

## SITE EVALUATION COMMITTEE

In re: SITE EVALUATION COMMITTEE:  
DOCKET NO. 2012-01: Application  
of Antrim Wind, LLC, for a  
Certificate of Site and Facility  
for a 30 MW Wind Powered Renewable  
Energy Facility to be Located in  
Antrim, Hillsborough County,  
New Hampshire.  
(Hearing re: Subdivision request)

Amy L. Ignatius, Chrmn.      Public Utilities Commission  
(Vice Chairman of SEC)  
(Presiding Officer)

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Johanna Lyons, Designee	Dept. of Resources & Econ. Dev.
Craig Green, Designee	Dept. of Transportation
Brad Simpkins, Dir.	DRED - Div. of Forests & Lands
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# I N D E X

PAGE NO.

## OPENING STATEMENTS BY:

Ms. Geiger	14
Ms. Goldwasser	25
Ms. Pinello	37
Mr. Roth	39

## *STATEMENTS/QUESTIONS FROM SUBCOMMITTEE MEMBERS BY:*

Chairman Ignatius	19, 42, 51
Mr. Dupee	24, 47
Mr. Iacopino	29, 51
Mr. Boisvert	35
Ms. Bailey	44
Dir. Stewart	46

## ITEM:           SECTION II

Ms. Goldwasser	71
Mr. Roth	72
Questions by Ms. Bailey	73

## ITEM:           SECTION IV.C.4

Ms. Goldwasser	78
Mr. Roth	78
Ms. Pinello	79
Questions by Chairman Ignatius	79
Questions by Ms. Bailey	80

## ITEM:           SECTION IV.C.5

Summary by Chairman Ignatius	80
------------------------------	----

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

# **I N D E X (continued)**

**PAGE NO.**

**ITEM: SECTION V.B.2**

Summary by Chairman Ignatius	83
Ms. Goldwasser	84, 90
Questions by Chairman Ignatius	86
Mr. Roth	89
Questions by Mr. Iacopino	91

**ITEM: SECTION V.B.3.a(4)**

Summary by Chairman Ignatius	92
Ms. Goldwasser	93
Mr. Roth	93

**ITEM: SECTION V.B.3.a(9)(10)(11)  
(12)(17)(25)(26)(28)(29)**

Summary by Chairman Ignatius	95
Ms. Goldwasser	95, 102
Questions by Chairman Ignatius	96
Questions by Mr. Iacopino	97
Mr. Roth	101, 102

**ITEM: SECTION IX.D**

Summary by Chairman Ignatius	103
Mr. Roth	104, 105
Ms. Goldwasser	105, 106
Questions by Mr. Iacopino	107
Questions by Ms. Bailey	108
Questions by Chairman Ignatius	109

**ITEM: SECTION IX.E**

Summary by Chairman Ignatius	111
Mr. Roth	111

1	<b>I N D E X (continued)</b>	
2		<b>PAGE NO.</b>
3	<b>ITEM:</b>	<b>SECTION IX.F</b>
4		Summary by Chairman Ignatius 111
5		Ms. Goldwasser 112, 116, 121
6		Questions by Mr. Iacopino 113, 119
7		Questions by Dir. Stewart 114, 117
8		Mr. Roth 115, 118
9	<b>ITEM:</b>	<b>SECTION IX.G</b>
10		Summary by Chairman Ignatius 122
11		Mr. Roth 122
12		Ms. Goldwasser 123
13		Questions by Mr. Boisvert 124
14	<b>ITEM:</b>	<b>SECTION IX.H</b>
15		Summary by Chairman Ignatius 124
16		Ms. Goldwasser 125
17	<b>ITEM:</b>	<b>SECTION IX.I</b>
18		Summary by Chairman Ignatius 125
19		Ms. Goldwasser 125
20		Questions by Ms. Bailey 125
21		Mr. Roth 126
22		Questions by Mr. Iacopino 126
23	<b>ITEM:</b>	<b>SECTION IX.J</b>
24		Summary by Chairman Ignatius 129
25	<b>ITEM:</b>	<b>SECTION IX.K</b>
26		Summary by Chairman Ignatius 129
27		Ms. Goldwasser 129
28		Mr. Roth 130
29		Questions by Mr. Iacopino 130
30		Questions by Chairman Ignatius 131

1	<b>I N D E X (continued)</b>	
2		<b>PAGE NO.</b>
3	<b>ITEM:</b>	<b>SECTION IX.L</b>
4		Summary by Chairman Ignatius 132
5		Mr. Roth 132, 136, 140
6		Ms. Goldwasser 133, 139
7		Questions by Chrnm. Ignatius 134, 137
8	<b>ITEM:</b>	<b>SECTION IX.M</b>
9		Summary by Chairman Ignatius 140
10	<b>ITEM:</b>	<b>SECTION IX.N</b>
11		Summary by Chairman Ignatius 141
12		Mr. Roth 141, 144
13		Questions by Chairman Ignatius 142
14		Ms. Goldwasser 142
15	<b>ITEM:</b>	<b>SECTION IX.O</b>
16		Summary by Chairman Ignatius 145
17		Mr. Roth 145
18		Questions by Chairman Ignatius 145
19	<b>ITEM:</b>	<b>SECTION IX.P</b>
20		Summary by Chairman Ignatius 145
21		Mr. Roth 146
22		Ms. Goldwasser 146
23	<b>ITEM:</b>	<b>SECTION IX.Q</b>
24		Summary by Chairman Ignatius 146
		Mr. Roth 146
		Ms. Goldwasser 147
		Ms. Pinello 148
		Questions by Mr. Iacopino 148

1	<b>I N D E X (continued)</b>	
2		<b>PAGE NO.</b>
3	<b>ITEM:</b>	<b>SECTION IV.C.2</b>
4		Ms. Goldwasser 151, 156
5		Questions by Chrmn. Ignatius 152, 153
6		Mr. Roth 153, 155
		Ms. Geiger 154
		Ms. Pinello 156
7	<b>ITEM:</b>	<b>SECTION V.C</b>
8		Ms. Goldwasser 157, 159
9		Mr. Roth 158, 165
10		Questions by Mr. Iacopino 158
11		Questions by Chrmn. Ignatius 161, 165
12	<b>ITEM:</b>	<b>SECTION V.C.1.b</b>
13		Ms. Goldwasser 167
14		Mr. Roth 170
15		Questions by Chairman Ignatius 171
16	<b>ITEM:</b>	<b>SECTION VI.A</b>
17		Ms. Goldwasser 171
18		Mr. Roth 173
19	<b>ITEM:</b>	<b>SECTION VIII</b>
20		Mr. Roth 174
21		Ms. Goldwasser 174
22	<b>ITEM:</b>	<b>SECTIONS X, XI, &amp; XII</b>
23		Mr. Roth 174
24		

1	<b>I N D E X (continued)</b>	
2		<b>PAGE NO.</b>
3	<b>GENERAL QUESTIONS BY:</b>	
4	Mr. Dupee	175
5	Ms. Bailey	177
6	Chairman Ignatius	180
7	Mr. Simpkins	182
8	<b>GENERAL STATEMENTS ON SUBDIVISION ISSUE BY:</b>	
9	Ms. Geiger	178
10	Ms. Pinello	179
11	<b>DISCUSSION RE: DELIBERATIONS ON SUBDIVISION ISSUE BY:</b>	
12	Chairman Ignatius	187, 189
13	Ms. Bailey	188
14	Mr. Dupee	188
15	Mr. Iacopino	188
16	Mr. Stewart	189
17	Mr. Simpkins	189
18	Mr. Green	189
19	<b>SUMMARY BY MR. IACOPINO ON PREHEARING CONFERENCE</b>	190
20	<b>STATEMENT BY CHAIRMAN IGNATIUS REGARDING</b>	200
21	<b>HEARING SCHEDULE AND WEATHER CONCERNS</b>	
22	<b>OTHER QUESTIONS/COMMENTS BY:</b>	
23	Ms. Lyons	205, 207
24	Dir. Stewart	206
	Mr. Simpkins	206
	Chairman Ignatius	207
	Ms. Bailey	210
	Mr. Iacopino	210



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

2                                   CHAIRMAN IGNATIUS:   Good morning,  
3                   everyone.   I'd like to open the hearing today in Docket  
4                   2012-01, which is the matter of the request for  
5                   certification by Antrim Wind Energy, LLC.   And, welcome,  
6                   everyone.   Can you hear me back there?   I'll keep it up.  
7                   And, let's all try to remember that we don't have a  
8                   microphone system here that we're used to at the  
9                   Commission.

10                                  What we are doing today is limited to  
11                   one aspect of this case, which is taking arguments and  
12                   questions by Committee members regarding the subdivision  
13                   authorization with the Site Evaluation Committee, and  
14                   whether the Committee has full authority over the  
15                   subdivision request that's in the Application, or whether  
16                   the Planning Board retains full authority over the  
17                   subdivision aspects of this Application, or somewhere in  
18                   between.   And, as you recall from the prior session we had  
19                   where this came up, we had some briefing and discussion,  
20                   and the Committee determined that it felt it wasn't "all  
21                   or nothing", it wasn't either one of the two extremes, it  
22                   was somewhere in between.   That, in the Committee's view,  
23                   it seemed as though the case law sent us to an analysis of  
24                   what is preempted and held in the authority of the SEC to

{SEC 2012-01} [Re: Subdivision request] {10-26-12}

1 determine as part of the overall scheme of 162-H, and what  
2 remains with the Planning Board as the residual authority  
3 that isn't preempted by the state statute for the SEC.

4 We then asked people to think about  
5 that, parties to come forward and identify what they felt  
6 the lines should be on what's on the SEC side and what  
7 would be on the Planning Board side. And, we received  
8 three filings; from the Planning Board, the Applicant, and  
9 Public Counsel. And, I'm not aware of anything else that  
10 we received. But Committee members have those three  
11 filings and have reviewed them. And, so, what we're going  
12 to do today, after going through appearances, is we are  
13 going to have those three entities, the Applicant, the  
14 Planning Board, and Public Counsel, to make their  
15 presentations. They don't have to restate everything that  
16 was in the filings, but a sort of quick summary of their  
17 position. And, then, to go kind of section by section of  
18 what they think is in or out, if that's their -- if that's  
19 their interpretation of the way to go. If they feel they  
20 can't separate them out, explain why they think they can't  
21 separate them out. Committee members may ask questions.  
22 It's not a day for cross-examination by other parties or  
23 on each other. It's just Committee questions in a sort of  
24 oral argument type setting.

1                   And, at the close of that, we'll  
2     determine whether we want to undertake deliberations on  
3     the issue or set it aside for deliberations at the  
4     conclusion of the full record. So, we'll determine that  
5     later. And, I think that's the only matter of business  
6     today, other than maybe some administrative matters that  
7     Mr. Iacopino would want to go through to get us ready for  
8     next Monday.

9                   So, that's the game plan as I see it for  
10    this morning. It's now 3:15. It's actually almost 9:15.  
11    So, you can do the math every time you look at the clock.

12                  So, why don't we begin with appearances.  
13    I'm Amy Ignatius. I'm Chairman of the Public Utilities  
14    Commission. And, by statute, serve as Vice Chair of the  
15    Site Evaluation Committee, and have been selected to  
16    preside over this Subcommittee, taking on the Antrim Wind  
17    Energy case. Why don't we go around, starting with  
18    Johanna, on Committee members.

19                  MS. LYONS: I'm Johanna Lyons,  
20    representing the Department of Resources & Economic  
21    Development.

22                  MS. BAILEY: Kate Bailey, from the  
23    Public Utilities Commission.

24                  MR. SIMPKINS: Brad Simpkins, Department

1 of Resources & Economic Development.

2 MR. DUPEE: Brook Dupee, representing  
3 the Department of Health & Human Services.

4 DIR. STEWART: Harry Stewart, Water  
5 Division Director, Department of Environmental Services.

6 MR. GREEN: Craig Green, Department of  
7 Transportation.

8 MR. BOISVERT: Richard Boisvert,  
9 Division of Historical Resources.

10 CHAIRMAN IGNATIUS: And, you know  
11 Mr. Iacopino, who is counsel to the Site Evaluation  
12 Committee. Let's take appearances of parties.

13 MS. GEIGER: I'm Susan Geiger, from the  
14 law firm of Orr & Reno. I represent Antrim Wind Energy,  
15 LLC, the Applicant in this docket. And, with me this  
16 morning, from Orr & Reno, is Attorney Rachel Goldwasser,  
17 and from Antrim Wind, Jack Kenworthy.

18 CHAIRMAN IGNATIUS: And, can everyone  
19 hear? We've got another meeting behind us and people  
20 behind. So, let's everyone keep their voices up please.  
21 Sir, behind you? Anybody else? Any other parties who  
22 want to identify themselves?

23 MR. FROLING: I'm Stephen Froling. I'm  
24 representing the Harris Center for Conservation Education.

1 MR. STEARNS: I'm Galen Stearns. I  
2 represent the Town of Antrim Board of Selectmen.

3 MR. GENEST: Mike Genest, one of the  
4 Selectmen.

5 (Court reporter interruption.)

6 MR. ROBERTSON: John Robertson,  
7 Selectman.

8 MR. IACOPINO: Martha.

9 MS. PINELLO: Martha Pinello, Antrim  
10 Planning Board.

11 MR. ROTH: Peter Roth, Counsel for the  
12 Public.

13 CHAIRMAN IGNATIUS: All right. And, do  
14 we have any other intervenors who are here who haven't  
15 checked in?

16 (No verbal response)

17 CHAIRMAN IGNATIUS: All right. Then,  
18 Mr. Iacopino, are there any procedural issues we should  
19 take up first, any other administrative things to check  
20 off the list, or should we --

21 MR. IACOPINO: Not unless you include  
22 hurricane planning.

23 CHAIRMAN IGNATIUS: We will spend a  
24 little time talking about that later. Unfortunately, that

1 is a complication we've got to figure out.

2 All right. Well, then, let's begin with  
3 presentations of the positions on the subdivision  
4 authority question. And, let's begin with the Applicant.  
5 And, I think, in terms of people being able to hear, if  
6 you want to maybe shift slightly, you know, rearrange a  
7 little bit, so that people can hear from behind you as  
8 well, might be helpful.

9 MS. GEIGER: Okay. Thank you. I'm  
10 going to switch places with Mr. Kenworthy, so that -- can  
11 everyone hear me?

12 FROM THE FLOOR: Uh-huh.

13 CHAIRMAN IGNATIUS: Thank you.

14 MS. GEIGER: I think, as the  
15 Subcommittee knows, Antrim Wind's position is that the  
16 Site Evaluation Committee's authority fully preempts any  
17 local planning board authority over the subdivision  
18 approval of the Project substation. Our preemption  
19 arguments are laid out in two memoranda that we filed with  
20 the Committee, one on July 24th of this year, the other on  
21 September 28th. The Applicant's September 28th memorandum  
22 also discusses, in addition to the preemption argument  
23 itself, some of the Supreme Court cases upon which the  
24 Subcommittee apparently relied in making its determination

1       that there was not total preemption over this subdivision  
2       issue. And, that's why we're here today, obviously, to  
3       discuss what, if any, residual authority remains with the  
4       local Planning Board.

5               Now, as we've discussed in our  
6       memorandum, the three Supreme Court cases, *Stablex*, *North*  
7       *Country Environmental*, and the *Bio Energy* case, all deal  
8       with very specific statutes that are very different from  
9       162-H, which is the statute that governs the Committee's  
10      authority and operations here. These statutes, RSA 147-A  
11      through D, 149-M, and 125-C, again, are very different  
12      from 162-H, which deals very comprehensively with land use  
13      and siting relative to energy facilities.

14             In fact, unlike 162-H, those statutes,  
15      which deal, respectively, with hazardous waste, solid  
16      waste, and air emissions, two of them actually contain  
17      savings clauses, specifically says that local authorities  
18      are reserved the authority to apply local ordinances and  
19      regulations, but are not inconsistent with those statutes.  
20      So, 162-H doesn't have a savings clause in it. Two of the  
21      statutes in the Supreme Court cases that are discussed in  
22      my memo do have savings clauses in them. So, I think  
23      we're in a very, very different situation here.

24             In addition, we've got a statute, 162-H,

1       that says that this Committee's decisions are to be  
2       conclusive on all questions of siting and land use. And,  
3       that's in Section 16, II, of 162-H.

4                   MR. ROTH: Excuse me, madam Chairman? I  
5       thought this was a hearing not to revisit the question  
6       that was argued a month or so ago. But, instead, as you  
7       described at the beginning of the hearing, to determine  
8       which of the provisions of the Antrim Planning Board rules  
9       were to be preempted. And, what I hear Attorney Geiger  
10      doing is essentially rearguing the preemption, and, in a  
11      way, asking for a rehearing or reconsideration on the  
12      matter that was already discussed a month ago. And, I  
13      think that's inappropriate. And, I would ask that she be  
14      directed to move to the substance of the hearing today.

15                   CHAIRMAN IGNATIUS: Well, I had said in  
16      the beginning that we didn't need to rehash everything  
17      that's in the filings, because people have seen them and  
18      read them, but people could do a quick summary of their  
19      position, if it's -- I assume we're going to get quickly  
20      to the --

21                   MS. GEIGER: We can move right ahead.

22                   CHAIRMAN IGNATIUS: All right.

23                   MS. GEIGER: And, I will do that.

24      Basically, what I'd like to do also is, and I haven't had



1 a chance to do this because our memoranda were filed on  
2 the same day, but just quickly respond to memoranda that  
3 were filed by others.

4 MR. ROTH: Again, I think that's an  
5 inappropriate use of the Committee's time and the parties'  
6 time.

7 CHAIRMAN IGNATIUS: Well, I'd like to  
8 hear it. And, we'll give you the opportunity to do as  
9 well.

10 MR. ROTH: I don't need to.

11 CHAIRMAN IGNATIUS: And, I forgot to  
12 mention that others who didn't file their own positions in  
13 writing are welcome to orally address those today, if they  
14 have a position on Subdivision Regulations, other parties.  
15 That wasn't meant to be the only people who could speak  
16 today, but we're not questioning each other. But, if you  
17 want to make your own position, after the three who I've  
18 identified have, you're welcome to speak to that briefly.  
19 Go ahead.

20 MS. GEIGER: The Planning Board states  
21 in its submission that, basically, all of its zoning  
22 ordinances and site plan and subdivision review  
23 regulations apply to the substation that's at issue here.  
24 And, we believe that that point or that position actually

underscores the Applicant's position concerning preemption. Because, if Antrim were to apply all of the ordinances and regulations that it says applies here, they're going to effectively be duplicating work that this Committee is doing. And, we'll get into that as we move through some of those local regulations to demonstrate exactly where there is substantial overlap between what the Planning Board does in reviewing a subdivision plan, and what this Committee does when it reviews an energy facility for purposes of certification under 162-H. So, we think that, in areas where there is direct overlap between this Committee's function and the local body's function, there is preemption as a matter of law.

In addition, if the -- if this Project were required to go to the local Planning Board for approval of the subdivision for the substation, in addition to duplication of effort, there's an additional regulatory hurdle that would have to be jumped through, and we think that's expressly in contravention of what the Legislature intended when it enacted 162-H.

Now, without conceding that the Antrim Planning Board has any residual authority to approve the substation plans, we believe that, if any local authority remains, it is very, very limited. And, as we've set out

1 in our memorandum, I believe in the back of it, you will  
2 see a marked up version of the local regulations to  
3 demonstrate where we believe there is overlap with what  
4 this Committee's function is and what the Town would  
5 propose to assert with respect to the Project substation.

6 We'd be happy to move through that with  
7 you now, but the ultimate point that I'd like to make is  
8 that, even if, for some reason, the Committee were to  
9 decide that there were some residual authority with the  
10 Planning Board over the limited areas that we've  
11 identified, there's case law that says that that authority  
12 cannot be applied to exclude the Project. It cannot have  
13 exclusionary effect. So, we would ask respectfully that  
14 the Subcommittee keep that point in mind as it moves  
15 through the regulations.

16 And, I think, getting something to  
17 Mr. Stewart might have said at the last meeting, and that  
18 is, we could very well conclude at the end of this  
19 exercise that, because the siting issues here are so  
20 inextricably linked to local planning and zoning  
21 ordinances that you can't tease any of them out, and you  
22 can't decide that there should be any residual authority  
23 left with the Town.

24 CHAIRMAN IGNATIUS: Can I ask you a

1 question about that? If by saying -- I know your position  
2 is, you believe that all is preempted, but that, for the  
3 sake of argument, maybe there's something that is not  
4 preempted. And, if that were the case, anything that's  
5 not preempted, the Planning Board could review, but only  
6 say "yes". There couldn't be a "no" to any evaluation of  
7 the Planning Board, because to say "no" to anything would  
8 be blocking the Project and therefore is preempted?

9 MS. GEIGER: I think that's right. And,  
10 I get that directly from the case law. The same case law  
11 that the Committee apparently relied on in going down the  
12 path of residual authority.

13 CHAIRMAN IGNATIUS: Well, let me follow  
14 that, because I'm not understanding just conceptually. If  
15 the theory is that anything that's a direct conflict is in  
16 the hands of the Site Evaluation Committee, and the  
17 Planning Board can't undertake it. Then, the things that  
18 are not direct conflicts and may not be material to a wind  
19 farm, but are just things that the Planning Board cares  
20 about, you know, adequate water or sewer or frontage or  
21 something like that, how is it that it would be, if it's  
22 not a direct conflict and not preempted, so it sits in the  
23 hands of the Planning Board, and I know that's not your  
24 legal position, but, assume that, for a moment, that is

1 the legal finding, then how is it that that's meaningful,  
2 if the Planning Board can do nothing other than say "yes"  
3 to the Applicant?

4 MS. GEIGER: Well, I think that -- I  
5 think that just points out the whole issue with  
6 preemption, I mean, and residual authority in this  
7 particular context. Because I think we have a fundamental  
8 disagreement about what types of things respectfully you  
9 think that the Town could retain authority over. It seems  
10 like water and other uses are something that this  
11 Committee decides. You know, adequate water or water  
12 quality, *etcetera*, that's something that's specifically  
13 within the purview of this Committee. So, I would argue  
14 at the very beginning that that's not something that the  
15 Town would have the authority to look at.

