarding that sort of
12 consideration.

13 CHAIRMAN GETZ: Director Scott.

14 DIR. SCOTT: I would like to note
15 that, should we take jurisdiction, that the SEC has a
16 strong record of taking into account existing
17 ordinances at town level and agreements between
18 applicants and the Town. So, should we take
19 jurisdiction, I would argue that there would be no
20 reason for the Town to still not press forward with
21 their regulation.

22 MR. HARRINGTON: Mr. Chairman, just as
23 another, kind of where we're heading on this, it
24 seems from the discussions that we had three

1 possibilities: Reject jurisdiction, we accept
2 jurisdiction, or we defer the decision. I think we
3 can eliminate one of those, it sounds like. Is
4 anybody in favor of just outright saying we reject
5 taking jurisdiction at this time, case closed? Okay.
6 Amy is --

7 CHAIRMAN GETZ: I think we have to
8 address the defer issue first and then go to the yes
9 versus no. I think that seems to be the fairer way
10 to address that, because I don't think... well, if I
11 look at the -- you know, originally when some of
12 these papers were filed, there was an argument for
13 some of those opposing that we take jurisdiction,
14 just defer until, I don't know, six, nine months and
15 see what happens. That was a position I was very
16 uncomfortable with. You know, when I look at the
17 question of who has greater capacity to review some
18 of these issues, between the Committee and the Town,
19 then I would agree that the Committee has greater
20 capacity. But I don't think that's the test. I
21 think the test is whether it's necessary for us to
22 step in, when you boil it down into the language of
23 the Laflamme and CPD case. And to me, that again
24 gets the focus on what are the institutions there?

1 And I find that there's convincing argument about
2 this deferral. A short-term deferral makes some
3 sense, where a long-term deferral, in my mind,
4 doesn't. Because I think in giving that very
5 difficult choice between deferring to the board of
6 selectmen who say take jurisdiction versus let's see
7 if the institutions work, the institutions are there.
8 I guess I would lean to giving them some opportunity
9 to work. I think I haven't seen any objective
10 evidence that persuades me to think they can't work.
11 But I do find the notion of some type of modest
12 deferral to see if the checkpoints are being made has
13 some attraction to me, but not waiting, you know, six
14 or nine months and seeing what comes out of it. But
15 that's kind of where this conversation has driven me.

16 So, anybody else want to speak to --

17 MR. HARRINGTON: Could you just give
18 us a little more? I'm not quite sure what you meant.
19 Be like wait until August 18th and see if the
20 planning board approved that, and then at that point
21 we'd say we're not taking jurisdiction; let's wait
22 another month for the next checkpoint or --

23 CHAIRMAN GETZ: Yeah. I think to the
24 extent there's checkpoints and they're meeting them,

1 I think you have to -- I don't think saying, okay,
2 we'll adjourn, defer until September, October. You
3 know, seems like there's a lot of steps that are
4 supposed to be taking place.

5 MR. HARRINGTON: That's the same thing
6 I was saying. They have their schedule. We hold
7 them to the schedule. So if August 18th comes and
8 goes and they haven't gotten the planning board
9 adopting it, then they would miss the schedule and
10 we'd accept jurisdiction. It wouldn't wait until
11 December 1st and find out nothing happened.

12 CHAIRMAN GETZ: Right. But I guess,
13 you know, first off, let's see who's -- how many
14 people -- if there's a majority comfortable with the
15 notion of deferral. And if there's not, then we
16 would turn to whether to take or not take
17 jurisdiction. But Director Muzzey.

18 DIR. MUZZEY: What would be the
19 differences or the advantages of deferring? Because
20 I think in deferring, we're acknowledging that we
21 don't have all the information we need right now,
22 that we're waiting to hear more from the Town, than
23 just not asserting jurisdiction, but allowing the
24 proposed applicant to come back and ask for our

1 jurisdiction at a later time without prejudice. What
2 are the differences between those two mechanisms?