16 CHAIRMAN IGNATIUS: But, if you -- I'm  
17 trying to stay away from the environmental sections,  
18 because I think there's a number of people have already  
19 sort of agreed that a lot of the environmental things sort  
20 of move over to the SEC side of things. But, if something  
21 like, I don't know, let's say trash collection, I don't  
22 even remember if there is an ordinance on trash  
23 collection. But let's just -- something that is  
24 immaterial, whether it's a wind facility or a school or a

1 housing development. It's just something that the Town  
2 thinks is important. It's got nothing to do with the  
3 siting of the facility. Is your view that, even if we  
4 were to find some residual authority under the Stablex  
5 line of cases, that residual authority can only be  
6 approval and could never be --

7 MS. GEIGER: It can't be applied in an  
8 exclusionary way. So, for example, metes and bounds of a  
9 lot, and things of that nature, that talk about specific  
10 things that are germane to the issue of creating this  
11 subdivided lot. Seems to me those would be things that  
12 the Board would -- could, under the theory of residual  
13 authority, apply to approve the subdivision. And, we laid  
14 those out in our filing. And, Attorney Goldwasser is  
15 prepared to walk us through them, if that would be more  
16 helpful. I think the problem that we're having here is  
17 we're having a conceptual discussion. And, I think the  
18 point that each of us is trying to make, actually, I think  
19 will be highlighted as we move through these regs.  
20 Because, I think, once you do that, you see, sort of in  
21 black and white, examples of criteria that we believe the  
22 Legislature intended this Committee to have authority  
23 over.

24 Now, if the argument of residual

1 authority prevails, then what we've done in the  
2 alternative is tried to identify those limited areas where  
3 the Town might be able to apply some of its regulatory  
4 criteria to review and approve a subdivision.

5 CHAIRMAN IGNATIUS: I understand that.  
6 And, my only question was, taking that final piece of  
7 identifying what might remain with the authority -- within  
8 the authority of the Planning Board under the theory that  
9 the Committee has found meaningful, was your final  
10 sentence earlier to say, "and even if you try to assert  
11 any of that, you couldn't say "no" to it, because that  
12 would be exclusionary." So, I guess, let's try to be sure  
13 we're -- I don't want to go through sort of a puzzle here  
14 and have it be "surprise", at the end, "we've identified  
15 the things that might be residual, but they are of no  
16 import.

17 If there's things that you believe that  
18 you want us to consider in the alternative as remaining  
19 residual with the Planning Board, and that the Planning  
20 Board could make a meaningful determination up or down on,  
21 that's what I really want to hear. As opposed to, the  
22 Planning Board has it, but, if they ever say "no" to it,  
23 that's illegal, and because then that's really a waste of  
24 effort. Mr. Dupee.

1 MR. DUPEE: Thank you, madam Chairman.  
2 And, just to make sure I understand the question. So, if  
3 we're talking about residual authority being -- something  
4 being immaterial to the Application. So, there's an  
5 ordinance that says you have to have a trash collection  
6 and you have to use green bags. And, the Applicant says  
7 "I'd rather have red bags." So, the question is, could  
8 the Planning Board's determination that, yes, you must  
9 have a different color bag apply, because it would not  
10 change the nature of the permit. So, they would have that  
11 residual authority. But, for something that for some  
12 reason would change or cause the Applicant to be denied,  
13 there would be --

14 (Court reporter interruption.)

15 MR. DUPEE: I'm sorry. So long as it's  
16 clear that the regulation or ordinance would be something  
17 that wouldn't affect the actual issuance of the permit.  
18 So, the example being a green trash bag versus red trash  
19 bags. So, if I understand correctly, the question is  
20 whether the Planning Board can say green versus red, but  
21 couldn't say whether or not, you know, if your an energy  
22 -- if you're a wind facility, then you couldn't meet the  
23 standard, something along those lines, if I understand  
24 correctly.



1 MS. GEIGER: I'm going to -- I'm going  
2 to turn this over to Attorney Goldwasser, who practices in  
3 the area of land use. She appears before lots of zoning  
4 and planning boards, I do not. And, so, I think she's in  
5 a better position to address specific examples that you  
6 might give of local regulations that could theoretically  
7 be reserved to the Town, if the SEC believes that they do  
8 not have authority to preempt.

9 CHAIRMAN IGNATIUS: And, specifically to  
10 Mr. Dupee's question?

11 MS. GOLDWASSER: I hope so.

12 CHAIRMAN IGNATIUS: Please.

13 MS. GOLDWASSER: And, I'm going to use  
14 an example that is really far to one side, so that it  
15 makes it hopefully clearer. And, then, when we walk  
16 through the regulations, which I'm sure we'll do at some  
17 point this after -- this morning, we can see where the  
18 gray area is here. But I think you've identified a good  
19 question. And, to take the Planning Board's position,  
20 which is that, when it makes a subdivision determination,  
21 it must decide that the project meets all local zoning  
22 ordinances and regulations. To take that as an example of  
23 where we get past the green versus red bags, and we get  
24 into something that is much more concerning, to use that

1 as an example for exclusionary effect.

2 So, the Antrim zoning ordinance states  
3 what kind of uses are permitted in a district, states  
4 setback for buildings, states height regulations for  
5 buildings, states exceptions for those things, leaving  
6 aside what would be permitted in Antrim and what wouldn't  
7 be permitted in Antrim. If this Committee decides that  
8 the Planning Board is correct, and, therefore, the  
9 Planning Board has subdivision authority, and, when the  
10 Planning Board makes a subdivision decision, it must  
11 determine that the project meets all of these regulations.

12 If, hypothetically, this project didn't  
13 meet the use/setback/height regulations, the Planning  
14 Board subdivision decision would be "Sorry, we can't grant  
15 you subdivision authority. You need to go seek a variance  
16 from the Zoning Board from the zoning ordinance." And,  
17 requiring an Applicant to go seek a zoning variance for  
18 the use of the site or for the setbacks associated with  
19 this site, in a case where the Site Evaluation Committee  
20 has determined that a project is permitted, that, from my  
21 perspective, completely contradicts the language in RSA  
22 162-H, which states that the Site Evaluation Committee's  
23 determinations must be conclusive on all issue of siting  
24 and land use. That would be exclusionary. Because, if

1     you went -- if you had to go to the Zoning Board and seek  
2     a variance against an ordinance on a use issue, which  
3     clearly goes beyond what the legislative history, the  
4     statute, and the PSNH case indicate, I mean, that that --  
5     that goes far beyond what, you know, what any -- any  
6     residual authority which might be left in the Planning  
7     Board. That's the opposite of the red bag versus green  
8     bag example. Is that fair, I guess?

9                     MR. DUPEE: To the general versus  
10     specific.

11                    MS. GOLDWASSER: Yes. Because what that  
12     would mean was that an applicant to the Site Evaluation  
13     Committee, not just this Applicant, but any applicant to  
14     the Site Evaluation Committee, when seeking subdivision  
15     authority, has to go to each town and each location and  
16     seek very likely variances from the zoning board, which  
17     are appealable in one way, subdivision authority from the  
18     planning board, which is appealable via a separate avenue,  
19     and a Site Evaluation Committee permit, which might  
20     contradict each other. So, to use another example, in the  
21     driveway example, the regulations, the Planning Board's  
22     regulations provide certain requirements regarding how  
23     driveways need to work. Those requirements aren't  
24     necessarily applicable to a project that's before this

1 Committee for all sorts of complicated reasons that, in my  
2 mind, the Legislature indicated should be dealt with by  
3 this Committee and not by a local land use authority. If  
4 an applicant seeks authority from this Committee and  
5 provides a DOT permit to get the driveways necessary to  
6 serve a facility, and, at the same time, must go to the  
7 Planning Board to speak subdivision authority, and the  
8 Planning Board says "No, no. You don't meet our  
9 regulations for driveways. You must do A, B, C, D and E."  
10 Then, the Applicant has potentially two different  
11 approvals; one for a driveway in one location and one for  
12 a driveway in another location. They might affect how  
13 other parts of the project operate. And, then, they have  
14 to recursively come back to the SEC with an amendment to  
15 their App. I mean, it gets very complicated. And, that's  
16 where exclusionary effect could be a real problem.  
17 Because, if those requirements that are in the regulations  
18 for a driveway make it impossible to meet, it's impossible  
19 to meet those requirements, theoretically, then a project  
20 that the Site Evaluation Committee could approve, which  
21 meets the standards that the Site Evaluation Committee has  
22 set out, could be excluded from being built, because of  
23 the Planning Board's application of its own regulations.  
24 And, when I look at the language in 162-H, which states

1       that siting -- that this Committee's decisions are  
2       "conclusive on...siting and land use", that's where I have  
3       a problem.

4                       CHAIRMAN IGNATIUS:   Mr. Iacopino.

5                       MR. IACOPINO:   Thank you.   Can I just  
6       ask you a question about that?   I want to take your  
7       driveway example.   Let's say that the planning regulations  
8       require a certain width of a driveway or a certain  
9       thickness of the asphalt, and that's what the Planning  
10      Board requires under their Subdivision Regulations.   I'm  
11      having a hard time getting my arms around your suggestion  
12      that that somehow affects the siting decision that was  
13      made by this Committee.   If they tell you the driveway has  
14      got to be 20 feet, instead of 15 feet, --

15                      MS. GOLDWASSER:   Right.

16                      MR. IACOPINO:   -- it seems to me that  
17      that's exactly the type of regulation that it is not --  
18      it's not like a wind ordinance, it doesn't go to the core  
19      of what we do.   It is applied to every industrial  
20      facility.

21                      MS. GOLDWASSER:   Yes.

22                      MR. IACOPINO:   I assume it's being  
23      applied in good faith.   And, it's the type of thing that  
24      it doesn't really affect the siting of the facility.   So,

1       it seems to me that that's exactly the type of regulation  
2       that would fit within the language that has not only been  
3       in *Stablex*, but every case since *Stablex* has come down,  
4       and from the case before *Stablex* as well, about residual  
5       authority.

6                       So, I'm not -- I don't see how you  
7       suggested that's somehow an exclusionary type of authority  
8       on the part of the Town. Now, if they were saying "well,  
9       for wind plants, we require a 60-foot driveway", or "a  
10      5-foot driveway", whatever, and they were applying it  
11      differently or in an exclusionary manner or in bad faith,  
12      I'd have a better time accepting your argument.

13                      But can you please explain to us how --  
14      how it is something like that? I mean, it seems to me  
15      that those sort of substantive regulations are really more  
16      fairly put in the "red and green bag" category than to  
17      suggest that they're somehow exclusionary.

18                      MS. GOLDWASSER: I have a couple of  
19      responses to that. The first one is that the Planning  
20      Board is given special authority in this process, and they  
21      have every right and obligation to come to the Committee  
22      and say "we don't" -- "this road" -- "these roads don't  
23      meet our requirements in these parts of our regulations,  
24      you ought to require the Applicant to have a 30-foot wide

1 driveway." And, my guess is, this Committee would say,  
2 "unless there's a good reason not to, yes, you guys, you  
3 need to put in a 30-foot wide driveway." What the  
4 Legislature didn't intend was for an applicant to have to  
5 go through an entirely separate regulatory process, which  
6 has appeals to the Superior Court, and then appeals to the  
7 Supreme Court, as a completely separate means of obtaining  
8 the outcome. So, that's part one. I'll get to --

9 MR. IACOPINO: Okay. But wait -- I  
10 don't want to interrupt you, but you keep going back to  
11 the decision that's already been made. We'd like to --  
12 which is that, there is preemptive effect, but there is  
13 some residual authority.

14 I think what we really want to get to in  
15 this hearing is this issue of the residual authority,  
16 which portions of the ordinances in the Town of Antrim  
17 apply. It's clear that, you know, a zoning ordinance  
18 isn't going to apply, if we say this is a proper site, and  
19 it's in a residential -- even if it was in a residential  
20 district, if the Committee says "This is a proper site for  
21 this facility", we preempt that local zoning. But, when  
22 you're talking about driveways or trash collection or  
23 things like that, I'd rather that we address those issues,  
24 than to keep going back to this issue of "whether or not

1       there's total preemption or not?" We've already decided  
2       that there is some residual authority. We're looking for  
3       an argument from the parties and guidance from the  
4       parties, in terms of "where is the line between that  
5       residual authority?"

6                       MS. GOLDWASSER: And, I guess I would  
7       assert, Mr. Iacopino, that the driveway issue is -- what I  
8       heard the Committee say at the last hearing was that "land  
9       use" -- "issues of land use and siting" -- "issues of land  
10      use and siting are within the Committee's decision-making  
11      authority, and issues of subdivision, of how this land is  
12      divided up, are the residual authority of a planning  
13      board." Now, the driveway issue, for example, in these  
14      regulations, there are rules about shared driveways, okay?  
15      How long a shared driveway can be. How -- so, if you have  
16      two lots that are next to each other, how long the  
17      driveway that one of them shares, you know, can be to the  
18      next one? That could directly impact how the subdivision  
19      comes out. That's more than an issue of the width of a  
20      driveway, and that's more about the -- whether this site  
21      is appropriate for this facility and how the land will be  
22      used, and less about a subdivision authority. And, I  
23      apologize if I misunderstood what the Committee had said  
24      in the last hearing, but that was what I had perceived.



1                   MR. IACOPINO: But what you're saying  
2 is, is that -- the application of that particular  
3 subdivision regulation with respect to shared driveway has  
4 an exclusionary effect on these particular properties.

5                   MS. GOLDWASSER: Right. Right.

6                   MR. IACOPINO: That's fine. That's the  
7 type of argument that I think we're looking for here  
8 today, instead of keep going back to the preemption  
9 argument. That's been -- but what I would suggest that  
10 the parties do, and, obviously, it's up to you how you  
11 want to present your cases, but you look at the language  
12 out of *Stablex*, which basically has -- I count them as  
13 four things to look at, is it something that goes to the  
14 core of what the Committee does, something, for instance,  
15 if they had a wind ordinance, we would preempt the wind  
16 ordinance. Number two is, is this something that applies  
17 to every industrial facility? Number three, is it being  
18 applied in good faith? And, number four, does it have an  
19 exclusionary effect? I think that that's the type of  
20 analysis we need to do with respect to the regulations  
21 that apply in Antrim.

22                   I agree that there's another step that  
23 you need to address, and that is the fact that there's a  
24 process, and you may have a planning board that does not

1       -- will not give you the process. But this may not be the  
2       place where that has to be resolved. You know, you may  
3       file a limited application at the end of day, when you  
4       have your certificate, you may go to them and say "we're  
5       filing an application for our subdivision here, based upon  
6       the limited criteria that we believe are residual  
7       authority", and they may say "no, we can't accept that."  
8       And, that's -- I don't think that the Committee can help  
9       you with that. You have to go somewhere else to get that  
10      kind of relief. But I think that that's a different  
11      issue. I'm sure we can address it today, but I think that  
12      it's best if we go through the regulations first, apply  
13      the *Stablex* criteria, tell us why you think the *Stablex*  
14      criteria renders any particular regulation residual or  
15      not, and then we can address process issues separately.

16                   MS. GOLDWASSER: So, just to make sure  
17      that I understand what process the Committee would like to  
18      follow, would you like us -- I had assumed that we were  
19      going to go and provide -- present argument, and then go  
20      through the regulations sort of en masse. I'm happy to  
21      walk through our Appendix A, which we provided, which  
22      provides a redline of how we viewed the regulations now,  
23      or I can wait. It's at the -- however the Chair would  
24      like to proceed.

1 CHAIRMAN IGNATIUS: No, I think that's a  
2 good question. I think we could go either way. If it  
3 would help to have each party, who has a position they  
4 want to advance on this, to go through just a very quick  
5 summary of their overall position, and then we begin  
6 section by section, and let each person make their pitch  
7 on that section, and the Committee ask questions about  
8 that section, and then move to the next, that's fine.  
9 Rather than have the Applicant go through the entire  
10 ordinance, and then have Public Counsel go through the  
11 entire ordinance, and the Planning Board go through the  
12 entire. That may be more useful. Is that all right with  
13 everyone?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: All right. Before  
16 we begin that, were there other questions from Committee  
17 members before we shift gears a bit? Yes, sir.  
18 Mr. Boisvert.

19 MR. BOISVERT: I just want to be clear.  
20 I believe I understand it. But I've heard attorneys refer  
21 to the Project. I'm assuming that our discussions have to  
22 do with the subdivision and what happens on that  
23 subdivision property only. It does not extend to wind  
24 tower locations, etcetera. That's my understanding. But

1 I've heard some language that could be construed  
2 otherwise. I want to make sure that that's my  
3 understanding.

4 CHAIRMAN IGNATIUS: That's a very good  
5 question. And, that's also been my understanding. That  
6 we're not discussing whether the Planning Board should  
7 have the residual authority to say, you know, "Tower 10  
8 should be not where it's located, but somewhere in another  
9 part of the municipality." That that isn't what we're  
10 talking about. We're talking about, "for the request that  
11 we subdivide a parcel of land for the Project, does that  
12 sit with us or does that sit with the Planning Board?"

13 Thank you. So, anything else on this  
14 sort of general overview from the Applicant or should we  
15 move to the Planning Board for a position? Ms. Pinello,  
16 are you taking that one?

17 MS. PINELLO: Yes, I am.

18 CHAIRMAN IGNATIUS: Thank you.

19 MS. PINELLO: Good morning. I'd like to  
20 also introduce Sarah VanderWende, who is a member of the  
21 Planning Board, who is now in attendance with me.

22 CHAIRMAN IGNATIUS: And, can you spell  
23 your last name for the reporter please?

24 MS. VANDERWENDE: My last name is

1 "VanderWende", V-a-n-d-e-r-W-e-n-d-e.

2 CHAIRMAN IGNATIUS: Thank you. Go  
3 ahead.

4 MS. PINELLO: First off, I would like to  
5 start by thanking the Committee for being able to have  
6 this opportunity to present what, in many ways, is a very  
7 nuanced and very small aspect of our life in towns in New  
8 Hampshire. Planning boards is a small part of it, and  
9 even then, smaller than that is subdivision. And, I will  
10 admit there are some of us who are fascinated with these  
11 aspects of government enough to be willing to take these  
12 on to look at that. And, in fact, what I feel privileged  
13 is is that this is an aspect of quasi-judicial boards and  
14 local boards that, as we begin to develop this form of  
15 expediated permitting, this situation we're wrestling out  
16 for many other kinds of situations. So, I feel privileged  
17 to be able to sort out how we do this in shared  
18 responsibility. And, because I am not an attorney, and I  
19 don't play an attorney, I'm going to read a brief  
20 statement. And, then, I'd be happy to take questions and  
21 follow with that.

22 The Planning Board does have the legal  
23 authority to recognize state law preemption principles,  
24 and to conduct a local subdivision review, which gives

1 full credence to those principles. The Planning Board is  
2 an elected board. This particular board is elected by the  
3 citizens of Antrim to implement the authority given by  
4 state law for subdivision. The Board's authority over  
5 this subdivision: The standard for which regulations can  
6 be applied, versus which -- those which can be preempted  
7 is called the "residual authority", recognized in cases  
8 such as *Simplex [sic-Stablex?] versus Hooksett*, the  
9 Supreme Court in -- the New Hampshire Supreme Court,  
10 excuse me, in the *North Country Environmental* case, which  
11 says as follows: "We vacate and demand for determination  
12 as to whether the Town's existing Site Plan Regulations  
13 are applicable, lawful, and consistent with RSA  
14 Chapter 149-M. To be lawful, the Town must have applied  
15 the regulations in good faith without exclusionary affect.

16 Another case, *Stablex versus the Town of*  
17 *Hooksett*, 122 New Hampshire 1 -- and, I think you have  
18 this, the citation for that, and then also in Pelham.  
19 "Applicable regulations are those to which any industrial  
20 facility would be subjected."

21 The Antrim Planning Board cannot know in  
22 advance which regulations will be applied in good faith  
23 and without exclusionary effect. Antrim Planning Board  
24 members cannot segment the Antrim regulations for a case

1       that then they then would sit on for the residual  
2       authority. The SEC or someone not on the Planning Board  
3       could make a list of those Antrim regulations, which would  
4       be discriminatory on their face, presumably a short list,  
5       and remand -- the remaining regulations are capable of  
6       being applied in a non-exclusionatory [sic] manner. And,  
7       that the Board -- we intend to do just that. And, that  
8       the Board recognizes that, whether or not it ends up doing  
9       so, or having this come to us, it would also be subject to  
10      further review by appeal.

11                       So, I'd be glad to take questions or --  
12      so, that kind of I will admit we're on the opposite side  
13      of that. But I think it's important for you to  
14      understand, we're not on the opposite side of this because  
15      we choose to be oppositional. It's our responsibility as  
16      an elected board. And, so, for us to make decisions,  
17      before we have an application, would, in effect, being  
18      exclusionatory [sic] already. So, thank you.

19                      CHAIRMAN IGNATIUS: All right. That's a  
20      good summary. And, then, we'll come back to your position  
21      on particular --

22                      MS. PINELLO: Okay. Thank you.

23                      CHAIRMAN IGNATIUS: -- aspects of the  
24      ordinance. Mr. Roth.

1                   MR. ROTH: Thank you. I guess I'd like  
2 to start with my understanding of the Town's position, the  
3 Planning Board's position. And, perhaps that can shed  
4 some light on what I think is perhaps the disconnect  
5 between the Applicant and the Town -- or, the Planning  
6 Board. It seems to me, the Planning Board is saying  
7 "we're not saying all of these regulations must be applied  
8 and, therefore, you know the Applicant is going to have to  
9 go through, you know, all these hoops." I think what  
10 they're saying is that they have to, as a co-sovereign, as  
11 an instrument of the sovereign power of the state, they  
12 have to look at the application on its face and on its  
13 merits when it's presented, and not make predictions about  
14 what they're going to do with it before it's actually  
15 presented. And, that they have a responsibility of their  
16 own to make an assessment about what's preempted and  
17 what's not. And, that they cannot do that until they  
18 actually see the application and know what it says.

19                   So, I think that's how I understand it,  
20 and it's perhaps appropriate that I'm sitting between  
21 them. I think that the Applicant's view of the exclusion  
22 -- exclusionary effect is wrong. It seems to me that, if  
23 they have residual power, they have the power to say "no".  
24 And, I think the idea of "exclusionary effect" is -- it's



1 intended to block rules that simply say "no wind power" or  
2 "we prohibit this type of facility altogether." And,  
3 that's an exclusion provision that, obviously, could not  
4 coexist with the Site Evaluation Committee. But I think  
5 it has to be where things are uniformly applied to all  
6 kinds of facilities, those who cannot be seen as  
7 exclusionary just because the Planning Board can say "no".

8 I've gone through the, you know, the  
9 Planning Board regulations. And, as I said in a brief  
10 memorandum that I filed, you know, it seems to me that you  
11 look for the core things. And, when I do that, I exclude  
12 basically anything that looks like the -- where they're  
13 looking at the configuration of the structure and, you  
14 know, for example, you know, an example is parking. If  
15 you'll look, and I'm just giving you an example here.

16 CHAIRMAN IGNATIUS: Yes. And, then,  
17 we'll go back more thoroughly through each.

18 MR. ROTH: Yes, I understand.

19 CHAIRMAN IGNATIUS: But, if you want to  
20 give a general example, that's good.

21 MR. ROTH: In the Planning Board  
22 regulations, on Page 31, it says "Parking Requirements".  
23 And, in my view, that should be preempted. And, the  
24 reason for that is because it refers to the new structure

1 or enlargement of an existing structure. And, so, when --  
2 that, to me, ought to be preempted, because it deals with  
3 the structure, not with the lot configuration. And, so,  
4 that's where I draw the line. And, I think I tried to  
5 apply that throughout my list of things that are in and  
6 out.

7 CHAIRMAN IGNATIUS: Can you explain why  
8 the structure should be the governing starting point in  
9 your breakout of these?

10 MR. ROTH: Because the Site Evaluation  
11 Committee's function here is to approve a certificate for  
12 a facility, and that's the structure. It would be as  
13 though, if the Planning Board regulations said, you know,  
14 "any building must have wood siding and painted an  
15 attractive hue of barn red." And, obviously, you cannot  
16 build a subdivision painted with barn red wooden siding.  
17 I suppose they could try, but it seems to me that that is  
18 something that where you're dealing with the actual energy  
19 facility itself, the structure. This Committee's  
20 jurisdiction over that issue I think is paramount over  
21 something that the Planning Board would want. Whereas, in  
22 contrast, looking at the driveway issue, the driveway has  
23 to do with the lot, not with the structure itself. And,  
24 that's just by the terms of the Planning Board

1 regulations. Now, if the Planning Board regulations said  
2 something different, other than "parking associated with  
3 the structure", I might have a different view of it. But  
4 I'm just taking it on the face value of what the Planning  
5 Board has written for its own rules.

6 CHAIRMAN IGNATIUS: So that, for  
7 example, a height ordinance is very structure-related, and  
8 would be preempted. But, if there were a noise ordinance,  
9 would that --

10 MR. ROTH: That has to do with the  
11 facility. And, so, I would submit that that would be  
12 preempted.

13 CHAIRMAN IGNATIUS: Because the noise  
14 comes from the structure?

15 MR. ROTH: That's correct.

16 CHAIRMAN IGNATIUS: Okay.

17 MR. ROTH: Then, I think it's fairly  
18 simple to see that there are a number of things in here  
19 that just don't apply at all in the Planning Board  
20 regulations. And, things that just don't apply should not  
21 be deemed to be preempted. Because I just don't think, in  
22 terms of doing a preemption, you should only go as far as  
23 you absolutely need to go. And, if you don't need to  
24 preempt things that don't apply, then you shouldn't

1 declare them preempted. And, there are a number of  
2 examples that we can go through when we do the  
3 step-by-step analysis.

4 And, then, there are things like, for  
5 example, the Section IV of the Planning Board regulations,  
6 "Procedure". You know, it's just filling out the  
7 application, including the right papers and stamps with  
8 it. And, I think that that's sort of a uniform thing that  
9 applies to everybody. And, it's, you know, anybody can  
10 get that done correctly. And, my experience with planning  
11 boards is they're generally pretty cooperative and helpful  
12 about getting that done correctly. And, so, I wouldn't  
13 think that any of that should be preempted, because it's  
14 uniform, and it's not hard to -- it's not hard to do.  
15 And, it puts the Planning Board in a position where they  
16 can actually evaluate the merits of the thing in a proper  
17 way. That's all I really have to say about it.

18 CHAIRMAN IGNATIUS: All right. Ms.  
19 Bailey.

20 MS. BAILEY: Do you think that the  
21 zoning ordinances are preempted?

22 MR. ROTH: I don't think you need to  
23 preempt the zoning ordinances here. Because, in this  
24 case, it appears that the zoning for this location is

1 proper for the facility that's being proposed. So,  
2 whether it's preempted or not is sort of a nice academic  
3 question, but I don't think, as I said with things that  
4 are not applicable, I don't think you need to go there.

5 MS. BAILEY: But what about  
6 Ms. Goldwasser's example, where the Planning Board says  
7 "no" to something, and they have to get a variance from  
8 the zoning ordinances?

9 MR. ROTH: You know, that's the way it  
10 goes. And, you know, that --

11 MS. BAILEY: So, if that's the way it  
12 goes, they have to go to the Zoning Board?

13 MR. ROTH: Whatever the procedure is,  
14 you know, that's what they have to do. And, that's what  
15 any -- that's what any user of that property wanting to  
16 configure it that way would have to do.

17 MS. BAILEY: If it had to do with the  
18 configuration of the land itself, --

19 MR. ROTH: That's correct.

20 MS. BAILEY: -- and not anything on the  
21 land?

22 MR. ROTH: Right.

23 MS. BAILEY: Thank you.

24 CHAIRMAN IGNATIUS: Mr. Iacopino.

1 MR. IACOPINO: I'm sorry, Mr.

2 Stewart has a question.

3 CHAIRMAN IGNATIUS: Mr. Stewart.

4 DIR. STEWART: Why is the driveway not  
5 part of the facility?

6 MR. ROTH: Because of the way the rule  
7 is -- I believe the rule does not associate the driveway  
8 with the structure. The driveway is associated with the  
9 lot.

10 DIR. STEWART: Don't you need a driveway  
11 to operate the facility?

12 MR. ROTH: Absolutely.

13 DIR. STEWART: I suppose you could  
14 helicopter in.

15 MR. ROTH: But, you know, I think you  
16 need a driveway for the lot in order to get to it. And, I  
17 suppose you could helicopter into it, but I think that's  
18 not favored in land planning anywhere.

19 MS. PINELLO: Thank you.

20 MR. ROTH: Or parachute. But the point  
21 I'm making is, I took the land, you know, the Antrim  
22 regulations on their face. And, if a regulation, I think  
23 I got this right, says that whatever the system or  
24 facility is that was associated with the structure, as the

1 parking lot is, according to the regulation, then I think  
2 that that should be preempted. Whereas, in things that  
3 are associated with the lot itself, because it comes out  
4 of the configuration of the lot by the subdivision, then  
5 that should be not preempted.

6 CHAIRMAN IGNATIUS: Mr. Dupee.

7 MR. DUPEE: Thank you, madam Chair. So,  
8 Attorney Roth, if you go to the ZBA, because your driveway  
9 didn't meet spec, and ZBA said "we're not going to give  
10 you a variance", what happens then?

11 MR. ROTH: Then, they have to go and  
12 design the driveway in accordance with the spec.

13 MR. DUPEE: And, if that wasn't  
14 possible?

15 MR. ROTH: Or they can appeal it.

16 MR. DUPEE: Thank you. Madam Chair?

17 CHAIRMAN IGNATIUS: Yes, go ahead.

18 MR. DUPEE: So that, if you definitely  
19 could not --

20 (Court reporter interruption.)

21 MR. FROLING: Could you speak up please.

22 MR. DUPEE: Attorney Roth, so, if the  
23 Applicant could not meet the terms and conditions of that  
24 ordinance, yet the Committee had still said "Yes, okay, go

1 ahead and build", what happens then?

2 MR. ROTH: Well, then, they wouldn't be  
3 able to get their subdivision approved, and they wouldn't  
4 be able to record the document, and they would have a  
5 title problem that PSNH has said would be a show-stopper  
6 for them.

7 CHAIRMAN IGNATIUS: Please continue.

8 MR. DUPEE: So, that would be sort of a  
9 *de facto* denial of the permit?

10 MR. ROTH: No, it would not be a *de*  
11 *facto* denial of the permit. It would be a denial of their  
12 subdivision plan. And, there are other solutions. I  
13 mean, you know, according to their lease, at least as I  
14 understand it, they have an option to purchase the whole  
15 piece of property. So, they could skip the subdivision  
16 business and just buy the whole lot. So, there are, you  
17 know, ways around us, including, you know, the appeal  
18 process.

19 CHAIRMAN IGNATIUS: Please continue.  
20 You don't have to ask permission, that's all right.

21 MR. DUPEE: Thank you, madam Chair. So,  
22 if, at the end of that process, it appeared, under a town  
23 ordinance or the interpretation therefore, that this  
24 facility could not be built, would you believe that the



1 Site Evaluation Committee determination would preempt?

2 MR. ROTH: No. I mean, that's the  
3 discussion that Attorney Iacopino had with the Applicant a  
4 minute ago. The power to have that residual authority,  
5 and I think "residual authority" is perhaps not quite the  
6 right -- it's sort of a "co-", a sharing of authority, not  
7 so much a "residual", but that's semantics. But the  
8 existence of that authority is the power to say "no".  
9 And, then, if they say "no", then the Applicant needs to  
10 go back to the drawing board and think of a different way  
11 of doing it, or, you know, abandon the project.

12 MR. DUPEE: So, to just make sure I  
13 understand correctly, if the Committee's determination was  
14 this facility should be built, a certificate of facility  
15 was offered, and the Applicant still needed to go through  
16 a series of local, residual obligations, duties,  
17 requirements, that at no point would the exercising of  
18 those local conditions affect the fact that they could go  
19 ahead and build their facility according to the permit  
20 they had gotten or the certificate they had gotten from  
21 the Committee?

22 MR. ROTH: If I understand you  
23 correctly, I think what it comes down to is, was that  
24 decision by the Planning Board made in good faith? And,

1 if it was made in good faith, and it withstands the appeal  
2 process, then, you know, that's the way it goes.

3 You know, I think I said in my original  
4 memorandum, you know, there are plenty of other situations  
5 where this Committee's work is done, but the Applicant  
6 still has to go off somewhere else and get other approvals  
7 that can either kill the project or give it the green  
8 light. And, you know, just the mere fact that the  
9 Committee has the ability to give the license doesn't  
10 guarantee everybody the opportunity and the ability to  
11 complete the project. So, you know, the fact that this  
12 one sharing of authority with the, you know, the Planning  
13 Board might present a stumbling block to that. And, I  
14 would submit, out of any number of these projects that  
15 have been brought to the Site Evaluation Committee over  
16 the years, this is the first one where anybody has come in  
17 and said "Oh, by the way, the Planning Board is going to  
18 screw us in the end, and, therefore, you should preempt  
19 them." Plenty of other projects have gone to planning  
20 boards all over the state with, you know, with success and  
21 gone on and built their projects.

22 So, again, it comes down to, as Attorney  
23 Iacopino said in the analysis, was it done in bad faith?  
24 And, if it was not, if it was in good faith, then the

1 power of the planning board to say "no" should stand.

2 CHAIRMAN IGNATIUS: Mr. Roth, let me  
3 follow up on what you just said. Are you saying that  
4 there are other Site Evaluation Committee projects that  
5 have taken place in recent years that have also had a  
6 parallel planning board process going on?

7 MR. ROTH: Yes. The Groton facility,  
8 for example, had to go to the Town of -- Susan, help me  
9 out here?

10 MS. GEIGER: Holderness.

11 MR. ROTH: -- Holderness for approvals  
12 from the Planning Board, received them, and, as far as I  
13 know, they're under construction.

14 CHAIRMAN IGNATIUS: And, what was being  
15 sought from the Town of Holderness Planning Board?

16 MR. ROTH: I think it was the necessary  
17 things to build a substation, of all things. But I'm sure  
18 Attorney Geiger has a better grasp of the facts there.  
19 But that was done with the Town of Holderness Planning  
20 Board making their determinations on things like lighting  
21 and, I don't know, whatever else they did. But their role  
22 was not preempted, and nobody came here and said that they  
23 should be.

24 MR. IACOPINO: Yes. But, in that case,

1       that Applicant chose to do that that way. They never  
2       brought the issue to the Site Evaluation Committee. They  
3       never came and said "we're going to need a subdivision  
4       over in Holderness where we're building the thing, would  
5       you grant it to us."

6               MR. ROTH: No, I agree. They never came  
7       to you and said "can we do that", because they didn't  
8       think they needed to. But there was nobody in here saying  
9       "you should preempt the Town of Holderness Planning  
10      Board."

11             MR. IACOPINO: I understand what you're  
12      saying. But I'm just -- I think I knew where you were  
13      going with the question. It wasn't before the Committee,  
14      because nobody had brought it to our attention then.  
15      Nobody asked us to do it.

16             MR. ROTH: And, madam Chairman, I would  
17      suggest that, you know, with a little more research, we  
18      could probably find that nearly every project constructed  
19      with this Committee's authority has some involvement with  
20      a planning board over something.

21             CHAIRMAN IGNATIUS: Well, be careful  
22      with statements like that, because that's what we're  
23      trying to sort out. And, of the ones that I've  
24      participated in, which isn't that many, I can't think of

1 any, but there may be -- there may be some, and it would  
2 be interesting to see what those are. There are certainly  
3 situations where there's been input. But, whether there  
4 have been parallel procedures, where applications filed in  
5 both entities at once, going forward on their own separate  
6 tracks, is something that I'm not aware of. So, I didn't  
7 know about Holderness, that's good to know. If there are  
8 others you know of, I would be interested.

9 MR. ROTH: I don't know of any  
10 specifically. And, the notion of "parallel proceedings" I  
11 think perhaps asks too much. I think, in some of these  
12 instances, you know, the planning -- you know, again, I'm  
13 speculating, but I would suspect that the planning board  
14 proceeding was done after the fact.

15 CHAIRMAN IGNATIUS: All right.  
16 Mr. Iacopino.

17 MR. IACOPINO: I have a couple  
18 questions. I want to address what Mr. Dupee was  
19 addressing with you, because it seems to me that that  
20 really gets to the crux of what the Committee has to  
21 consider today. And, you keep -- it's basically "what is  
22 the definition of "exclusionary effect". Okay? So that,  
23 if we're looking at any particular subdivision regulation,  
24 what's the definition of "exclusionary effect"? If I

1 understand what you've said, and please correct me if I'm  
2 wrong, is that you make that determination or you think  
3 that that definition begins with this distinction between  
4 the lot and the structure. Am I correct? That's --

5 MR. ROTH: No. I think that it's -- one  
6 of my criteria for determining whether this is "core", and  
7 that was the first of your *Stablex* factors, "core" is  
8 whether it's lot or structure. That, to me, is a separate  
9 piece of the analysis. But, for me, the exclusionary  
10 effect is, you look at the rule, the particular rule, or  
11 the set of rules as a whole, and decide "is there  
12 something in there that is intended to block or the sole  
13 purpose is to prohibit this kind of a facility from being  
14 constructed?" Not things that are uniformly applied to  
15 everybody who comes in the door. Whether it's a strip  
16 mall or a substation or, you know, a gas station.

17 MR. IACOPINO: But would you agree that  
18 there are regulations, Subdivision Regulations, that could  
19 be applied uniformly, but still have an exclusionary  
20 effect on a energy facility?

21 MR. ROTH: I guess I would agree with  
22 Ms. Pinello that that list could be fairly small.

23 MR. IACOPINO: Okay. But it could, it  
24 could exist?

1                   MR. ROTH: Yes. There could be one that  
2     says "you cannot have a facility that -- you cannot, you  
3     know, use the lot for a facility that has high voltage",  
4     you know, something like that. I don't think there is  
5     such a thing in the Planning Board regulations. But, if  
6     one were there, that would be getting close to excluding  
7     an energy facility.

8                   MR. IACOPINO: The other question that I  
9     have, and I'm going to address this to Ms. Pinello, too,  
10    so both of you can answer, is about, I don't know if I'm  
11    correct about this, but it seems to me about 50 percent of  
12    the regulations that have been filed with the Committee  
13    are process, what you have to put in your application, you  
14    know, what has to be in it. And, I guess my question is  
15    this, if a energy developer obtains a Certificate of Site  
16    and Facility from this Committee, comes to you and says  
17    "okay, we've got this certificate. We can't comply with",  
18    because this is what I thought your memo said, "we can't  
19    comply with these requirements of this application,  
20    because, you know, these are things that are dictated by  
21    our facility." And, you know, whatever -- so, they come  
22    in and say, for instance, let's say you had a wind  
23    ordinance, just for -- "we can't comply with your wind  
24    ordinance, because we have a certificate from", and

1 clearly that's something that is excludable. Is there  
2 application going to be considered or is it just going to  
3 be rejected, because they have taken the position that  
4 certain regulations don't apply?

5 MS. PINELLO: Just a minute, let me go  
6 through the process, I'm not -- let me think about it.  
7 When considering an application, the Planning Board  
8 accepts an application. Some applications are complete,  
9 some applications are incomplete, some developers make  
10 demands that don't match our ordinances. We consider  
11 those. You have a conceptual -- sometimes you have a  
12 conceptual, sometimes you don't, you go in for the  
13 process. So, it is not unusual for somebody to apply to  
14 use a piece of land or subdivide a piece of land, but not  
15 have everything all together, and that's why you have  
16 conceptuais.

17 We have a process in which we're  
18 required, once an application is accepted, to follow the  
19 law, in terms of when we look at that, and then also we  
20 have a requirement in terms of how long we have, that  
21 we're allowed to say "process it" or have hearings on it.  
22 So, that's one aspect of that.

23 The other aspect is, it is the Planning  
24 Board's understanding, with the SEC, that the Planning



1 Board has residual authority regarding subdivision. The  
2 Planning Board does not have authority in this case  
3 associated with the SEC regarding land use. So, that --  
4 does that -- does that -- maybe, can you --

5 MR. IACOPINO: My question is little  
6 more basic.

7 MS. PINELLO: Okay.

8 MR. IACOPINO: It actually goes to the  
9 process. If they came in and they say "We've got this  
10 certificate from the Site Evaluation Committee.  
11 Therefore, this part of the application, and this part and  
12 this part don't apply." Are they going to get shown the  
13 door? Or, is the Committee -- I mean, because you seem to  
14 have this process, and what I thought I read in your memo,  
15 maybe I read it too closely, I don't know, but I thought I  
16 read in your memo is that, "we have" -- "all of these  
17 regulations, zoning, planning, subdivision, all interact  
18 with one another. And, therefore, we can't address this  
19 issue without applying all three." Well, I think it was  
20 three different ordinances that interact with each other.  
21 And, so, I sort of got the impression from that that, if  
22 they came in with a certificate and an application, and  
23 that application wasn't exactly what's required under your  
24 regulation, they were going to be shown the door. And, I

1 think that may be the perception they have as well.

2 MS. PINELLO: Okay. What I think is in  
3 part of that, and let me just take a minute and regroup.  
4 And, look, I apologize that I'm not perhaps as facile as  
5 some are on this.

6 (Short pause.)

7 MS. PINELLO: I think the answer or  
8 perhaps the area that you're looking at, and just so we  
9 can be clear about this, and I'm sorry to take time such  
10 as this, --

11 CHAIRMAN IGNATIUS: No.

12 MS. PINELLO: -- but this really helps  
13 me to be clear.

14 CHAIRMAN IGNATIUS: Please take your  
15 time. Don't -- we're not --

16 MS. PINELLO: Okay.

17 CHAIRMAN IGNATIUS: This isn't a quiz  
18 here. We're trying to sort it out.

19 MS. PINELLO: If you look to Antrim  
20 Planning Board's Exhibit 17, newly numbered exhibits as of  
21 yesterday.

22 MR. IACOPINO: Okay.

23 MS. PINELLO: Page 2.

24 MR. IACOPINO: What is that, though,

1       because we're not working off the list?

2                   MS. PINELLO:   That would be called the  
3       "Memo to New Hampshire Site Evaluation Committee from  
4       Antrim Planning Board", date September 20th.

5                   MR. IACOPINO:   Okay.   So, that's the  
6       memo that you filed for today's hearing.   Okay.   Just so  
7       the Committee is aware, apparently, also they marked that  
8       as an exhibit for the adjudicatory proceedings that are  
9       beginning on Monday as well.

10                  CHAIRMAN IGNATIUS:   Thank you.   And, so,  
11       what page do we go to?

12                  MS. PINELLO:   It's a two-page memo, with  
13       an --

14                  MR. IACOPINO:   Attachment.

15                  MS. PINELLO:   -- with an attachment,  
16       thank you.   And, there are a couple of places in the  
17       letter where I think that might help.   And, I'll just let  
18       everybody have a chance to get to it, if they need to, and  
19       then -- I may be addressing this from the back of the  
20       letter to the front.   But, if we go to the paragraph that  
21       it's the first real paragraph of the page, on the Page 2,  
22       you'll see "3" up at the top, subheading "3", and then  
23       there's subheading "B".

24                  MR. IACOPINO:   Yes.

1 MS. PINELLO: And, then, you go down to  
2 the paragraph that actually starts -- that says "The  
3 Antrim Planning Board"?