3 CHAIRMAN GETZ: I think it's largely a
4 procedural and timing issue, in terms of having an
5 open proceeding in which you can have the information
6 come in and you don't have to re-notice and have
7 petitioners intervene, as opposed to if you said --
8 well, if you said no, but you were holding open the
9 prospect that you could come back if things were
10 falling apart. I think, if that's what you're
11 proposing --

12 DIR. MUZZEY: But that would always be
13 an option, that they could come back and ask again
14 for us to assume jurisdiction.

15 CHAIRMAN GETZ: Well, if you say --
16 depends, I think, on how you get there. If the
17 verdict is or the finding is we are not taking
18 jurisdiction because it's not necessary based on the
19 facts before us, well, of course, then that would be
20 subject to rehearing and appeal. But then, if six
21 months later -- I guess what you're positing is that
22 nothing happens. None of the checkpoints have been
23 met. Then they come back to file a new petition to
24 take jurisdiction and then you start all over. So...

1 Director Scott.

2 DIR. SCOTT: I just hope you can flush
3 out even more. So let's say they met the schedule in
4 this scenario. They're constantly meeting it. But
5 at the end of it, I mean, what are -- so in effect,
6 we're saying no matter what product they come out
7 with, they're all set? Or we're -- how does that
8 work? I mean, they could just say the ordinance will
9 say all wind towers in the town should be blue, and
10 that's the extent of it. So let --

11 MR. HARRINGTON: Well, my position on
12 that was that when the -- until the thing is actually
13 approved by the town, it's not really valid. There's
14 really not much sense in us looking at it before
15 then. But if it gets approved by the town, then we
16 would look at the ordinance in the same way we did
17 with the Berlin Clean Power case and say: Does it
18 meet the requirements or the intent of 162-H:1? And
19 if it did, then fine. But if it doesn't, if it's
20 like you say, comes out to all windmills must be blue
21 and that's the end of it, at that time we'd say,
22 well, you don't meet it. We need to step in and take
23 jurisdiction. But you can't do that until the
24 ordinance is written and becomes valid.

1 CHAIRMAN GETZ: Mr. Iacopino.

2 MR. IACOPINO: I just want to point
3 out to the Committee there is a statute that may
4 inform you with respect to zoning statutes dealing
5 with renewable energy resources. And the statute is
6 R.S.A. 672 Section 1, III-a. And this is another --
7 this is a declaration of purpose in the planning and
8 zoning statute. It starts off, "Declaration of
9 Purpose: The general court hereby finds and declares
10 that..." and then it goes to Section III(a), "Proper
11 regulations encourage energy-efficient patterns of
12 development, the use of solar energy, including
13 adequate access to direct sunlight for solar energy
14 uses, and the use of other renewable forms of energy
15 and energy conservation. Therefore, the installation
16 of solar, wind or other renewable energy systems or
17 the building of structures that facilitate the
18 collection of renewable energy shall not be
19 unreasonably limited by use of municipal zoning
20 powers or by the unreasonable interpretation of such
21 powers, except where necessary to protect the public
22 health, safety and welfare."

23 To the extent that may inform your
24 discussion regarding zoning ordinances, that is the

1 declaration of purpose in the planning and zoning
2 title of the revised statutes in New Hampshire.

3 CHAIRMAN GETZ: Any further
4 discussion?

5 DIR. MORIN: Would you like a motion?

6 CHAIRMAN GETZ: Sure.

7 DIR. MORIN: I move that we defer our
8 decision until -- I'm having a little trouble with
9 the date, but I'm thinking either October 15th or
10 November 1st. I think December is a little late.
11 Let's say -- can I just look at the schedule?

12 CHAIRMAN GETZ: Do you mind if I
13 interject?

14 DIR. MORIN: Yes, please do.

15 CHAIRMAN GETZ: Because I'm a little
16 concerned about deferring out that long. I think I
17 would -- if we're going to go down this path to
18 basically defer a decision pending a report back from
19 the parties shortly after Labor Day, because it looks
20 like several things are supposed to happen through
21 July and August, I wouldn't want to go out much later
22 than that, given -- I'd like for us to be well
23 apprised of what's going on, and on a more timely
24 basis, if we're going to go down that path.