4 MR. IACOPINO: Yes.

5 MS. PINELLO: Okay? "The Antrim  
6 Planning Board does not have the authority to waive any of  
7 the provisions in the Zoning Ordinance." Remember there  
8 are separate parts, so we're talking now about the Zoning  
9 Ordinance. "Applications inconsistent with the Zoning  
10 Ordinance may require the applicant to apply to the Zoning  
11 Board of Adjustment for a Variance." That's anybody who  
12 doesn't apply -- whose project doesn't apply to the  
13 ordinance. So, there's a clear path for that. "The  
14 Planning Board has the right to waive certain provisions  
15 of the Subdivision and Site Plan Regulations but not" --  
16 "only under the following criteria", and then we have a  
17 criteria for a waiver.

18 So, the process, and interesting that  
19 you would say this, Mr. Iacopino, because we're in the  
20 process of redoing our Subdivision and Site Plan  
21 Regulations, and we have this very point/line young  
22 engineer, who is very clear about separating things. And,  
23 the last Planning Board meeting he goes "the problem with  
24 this is, there's too much process", in one part, so, there

1 is, in some ways, is an issue with our Subdivision  
2 Regulations. So, there is process -- in this current  
3 issue of our Subdivision Regulations, it is mixture of  
4 process, application, and the actual regulation.

5 But the process that's available to an  
6 applicant is a couple of different ones. If you come in,  
7 and it doesn't match the ordinance, the path that's  
8 available to everyone is the ZBA. And, that is a clear --  
9 and, we've had that. The other path is to come in for  
10 conceptual and to ask for waivers. And, part of -- my  
11 assumption, in terms of the process, without saying about  
12 this application, that one of the formal ways the process  
13 -- the procedural ways that exemption and the SEC and the  
14 Antrim Planning Board could work together is with that  
15 understanding of those areas that are preempted, that is,  
16 in land use, that there would be a conditional -- there's  
17 a waiver for those aspects.

18 MR. IACOPINO: I understand -- okay.  
19 So, you're thinking that any issue with respect to their  
20 inability to comply with your process or end of things  
21 would result in a request for a waiver and you would have  
22 to determine --

23 MS. PINELLO: We have -- and there are  
24 criteria for the waiver, which --

1 MR. IACOPINO: Okay, I understand. I  
2 understand that's your position.

3 MS. PINELLO: Okay.

4 MR. IACOPINO: Let me back you up for a  
5 minute in terms of that, because, if the Site Evaluation  
6 Committee says "this energy facility is going in this  
7 place, in Antrim", okay, it seems to me that the Antrim --  
8 the Zoning Ordinance, to the extent that that would  
9 otherwise exclude or otherwise limit the siting, would be  
10 preempted.

11 MS. PINELLO: Absolutely.

12 MR. IACOPINO: Okay. Why would they  
13 have to go get a variance then under those circumstances?  
14 That's a concern I have, is that they're going to be put  
15 into a process that then sort of undermines the authority  
16 of the Committee.

17 You know, because you're saying, with  
18 this driveway issue, they would have to go get a variance,  
19 correct? Or, well, I mean, somebody has said that, it may  
20 not have been you.

21 MS. PINELLO: Okay. Yes. And, I want  
22 to be clear about the driveway.

23 MR. IACOPINO: I know, you're not saying  
24 anything --

1 MS. PINELLO: Yes. And, I want to be  
2 also clear about the driveway in terms of land use  
3 planning. Some of you have lived in communities where  
4 there are backlots, and people have sold various lots to  
5 brother-in-laws and various -- "you can have this piece of  
6 land". And, then, someone new in town or new to town buys  
7 it, and you have a series of land that is not acceptable.  
8 The why, to answer Mr. Stewart, is the reason why the  
9 driveway is so critical to a subdivision is to provide  
10 land use to it, subdividing land is to have access, and  
11 that's part of state law. So, that's why it's with -- it  
12 goes with the subdivision.

13 I think, as I understand the decision  
14 that was made previously by the SEC through our shared  
15 arguments was that we do not have the -- the Antrim  
16 Planning Board has subdivision -- that subdivision  
17 authority is not preempted. We're not clear where that --  
18 what is exactly the part of a subdivision for a facility  
19 like this. But there is clear understanding of that.  
20 And, then, so that you come in for a subdivision, and the  
21 Board has been asked many times, "well, what if Mr. Ott  
22 just came in and asked for a subdivision and didn't tell  
23 us what he was using it for?" Mr. Ott would apply, and  
24 there would -- you know, you would follow the procedures

1 for a subdivision. And, then, in this case, he wouldn't,  
2 for a change of use, procedurally, it would have to come  
3 in for a change of use, but that change of use would  
4 already be preempted.

5 MR. IACOPINO: Okay. But I guess that's  
6 -- all right. So, it's --

7 MS. PINELLO: We cannot --

8 MR. IACOPINO: -- what you're looking at  
9 is where you draw the line, basically, is what you're  
10 saying?

11 MS. PINELLO: And, I said, we cannot  
12 draw a line without (1) having an application, or (2)  
13 having a decision as to where those lines are drawn,  
14 unless it comes further back than this board, a regional  
15 planning office, the State Office of Planning. But, for  
16 us to make those lines on an application that may come  
17 before us is -- I am uncomfortable making that, in that I  
18 really try very hard not to -- to receive an Application  
19 and review that.

20 CHAIRMAN IGNATIUS: All right. Is there  
21 anyone, other than the three we've heard from so far, who  
22 has a sort of general position you want to put on the  
23 table on this issue, before we start going through the  
24 ordinance item-by-item? So, raise your hands and we'll



1 take that now?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: All right. Then,  
4 and are there any general questions from the Committee,  
5 before we start going through section-by-section? Mr.  
6 Boisvert.

7 MR. BOISVERT: Can we take a five-minute  
8 break?

9 CHAIRMAN IGNATIUS: Oh, yes, I think  
10 we're also going to do that. So, I just want to get those  
11 out of the way. If there are no other sort of general  
12 overview issues, then let's take a break for fifteen  
13 minutes, which will be about 10 -- between 10:30 and  
14 10:35, try to keep it tight. Give the court reporter a  
15 break, everyone a chance to stretch. And, then, we'll  
16 begin by going through the ordinance. And, so, people  
17 should pull their copies of the ordinance to work off of,  
18 which was attached to the Applicant's filing. It was also  
19 attached to the Planning Board's, I think. But let's just  
20 make sure that we're all using the same pagination when we  
21 get there. So, let's take a brief break.

22 (Recess taken at 10:20 a.m. and the  
23 hearing resumed at 10:38 a.m.)

24 CHAIRMAN IGNATIUS: All right. We will

1 resume. Thank you, everyone, for getting back quickly.  
2 We are going to take up going through the Subdivision and  
3 Site Plan Regulations section-by-section. We want to make  
4 sure we've got a common copy that has similar paginations,  
5 so we don't get muddled up.

6 MR. IACOPINO: Do you have the Planning  
7 Board memo?

8 CHAIRMAN IGNATIUS: Yes.

9 MR. IACOPINO: The Planning Board had a  
10 44-page copy attached to the Site Plan Review Regulations,  
11 that didn't have the mark-up that this Committee had on  
12 them. So, otherwise, I think that it's the same, except  
13 that they -- I'm sorry, that the Applicant had.  
14 Otherwise, I think the Applicant has some areas of it  
15 crossed out. So, we have two copies of them. I suggest  
16 we choose one and just use the one.

17 CHAIRMAN IGNATIUS: Well, first, are  
18 they the same -- substantively, they are exactly the same?  
19 It's not that one has been amended and one is not?

20 MS. PINELLO: I don't think the issue is  
21 of whether amending. I think it's, when you download it  
22 and print it out, you may have a different pagination. So  
23 that, if you're looking at Page 43, it may -- one document  
24 may start at Page -- Page 42 may start earlier. So, if

1       they could all be the same, I think that would be helpful.

2                   CHAIRMAN IGNATIUS:   Okay.   That's good.

3       So, we're certain it's the same document between the two  
4       submissions.   It's only a question of pagination.   So, I  
5       think what would be easiest is if we, first of all, be  
6       sure we're talking about a section.   "Section F" is always  
7       going to be "Section F".   And, if we can agree on one  
8       particular version in the pagination, that's best.   But it  
9       may be that each person brought different things with  
10      them.   Ms. Goldwasser?

11                   MS. GOLDWASSER:   Just for the record,  
12      the version that we used for the track changes is a Word  
13      document that we obtained from the Town of Antrim, and it  
14      should have exactly the same pagination.   I believe it has  
15      the same pagination as the Planning Board's untracked  
16      version.   So, I don't think there's a pagination --  
17      they're very close, if they're not identical.   But they  
18      should be the same document.   I just wanted to state that  
19      on the record.

20                   CHAIRMAN IGNATIUS:   Thank you.   Well,  
21      it's certainly easier for me to use the one that the  
22      Applicant has made some reference of what they think is  
23      clearly out and has been preempted.   But, if everybody has  
24      that version with them, this is the one that was attached

1 to the Applicant's filing on September 28th. Let's try to  
2 use that. If people brought others, we'll just make sure  
3 we're -- things are lining up.

4 DIR. STEWART: Is that Exhibit A?

5 CHAIRMAN IGNATIUS: Yes.

6 MR. ROTH: I don't have their strike-out  
7 document. And, I would object to using it, since it's not  
8 an official copy of the Antrim Subdivision/Site Plan  
9 Review.

10 MS. BAILEY: Madam Chair?

11 CHAIRMAN IGNATIUS: Yes.

12 MS. BAILEY: It looks to me like they're  
13 identical. I mean, even the page numbers are in the same  
14 font. You know, this is -- the one in the Orr & Reno  
15 submission starts on Page 4, but it's not the fourth page  
16 of the document, it's 4 from the Antrim Planning Board, I  
17 think. And, it looks like they are identical, if you just  
18 look at the formatting.

19 CHAIRMAN IGNATIUS: All right. So, let  
20 the people use whichever copy you want to use, I think.  
21 We've had representation that this is the same version  
22 that came from the Planning Board that the strike-outs  
23 appear in. Whichever is easier, whichever your notes are  
24 made on, I'm not going to get caught up in --

1 MR. ROTH: That's fine.

2 CHAIRMAN IGNATIUS: -- which is  
3 authenticated and which is not. This is an exercise in  
4 exploring the regulations. So, we have three different  
5 approaches taken here. The Town has said it can't, in  
6 advance, determine what applies and what does not apply,  
7 because that would be inappropriate, because it hasn't got  
8 an application in front of it.

9 We have the Applicant saying that its  
10 view is that legally all of the regulations are preempted,  
11 but, in the interest of trying to work with our  
12 determination of what might remain as residual, identified  
13 the things that it thought might remain, even though its  
14 position is still that nothing remain with the Planning  
15 Board.

16 And, we have the Public Counsel's memo  
17 that took and identified the sections that should not be  
18 preempted. And, these are identified on Page 2 and 3 of  
19 Public Counsel's memo, with the headings or number  
20 headings for each of the sections that were not preempted,  
21 and that the things that are not on the list would be  
22 preempted.

23 And, so, if we work off of that, those  
24 various listings, the first item that is marked off as

1 being preempted, in the Applicant's view, would be on Page  
2 7, number 4, in Section -- yes, just a moment -- Section  
3 IV. Ms. Goldwasser.

4 MS. GOLDWASSER: I just have a  
5 suggestion with respect to how this might make sense, just  
6 based on how the Antrim regs work. There's a "purpose"  
7 section, that's the first thing that sort of gives you the  
8 overview of what the Planning Board's goals are. And,  
9 then, the regulations walk through "minor subdivision",  
10 "major subdivision", "minor site plan", "major site plan".  
11 And, then, at the end of all of those sections, on Page  
12 28, they start with "General Standards and Requirements",  
13 which apply to all subdivision and site plan applications.

14 I thought it might be helpful, rather  
15 than starting with the procedural, to start with the  
16 substance, because that seemed to be what the Committee  
17 was trying to do. So, in thinking about what we're doing  
18 this morning, I guess it's still morning, I just suggest  
19 we might want to consider starting with the purpose, and  
20 then going to Page 28 to do the substance, the substantive  
21 parts, and then we can go back and look at the process and  
22 the specifics of a subdivision application.

23 CHAIRMAN IGNATIUS: I'm open to that.  
24 Any concern about that?

1                   MR. ROTH: I just -- I don't think that  
2 makes any sense. I think the way the Chair proceeded was  
3 fine. Let's start at the beginning and work our way  
4 through.

5                   CHAIRMAN IGNATIUS: I'll go either way.  
6 All right. Let's just take it in order then.

7                   MS. BAILEY: I would like to hear  
8 opinions on the "purpose" though, because, to me, it looks  
9 like some of the "purpose" may be preempted. I don't know  
10 if that's appropriate to preempt "purpose", but --

11                  MS. GOLDWASSER: And, actually, we  
12 didn't cross parts of that section out, and I'm glad you  
13 asked that question, because a lot of the sections on  
14 substance indicate that the Board will be guided by the  
15 "purpose". And, we didn't know what to do about the  
16 "purpose" section, so we left it. But I would note that  
17 the first, you know, Section II.A.1 indicates that the  
18 purpose of Subdivision and Site Plan Regulations is "the  
19 harmonious and aesthetically pleasing development of the  
20 Town of Antrim and its environs", which is very, very,  
21 very similar to what this Committee is supposed to be  
22 deciding with respect to the Application. And, so, we  
23 struggled with that when we were applying sort of a  
24 two-part test. As this Committee has sort of construed

1       this morning, the first part is (1) is this preempted?  
2       Does the Site Evaluation Committee, under RSA 162-H,  
3       preempt the field of this issue? And, then, this morning  
4       the Committee has indicated that there's a second part to  
5       that test, after you've decided "no, it's not preempted",  
6       it might exclusionary, sort of how I'm seeing the test.  
7       So, I don't know -- we weren't sure what to do about the  
8       "purpose" section, because it does end up overlapping.  
9       But, at the same time, if you delete the purposes, you've  
10      undone sort of the Planning Board.

11                   MR. ROTH: If I may, I don't see any  
12      purpose to delete -- to preempting Section I, Section II  
13      or Section III, because none of those are actionable  
14      requirements of the law. None of those would ever  
15      conflict with anything that this body is expected to do.  
16      They're purposes and definitions and a statement of its  
17      authority under state law. Those are not things that  
18      would ever result in a compliance by the Applicant.

19                   And, so, I didn't address them in any  
20      way. They just seemed to me not something that any of us  
21      needed to concern ourselves with in this exercise.

22                   CHAIRMAN IGNATIUS: When you said  
23      "Sections 2, 3, and 4", you mean Roman numerals?

24                   MR. ROTH: I, II, and III.



1 CHAIRMAN IGNATIUS: I'm sorry.

2 MR. ROTH: "Authority", "Purpose", and  
3 "Definitions". And, I just started my analysis at Section  
4 IV.

5 MS. BAILEY: Can I ask a question about  
6 that?

7 CHAIRMAN IGNATIUS: Yes, please.

8 MS. BAILEY: So, if the Planning Board,  
9 in their deliberations, is looking at one of the  
10 regulations, and they, you know, they have to make a "yes"  
11 or a "no", they might go back and look at the Purpose and  
12 decide that it's not aesthetically pleasing to the Town of  
13 Antrim, and say "no", because it's not aesthetically  
14 pleasing. Couldn't they do that?

15 MR. ROTH: I don't know how they could  
16 do that when considering a subdivision. I think something  
17 like "aesthetically pleasing" is the kind of thing that  
18 comes out when you're talking about the use of the site.  
19 And, so, I would, you know, challenge the Applicant to  
20 find a provision that's specifically toward subdivision,  
21 where the purpose of whether it's "aesthetically pleasing"  
22 comes into play.

23 I mean, the interesting thing about the  
24 Subdivision Regulations, from when I read them, and you

1 look at some of the historical documents that were cited  
2 in the original preemption memoranda, this was -- these  
3 rules were put into place primarily to deal with  
4 residential subdivisions. Where a town is all of a sudden  
5 faced with a little subtown built right in its midst, and  
6 these regulations were trying to put some controls on  
7 that. So, the "aesthetically pleasing" part I suppose  
8 could come out in the context of a big residential  
9 subdivision. But I don't know how, on a minor subdivision  
10 of this nature, that that would ever come into play.

11 MS. BAILEY: And, the same would apply  
12 to the "undesirable and preventable elements of pollution  
13 such as noise", that wouldn't apply because that has to do  
14 with the facility?

15 MR. ROTH: Right. Other places where I  
16 rejected those provisions that deal with the things that  
17 the facility does, I agree that they should be preempted.  
18 I don't see how the configuration of the subdivided lot is  
19 going to impact on, you know, --

20 MS. BAILEY: Noise.

21 MR. ROTH: -- noise, for example.

22 But --

23 MS. BAILEY: So, then, that provision  
24 might be not applicable?

1 MR. ROTH: It doesn't come into the  
2 Planning Board's analysis, but the Planning Board's  
3 analysis is going to be focused on the provision in  
4 question, not on the "Purposes" section. They're going to  
5 be looking at it, "Okay, what does this particular section  
6 do?" You know, "Oh, it deals with noise. Noise is  
7 directly in the core of the jurisdiction and power of the  
8 Site Evaluation Committee, we don't address that."

9 MS. BAILEY: Okay. So, we can, as we go  
10 through it, keep this in mind and see if --

11 MR. ROTH: You know, the Purposes, I  
12 think, you know, statutorily, I don't think anybody is  
13 sort of bound by the Purposes.

14 MS. GOLDWASSER: We'll get there.

15 MS. GEIGER: Can I get a clarification  
16 for the record. I apologize, Attorney Roth. What is your  
17 position with respect to the "Purpose" section? Is that  
18 it doesn't apply?

19 MR. ROTH: That I, II, and III, we don't  
20 need to preempt them, because there's nothing in there  
21 that would result in a conflict of law between -- or,  
22 jurisdiction between the Site Evaluation Committee and the  
23 Planning Board.

24 MS. GOLDWASSER: I think, as we go,

1 we'll see whether that's true or not.

2 MR. ROTH: And, if there is a conflict  
3 in a particular provision, it's not because of the  
4 Purposes, it's because of what the provision itself says.

5 MR. IACOPINO: If I can just point  
6 something out. I think that the ruling -- I think the  
7 ruling of the Committee at the last hearing is that  
8 preemption does apply. This isn't a question of whether  
9 the local regulations are preempted or not. They are not.  
10 What we are trying to determine here is that, despite  
11 preemption, what residual authority under the language  
12 that came out in the *Stablex* line of cases is reserved to  
13 the Town. That's what we're doing here. And, I don't  
14 think you mean to say that "it's not preempted". I think  
15 what you mean -- what I thought you were going to say was  
16 "we don't have to deal with it."

17 MR. ROTH: That's what I said.

18 MR. IACOPINO: Right. But I think that,  
19 by using that "it's not preempted" is -- leads us down a  
20 dangerous path. I mean, I think the ruling of the  
21 Committee is that these regulations are preempted, and  
22 that the authority of the Town is preempted. However,  
23 there is residual authority that is left to the Town.  
24 And, we'll go through the regulations and make the

1 determination, from our view, what those -- what that  
2 residual authority may be.

3 MR. ROTH: I agree with you.

4 MR. IACOPINO: Okay.

5 MR. ROTH: I just would point, from my  
6 perspective, Section I, Section II, and Section III don't  
7 deal with residual authority or a conflict with this  
8 Committee's jurisdiction. So, it's -- the preemption  
9 analysis really doesn't -- isn't necessary to be applied  
10 to there.

11 MR. IACOPINO: Doesn't that then go back  
12 to what Ms. Goldwasser suggested before, aren't be better  
13 off dealing with substantive regulations that start on  
14 Page 28, start there and then we can --

15 MR. ROTH: Oh, no. Because, and maybe,  
16 you know, we'll get there quickly, because, you know, the  
17 procedure I think is something, you know, that could  
18 present a substantive challenge, because there is a  
19 procedure here in this Committee. And, so, you know,  
20 personally, you know, she got to C.4 before she -- they  
21 found something that was preempted. And, you know, I'm  
22 willing to start there, because I thought the rest of it  
23 up to that point was fine.

24 CHAIRMAN IGNATIUS: All right. Let's

1 keep on going. We are not going to spend days on this.  
2 We want to keep moving.

3 So, Page 7, C.4, is something that the  
4 Applicant has marked off, as well as C.5. And, the Public  
5 Counsel has marked off 5, but not 4. I think that's the  
6 difference we have on that one. So, how about let's first  
7 take up Number 4.

8 MS. GOLDWASSER: C.4 considers  
9 conditions which the Applicant must comply with, and  
10 states that the conditions must be met within a year of  
11 the permit being granted. And, our concern was that the  
12 SEC process operates at a wholly separate time frame.  
13 And, the problem being that the Applicant has to go back  
14 to the Planning Board, you know, numerous times, depending  
15 on the way that the SEC process is winding its way through  
16 its processes. If we were to go to the Planning Board to  
17 seek subdivision approval, they were to impose conditions  
18 which we can't really envision today, that we would be put  
19 in a position where the Applicant could not meet the  
20 Planning Board's conditions within a year, because the SEC  
21 process is doing something else which contradicts it or,  
22 you know, there is some sort of contravention there.

23 CHAIRMAN IGNATIUS: Mr. Roth.

24 MR. ROTH: I don't see any reason to

1 eliminate that provision. It's simply a generic deadline,  
2 and a standing deadline provision that applies to  
3 everybody. It doesn't operate in any exclusionary way.  
4 And, yes, sure, it has a different time table to it, but  
5 that's, you know, as I said earlier, that's the way it  
6 goes.

7 CHAIRMAN IGNATIUS: I'm assuming, Ms.  
8 Pinello, that because you had said you couldn't speak in  
9 advance, I wasn't going to call on you. But, if that's a  
10 misunderstanding, let me know.