1 DIR. MORIN: That would -- I will take
2 that advisement. I think I'm in full agreement with
3 that. So if it was after Labor Day, that would be
4 September 7th or something? I don't have a calendar.

5 MR. HARRINGTON: Just a question for
6 clarification, Mr. Chairman. When you're saying
7 "sometime after Labor Day," what would happen then?

8 CHAIRMAN GETZ: There would be a
9 report back on what happened at all of these
10 checkpoints between --

11 MR. HARRINGTON: A status update of
12 the schedule?

13 CHAIRMAN GETZ: Yes.

14 MR. HARRINGTON: Okay.

15 DIR. MUZZEY: September 13th is the
16 second public hearing.

17 MR. IACOPINO: Labor Day is Monday,
18 September 5th.

19 CHAIRMAN GETZ: I think if we had
20 something on Monday, September 5th, even though it's
21 before the second public hearing, they've already had
22 the first public hearing and a number of other things
23 that had happened, I think that would be useful
24 information. I don't think we would need to wait

1 necessarily, but... you said what? September?

2 MR. IACOPINO: September 5th is Labor
3 Day.

4 CHAIRMAN GETZ: So we could have
5 something filed that week.

6 DIR. MORIN: So we continue -- I don't
7 know what the right term is. Defer or continue?

8 CHAIRMAN GETZ: I guess maybe defer
9 consideration of the question whether to take
10 jurisdiction pending filing of a status report on the
11 progress of the ad hoc committee, and that it would
12 be due September -- well, 7th?

13 DIR. MORIN: I would agree with that
14 motion. I would so move.

15 CHAIRMAN GETZ: Well, that's the other
16 issue. I think we certainly would have to -- the ad
17 hoc committee would have to be most, I guess,
18 familiar with what's going on. But we'd want to hear
19 from everybody, to the extent there's any dispute
20 about -- so I guess all the parties would be in a
21 position to file what they considered the status of
22 the work of the ad hoc committee.

23 MR. HARRINGTON: And then the idea
24 would be, we would evaluate that and then make

1 further action as necessary at that time. I can
2 second that motion then.

3 CHAIRMAN GETZ: Any discussion about
4 the deferral as a possibility? Commissioner Bald.

5 CMSR. BALD: Mr. Chairman, I would
6 want to vote no on this. I think the request from
7 the select -- if they wanted to wait, they would have
8 waited. But they asked us to take this action. So I
9 think my feeling is that we should either vote to
10 take it or not take it. But it's not in our -- it
11 doesn't seem to me that we should be delaying that
12 request. There isn't a request -- there isn't
13 anything in the legislation that says other people
14 can ask us to delay it. If they wanted to, they
15 could have waited and said, well, we'll see at the
16 end of the summer and then petition or ask this
17 Committee to do it. But they did it now. So I feel
18 that we should vote either to take jurisdiction or
19 not take jurisdiction.

20 CHAIRMAN GETZ: Thank you. Anyone
21 else want to address the motion? Mr. Stewart.

22 DIR. STEWART: I agree with
23 Commissioner Bald. I mean, if we take jurisdiction,
24 we've created certainty for everybody, I think. And

1 as we all know, there would be a public hearing in
2 Antrim. We would take comments. We would consider
3 municipal ordinances that existed at the time of our
4 action. So the local participation would exist. So
5 if we take it now, we've created certainty rather
6 than drag it on.

7 CHAIRMAN GETZ: Director Normandeau.

8 DIR. NORMANDEAU: Yeah, I agree. And
9 I do think that there's some substantial difference
10 between this process and Berlin. In Berlin, you had
11 the city working with the developer and revolving
12 around rules, zoning laws or statute, whatever they
13 had put in place, regulations they had in place,
14 which is, I think, different than being sort of
15 directly involved in the development of such statute,
16 which is what I would see this as going down the path
17 of. So I'd say I would be a proponent of yea or nay.

18 CHAIRMAN GETZ: Director Morin.

19 DIR. MORIN: One of the main reasons
20 why I proposed to the Committee the idea of delay is
21 that it's really in deference to Commissioner
22 Ignatius's comments relative to local control and the
23 fact that there is a planning process in place. That
24 gave me pause to say I don't think it was intended

1 to, you know, usurp a local process, if there is a
2 local process that can handle it. So in my mind, I
3 was not convinced that there was a fully viable local
4 process now to handle it, but there may be. And
5 that's where I'm coming from on the delay and, you
6 know, the concern over is it appropriate for us to
7 not let the local process proceed, seeing as there is
8 a history of a local process, even if it wasn't
9 able -- it hasn't had experience in this kind of
10 project and this level of complexity. But her
11 concern over that local control -- so I felt this was
12 an adequate compromise to give that one last chance
13 to develop and then have enough of a backstop for the
14 Applicant, that we'd see what came through with the
15 promises and the process, and then be able to feel
16 like we gave that due diligence. And that's why I
17 came to the point of proposing this compromise.

18 CHAIRMAN GETZ: Director Muzzey.

19 DIR. MUZZEY: I'm concerned that we're
20 almost unfairly characterizing or almost penalizing
21 the Town's efforts to create a wind facility
22 ordinance. What we have now is a town that has zoned
23 a certain area in such a way that a wind facility
24 proposal would require a variance. We haven't had an

1 application to the ZBA to act on a variance; instead,
2 we have the Town working to create something that
3 would allow a wind facility of some size and some
4 scale in town. And I think, if anything, we have a
5 town that is working to create an environment where
6 the wind facility could be a success, rather than
7 using an ordinance to block a wind facility. And I
8 remain feeling very strongly that we need to give
9 that process time to work through, and that for the
10 State to come in and exert jurisdiction, it's
11 premature and it's not allowing the Town to do its
12 duties, land-use planning duties.

13 CHAIRMAN GETZ: Thank you. Anyone
14 else before we -- I would add this, from at least my
15 perspective. As I said before, I think it's an
16 extremely close call. I think substantial weight
17 should be given to the opinion of the elected body,
18 the board of selectmen. And personally, I found Mr.
19 Genest very credible and sincere in his testimony
20 that we should take jurisdiction. Counterbalancing
21 that is the fact that there are institutions that are
22 there, and I think in a very close call I would say
23 to defer for some time to give them the opportunity
24 to do what they said they were going to do. So

1 that's why I would vote in favor of the motion that's
2 presently before us.

3 So is there anyone else who wants --
4 and I think that deference, you know, does contribute
5 to the public interest, in terms of allowing the
6 institutions an opportunity to demonstrate that they
7 can work.

8 All right. With that, then, there's a
9 motion on the floor and a second to defer
10 consideration until December -- or September --

11 MR. IACOPINO: September.

12 CHAIRMAN GETZ: -- September 7th and
13 requiring updates from the parties on the progress of
14 the ad hoc committee during the interim. So all
15 those in favor of deferring consideration, please
16 signify by raising your hand.

17 (Some members raising hands)

18 MR. IACOPINO: Five.

19 CHAIRMAN GETZ: And that means that we
20 have --

21 MR. HARRINGTON: Well, someone could
22 abstain. Let's take an opposition vote.

23 CHAIRMAN GETZ: All those in
24 opposition?

1 (Some members raising hands)

2 CHAIRMAN GETZ: So it's five to five.

3 MR. IACOPINO: The motion doesn't
4 pass.

5 CHAIRMAN GETZ: Democracy at work.

6 CMSR. BELOW: I have to call my
7 car-pool person who's wondering if he's been
8 abandoned. I'll be right back.

9 CHAIRMAN GETZ: Okay. Let's go off
10 the record. Looks like we've got a number of phone
11 calls. Let's take a brief recess.