11 MS. PINELLO: The only thing that I  
12 think we'd feel -- Sarah and I would feel comfortable with  
13 would be general procedure kinds of questions that, you  
14 know, but not specifics.

15 CHAIRMAN IGNATIUS: All right.

16 MS. PINELLO: Thank you.

17 CHAIRMAN IGNATIUS: For example, in this  
18 Section 4, it says that there's a provision, if you seek  
19 an extension more than 30 days prior to the expiration  
20 date, at least the Planning Board could consider it. It  
21 doesn't say you "shall grant it". Is that something  
22 that's routinely done? Is there a difficulty in getting  
23 an extension?

24 MS. PINELLO: With the economy the way

1       that it is and subdivisions that were the way they were  
2       before 2008, yes.

3                   CHAIRMAN IGNATIUS:   That they're  
4       granted, it's not a difficult thing to have obtained, if  
5       you follow the 30-day rule?

6                   MS. PINELLO:   Right.

7                   CHAIRMAN IGNATIUS:   All right.  
8       Section 5, it looks like both the Applicant and Public  
9       Counsel felt that was appropriately preempted.  Is there  
10      any further comment or questions about Section 5?

11                   (No verbal response)

12                   CHAIRMAN IGNATIUS:   All right.  We move  
13      now to -- Ms. Bailey, yes.

14                   MS. BAILEY:   I'm sorry.  In Paragraph 1,  
15      under that section.

16                   CHAIRMAN IGNATIUS:   In C?

17                   MS. BAILEY:   C.1.  It says, the second  
18      sentence, "The Board shall act to approve, conditionally  
19      approve or disapprove within 90 days."  I guess I -- I  
20      highlighted this section, just wondering, I think I know  
21      what the answers will be, but, from the parties, does the  
22      Planning Board have the authority to disapprove it or can  
23      they only approve it conditionally?

24                   MS. GOLDWASSER:   I think this goes to



1 the exclusionary effect analysis, which is going to be on  
2 a case-by-case basis. We know that the Supreme Court has  
3 said that the Planning Board can't apply its regulations  
4 on an exclusionary basis. And, we've said that there's  
5 nothing in these regulations that could be applied to  
6 exclude the Project. But the Committee seems to be making  
7 clear that it believes that the Planning Board could rule  
8 against, you know, if the Committee determines that the  
9 Planning Board can rule against the Project, and  
10 essentially veto it because of a decision that it makes  
11 associated with subdivision approval, then that section  
12 has to stay in.

13 MS. BAILEY: I don't know if the  
14 Committee has made that decision yet.

15 MS. GOLDWASSER: I mean, our position  
16 would be that "exclusionary effect" means you can't  
17 exclude the Project. We can provide green garbage bags,  
18 rather than red garbage bags. We can meet, you know, the  
19 Town's usual and customary requirements for snow removal  
20 or whatever, to the extent that those exist in these  
21 regulations, but that application of the regulations in a  
22 way that would exclude the Project is impermissible.

23 MS. BAILEY: So, "exclusionary" to you  
24 means they can't disapprove it?

1 MS. GOLDWASSER: Yes.

2 MR. ROTH: Ms. Bailey, I think the  
3 context of this particular set of regulations, "Board  
4 Action on Completed Application", should be considered,  
5 and that is -- these are just keeping the Planning Board's  
6 feet to the fire and providing timely and quick, as this  
7 Committee is very familiar with, responses to the matters  
8 that are brought before them. And, that's all it is.  
9 It's simply a timetable and a requirement that they keep  
10 moving with these things, and that somebody doesn't file  
11 an application and it sits there for a year without being  
12 acted on. And, the same, you know, similarly, this body  
13 knows, things have to happen quickly. And, so, I think  
14 all of these provisions here are designed to deal with  
15 that, and just provide a structure and a stricture for the  
16 Planning Board to act.

17 MS. BAILEY: I think you, I didn't write  
18 it down, but you have a slightly different interpretation  
19 of what "exclusionary" is, --

20 MR. ROTH: Yes, that's --

21 MS. BAILEY: -- than that "they can't  
22 disapprove it"? What's your --

23 MR. ROTH: As I argued earlier, the  
24 residual authority is the ability to say "no". So, I

1 don't see that, when it's applied in a good faith way, as  
2 being "exclusionary".

3 MS. BAILEY: What do you think -- how  
4 would you define "exclusionary"? What does that mean?

5 MR. ROTH: Well, if there was a  
6 provision in here, let's say, you know, let's say there  
7 was a -- in Section IX, "General Standards and  
8 Requirements", it said "No facility shall involve voltage  
9 in excess of", you know, pick the number where a  
10 substation operates, and that would be exclusionary to an  
11 energy facility, and, therefore, that would be preempted.  
12 But, if it said "all facilities will have appropriate  
13 lighting", maybe that wouldn't be exclusionary. Although,  
14 you know, I basically already said that, if it pertains to  
15 the structure, the improvements of the subdivision, of the  
16 subdivided lot that is what's going to be built there, my  
17 approach to these rules has been "all of that stuff should  
18 be preempted."

19 MS. BAILEY: Thank you.

20 MR. ROTH: And, that's erring on the  
21 side of caution out of respect to the Commission's  
22 jurisdiction.

23 CHAIRMAN IGNATIUS: All right. Let's  
24 move to V, which is at the very bottom of Page 7. And, it

1 looks as though both the Applicant and Public Counsel have  
2 not argued for preemption, given your overall legal  
3 argument, I understand, but, for the purposes of this  
4 exercise, have not suggested preemption for Section Roman  
5 Numeral A, Roman Numeral B, except for the end of  
6 Section 2. Let's take that and then we'll continue on.  
7 It kind of comes and goes. That section of Roman Numeral  
8 -- B.2, "Minor Subdivision", the last sentence.

9 MS. GOLDWASSER: And, this section  
10 actually goes to two different issues that Counsel for the  
11 Public has raised. The first one is the assumption that  
12 Counsel for the Public has made that this is a "minor  
13 subdivision" and not a "major subdivision".

14 First, there are contradictions in the  
15 Antrim Planning Board's regulations and the Antrim Zoning  
16 Board's ordinance regarding the definition of "major" and  
17 "minor subdivisions". The ordinance defines them as a  
18 "minor subdivision" is something that does not include --  
19 hold on, let me pull out my definitions, so I get this  
20 100 percent correct for you.

21 CHAIRMAN IGNATIUS: And, it's in that  
22 Section 2 right there, B.2?

23 MS. GOLDWASSER: Yes. But there's a  
24 definition in the ordinance, which I don't have in front

1 of me, so I'm just going to pull it out. A "major  
2 subdivision", under the regulations, includes "all  
3 subdivisions which create more than two new lots in  
4 addition to an existing lot from which the subdivision is  
5 made or involves the construction of a road or other  
6 improvements." And, that's on Page 16 of our most recent  
7 memoranda. "Other improvements" would seem to include a  
8 substation, which would seem to indicate that we would  
9 need to perform a major subdivision for this Project.

10 However, the zoning ordinance, and the  
11 definitions from the zoning ordinance are incorporated  
12 into the regulations in the section -- the section that we  
13 skipped, regarding "definitions", indicates that a  
14 subdivision is "major" only when it includes public  
15 improvements, and not "any improvements".

16 So, that merely highlights the fact that  
17 there's a lot of uncertainty when an Applicant goes before  
18 a land use board, because, you know, every regulation is  
19 different, every town is different. Towns change their  
20 regulations all the time. So, this opens the door for  
21 legal argument. Regardless of what the Planning Board  
22 says about what this is, someone else can come in and say  
23 "the Planning Board, you misunderstood your own  
24 regulations. You should have gone through major

1 subdivision, not minor subdivision. So, this creates a  
2 great deal of uncertainty around the process for an  
3 applicant not knowing, you know, which abutter is going to  
4 come in and appeal the Planning Board's decision on  
5 subdivision. Assuming that the Planning Board, you know,  
6 does everything the way we know they will.

7 So, that's Part 1 of the question  
8 between "major" and "minor".

9 CHAIRMAN IGNATIUS: All right. Before  
10 you go on then, --

11 MS. GOLDWASSER: Yes.

12 CHAIRMAN IGNATIUS: Before you go on,  
13 Ms. Pinello, do you have any response to the definition  
14 that says "other improvements", but in another section  
15 says "public improvements"? And, how it's been  
16 interpreted in the past?

17 MS. PINELLO: I think it's a matter of  
18 how Attorney Goldwasser is interpreting that, that hasn't  
19 been -- that hasn't been an issue.

20 CHAIRMAN IGNATIUS: I'm not following.

21 MS. PINELLO: That separation, what  
22 Attorney Goldwasser sees as two separate definitions, that  
23 has not been an issue in our Planning Board deliberations.

24 CHAIRMAN IGNATIUS: So, do you define,

1 in other cases, have you defined "major subdivision" as  
2 involving "any improvements" or only "public  
3 improvements"? Is there any distinction between those two  
4 words?

5 MS. PINELLO: They're hasn't been,  
6 ma'am.

7 CHAIRMAN IGNATIUS: So, the definition  
8 here of "counting the lot size at the end of the  
9 subdivision -- the lot numbers at the end of the  
10 subdivision, as well as the test of whether or not a road  
11 is constructed or other improvements are constructed", is  
12 what you would be looking at at the Planning Board?

13 MS. PINELLO: Yes. That would be.

14 CHAIRMAN IGNATIUS: Okay. All right,  
15 your next point?

16 MS. GOLDWASSER: So, that was Part 1.  
17 Part 2 is this line that is stricken indicates that "the  
18 Board may require a major subdivision plan prepared should  
19 the proposal significantly impact the concerns herein  
20 contained." And, so, basically, what that means is that  
21 the Board can say "well, we know you submitted a minor  
22 subdivision request, and that might be correct under our  
23 regulations. But this substation has a really big impact,  
24 because it's associated with a wind farm. And, therefore,

1     you need to go do major subdivision approval. And, when  
2     we look at the purposes of our ordinance, we see that a  
3     number of issues that are in the purposes of our  
4     ordinance, as we talked about a few minutes ago, are  
5     implicated in this substation. The substation is going to  
6     be a big facility, it's going to have industrial  
7     components. We don't like where the driveway is. We  
8     don't think it's going to line up well with the road."  
9     Those purposes can be implicated in the decision about  
10    whether a -- whether the project is "major" or "minor".  
11    And, there isn't a standard in the ordinance for when a  
12    planning board makes that decision, except to say that the  
13    concerns herein contained implicate it.

14                 So, that level of variability and  
15    concern about what standard would be applied appear to  
16    indicate that the issues that -- the issues that could be  
17    used to assert that this was a major subdivision, rather  
18    than a minor subdivision, would indeniably include --  
19    undeniably include issues which are preempted by this  
20    Committee.

21                 CHAIRMAN IGNATIUS: Unless the reference  
22    to "other improvements", meaning a "substation", has  
23    already kicked you into the "major" category to begin  
24    with, and you don't have to worry about what would apply



1 and what wouldn't.

2 MS. GOLDWASSER: I don't know what  
3 standards are going to be applied to this Applicant.  
4 That's one of the major problems with the procedure that  
5 we're going through today.

6 CHAIRMAN IGNATIUS: All right. Anything  
7 further on Section B.2?

8 MR. ROTH: If I may? It seems to me the  
9 criteria for, you know, what residual power the Planning  
10 Board has, one of those criteria isn't that it might be  
11 complicated and confusing for the Applicant or there might  
12 be people who complain about it. Or, that the Planning  
13 Board might decide whether it's minor or major and  
14 different criteria apply.

15 If it comes down to where they make a  
16 decision like was sort of the bogeyman alluded to by the  
17 Applicant, that "oh, they're going to declare it a "major  
18 subdivision", and that becomes exclusionary, and they're  
19 doing it out of animus toward a wind farm", you know, then  
20 the question becomes "Is that bad faith?" But I don't  
21 think we can sit here now and presume that every decision,  
22 every discretionary decision made by the Planning Board is  
23 going to be in bad faith.

24 CHAIRMAN IGNATIUS: I don't think that's

1       what the Applicant said.

2                       MR. ROTH:  Well, then, --

3                       CHAIRMAN IGNATIUS:  That's not what I  
4       heard.

5                       MR. ROTH:  But, at least, you know, the  
6       "uncertainty" issue is not -- should not be a decided  
7       factor, because that's not part of the criteria specified  
8       in the residual power of the Planning Board.

9                       MS. GOLDWASSER:  I would just reference  
10      the legislative history that this Committee is extremely  
11      familiar with, --

12                      CHAIRMAN IGNATIUS:  Right, and you've  
13      filed it twice, so you don't need to go into it.

14                      MS. GOLDWASSER:  Right.  And, it was  
15      referenced in the jurisdictional proceeding as well, which  
16      is a different committee, but the same, you know, the same  
17      Applicant.  In that, one of the purposes of the Committee  
18      is to avoid multi-jurisdictional concerns and provide a  
19      means of building energy facilities.  And, so, that  
20      uncertainty I think does play a role in this decision of  
21      what's preempted and what isn't, because the purpose of  
22      the statute that this Committee is utilizing for this  
23      proceeding is to avoid those sorts of procedural hiccups.

24                      CHAIRMAN IGNATIUS:  All right.  We

1 understand the argument. Let's move on. Mr. Iacopino.

2 MR. IACOPINO: How -- I guess, first, a  
3 point of clarification. Does the Applicant take the  
4 position that any -- that, if this was a "major  
5 subdivision", that for some reason that in and of itself  
6 makes it exclusionary or -- I mean, because here the issue  
7 here over this particular regulation is that the Board may  
8 require that a major subdivision plan be provided, as  
9 opposed to a minor subdivision. Is it your position that,  
10 if the regulations did, in fact, require them to file a  
11 major subdivision plan, that that's somehow exclusionary?

12 MS. GOLDWASSER: We provided our  
13 comments on the redacted version on the major plan. I'm  
14 sure that there are some sections that are remaining in  
15 that section. It's a question of inapplication, that  
16 there's no standard provided here. The standard, which  
17 would be provided, appears to be, you know, look at the  
18 purpose of the regulations and ask oneself "what are the  
19 impacts of this subdivision?" If you look at the purpose  
20 of the subdivision -- if you look at the impacts of the  
21 subdivision, the reason you bump it up to "major" is  
22 because of the impact of the land use, --

23 MR. IACOPINO: But is the fact that --

24 MS. GOLDWASSER: -- because it's a

1 postage stamp.

2 MR. IACOPINO: Is the possibility that  
3 it may be -- that the Planning Board may consider it to be  
4 a "major subdivision", is that in and of itself  
5 exclusionary or in bad faith on its face?

6 MS. GOLDWASSER: Not assuming, you know,  
7 you've read the first half of our argument, --

8 MR. IACOPINO: And, please, for the rest  
9 of this hearing, when I talk about these regulations, I  
10 know you've reserved your argument about the extent of  
11 preemption. But, right now, we're just trying to  
12 determine whether or not any of this remains within the  
13 residual authority of the Planning -- of the Town of  
14 Antrim. Okay.

15 MS. GOLDWASSER: The remaining sections  
16 in the "major subdivision" regulations in our -- attached  
17 to our requirements are not exclusionary as a whole, there  
18 are sections that we have suggested are preempted, and I  
19 use the word "preempted", not "exclusionary", because  
20 there's a difference.

21 CHAIRMAN IGNATIUS: All right. Section  
22 -- we're still in Section V.B.4, is one that the Applicant  
23 has said should be preempted. So, do you want to address  
24 that please?

1 MS. GOLDWASSER: Yes. And, I can  
2 address the other sections that we've identified as  
3 "preempted" in this subsection, I believe, as all elements  
4 of either the planning regulations or the zoning  
5 ordinance, which we believe are preempted by this  
6 Committee's decision-making. So, environmental issues  
7 preempted by this Committee's decision-making. They don't  
8 need the information about environmental issues, because  
9 they can't make a decision that contradicts this  
10 Committee's decision about environmental issues. The  
11 ordinance, in our perspective, is wholly preempted. So,  
12 therefore, they don't need the information about the  
13 ordinance, because that's sort of an invitation to walk  
14 down the path of, you know, "is this a permitted use?"  
15 "Do you need to go get a variance?" "Are the buffers and  
16 setbacks proper?" "Do you need to go get a variance for  
17 setback requirement for a structure?" As Mr. Roth has  
18 indicated, he believes the structure would be preempted.  
19 So, you know, those buffer issues could become an issue in  
20 a subdivision approval. So, for those elements that we  
21 believe are preempted, we've excluded them from the  
22 Application process.

23 MR. ROTH: This is just information. I  
24 mean, if you look at the heading of this particular

1 section, "information required", and all it is is  
2 information to be provided. And, I don't see that as  
3 something that warrants preemption. If the Planning Board  
4 thinks that that's interesting and important information  
5 to have in its records while it does this, I don't see why  
6 anybody here should get in the way of it. This is a  
7 fairly routine type of, you know, list of requirements  
8 that planning boards get from everybody. And, everybody  
9 gripes about it, too. They think it's too much stuff, too  
10 much information. And, in many cases, I would be shocked  
11 to learn that a planning board was unwilling to waive some  
12 of these requirements under its waiver powers because of  
13 the lack of necessity for it.

14 For example, you know, if, for example,  
15 the property had already been before the Planning Board,  
16 and this information was already included in a Planning  
17 Board file or a plan that was previously filed, they would  
18 say "no, you don't have to provide all that stuff again."  
19 And, you know, I don't know what this one looks like. But  
20 this is simply information that's required of everybody.  
21 And, it's, you know, to the extent it's burdensome, it's  
22 burdensome to everybody, but it's not exclusionarily  
23 burdensome. And, I don't see how that, if -- whether the  
24 information is provided is something that impinges upon

1 the Committee's jurisdiction.

2 CHAIRMAN IGNATIUS: All right. Section  
3 -- we're still in B.3.a, and we're now down to (9), (11),  
4 (12), and (17) in that section. Oh, no. It keeps on  
5 going, (25), (26), (28), and (29). So, you want to go  
6 through those, either separately or as a group, if they  
7 fit together.

8 MS. GOLDWASSER: I mean, again, as I  
9 said before, the issue for the Applicant is not whether  
10 they're exclusionary, the issue is that they're preempted.  
11 And, if you get to the substance of the issues that the  
12 Planning Board may address on a subdivision consideration,  
13 which are in Section -- I want to say "Section 4" of the  
14 regulations, you know, you can go back and look at these  
15 after you've determined what issues the Planning Board can  
16 decide. But, to require the Applicant to provide, for  
17 example, the "location of all buffers and setbacks", is an  
18 invitation to say "you don't meet our buffers and  
19 setbacks." So, if buffers and setbacks are not  
20 applicable, because the Site Evaluation Committee has  
21 preempted the land use concerns that the Planning Board  
22 can consider, then the Application shouldn't require to be  
23 shown that the buffers and setbacks won't be met.

24 CHAIRMAN IGNATIUS: Well, let's keep

1 focused though. We not talking about all aspects of the  
2 Application that the Antrim Wind has made to the SEC.  
3 We're only talking about the subdivision.

4 MS. GOLDWASSER: Right. And, so,  
5 Paragraph (9), of the section on Page 9, indicates that  
6 the Application to the Site Evaluation -- I'm sorry, to  
7 the Planning Board, must provide the "location of all  
8 buffers and setbacks by use of dashed lines". So, my  
9 point is that, if the Committee determines that the  
10 ordinance would drive that decision, what setbacks and  
11 buffers. If the Committee decides that the ordinance is  
12 preempted, then the Application need not provide  
13 information indicating that the Applicant isn't meeting  
14 the ordinance.

15 CHAIRMAN IGNATIUS: Well, but that's a  
16 big "if". I guess I'm getting lost. If the Committee  
17 doesn't decide to preempt the ordinance, then why is  
18 location of buffers and setbacks on that one subdivided  
19 lot inappropriate?

20 MS. GOLDWASSER: That's why I wanted to  
21 do Section 4 first. But I would suggest that the  
22 ordinance is, because the ordinance concerns land use, and  
23 -- but, not, you know, notwithstanding that statement, the  
24 elements in the Application, which this Committee decides



1 are relevant to the Planning Board's decision-making, you  
2 know, we struck out, from our perspective, what those  
3 things should be. Because it's not a question of, you  
4 know, are these very fine people who are donating their  
5 time to the Antrim Planning Board to do this hard work,  
6 it's not a question of "are they going to do a good job or  
7 not?" It's a question of, you know, providing information  
8 which could be used by a whole variety of people to assert  
9 that the Planning Board regulations aren't being met, when  
10 the standard can't be applied to the Applicant, because  
11 the standard has been preempted. And, so, for example,  
12 another example of that is in Paragraph (11), on  
13 "wetlands". You know, this Committee makes these  
14 decisions on wetlands. We believe that the Planning Board  
15 can't make environmental decisions like that. And, if the  
16 Planning Board can't make those decisions, then we excised  
17 these issues from the Application. But I think this is a  
18 little bit "the tail wagging the dog" here, because it's  
19 what's in the Application, rather than what issues the  
20 Planning Board, you know, may consider.

21 MR. IACOPINO: And, I just wanted to --  
22 I think you got to the point in your last sentence there.  
23 But I guess my only question is, is that, for this whole  
24 section, B.3, V.B -- yes, B.3, all this is is information.

1 And, do you have an argument as to how providing this  
2 information is either bad faith or exclusionary to the  
3 Committee? Or even somehow in violation of the preemption  
4 doctrine? Because, clearly, providing the information is  
5 not taking over the role of the Site Evaluation Committee.  
6 It doesn't appear to me that providing information can  
7 have any kind of exclusionary effect on the Project. It's  
8 just information. And, as I say, these are, obviously,  
9 Town rules, they're adopted through a process. And, so,  
10 they're going to have presumption of "good faith" involved  
11 in them. So, I guess, do you have an argument as to how  
12 they're actually exclusionary or otherwise contravene the  
13 *Stablex* language that we're talking about?

14 MS. GOLDWASSER: The issue is that  
15 they're preempted. They don't end up in the residual  
16 authority. So, it doesn't matter if they're exclusionary  
17 or not.