12 (Whereupon a recess was taken at 5:09
13 p.m. and the hearing resumed at 5:17 p.m..)

14 CHAIRMAN GETZ: Okay. We're back on
15 the record. Well, let me -- two things: The vote
16 was five to five. But let me put on the record, I
17 think, who voted what. I think the five votes in
18 favor of deferring were: Mr. Harrington, Director
19 Muzzey, Commissioner Ignatius, myself and Director
20 Morin.

21 So then the five votes in the other
22 direction were: Mr. Stewart, Director Normandeau,
23 Director Scott, Commissioner Below and Commissioner
24 Bald.

1 And it's five to five, so the motion
2 fails. So then I guess that's -- I'm not sure how
3 another vote will turn out. But I guess if there's a
4 motion either to take or not to take jurisdiction,
5 then I guess we would take a motion.

6 Director Normandeau.

7 DIR. NORMANDEAU: In an effort to move
8 along the process, I'll make a motion that we take
9 jurisdiction.

10 CHAIRMAN GETZ: Second?

11 CMSR. BALD: Second.

12 CHAIRMAN GETZ: Second by Commissioner
13 Bald. Any discussion?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. No discussion
16 whatsoever?

17 MR. HARRINGTON: I've got a question
18 maybe for Mr. Iacopino.

19 MR. IACOPINO: Yes, sir.

20 MR. HARRINGTON: Given the remote
21 possibility that we keep continuing to get these
22 five-to-five votes, what exactly happens if, let's
23 just say we have a vote on taking jurisdiction and it
24 comes out five to five. So we don't take

1 jurisdiction. The motion fails. At that point, does
2 there have to be a motion not to take jurisdiction?
3 And if that fails because it's five to five, where
4 does that leave us then?

5 MR. IACOPINO: Leaves us without
6 taking jurisdiction.

7 MR. HARRINGTON: Defers to not taking
8 jurisdiction.

9 MR. IACOPINO: No matter which order
10 these votes go in, if they're all five to five, it
11 means that the Committee is not able to come -- is
12 not able to meet the required standard for the vote.

13 (Cmsr. Ignatius leaving proceedings.)

14 CMSR. BALD: We should wait until she
15 comes back.

16 MR. HARRINGTON: On the other hand, we
17 could sneak a quick vote in. We'll have to leave the
18 room in pairs from now on.

19 (Laughter)

20 CHAIRMAN GETZ: Off the record. You
21 don't have to keep recording this.

22 (Whereupon a recess was taken at 5:20
23 p.m. and the hearing resumed at 5:21 p.m..)

24 CHAIRMAN GETZ: Okay. We're back on

1 the record. And we have a motion to take
2 jurisdiction, so --

3 CMSR. BELOW: I would, Mr. Chairman,
4 observe one thing in the statute that just gives me a
5 little pause. I keep reading it over. And it says,
6 in the definition of renewable energy facility,
7 "Electric generating station facility of 30 megawatts
8 or less nameplate capacity, but at least 5 megawatts,
9 which the Committee determines requires a certificate
10 consistent with the finding and purposes set forth in
11 R.S.A. 162-H:1, either on its own motion" -- which
12 would be by our own motion we concluded it requires a
13 certificate -- "or by petition of the applicant, or
14 two or more petitioners as defined in R.S.A. 162-H:2,
15 XI." And the subtle difference is it says if we --
16 when the Committee determines it requires a
17 certificate by petition of the applicant as opposed
18 to on its own motion. And I know we've always
19 interpreted that to mean we still have to make the
20 determination, even when we get a petition. But I
21 just -- it just strikes me, where we have both the
22 petition by the potential applicant and two or more
23 petitioners in the petitioner categories, the
24 governing body of the host community and 100 or more

1 registered voters from the host community, it just
2 seems like on balance it should weigh towards
3 accepting jurisdiction, even if it may not be
4 required. But I think the suggestion is there, that
5 when you've got the applicant or the governing body
6 and 100 voters in the community asking for
7 jurisdiction, I think the suggestion is there: We
8 should grant that.