18 MR. IACOPINO: But --

19 MS. GOLDWASSER: The issues in -- the  
20 issues contained in the paragraphs, from our perspective,  
21 are issues that the Planning Board could have raised in  
22 technical session data requests. They could have said:  
23 "Please provide us with this information. Do you meet the  
24 setbacks?" And, then, they could have provided the

1 Committee with an opinion about the orderly development of  
2 the region and the problems with it. And, those are the  
3 issues that this Committee addresses in its determination  
4 of a certification of a project. Provision of information  
5 -- I understand what you're saying about "provision of  
6 information". But, once you start walking down that road,  
7 you're walking past the "preemption" question, into the  
8 "exclusionary" question. And, I respectfully suggest that  
9 the issue is "are these elements that a planning board  
10 would consider preempted?"

11 MR. IACOPINO: I guess the only  
12 additional question I have for you then is that, if the  
13 Town -- I have to do it in a hypothetical. If any town,  
14 let's say they have a requirement that they want to know  
15 this information with respect to every piece of property  
16 in the town, so that they have sort of an ability to make  
17 a map, an ability to put structures within a map, and  
18 things like that, how does that preempt or how does that  
19 violate an energy facility's existence based upon a  
20 certificate from the Site Evaluation Committee? How is  
21 that in violation of the preemption doctrine if the Town  
22 just wants the information, excuse me?

23 MS. GOLDWASSER: There's a difference  
24 between just wanting the information and making a decision

1 based upon that information.

2 MR. IACOPINO: And, that's my point.

3 MS. GOLDWASSER: And, I think, you know,  
4 again, I think this is the tail wagging the dog. And,  
5 when we get to the substance, we can -- you know, the  
6 Committee will decide what sections apply and what  
7 sections don't. But, if any of you have been at a, you  
8 know, 7:00 planning board or zoning board meeting, where a  
9 group of individuals, most of whom aren't lawyers, are  
10 trying to make decisions, and they're presenting with a  
11 great deal of information, and abutters are presenting a  
12 great deal of other information, it's very difficult to  
13 keep your eye on the ball, in terms of what is relevant  
14 and what isn't. It opens the door to procedural mishaps  
15 and substantive mishaps. And, our mere suggestion here is  
16 that the Application ought to include the information that  
17 the Planning Board needs to make its decision. And, if  
18 they need other information for other purposes, I don't  
19 know if the Town would have the statutory authority,  
20 Mr. Iacopino, to do what you suggested, to seek that  
21 information. But that's for a separate purpose, and no  
22 decision-making would occur based on that. So, it's a  
23 distinguishable circumstance, from my perspective.

24 MR. IACOPINO: Well, it was a

1       hypothetical. I'm sorry to have to do that. I mean, I  
2       just don't see -- I don't understand we're going to -- we  
3       may be here until 7:00 tonight, if we're going to be  
4       arguing over information that has to be given to the town,  
5       as opposed to whether or not the driveway requirement or  
6       whether or not, you know, other substantive regulations  
7       are residually left to the Town or not. So, I mean,  
8       that's my concern. I guess I don't -- I guess, well, it  
9       doesn't make a difference what I feel.

10               CHAIRMAN IGNATIUS: Ms. Pinello.

11               MS. PINELLO: The only comment I would  
12       make is that the Planning Board does have the  
13       responsibility to sign off on a plat to be registered with  
14       the Registry of Deeds, and that plat has requirements  
15       within that for information.

16               MR. ROTH: And, if I may, just for one  
17       moment. I think that the Applicant's conundrum is  
18       resolvable. And, that is, after we go through everything,  
19       and it turns out there's a list of stuff that is not in  
20       the residual power, the Applicant can go to the Planning  
21       Board and say "Here's our plan. It has information from  
22       categories (1), (2), (3), (4), (5), (9), (11), whatever,  
23       it doesn't have the other information. And, the reason it  
24       doesn't have the other information", it can be explained

1 by the Applicant to the Planning Board, "is because, in  
2 its exercise of its jurisdiction, the Site Evaluation  
3 Committee has determined that that is not something that  
4 you need to look at. Can you please, therefore, waive the  
5 requirements of this provision that requires all this  
6 information?" And, as I said before, I would be surprised  
7 if the Planning Board wouldn't abide by that request,  
8 because what would be the point of it?

9 MS. GOLDWASSER: But they could say  
10 "no", and that's the problem.

11 MR. ROTH: They could. But that's --

12 MS. GOLDWASSER: That's a problem that  
13 an applicant --

14 MR. ROTH: But then it doesn't create an  
15 exclusion to them.

16 CHAIRMAN IGNATIUS: For the sake of the  
17 court reporter, you're both lawyers, you know better than  
18 that. One at a time.

19 MS. GOLDWASSER: Go ahead.

20 MR. ROTH: Well, I guess, you know, yes,  
21 they could say "no, put it all in there." But that  
22 doesn't create a problem for them. All it is is their  
23 surveyor, who's creating a plan, maybe has a little more  
24 work to do.

1 CHAIRMAN IGNATIUS: I feel like we're  
2 not making enough progress on the substance. And, so,  
3 perhaps we shift gears and see if it works better going  
4 from the other direction.

5 Page 28 is the beginning of Section --  
6 I'm sorry, Page 27, should we begin with, with  
7 "Performance Guarantees"? VII, Performance Guarantees, is  
8 an area that, if I'm reading this right, the Applicant has  
9 argued should be -- or is this still sort of in the  
10 preliminary? Is this --

11 MS. GOLDWASSER: It's okay.

12 CHAIRMAN IGNATIUS: You're probably  
13 right.

14 MS. GOLDWASSER: No, it's okay. I was  
15 looking for something else that's related to this.

16 CHAIRMAN IGNATIUS: Should we begin with  
17 Section 9 -- IX, "General Standards and Requirements"?  
18 Let's do that. It appears that both the Public Counsel  
19 and the Applicant agreed that Section IX.A and B should  
20 not be preempted. Section C, both agreed it should be  
21 preempted. And, D is the first place where we have a  
22 difference of opinion. That the Applicant would argue D,  
23 all of D should be preempted; Public Counsel argued that  
24 Sections 1 and 3 are not preempted, but Section 2 is

1 preempted. Did I get that right?

2 So, should we look at -- this is in  
3 "Sanitary Systems", D.1 and 3, on why -- Mr. Roth, I'll  
4 start with you this time, why it shouldn't -- those two  
5 should not be preempted?

6 MR. ROTH: These provisions pertain to  
7 the lot and not improvements on the lot. And, it appeared  
8 to me that Section 2 was something that was closer to the  
9 core of the jurisdiction of the Committee, because of  
10 the -- interesting, the "New Hampshire Water Supply and  
11 Production Control Division", I don't think they have one  
12 of those anymore. But those kinds of filings and permits  
13 and the like are controlled through this Committee. But  
14 the other two, 1 and 3, seem to me to deal with the lot  
15 itself.

16 And, I don't know whether, in a case  
17 like this, where they have a facility that is not intended  
18 to be occupied, whether they even apply. So, maybe the  
19 answer is "not applicable", instead of "not preempted".  
20 And, I would be also surprised that, if a person, for  
21 example, said "yeah, I want to do a subdivision plan and  
22 I'm going to build an agricultural barn on that site",  
23 that the Planning Board would say "no, you must have a  
24 septic system and you must have a sanitary facility, even



1       though it's a barn." That just doesn't make any sense to  
2       me. And, it seems to me that they would probably grant a  
3       waiver of this kind of thing, when you have a facility  
4       that is not intended to be occupied as a dwelling or a,  
5       you know, place of business, you know, where people are  
6       there all the time, every day.

7                       I could be wrong about that. But that's  
8       my common sense look at it.

9                       CHAIRMAN IGNATIUS: The Applicant?

10                      MS. GOLDWASSER: This is one of those  
11       areas that we believe falls within the Committee's  
12       jurisdiction. And, to the extent that Mr. Roth indicates  
13       that he would hope that "a planning board would take  
14       certain reasonable action, so it doesn't matter if it's  
15       preempted", doesn't resolve the problem. It's just, it's  
16       another ability to seek further regulation or additional  
17       action. We don't know what it will be, and we don't -- we  
18       can't predict it. We just believe that it falls within  
19       this Committee's siting authority.

20                      MR. ROTH: If I can make one more point?  
21       It seems to me that the *Stablex* case -- line of cases, in  
22       talking about the residual power, deals with the police  
23       power, is really what their talking about. And, the  
24       police power is very closely tied to regulations

1 involving, you know, sanitation, health and safety of  
2 people who dwell there. And, so, if anything, these  
3 provisions fall very clearly on the police power side of  
4 the line, if they have any applicability in a situation  
5 like this at all.

6 MS. GOLDWASSER: I just note that 162-H  
7 indicates that this Committee must determine the health  
8 and safety of a project, that's one of the standards that  
9 it has to meet. And, all of the authorities of a planning  
10 board, just to step back for a second, all of the  
11 authorities of a planning board are granted by grant by  
12 the state government. In other words, if the RSAs that  
13 allow a planning board to operate does not exist, the  
14 Planning Board could not operate. All of those  
15 authorities would be held by the State of New Hampshire.  
16 That's the kind of state we -- there are other states that  
17 are different; that's what New Hampshire is. So, in this  
18 situation, the Legislature has determined that this  
19 Committee is authorized and must shoulder the burden of  
20 determining whether a project meets the health and safety  
21 requirements of the state. It also has provided the  
22 Planning Board with the authority to apply its subdivision  
23 authority in certain situations. In this situation, the  
24 Site Evaluation Committee's authority preempts the

1 Planning Board's.

2 MR. IACOPINO: Actually, can I just ask  
3 a question? Now, on the subdivided lot, there's going to  
4 be a substation. Does the subdivided lot also contain  
5 some other kind of structure?

6 MR. KENWORTHY: No.

7 MS. GOLDWASSER: I'm going to defer to  
8 the Applicant. The answer is "no".

9 MR. IACOPINO: And, I'm sure this is in  
10 the record somewhere, but, just for the sake of argument,  
11 right now I just want to clarify. So that, what's being  
12 proposed for this is not -- there's not any kind of  
13 building that somebody would go into and enter, and it's  
14 basically industrial equipment, like transformers and  
15 things like that?

16 MS. GOLDWASSER: Correct.

17 MR. KENWORTHY: But there is a -- I'm  
18 not allowed to -- there is a small, very small operator  
19 room that's associated with the switchyard itself. I  
20 can't remember the dimensions. But, I mean, it's a very  
21 small portion of the facilities. For the most part,  
22 you're right. This is kind of what you would see in terms  
23 of a large electrical switchyard, mostly industrial  
24 equipment, wires.

1 MS. BAILEY: Can I ask a question?

2 CHAIRMAN IGNATIUS: Yes, please. Ms.  
3 Bailey.

4 MS. BAILEY: It's subdivided into two  
5 parcels, and one of the parcels has a warehouse on it,  
6 doesn't it?

7 MR. KENWORTHY: This particular lot is  
8 one of three that we lease from a single landowner. And,  
9 it's about 30 acres in size. And, what we have requested  
10 is to subdivide, to meet PSNH's requirements, just the  
11 land directly underneath the facility that PSNH requires.  
12 And, then, that will be accessed by an easement from the  
13 highway.

14 MS. BAILEY: So, in your Application, in  
15 my mind, there's a picture, and there's, you know, a  
16 chainlink fence around the part that we're talking about,  
17 and then there's another chainlink fence around another  
18 part, that you guys are going to use, and there's a  
19 warehouse on that part. But that's not part of this  
20 subdivision? We're only talking about the --

21 MR. KENWORTHY: Well, I suppose it is,  
22 in the sense that it remains on the other portion of the  
23 property --

24 MS. BAILEY: But they don't have

1 anything --

2 MR. KENWORTHY: -- that it's being  
3 subdivided from.

4 MS. BAILEY: Okay. And, so, the  
5 Planning Board doesn't have anything to say about the  
6 second half of that?

7 MR. ROTH: It's my understanding that  
8 planning boards don't impose these kinds of -- the  
9 regulations and the requirements on the rest of the lot.  
10 It only goes to the new lot being formed.

11 MS. BAILEY: Okay. And, so, there's  
12 only one new lot being formed?

13 MR. KENWORTHY: Yes.

14 CHAIRMAN IGNATIUS: And, Mr. Kenworthy,  
15 you had said that the newly created lot would be accessed  
16 through an easement. And, does that mean a road that's  
17 cut using an easement or what?

18 MR. KENWORTHY: Right. I'm sorry. The  
19 easement would be essentially the same as the proposed  
20 access road to the site. And, I apologize, I don't have a  
21 site plan here with me, but --

22 MS. GOLDWASSER: It's Appendix 19, I  
23 believe.

24 MR. KENWORTHY: You know, the access

1 road comes off of Route 9, and then it provides access to  
2 this substation lot, and then continues on to provide  
3 access to the remainder of the site. So, that's our  
4 driveway permit, that's what we received, the DOT permit  
5 for that driveway. But the actual subdivision is only  
6 this kind of nominally one acre area that's directly  
7 underneath the interconnection part of the substation.  
8 But, you're correct, adjacent to that is another smaller  
9 piece of the substation, which is the collector  
10 substation, which we would own and operate. And, then,  
11 further adjacent to that is the O&M building and parking  
12 and other things of that nature.

13 CHAIRMAN IGNATIUS: So, the access to  
14 this would be through a road that will be built and has  
15 been -- will go through the normal DOT process for a  
16 driveway permit for that?

17 MR. KENWORTHY: Yes, and we have.

18 MS. GEIGER: We have a driveway permit  
19 for that already.

20 MS. GOLDWASSER: So, another way of  
21 saying that is the access to the subdivided lot is wholly  
22 controlled by the Site Evaluation Committee process, in  
23 the subdivision plan that we have submitted to the Site  
24 Evaluation Committee.

1 MS. GEIGER: Said another way, the  
2 driveway application that DOT has granted was submitted  
3 with the SEC Application.

4 CHAIRMAN IGNATIUS: So, there's no  
5 further access off of that DOT-approved driveway that  
6 needs to be cut?

7 MR. KENWORTHY: Not for our purposes or  
8 the purposes of accessing the substation.

9 CHAIRMAN IGNATIUS: And, there's no  
10 water or sewer required for operation of the substation?

11 MR. KENWORTHY: No, not -- no.

12 CHAIRMAN IGNATIUS: All right. Can we  
13 go on to Section E? This is still within Roman Numeral  
14 IX. It's on Page 31, "Parking Requirements". This is an  
15 area that Public Counsel felt should not be preempted.

16 MR. ROTH: No, I actually said it would  
17 be preempted.

18 CHAIRMAN IGNATIUS: Okay. I apologize.  
19 Thank you. And, the Applicant as well. All right.

20 F, we have a difference of opinion, yes.  
21 Where the Applicant has said that Section F, driveway  
22 permits should be preempted. And, Applicant -- excuse me,  
23 Public Counsel had said it should not be preempted. And,  
24 that's the entirety of F, which is on the bottom of 31,

1 through to the top of 33. Ms. Goldwasser.

2 MS. GOLDWASSER: Yes. This is a varied  
3 section regarding the driveway permits. It includes  
4 references to the Department of Transportation's  
5 requirements, if such are granted, but plus general  
6 specifications regarding the distances between driveways.  
7 I would note for the Committee that, if a substation was  
8 not included in this Application, or, you know, in an  
9 alternative universe, where Antrim Wind was operating a  
10 substation and didn't need to subdivide, none of this  
11 would be relevant to the Planning Board, because this  
12 Committee would always make a determination of whether the  
13 driveway was appropriate as part of the Application. So,  
14 the only reason that this is before the Committee is, this  
15 issue, the driveway issue is before the Committee, just  
16 like a lot of the other preempted issues, is because there  
17 is a substation that must be owned by Public Service of  
18 New Hampshire.

19 So, it seems to us that, for those  
20 reasons, this is a preempted issue, and not one that the  
21 Planning Board can, for example, go in and say "No, you  
22 know, your DOT permit is all very well and good. But our  
23 regulations say A, B, and C. You should have moved your  
24 driveway 100 feet north on somebody else's property or,



1     you know, you can't put your driveway there, you can't  
2     access the property. Go back to DOT, fix this, and come  
3     back to us." If they did that, we could have a  
4     certificate from the Committee and then have to come back  
5     to the Committee with an amendment to our certificate,  
6     because our driveway has been moved by the Planning Board.  
7     And, this is the kind of complex matrix that we're trying  
8     to work within in resolving this issue. Again, I would  
9     say that, if the Planning Board had concerns about where  
10    the driveway was located on this plan, they could have  
11    indicated to the Committee that they had a concern about  
12    the driveway. That would be a decision the Committee  
13    could make and say "No, you guys need to go back, as a  
14    condition of approval, you need to go back to the  
15    Department of Transportation and seek a change to your  
16    permit."

17                   MR. IACOPINO: Is what you're saying is  
18    that the driveway that's at issue here is, I mean, it's  
19    going to be there whether the substation was going in or  
20    not?

21                   MS. GOLDWASSER: Correct.

22                   MR. IACOPINO: Because it's the access  
23    to the Project, which the Committee, if we assume that  
24    they approve it, that's going to exist because it needs --

1       there needs to be access to the Project. And, if the Town  
2       were to take a position or tried to make that access more  
3       difficult, that that's something that has an exclusionary  
4       effect. Is that the argument that you're making?

5                   MS. GOLDWASSER: I would say that the  
6       Town's attempts to regulate the driveway that is the  
7       access to the Project are precluded by the Site Evaluation  
8       Committee's jurisdiction. If they tried to apply those  
9       regulations, they would be acting outside of their  
10      jurisdiction. It's not -- I mean, it's not a question of  
11      their -- they would be applying it in order to keep the  
12      Project out. I mean, they have rules that they're trying  
13      to apply. They're going to apply them the best way they  
14      can. The problem is that the issue is preempted.

15                   MR. IACOPINO: So, your argument then is  
16      based on what I consider "Issue Number 1", is this a core  
17      -- at the core of what the Site Evaluation Committee does?

18                   MS. GOLDWASSER: Correct.

19                   MR. IACOPINO: Okay.

20                   CHAIRMAN IGNATIUS: Mr. Stewart.

21                   DIR. STEWART: Yes, I asked Attorney  
22      Roth this earlier, so I'll ask you. Do you believe that  
23      the driveway is part of the facility?

24                   MS. GOLDWASSER: Is "part of the

1 facility"?

2 DIR. STEWART: Was it -- I mean, the  
3 Energy Facility Site Evaluation Committee, is the driveway  
4 part of the facility?

5 MS. GOLDWASSER: Absolutely. There's no  
6 way to construct a facility without a driveway. There's  
7 no way to access a facility without a driveway. There's  
8 no way to maintain a facility and maintain it safely  
9 without a driveway. I would further question the  
10 distinction between a "building" and a "driveway". I  
11 mean, I think different engineers might differ with me on  
12 this. But you're putting something on the ground, asphalt  
13 or whatever you're using to build the driveway. You're  
14 building a turbine. I don't see a distinction of reason  
15 there for the purposes of the analysis that we're doing  
16 today. I mean, I think that that's land use, I think it's  
17 siting, and I think it's within the Site Evaluation  
18 Committee's jurisdiction.

19 MR. ROTH: I, obviously, differ with  
20 that, and in a fairly profound way. And, that is,  
21 subdivision is, I think, the driveway, which is the access  
22 to the subdivided lot, is at the core of the subdivision  
23 problem. And, that is, one of the basic issues behind  
24 subdivision regulation is to avoid the creation of

1       stranded lots. And, if you could subdivide and create a  
2       stranded lot, then you've created a problem that lasts  
3       basically forever. I mean, this facility is predicted to  
4       last 50 years maybe, and maybe they will come up with a  
5       different way of the substation problem. But those things  
6       will be gone. This lot will remain. The lot that's --  
7       the property that surrounds this is right now in so-called  
8       "friendly" hands; that may not always be the case. So  
9       that, you know, it's kind of like the subdivision, the  
10      changing of the property lines is forever. These projects  
11      are not forever. And, so, the ability of the subdivision  
12      regulation to require access to the subdivided lot is  
13      essential to the proper management of the community, and  
14      the proper management of the land records and the maps and  
15      plats and stuff. And, the avoidance of conflicts in the  
16      future between landowners over property lines and access.

17                   CHAIRMAN IGNATIUS: Ms. Goldwasser, and  
18      then Mr. Stewart.

19                   MS. GOLDWASSER: Just two quick comments  
20      about that. First, the Site Evaluation Committee doesn't  
21      site residential properties for a reason. I mean, a  
22      substation is an energy facility that's going to exist for  
23      as long as any of us are around, and probably for as long  
24      as any of our children or grandchildren are around. I

1 have a 17-month old daughter. So, that's like a really --  
2 that's a really long time. And, some stations are  
3 basically permanent facilities. They are different from,  
4 you know, sort of more impermanent facilities that are  
5 likely to be owned by different entities that might want  
6 different uses. I mean, this is going to be PSNH's  
7 substation. That's Part 1.

8 Part 2, it's perfectly reasonable, and  
9 the Applicant would be fine to say that the Committee  
10 should condition the subdivision with merger requirements,  
11 should the substation be ever eliminated and the lot be  
12 turned over to somebody else, it can be merged back  
13 together with the larger lot that it's a part of today,  
14 and would resolve this question of permanency and resolve  
15 these issues relating to the impacts of the subdivision,  
16 and would permit the energy facility to be constructed  
17 today. And, if ever it wasn't an energy facility there,  
18 the energy -- the lot line changes could be eliminated.

19 MR. IACOPINO: Just so you know, my  
20 27-year old was 17-months yesterday. So, it goes by very  
21 quickly. Do you have a question, Mr. Stewart?

22 DIR. STEWART: Yes, for Attorney Roth.  
23 Is there some reason that we're precluded, the EFSEC, from  
24 considering these town access issues and, you know,

1 ensuring those occur and so forth, as we consider the  
2 energy facility during our evaluation?

3 MR. ROTH: No, of course not. The  
4 statute actually provides for that. But, you know, we're  
5 here to sort of slice and dice the Antrim Subdivision  
6 Regulations. And, I just -- my argument, I submit, that,  
7 you know, there's nothing more integral to the Subdivision  
8 Regulations than providing and ensuring that there's  
9 access to the subdivided lot forever. And, that's what  
10 the driveway bit is all about. And, so that, you know,  
11 again, going to the Applicant's argument about "yes, these  
12 things are really permanent", I mean, I can show you a big  
13 vacant lot down the street from my house where there used  
14 to be a knitting mill and a tannery. And, I'm sure  
15 somebody built those things thinking they were going to be  
16 there forever. And, now, there's just a pile of buried,  
17 rotting hides. So, you know, but the lot lines over  
18 there, they're still there. And, so, you know, the lot  
19 lines, those are forever, unless somebody comes in and  
20 does another, you know, magical change of the property  
21 lines. And, so, the idea is, you want to make sure that  
22 there's access.

23 And, in terms of the -- you know, if the  
24 Committee is to sort of start dictating the driveway, then

1     you might as well take over the whole thing and just  
2     approve the subdivision or not. But I don't see what, you  
3     know, when you go right into the core of the subdivision  
4     power of the Planning Board, what's left? And, that's  
5     where I think this one, you know, where the rubber meets  
6     the driveway, so to speak.

7                   MR. IACOPINO: Let me ask you something,  
8     because, obviously, the Committee will decide whether this  
9     is preempted or not. Or, and I assume they will go on, if  
10    they have to, and decide what is technically not  
11    preempted, whether it fits within the residual authority  
12    of the town.

13                   And, Ms. Goldwasser raised an issue  
14    that, if the Committee decides that this is preempted and  
15    they decide to subdivide the lot, she mentioned a merger  
16    condition upon, I assume, on decommissioning, for lack of  
17    a better time frame. What is your -- do you have a  
18    position as to whether or not that's something within the  
19    authority of the Committee to do?

20                   MR. ROTH: Well, now, you're basically  
21    going back to taking over the -- you're sort of accepting  
22    the argument that basically all of this is preempted, and  
23    -- because the only way you get there is through that.  
24    And, I don't know, you know, I haven't really given much

1 thought to whether, you know, my basic position is that  
2 the Site Evaluation Committee does not have the ability to  
3 completely preempt the subdivision rules. And, so, to say  
4 that, I don't think there's any statutory authority to  
5 write a condition that changes the boundary lines and the  
6 land ownership of particular pieces of land, I don't think  
7 that's anywhere in the statute.

8 MR. IACOPINO: I understand that. But  
9 I'm thinking more from a practical standpoint. Is there  
10 something that would argue against such a condition,  
11 should the Committee get through several steps and make a  
12 decision to grant a subdivision?

13 MR. ROTH: Other than the fact that it  
14 would be unlawful, because it's not provided in the  
15 statute, I suppose not.

16 MR. IACOPINO: Well, obviously, if the  
17 Committee got there, they decided it wasn't unlawful, even  
18 though you may have argued that it's unlawful, if they got  
19 there and they decide it was unlawful, my question is  
20 about the proposed condition. Is there anything that you  
21 know about merger or returning property that would  
22 prohibit the Subcommittee from doing that?

23 MR. ROTH: No. But, you know, that's  
24 based on my limited experience with the law of property, a



1 case -- a course which most of us probably dealt with in a  
2 very strange place.

3 MR. IACOPINO: Hence the question from  
4 this lawyer. Ms. Goldwasser, do you know of any problem  
5 with that?

6 MS. GOLDWASSER: I don't know of any  
7 problem with that. I would, and, in particular, if the  
8 Committee were to determine, for example, that this  
9 driveway issue is to be preempted by the Site Evaluation  
10 Committee, that, if it makes that decision, and that  
11 decision stands, then it would be able to require that the  
12 lots be merged. But I would only adjust what you had said  
13 in a slight way, which is that they would be merged when  
14 the substation was no longer in existence, --

15 MR. IACOPINO: Right.

16 MS. GOLDWASSER: -- not when the  
17 facility was decommissioned. And, that's an important  
18 point to make, because the facility may be decommissioned,  
19 and PSNH may continue the use of the substation for some  
20 length of time after there.

21 MR. IACOPINO: Okay. I didn't mean to  
22 make that set in stone, --

23 MS. GOLDWASSER: Right.

24 MR. IACOPINO: -- I was just trying to

1 envision a time that I could put into the question.

2 So, --

3 MS. GOLDWASSER: Of course.

4 MR. IACOPINO: Are there any other  
5 questions from the Committee on this? So, we dealt with  
6 Driveway, Section F, and heard arguments.

7 CHAIRMAN IGNATIUS: So, looking at  
8 "Roadways", Section G, on Page 33, the Applicant has said  
9 that should be "preempted"; the Public Counsel said "not  
10 preempted, but, then again, not applicable." So that, I  
11 don't know, Mr. Roth, if there's anything more to explain.  
12 Your view is that --

13 MR. ROTH: Right.

14 CHAIRMAN IGNATIUS: -- it doesn't need  
15 to be formally preempted, but it's not going to come into  
16 play?

17 MR. ROTH: The way I read the Planning  
18 Board regulations is, when they're talking about roads,  
19 they're talking about a street that's passable by the  
20 public. And, what we're talking about here is a driveway,  
21 not a road. Even though, in generic terms, it looks like  
22 a road. But, I think, for purposes of these Planning  
23 Board regulations, we're talking about streets that the  
24 public travel on to use their property and go from one

1 place to another. And, that's not what's being discussed  
2 here. And, so that you don't need to preempt those things  
3 which are not applicable.

4 CHAIRMAN IGNATIUS: Ms. Goldwasser.

5 MS. GOLDWASSER: I would adopt what we  
6 had said about driveways. And, to the extent there are  
7 roads in this project or other projects that the Site  
8 Evaluation Committee has to certificate, this falls well  
9 within the range of issues that the Site Evaluation  
10 Committee would address and would preempt it. Whether or  
11 not it's applicable in this situation, I don't know who is  
12 going to argue what is applicable. There's a very long  
13 driveway, potentially, in this project, because the  
14 driveway that begins on Route 9 continues down the length  
15 of the turbines. And, so, I don't know what the Planning  
16 Board is going to construe a road as. And, I can't say  
17 affirmatively that this is irrelevant and, therefore, the  
18 Committee must not rule on it. I don't know what would  
19 happen.

20 So, for those reasons, I believe that  
21 the Site Evaluation Committee, just like in the  
22 circumstance of driveways, has the authority to make  
23 decisions regarding the passable way that's on the plans  
24 submitted to the Committee. And, therefore, be it a road

1 or not, preempt it.

2 CHAIRMAN IGNATIUS: Mr. Boisvert.

3 MR. BOISVERT: I'm a little concerned  
4 about how we're taking the scope of our undertaking here  
5 today. I understand we're looking at the subdivision of  
6 this property, and you're mentioning other roads and other  
7 projects in the future. I really don't have the mindset  
8 at this point to try to consider what planning boards on  
9 in other towns on other projects might be doing, because  
10 we look at this definition or that aspect here. I'm  
11 concerned about overreaching the purpose of this meeting.  
12 And, so, to talk about what -- addressing the section of  
13 the Antrim Planning Board's documents and trying to  
14 interpret them for another project at a another time and  
15 another place, I think is going to use up a lot of our  
16 time. And, I really want to focus on this, and to the  
17 extent that we can. Yes, it may have implications later,  
18 but I don't want to get into that kind of consideration.

19 MS. GOLDWASSER: Point taken. My  
20 apologies, to the extent that I overreached there.

21 CHAIRMAN IGNATIUS: That's a good  
22 reminder. All right. Anything else on that? It sounds  
23 like similar arguments to what we've been going through on  
24 the roadways. How about on "Road Construction"? Again,

1 the Applicant argues for striking the entire section;  
2 Public Counsel did not, but said "but it's not applicable  
3 in this case". Anything beyond what we've been through on  
4 the others to add to this or the same arguments pretty  
5 much apply here as well?

6 MS. GOLDWASSER: The Committee has the  
7 plans for the construction of the road that's on the  
8 Project.

9 CHAIRMAN IGNATIUS: All right. The next  
10 item is I, "Storm Water Drainage for Roadways". And, this  
11 is one where, again, Applicant struck; Public Counsel  
12 didn't strike, but said "but it's not going to be  
13 applicable." Anything further we need to add to that  
14 discussion?

15 MS. GOLDWASSER: I would just add to the  
16 record that the Department of Environmental Services has  
17 provided the Committee with its perspective on drainage  
18 issues associated with the Project.

19 CHAIRMAN IGNATIUS: All right.

20 MS. BAILEY: So, just to make sure I  
21 understand it. So, your argument is that this is a core  
22 function of the SEC?

23 MS. GOLDWASSER: Absolutely. It falls  
24 well within the statutory confines of what the Committee's

1 direct jurisdiction as regarding environmental issues.

2 MS. BAILEY: Yes. It's just helpful if  
3 you say "it's a core function" or "it's exclusionary". I  
4 just wanted to make sure I had --

5 MR. ROTH: And, I feel compelled to  
6 respond now. But, if we were talking about a roadway,  
7 that might have some relevance, but we're not. We're  
8 talking about a driveway to the subdivision, not the  
9 roadway to the Project. And, that's within the core  
10 jurisdiction of the Planning Board.

11 MS. BAILEY: Isn't it the same thing,  
12 though?

13 MR. ROTH: The plan that was submitted  
14 by the Applicant, it seems to me, shows a driveway up to  
15 the subdivision. And, that's what we're talking about, a  
16 driveway to the subdivision.

17 MS. BAILEY: And, if the driveway to the  
18 subdivision didn't exist, could they get to the rest of  
19 the road?

20 MR. ROTH: Yes. They could put a  
21 different road in across the property that they already  
22 have leased an easement to.

23 MS. BAILEY: Okay.

24 MR. IACOPINO: Okay. This leads to the

1 question I wanted to ask. Can each party please tell me,  
2 or tell the Committee, what exhibit or what document it is  
3 that shows the subdivided lot? In other words, where in  
4 the record do we look for the facts, so that, if we want  
5 to, other than taking your word for it, --

6 MS. GEIGER: Appendix 19 to the  
7 Application.

8 MR. IACOPINO: Appendix 19?

9 MS. GEIGER: It was submitted separately  
10 from the Application, so I don't know if the plan itself  
11 or copies have made their way into the bound volumes that  
12 we submitted. But it has been marked, premarked.

13 MR. IACOPINO: And, it has been  
14 distributed, Appendix 19 was distributed to the Committee.  
15 And, tomorrow -- Monday, all of you will have another copy  
16 of it as well, so that you'll have that during your  
17 deliberations. But is there, from your -- from any  
18 parties' standpoint, is there any other document that is  
19 relevant to the factual issues, like the size of the lot,  
20 the configuration of the lot, the length of the driveway  
21 width, and that's -- that's in the record that the  
22 Committee should look at?

23 MR. ROTH: The lease and the option.

24 MR. IACOPINO: All right. And, for the

1 Committee members, I'll make sure that I -- I said, for  
2 the Committee members, I'll make sure I highlight those  
3 for them, when they get to this issue in their  
4 deliberations. I just want to make sure that there's --  
5 obviously, right now, we're looking at regulations, and we  
6 are determining whether regulations should apply or not.  
7 That ultimate determination is going to be based on  
8 factual issues as well. And, I just want to make sure  
9 that we have a record of where -- we have a direction  
10 where we should go to find those facts, once the Committee  
11 addresses these issues.

12 MS. GOLDWASSER: Mr. Iacopino, I would  
13 just add one more document. And, I, unfortunately, can't  
14 give you a figure number, but there are several figures in  
15 the Application and an exhibit that we brought yesterday,  
16 which will be provided to the Committee. And, we have, in  
17 poster form, that shows the entire Project in its full  
18 length. And, it shows, and I can't remember exhibit  
19 number --

20 MR. IACOPINO: I think Monday that will  
21 be Exhibit 38 or 38A.

22 MS. GOLDWASSER: 38A.

23 MR. IACOPINO: It's one of those. But  
24 we'll -- I'll highlight those for the Committee.



1 MS. GOLDWASSER: Because that exhibit  
2 shows that the driveway that's on the subdivision plan  
3 begins on Route 9 and continues through the Project.

4 MS. GEIGER: And, I think, if you look  
5 in Section C of the Application, I think it may be Figure  
6 C.1 will show you also a portion of the Project. It may  
7 just be the turbine string -- it may just be the string of  
8 turbines.

9 CHAIRMAN IGNATIUS: All right. Thank  
10 you. Section J, at the bottom of Page 35, again, this is  
11 one where the Applicant said to strike in its entirety;  
12 Public Counsel didn't strike, said it "shouldn't be  
13 preempted", but, at the same time, said "it wasn't going  
14 to be applicable in this case." Anything further to add  
15 to that discussion?

16 MS. GOLDWASSER: No.

17 CHAIRMAN IGNATIUS: If not, then Section  
18 K, "Erosion and Sediment Control", same thing, fully  
19 stricken by the Applicant; and marked as "not stricken,  
20 not preempted, but not applicable" by Public Counsel.  
21 Anything further?

22 MS. GOLDWASSER: I will just add that we  
23 provided plans regarding these issues that have been  
24 approved by the Department of Environmental Services.

1 CHAIRMAN IGNATIUS: And, echoing Ms.  
2 Bailey, you would consider those, --

3 MS. GOLDWASSER: Core.

4 CHAIRMAN IGNATIUS: -- erosion and  
5 sediment control, to be a core function of the SEC?

6 MS. GOLDWASSER: Yeah. Just to clarify,  
7 the terms we're using "core" or "not preempted", is that  
8 right? I just want to make sure I know what I'm saying.

9 CHAIRMAN IGNATIUS: Well, I don't know  
10 if it's quite an equivalent. But "preempted, if it's a  
11 core function", I think we can agree on that, yes?

12 MS. GOLDWASSER: Okay.

13 MR. ROTH: And, to be fair, my choice of  
14 this as being "not applicable" is based on the major/minor  
15 subdivision criteria. If it were to be that the Project  
16 -- or, the subdivision was to be determined to be a "major  
17 subdivision", and this did apply, I would agree that it  
18 would probably be preempted.

19 CHAIRMAN IGNATIUS: Oh, I see. So, when  
20 you say "not applicable", it's because assuming it was a  
21 minor subdivision?

22 MR. ROTH: That's correct. These  
23 provisions apply only to a major subdivision.

24 MR. IACOPINO: And, of course, I see Ms.

1 Pinello's eyes widening there. The Planning Board has  
2 taken no position whether it's a major or minor  
3 subdivision?

4 MS. PINELLO: No.

5 MR. IACOPINO: Okay.

6 MS. PINELLO: Okay. Thank you.

7 CHAIRMAN IGNATIUS: Well, I don't want  
8 you to rule on things that aren't before you. And, I get  
9 concerned when people ask me to do the same thing. So, I  
10 feel your pain here. But --

11 MS. PINELLO: But.

12 CHAIRMAN IGNATIUS: But.

13 MS. PINELLO: My mother always taught me  
14 to be -- my mother always taught me to be aware of those  
15 statements.

16 CHAIRMAN IGNATIUS: Right. But the  
17 definition we were looking at earlier on, and looking at  
18 other matters before the Planning Board over the years, if  
19 you're building something on the newly created lot, the  
20 structure is going to end up on the newly created lot when  
21 they're done, does that constitute an improvement on the  
22 lot and, so, therefore, it's moved into the "major"  
23 category or is it a more complicated analysis than that?

24 MS. PINELLO: You can't decide it on

1       that criterion alone. And, I think that's all I feel  
2       comfortable --

3                       CHAIRMAN IGNATIUS: Okay. That's fair.  
4       Thank you. All right. We're at "L. Storm Water Drainage  
5       Plan". And, this is, again, one that the Applicant struck  
6       as preempted; the Public Counsel did not strike and didn't  
7       mark as being "not applicable". So, Mr. Roth, what's your  
8       view on why this should remain within the authority of the  
9       Planning Board?

10                      MR. ROTH: I believe that this should  
11       remain with the authority of the Planning Board because it  
12       deals with the new lot, not with the improvements on the  
13       new lot. And, when I look at it, it looks more like  
14       simply a submittal, and it has very little by way of  
15       criteria. And, so, that all they need to do is show "the  
16       existing and proposed method of handling storm water",  
17       whatever it is, "the direction of flow of the run-off  
18       using arrows", "location, elevation and size" of the stuff  
19       that they're using to do it with, and then the "fifty year  
20       storm frequency", which seems to be the only criteria  
21       employed here, which I don't see as necessarily  
22       exclusionary or interfering with anybody's jurisdiction.  
23       So, I thought it was innocuous enough, and seemed to deal  
24       primarily with the configuration of the new lot, and not

1 any of the improvements on the lot, if you can call a  
2 subdivision an improvement.

3 CHAIRMAN IGNATIUS: Ms. Goldwasser?

4 MS. GOLDWASSER: Yes, a couple of  
5 things. These issues, the "storm water drainage plan",  
6 they are included with the Application, and any storm  
7 water issues would be associated with the construction of  
8 a substation. So, this, to us, is a clear core issue for  
9 the Site Evaluation Committee to determine on its  
10 consideration of environmental concerns. Storm water  
11 isn't -- subdivision doesn't -- subdivision alone doesn't  
12 create a storm water problem. The storm water issue is  
13 established when a substation is built on a lot. So,  
14 that's the first point.

15 And, the second point is that the  
16 Planning Board has to approve these things. Submittal is  
17 not enough. So, you know, an assumption that, "if you  
18 submit this, that's good enough", it may be true. I can't  
19 tell you if it's going to be true or not, because a  
20 planning board's job is to look at it and say "did you do  
21 these things the way we want you to do them?"

22 I don't know what storm water  
23 requirements a planning board might impose to further its  
24 purposes, and it can do that. So, concerned with any

1       assumption that this is it. And, you know, because these  
2       are simple words on a page, we all know that simple words  
3       on a page can become complicated problems. So, I just  
4       wouldn't make that assumption. But the primary issue here  
5       is that this is a core concern that the Planning -- that  
6       the Site Evaluation Committee will address at its hearing.

7                   CHAIRMAN IGNATIUS: Is there anything in  
8       the Application that requests from a State agency or from  
9       the Site Evaluation Committee itself, storm water  
10      handling?

11                   MS. GOLDWASSER: I believe that we  
12      submitted a storm water -- storm water plans as part of  
13      our submissions to the Department of Environmental  
14      Services.

15                   CHAIRMAN IGNATIUS: And, does it include  
16      the subdivided lot?

17                   MS. GOLDWASSER: Yes. Yes, because the  
18      subdivided lot, not to lose -- sort of not to lose sight  
19      of the fact that the reason the subdivided lot is before  
20      you is that there's a substation on it. And, we're  
21      seeking approval of a plan for an energy facility, which  
22      includes a substation, so that the energy facility is  
23      connected with the electric grid. And, so, all of the  
24      parts that have the -- that involve the substation are

1 included in the Application. We've included those parts,  
2 because, if we don't have a substation, we don't have an  
3 energy facility. And, we have a bunch of turbines turning  
4 and no electricity being delivered to customers.

5 CHAIRMAN IGNATIUS: I understand the  
6 link between the use of the subdivided lot and the Project  
7 as a whole. I guess what I'm asking is, and I apologize,  
8 I don't remember, in the Application itself, is there a  
9 specific delineation of the sorts of things that you see  
10 in L, of mapping out of the substation lot itself, that  
11 sort of directional flow of water, you know, elevation,  
12 catch basins, to the extent any of those apply, are they  
13 included in the Application?

14 MS. GOLDWASSER: I believe, subject to  
15 -- subject to check with the Applicant, that this  
16 information for the entire Project, including the  
17 substation, was provided to the Department of  
18 Environmental Services, and are included in one of the  
19 supplements to the Application, which has been provided to  
20 the Site Evaluation Committee.

21 If you're asking whether a separate  
22 analysis was done just for the lot, and that I'd have to  
23 check. But the lot is only the four square walls of the  
24 substation, and the lot doesn't go beyond that. It's

1 really just that.

2 CHAIRMAN IGNATIUS: But on the plans  
3 submitted to the SEC, and the lot where the substation is  
4 proposed, has the same sort of wetlands delineation,  
5 elevation markings, whatever might be required for other  
6 parts of the Project?

7 MS. GOLDWASSER: Yes. The substation  
8 lot has been treated as part of the Project. And,  
9 therefore, anything that we've provided, the wetlands  
10 delineation or storm water analysis for the Project has  
11 been provided for the property upon which the substation  
12 will sit.

13 CHAIRMAN IGNATIUS: Thank you.

14 MR. ROTH: If I may, a couple of brief  
15 points. I keep hearing over and over from the Applicant  
16 that, if it's included in their Application, any  
17 information included in their Application therefore  
18 creates this, you know, massive preemption over everybody  
19 else in the world. And, I just think that's not totally  
20 fair. There's a lot of information in that Application  
21 that does not create a preemption. Based on that  
22 argument, they wouldn't even have to submit their name to  
23 the Planning Board, because that's in the Application.

24 The second point that was raised



1 suggests that the subdivision alone doesn't affect the  
2 drainage of the lot, and that shouldn't be of any interest  
3 to the Planning Board. And, I take issue with that,  
4 because right now you have a single piece of land that's  
5 owned by one person. And, the drainage on that land is of  
6 no concern to him one way or the other. It is what it is,  
7 it goes wherever it goes. And, it doesn't impact -- it  
8 doesn't have an impact on any of his neighbors. You put  
9 some -- you take a subdivision, and now you have two  
10 owners, where there used to be one. And, so, the drainage  
11 from the subdivided lot onto the neighbors' lots is going  
12 to be a very important issue for the neighbor. Now, right  
13 now, we have friendly neighbors, but that's not  
14 necessarily going to be always true. So, you have to have  
15 an understanding of how this is going to be dealt with in  
16 the future. And, that's why this is an important issue to  
17 a planning board.