9 CHAIRMAN GETZ: Because there's more
10 people -- more categories requesting it?

11 CMSR. BELOW: Well, and also because
12 the finding that we should do this either on our own
13 motion or by the petition of the applicant or two or
14 more of the petitioners in the petitioner category.
15 So, I mean, it has been the judgment of the governing
16 body, the Applicant and the hundred voters,
17 registered voters in the community, that we should do
18 this. I understand there's a hundred registered
19 voters who have a different opinion, as well as
20 majority of the planning board. But I think that --

21 CHAIRMAN GETZ: Director Morin.

22 DIR. MORIN: I have a question. If we
23 decide to take jurisdiction, I wonder if as part of
24 that motion, or subsequent to that motion -- I have

1 some concerns that if we do go in that direction,
2 that it's not open-ended when an application would be
3 developed. And I know we can require an application
4 be filed by a certain point. I just wondered, can
5 that be a subsequent motion? Do the jurisdiction
6 first, and then can we have that discussion
7 afterwards? Or does it have to be part of taking
8 jurisdiction?

9 CHAIRMAN GETZ: It doesn't have to be
10 part of it. I think if we --

11 DIR. MORIN: Then we'll do it
12 separately.

13 CHAIRMAN GETZ: If we were to
14 determine to take jurisdiction, then we can, to the
15 extent we want to make some directive about how we
16 would exercise that jurisdiction, what our
17 expectations would be, then we could do that. I
18 think that's consistent with what was done in
19 Lempster, I believe.

20 Okay. And then I think -- well,
21 again, where I get back to is I have to, you know,
22 make this decision, at least in the way I read the
23 statute and the cases: Is it necessary for us to
24 take jurisdiction? And the evidence, at least to me

1 at this point, I'm not persuaded that it's necessary
2 for us to be involved, even though I think, you know,
3 it gets back to that argument that the Committee
4 would be in a position to -- has greater capacity to
5 review such a project. But --

6 CMSR. BELOW: I'm curious where you
7 find "necessity," though, in the statute. I'm
8 guessing, but I don't really see where the criteria
9 is that we have to find that it is "necessary."

10 CHAIRMAN GETZ: And that's the way
11 I -- that's the conclusion in the Laflamme/CPD case
12 that goes to the discussion of the sub-elements and
13 ultimately concludes the Committee finds it's not
14 necessary to assert jurisdiction, given all of the
15 meeting of all of the other sub-elements. And so
16 that's where I -- that's the bottom line I get to.

17 CMSR. BELOW: Okay. Mr. Harrington.

18 MR. HARRINGTON: If we played out that
19 scenario I was just talking about, that we continued
20 with the five-to-five votes so that we wouldn't take
21 jurisdiction, would that prevent the Applicant from
22 reapplying a request for jurisdiction -- or not
23 Applicant, but whatever we're calling --

24 CHAIRMAN GETZ: Proposing applicant.

1 MR. HARRINGTON: -- the potential
2 applicant from coming back to us, say in December, if
3 either the ordinance never got passed by the town, or
4 if the ordinance that was passed by the town they
5 thought was totally inadequate, they could -- could
6 they reply without prejudice at that time and request
7 jurisdiction?

8 CHAIRMAN GETZ: I'm not aware of
9 anything that would bar them from asking or filing
10 something.

11 MR. IACOPINO: It's the decision you
12 have to make at that time, depending what they filed.
13 It's a decision you make at that time.

14 MR. HARRINGTON: But they would have
15 the ability. There would be nothing preventing them
16 from filing again and just requesting, saying here's
17 what's going on, sort of almost the reverse of what
18 we were asking to be done at first, which would say
19 they would supply us with the information as to what
20 happened and why they feel the process in the town
21 wasn't working, or, you know, maybe it was -- the
22 ordinance doesn't get voted in, for example, they
23 could come back and request we take jurisdiction at
24 that time. And the answer is yes, they could; right?

1 MR. IACOPINO: Well, yeah, they can
2 file.

3 MR. HARRINGTON: And then we have to
4 make a decision. But they could request it. Okay.

5 CHAIRMAN GETZ: Okay. Well, let's
6 call the question then. The motion is to take
7 jurisdiction. All those in favor of taking
8 jurisdiction, please raise their hands.

9 (Some members raising hands.)

10 CHAIRMAN GETZ: So we have six in
11 favor of taking jurisdiction. So the motion passes.
12 And I'll note for completeness of the record that the
13 votes in favor were: Director Stewart, Director
14 Morin, Director Normandeau, Director Scott,
15 Commissioner Below and Commissioner Bald.

16 So that raises the additional question
17 of how we're going to --

18 DIR. MORIN: I'd like to -- and I
19 don't know whether we just have a discussion first
20 and then make a motion. But I am uncomfortable with
21 leaving it open-ended as to when would we receive an
22 application. I don't think we should take
23 jurisdiction and it be a year or two from now that we
24 get an application, because then the local process

1 would be entirely different. I think there should be
2 a reasonable time. They said by the end of the year.
3 I think I would like to have a stipulation that we
4 receive an application by a certain time. I don't
5 know the appropriate way to do that. But I'd just
6 ask to see what people think about that.

7 CMSR. IGNATIUS: Can I respond to
8 that? I think that's something to be very careful
9 about. If the community is looking to develop a wind
10 ordinance -- and presumably they will do that
11 irrespective of the decision here about this
12 petition -- by urging the company to file sooner than
13 later, it's urging, then, that an application be made
14 under one set of rules that may be on their way to
15 being changed. And if we want to give consideration
16 to the voice of the community when the SEC does hear
17 this case, in effect forcing it to be done before the
18 community has spoken may not be the best way to get
19 there.

20 DIR. MORIN: May I follow-up on that?

21 CMSR. IGNATIUS: I think it's a
22 two-edged sword.

23 DIR. MORIN: I hadn't thought of it
24 that way, so I appreciate your comment. I was

1 thinking of it as the opposite, that it would be
2 unfair to let them extend submitting their
3 application, and then the local -- you know, our
4 decision for jurisdiction might have been different a
5 year from now is where I was coming from. But your
6 point of saying that may actually allow the local
7 process to have a greater voice, I would be very
8 comfortable with.

9 My point is, to the extent that the
10 local voice is taken into account in whatever
11 process, I'd just leave it on the table if someone is
12 interested in that. But I see your point, and it
13 makes me less concerned about pushing for a date.

14 CHAIRMAN GETZ: Mr. Harrington.

15 MR. HARRINGTON: Well, one thing about
16 this, when we start talking about the local
17 involvement, the local voice, is it's not clear to me
18 that is going to be the case. I mean, we're talking
19 about the selectmen now saying, well, since we're
20 going to the Site Evaluation Committee, anyways -- if
21 I was a selectman, I'd certainly have to give second
22 thoughts as to whether or not I would approve the
23 spending of money to develop an ordinance that's
24 really not going to be anything but symbolic, because

1 it's going to be presented to this Committee, and we
2 can look at it and say, yeah, you did a good job, but
3 we're not going to pay any attention to it. That's
4 the authority we have by taking jurisdiction. We can
5 give -- we have to give weight to the local
6 preferences, but it's not an absolute situation. In
7 times of tight budgets, they may decide that
8 20-something thousand dollars they're going to spend
9 hiring consultants to develop an ordinance may be
10 better spent on something else, like patching up
11 potholes or whatever. So I'm not sure there is going
12 to be one. Certainly I think in the case of the
13 people that are spending their own money to hire
14 legal counsel for this, they may be hesitant to
15 continue to do that for an ordinance that's basically
16 going to be somewhat non-effective because the Site
17 Evaluation Committee can simply choose to ignore any
18 and all parts of it. I'm not sure that the
19 enthusiasm level is going to continue and that we
20 actually will see an ordinance out of the town on
21 this. So I don't think we should make the assumption
22 that there's definitely going to be one based on a
23 schedule, because I think the world has changed now.

24 CHAIRMAN GETZ: Any other discussion

1 or any motion with respect to how we --

2 DIR. STEWART: Well, I would just
3 reinforce, from my history with this Committee, that
4 we have weighed very seriously and heavily municipal
5 ordinances, and in communities without ordinances,
6 the comments by local governments, in terms of the
7 decisions. So, ultimately, anything that's put into
8 place formally will be considered very seriously by
9 the Committee.

10 CHAIRMAN GETZ: Director Muzzey.

11 DIR. MUZZEY: The other consideration
12 the Town may have is that any type of wind facility
13 ordinance would apply to the entire town. So
14 although the benefit to this particular proposal
15 could be looked at two different ways, there may be
16 benefit to creating an ordinance for the rest of the
17 town.

18 MR. HARRINGTON: That may be. But I
19 think, based on the size of the town and the number
20 of presenters here, this is probably going to be the
21 only wind project that's going to be built in Antrim,
22 because there's only so many good locations, if you
23 look at their map, for putting them in there.

24 But I would tend to think that some type of

1 deadline on filing would be helpful to the Town,
2 simply so the process can't be stretched out. I
3 think people are looking at now something that I
4 think we've seen from the past windmills affect at
5 least people's perception of their property values.
6 And if this process is, you know, sitting here a year
7 from now and they still haven't applied, that sort of
8 stretches out the process to those people who are
9 concerned. So I think some reasonable limits
10 saying -- they're the ones who came here, and they
11 said -- this wasn't just the selectmen. It wasn't
12 the petition. It was the Applicant who said we want
13 you to take jurisdiction, and we can file by the end
14 of the year. So I think a reasonable time, like,
15 say, the end of January of next year, would be
16 sufficient for them to file. And if they don't file
17 by that time, then, you know, we start all over
18 again. I just think that's a reasonable --

19 CHAIRMAN GETZ: I think that's a
20 second. Is that a motion?

21 MR. HARRINGTON: That's a motion, yes.

22 CHAIRMAN GETZ: Do we have a second?

23 Director Scott.

24 DIR. SCOTT: Yes.

1 CHAIRMAN GETZ: Any discussion?

2 CMSR. BELOW: Well, personally, I was
3 thinking more like nine months to a year. You said
4 end of January. What's that? Seven months?

5 MR. HARRINGTON: It's a month after
6 their self-imposed deadline that they claim they
7 could do it by.

8 CMSR. BELOW: I guess that's okay.

9 MR. HARRINGTON: I mean, make it
10 February 15th if that seems more reasonable. I just
11 don't think it should be unlimited.

12 CHAIRMAN GETZ: Well, let's not have a
13 moving target. We've got a motion for January --

14 MR. HARRINGTON: The end of January.

15 CHAIRMAN GETZ: -- January 31, 2012
16 for the filing of an application.

17 All those in favor, please signify
18 their agreement by raising their hand.

19 (Members raising hands.)

20 CHAIRMAN GETZ: That looks like it's
21 all but Commissioner Ignatius in favor. So that
22 motion passes.

23 CMSR. IGNATIUS: Mr. Chairman, I was
24 going to abstain on that if you had asked.

1 CHAIRMAN GETZ: Oh, okay.

2 MR. IACOPINO: So I should list you as
3 abstaining.

4 CHAIRMAN GETZ: Anything else we need
5 to address this afternoon?

6 (No verbal response)

7 CHAIRMAN GETZ: Hearing nothing, then
8 at this point I'll direct Mr. Iacopino to draft an
9 order memorializing the decision today for our
10 signatures. And we'll close the hearing and take the
11 matter -- we'll issue an order as soon as possible.
12 Thank you, everyone.

13 (WHEREUPON, Day 2 was adjourned at
14 5:35 p.m.)

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