18 CHAIRMAN IGNATIUS: I understand why  
19 it's an important issue to a planning board. But I guess  
20 the question is, is it something that's within the core  
21 function of the SEC? Not whether it's an important issue  
22 or not, but who's the one to make the determination.

23 MR. ROTH: Well, I look at this as  
24 simply a reporting of what's been done. And, I think the

1 Planning Board understands that this sort of thing is  
2 approved by the Department of Environmental Services. And  
3 based on the representations of the Applicant, I would  
4 agree that they probably covered it in their submittals to  
5 the Department of Environmental Services, and, therefore,  
6 this ought to be a real easy thing to comply with, simply  
7 turn the same papers over to the Planning Board that the  
8 Department of Environmental Services got.

9 I would also suggest that, you know,  
10 what probably the Planning Board would do with these  
11 particular provisions, and try to get something out of Ms.  
12 Pinello on that, is they would say "Well, what did you  
13 give to Environmental Services? Did they approve it?"  
14 And, if that was -- if the answer was "Here's what we gave  
15 to Environmental Services. And, yes, they approved it."  
16 Box checked. Next item. And, it would be -- I think it  
17 would be as simple as that. I don't see that -- this  
18 isn't a place where the Planning Board is going to go off  
19 and be a lone ranger, and perhaps act in bad faith, which  
20 is, of course, another check on the system, to require  
21 something that's unusually onerous and burdensome or  
22 exclusionary to upon the Applicant.

23 MS. GOLDWASSER: Can I just make one  
24 comment?

1 CHAIRMAN IGNATIUS: Yes, briefly.

2 MS. GOLDWASSER: I'll try to be as brief  
3 as possible. Several times Counsel for the Public has  
4 suggested what the Planning Board may or may not do. And,  
5 if the Committee needs to make a decision about  
6 preemption, based on the fact that it thinks that a  
7 planning board will act reasonably and agree with it, then  
8 that's not the preemption analysis, that's something else.  
9 I mean, that's an assumption that we all hope we would  
10 believe that people act in good faith.

11 But the issue here isn't what we think  
12 the planning board may or may not do. The issue here is  
13 the legal analysis of whether something is a core SEC  
14 function. And, this is. And, the issue isn't just  
15 whether the Planning Board might agree with you and rubber  
16 stamp a decision that the Site Evaluation Committee makes,  
17 if it makes a decision that's favorable to the Applicant  
18 in this case. But, also, that anyone could appeal that,  
19 who disagrees with it, using these standards.

20 So, if the Committee determines that  
21 some of these issues may be decided by the Planning Board,  
22 and the Planning Board acts reasonably, it doesn't mean  
23 that the Applicant won't get stuck in years and years of  
24 litigation regarding that. And, we've been in that

1 situation before, in this case and in other others. So, I  
2 just would hesitate -- I would just caution the Committee  
3 to not make decisions based on a hope that people we know  
4 will act reasonably, but based on the law that should be  
5 applied in this situation.

6 MR. ROTH: And, I would echo that  
7 concern, and turn it back upon the Applicant, and suggest  
8 that we not make decisions based on what evil things  
9 planning boards or appellants from planning boards might  
10 do. Which seems to be, as I said earlier, the bogeyman  
11 that keeps coming up in the arguments by the Applicant.  
12 That, "oh, if you have this, where there's any  
13 discretion" --

14 CHAIRMAN IGNATIUS: Can I stop you? We  
15 have so little time.

16 MR. ROTH: Okay.

17 CHAIRMAN IGNATIUS: I don't want each of  
18 you characterizing --

19 MR. ROTH: No more.

20 CHAIRMAN IGNATIUS: -- each other's  
21 positions. Let's just -- we've done it, we're done with  
22 it, no more. Okay?

23 "M. Plan for Disposal of Waste  
24 Generated During Development". This is one that both

1 Public Counsel and the Applicant identified as appropriate  
2 to strike as preempted. So, I assume we don't have to  
3 talk further about that.

4 "N" is "Community Facilities Impact  
5 Analysis". The Applicant believes this should be stricken  
6 in its entirety as preempted; Public Counsel did not take  
7 that view. So, Mr. Roth, what's your position on why the  
8 "Community Facilities Impact Analysis" remains, for  
9 example, with the Planning Board?

10 MR. ROTH: This is, again, goes to the  
11 basic essential function of the Planning Board with  
12 respect to a subdivision. And, it should be a fairly  
13 simple document to do in a case of a minor subdivision  
14 with one lot without any residences on it. But, if you  
15 look at the discussion in the materials cited in the  
16 memoranda about what the purpose of a subdivision overview  
17 is, it's to give the community the tools and the  
18 opportunity to deal with a new development in town that  
19 could bring a whole bunch of people with a whole bunch of  
20 social needs. Now, obviously, in a case like this, we're  
21 not going to see a substation bring a whole bunch of  
22 people with a whole bench of social and public safety  
23 needs. But that's what this is for. This is to give the  
24 Planning Board the tools to assess the impact of a

1 subdivision, which is usually going to be a big  
2 residential thing, in terms of its impact on the community  
3 and the community services that are going to be needed to  
4 support the new subdivision.

5 CHAIRMAN IGNATIUS: And, so, a  
6 subdivision in this case, that's this one-acre lot for the  
7 substation, the Section N would still apply, the Planning  
8 Board should still evaluate it, even in that type of a  
9 subdivision?

10 MR. ROTH: Yes. It seems to me they  
11 could still evaluate it. But, you know, estimated impact  
12 on the school system of a substation? Seems to me, the  
13 answer to that is pretty simple. And, similarly, the  
14 water system, all of these things. These are -- this is  
15 the whole reason for -- or, one of the primary reasons for  
16 having subdivision regulation, so the community can  
17 understand the impact of the new subdivision on all of the  
18 systems they have set up in their community to deal with  
19 what they have, you know, before this thing came into  
20 being.

21 CHAIRMAN IGNATIUS: Ms. Goldwasser.

22 MS. GOLDWASSER: This is the "orderly  
23 development of the region" the Committee must make a  
24 determination of under RSA 162-H.

1 I would just note that the issues that a  
2 community facilities impact analysis may be required --  
3 the issues to be considered which may be required of an  
4 Applicant, this is a new analysis that would be provided,  
5 includes sewage, again, issues that ought to be before the  
6 Committee, water system, traffic. School system we can  
7 skip for a second, we know there's not going to be a house  
8 there. Public safety issues, which are usually addressed  
9 by the Committee in the context of agreements with towns.  
10 Solid waste disposal, we've discussed that. And, we have  
11 a permit already. Storm water management, again, we've  
12 discussed that. We have a permit. "Estimated impact on  
13 recreational resources", I don't know how that isn't the  
14 orderly development of the region and the issues that are  
15 encompassed in the testimony that the Committee will be  
16 hearing next week. And, then, "any other study deemed  
17 appropriate by the Planning Board." So, the Planning  
18 Board may decide that it wants a study on issues, I don't  
19 know, relating to how the substation is going to operate,  
20 or who knows? I can't -- I'm trying not to delve into  
21 hypotheticals, but that concerns me, because these are  
22 exactly the issues that should be addressed via discovery  
23 before the Site Evaluation Committee, and ought to be  
24 considered in testimony before this Committee. And, to

1 provide another avenue for consideration of these issues  
2 again contradicts the intent of 162-H, and goes beyond,  
3 you know, goes far beyond what would be a subdivision  
4 issue for the Planning Board. And, remember, that all of  
5 these issues that we're looking at this afternoon now are  
6 issues that would be considered by -- for subdivision and  
7 for site plan approval.

8 MR. ROTH: If I may make a response to  
9 that?

10 CHAIRMAN IGNATIUS: Please.

11 MR. ROTH: This is not about the orderly  
12 development of the region. This is about the orderly  
13 management of the community.

14 Secondly, I don't think there is any  
15 testimony presented by the Applicant, and if the  
16 Applicant's position is that this is an essential element  
17 of them proving that they meet the orderly development of  
18 the region, that they're going to fail. Because I don't  
19 think there's any testimony that reflects on any of these  
20 points in here. You know, these are very specific things  
21 that the community has to deal with. This is not a  
22 regional issue. And, there is -- I don't believe, I could  
23 be wrong, but I don't believe there's any testimony  
24 addressing these points.



1                   CHAIRMAN IGNATIUS: All right. Anything  
2     from the Committee on N? If not, O is one that the  
3     Applicant asked to strike as preempted; Public Counsel  
4     said "no need to strike, but it was -- not to preempt, but  
5     it wasn't going to be applicable", under the minor  
6     subdivision theory, is that right?

7                   MR. ROTH: Correct. And, I would agree  
8     that, if it were a major subdivision, that it would  
9     probably be preempted.

10                  CHAIRMAN IGNATIUS: All right. Major or  
11     minor subdivision aside, is the content of the high  
12     intensity soil maps requirements the same, has that been  
13     submitted through the Application itself to the Site  
14     Evaluation Committee?

15                  MS. GOLDWASSER: I believe that we  
16     requested a waiver and received one from the Department of  
17     Environmental Services on this issue.

18                  MR. ROTH: And, my sense that this would  
19     be preempted, is because this seems to deal with the  
20     improvement -- the facility itself, not necessarily just  
21     the lot.

22                  CHAIRMAN IGNATIUS: "P. Ground  
23     Control", is one that the Applicant requests preemption of  
24     (2), this is the (2) of that, but not the first section;

1 and the Public Counsel, I always get this backward on  
2 which this is saying, agreed. Did I get that right?

3 MR. ROTH: I think, let me look.

4 CHAIRMAN IGNATIUS: That (1) is not  
5 preempted; (2) would be preempted.

6 MR. ROTH: (2), yes. Okay.

7 CHAIRMAN IGNATIUS: I think we're in  
8 agreement on that one, yes?

9 MS. GOLDWASSER: Yea.

10 CHAIRMAN IGNATIUS: Because you can't go  
11 to lunch until we get through Section Q, which brings us  
12 to Section Q, "Special Flood Hazard Areas". The Applicant  
13 asks that we strike all of Q, preempt all of that and find  
14 preemption on all of that; and Public Counsel said it  
15 wouldn't be applicable under the minor subdivision theory.  
16 If it were a major subdivision, again, Mr. Roth, would you  
17 say it is -- would be preempted?

18 MR. ROTH: I'm just looking at it again.

19 CHAIRMAN IGNATIUS: All right. Take  
20 your time.

21 MR. ROTH: Here's one where I'm going to  
22 chicken out a little bit and not take a position on it,  
23 because I'm not sure what it is it's trying to get at.

24 CHAIRMAN IGNATIUS: So, we have a new

1 term. There's "preempt", "no preempt", and "chicken out".

2 MS. GOLDWASSER: Now I know what I  
3 should have said at the beginning of the day.

4 CHAIRMAN IGNATIUS: You were saying  
5 you're not sure what exactly it's calling for?

6 MR. ROTH: Well, I could probably read  
7 that and figure it out, but I'm not sure what concerns  
8 it's attempting to allay. That's my issue.

9 CHAIRMAN IGNATIUS: On the Planning  
10 Board?

11 MR. ROTH: Whether it's trying to  
12 protect the residents of the new subdivision, you know,  
13 the new housing development from being flooded out, which  
14 would be a legitimate police power thing to do, but  
15 probably preempt it, if this were a residential  
16 development, which it's not. I have a feeling it's going  
17 to -- it's the kind of thing that's a non-issue in this  
18 case, because of that concern.

19 MS. GOLDWASSER: I can shorten this  
20 analysis. I don't believe we're in a -- there are special  
21 rules that apply to certain flood zones that FEMA applies,  
22 they're complicated, they have implications for towns.  
23 I'm sure that, if we were proposing a project that was in  
24 a special flood zone, you would have received hundreds of

1 pages of testimony about it already; you haven't. I don't  
2 believe this is an issue. So, I think we can move on.

3 MR. ROTH: Let's stick with  
4 "non-applicable".

5 CHAIRMAN IGNATIUS: Ms. Pinello,  
6 anything you want to add to that?

7 MS. PINELLO: It is information that  
8 relates to the floodplain. And, actually, it's in the --  
9 somewhere in a submittal is the FEMA floodplain map for  
10 the Town of Antrim. But, I apologize, I cannot recall  
11 what exhibit it would be in.

12 MR. ROTH: This is clearly upland,  
13 right? This isn't in the floodplain, is it?

14 MS. PINELLO: It's along Route 31. I'm  
15 not going to say anything about whether it is or not on a  
16 map without a map in front of me. Sorry, I don't do that.

17 MR. IACOPINO: Does Mr. Kenworthy know?

18 MR. KENWORTHY: If we're in the  
19 floodplains?

20 MR. IACOPINO: If you're in a flood  
21 hazard area?

22 MR. KENWORTHY: No, I don't believe we  
23 are. But I'd have to check to confirm definitively.

24 DIR. STEWART: We can do a field trip

1 Tuesday morning.

2 MS. PINELLO: Precisely, Mr. Stewart.

3 CHAIRMAN IGNATIUS: All right. I think  
4 we need to take a break for the sake of the court reporter  
5 and for all of our sanity, probably. So, let's take a  
6 lunch break. There is a cafeteria downstairs. If we --  
7 it's now almost 12:30, if we're back here at 1:30. And,  
8 we will pick up, we'll have to sort of sort out where we  
9 go next, in terms of sections that we haven't yet  
10 reviewed. But I appreciate everyone's patience in going  
11 through this. It's not always straightforward.

12 So, we'll be adjourned until 1:30.

13 Thank you.

14 (Lunch recess taken at 12:26 p.m. and  
15 the hearing resumed at 1:33 p.m.)

16 CHAIRMAN IGNATIUS: All right. Shall we  
17 begin again? I think we have -- we have the Committee  
18 back in full. And, some of our participants have moved  
19 on, but I think that's because of the day, not because  
20 they're still out at lunch. So, let's begin again.

21 Where we finished was we got through all  
22 of Section IX, "General Standards and Requirements". I'm  
23 open to people's suggestions on whether we go back to the  
24 beginning, we continue with the later sections, or if

1       there -- if there's particular areas that we need to  
2       discuss, either Applicant, Public Counsel, anyone else  
3       wants to bring forward, or things the Committee members  
4       have questions about, we can go into them individually.  
5       If the arguments are really just the same as what we've  
6       already done, and really nothing different about any  
7       particular section, then I don't know if we need to go  
8       through them. I don't see a need to do that. But I'm  
9       open to -- I'm not trying to cut anything off, if there  
10      are things that people do want to delve into.

11               So, maybe first, does the Applicant have  
12      sections that we've skipped over that you would like to  
13      make particular points on? And, if so, let us know what  
14      those sections are. And, then, I'll turn to Public  
15      Counsel, Planning Board, and everyone else with the same  
16      question.

17               MS. GOLDWASSER: Can I take a moment  
18      please?

19               CHAIRMAN IGNATIUS: Oh, that's fine.  
20      And, Board members, you might do the same, look and see if  
21      there's anything that you had marked for any questions  
22      that haven't been resolved yet, or at least addressed.

23               MS. BAILEY: Yes, what's been resolved?

24               (Brief off-the-record ensued.)

1 CHAIRMAN IGNATIUS: All right. We're  
2 back on the record. Ms. Goldwasser, you've been looking  
3 at the best way to proceed?

4 MS. GOLDWASSER: Yes. So, I'll -- there  
5 are a few variety -- a few sections that I would at like  
6 -- I would at least like to point out to the Committee,  
7 they aren't all sections that we've eliminated in our  
8 redline, but they are sections that concern issues that  
9 I'd like to bring to the Committee's attention. The way I  
10 guess I would propose to do that is, I can provide the  
11 section and the page number, and let everyone get there,  
12 and say my piece, and then we'll let the other parties say  
13 their piece, and then I can bring us to the next one.  
14 And, if somebody has another section, they can interject  
15 and we can stop there. That's fine with me.

16 CHAIRMAN IGNATIUS: All right.

17 MS. GOLDWASSER: But I'll try to keep  
18 this brief.

19 CHAIRMAN IGNATIUS: Thank you.

20 MS. GOLDWASSER: On Page 7, it's the  
21 Paragraph (2), after the subheading "C".

22 CHAIRMAN IGNATIUS: All right. Go  
23 ahead.

24 MS. GOLDWASSER: This section permits

1 the Planning Board to "refer the subdivision or site plan  
2 to a consultant or consultants for review and comment".  
3 We didn't delete this section, because we acknowledge  
4 that, if the Planning Board were granted some authority  
5 over subdivision, they could have a question about title.  
6 And, we didn't want to tell them that they couldn't seek  
7 an analysis of a title question. However, most of the  
8 time when planning boards do this analysis, they hire  
9 consultants, they're hiring consultants for, in  
10 particular, traffic studies, sometimes environmental  
11 studies. So, those sorts of studies, based on the  
12 analysis that we've done in our redacted version of the  
13 ordinance, would not be considered relevant to the  
14 Planning Board's analysis. And, therefore, we've presumed  
15 that the Planning Board would not be permitted to require  
16 the Applicant to pay for a consultant on an issue that's  
17 not under the Planning Board's jurisdiction. And, that's  
18 a presumption we've made, you know, based on this. But,  
19 should the Site Evaluation Committee and the powers that  
20 be determine that the Planning Board must make a decision  
21 on a subdivision plan, I didn't want to stand before you  
22 and say they couldn't hire a title consultant, if that  
23 issue was an issue in the subdivision.

24 CHAIRMAN IGNATIUS: So, if it were a



1 consultant on an issue that you're defining as one of the  
2 core issues of the SEC, if that were a determination been  
3 made of those issues by the SEC, the Planning Board would  
4 not have the ability to have a consultant to delve into  
5 one of those core issues?

6 MS. GOLDWASSER: Yes. I mean, those  
7 issues should have been raised here. I mean, the whole  
8 purpose that we're here today is try to avoid doing this  
9 twice. And, that's the purpose that the Committee is  
10 here.

11 CHAIRMAN IGNATIUS: All right.

12 MS. GOLDWASSER: So, yes.

13 CHAIRMAN IGNATIUS: Mr. Roth, do you  
14 have a response to that?

15 MR. ROTH: I don't have a problem with  
16 that concept. But I would not expect to see this  
17 Committee rewriting C.2 to reflect that. It seems to me  
18 that that is a natural process that the Planning Board  
19 will have to undertake. And, it will be, of course,  
20 guided by the Applicant and its attorneys. But I don't  
21 think it would, you know, it would be appropriate for the  
22 Committee to try to rewrite C.2 to reflect that view.

23 CHAIRMAN IGNATIUS: And, if there were,  
24 jumping way ahead, if there were a provision in an order

1 ultimately that said, "to the extent certain issues have  
2 been dealt with at the Site Evaluation Committee and, you  
3 know, identify core issues, those are not open to the  
4 Planning Board to undertake", is that -- that's not  
5 rewriting any of these sections, it's sort of giving  
6 direction to the Planning Board on how to proceed. Would  
7 you find that problematic?

8 MR. ROTH: Me? I don't think that the  
9 Site Evaluation Committee has the power to enjoin anybody.  
10 So, I think you could write kind of a guidance document.  
11 But I think you don't have the power to order anybody to  
12 do anything like that.

13 MS. GEIGER: I think I would just  
14 interpose a slight exception to that. It seems to me here  
15 we -- it's not the SEC asserting jurisdiction or telling a  
16 -- sort of a disinterested Planning Board what to do. The  
17 Planning Board is a party to this proceeding. And,  
18 they're here, they're a stakeholder. And, it seems to me,  
19 just as any other party in this proceeding can be directed  
20 to do something pursuant to the Committee's order or the  
21 Committee's condition imposed on a certificate, I think we  
22 have a slightly different situation here than the  
23 situation I think that underlies the assumption behind  
24 Mr. Roth's statement.

1                   MR. ROTH: Well, I still don't think  
2                   that, even under a certificate, you can enjoin somebody to  
3                   do something. And, I would submit further that, where  
4                   your -- you have an administrative agency of its own  
5                   nature, and even if you had the power to enjoin, to issue  
6                   an injunction against a party, I don't think that that  
7                   power would extend to telling a planning board how it  
8                   needed to decide a particular issue in front of it. I  
9                   don't think even the Superior Court can do that.

10                  CHAIRMAN IGNATIUS: I don't think I  
11                  suggested that.

12                  MR. ROTH: I don't think you did, but I  
13                  think Attorney Geiger just did. And, so, I think we need  
14                  to be very careful about what kind of orders go into the  
15                  final certificate and the orders, with respect to, you  
16                  know, you could say to one of the core parties in the  
17                  SEC's jurisdiction, that is, and I don't mean all the  
18                  parties to the case, but I'm talking about how the SEC,  
19                  you know, specifically includes a number of State  
20                  agencies. And, I think you do have the power to direct  
21                  one of those State agencies to do certain things and to,  
22                  you know, you can delegate the enforcement to that agency  
23                  and that kind of thing. But I don't think it goes to  
24                  ordering any particular party in a case to take any

1 particular action or refrain from taking any particular  
2 action.

3 CHAIRMAN IGNATIUS: All right. Well,  
4 we'll add that to the list of things to take under  
5 advisement. Anything else on that Section C.2?

6 MS. GOLDWASSER: I would only indicate  
7 that I believe some other paragraphs in the regs reference  
8 the hiring of consultants. And, where we've been  
9 concerned about those references, we've indicated in  
10 redline. I believe there's a couple of sections that say,  
11 you know, "a consultant could be hired for this purpose",  
12 and we've indicated in redline where we think that that  
13 would be inappropriate.

14 CHAIRMAN IGNATIUS: All right.

15 MS. PINELLO: Madam Chairman?

16 CHAIRMAN IGNATIUS: Yes.

17 MS. PINELLO: It might be helpful for  
18 you to know that the Town of Antrim's Planning Office is  
19 staffed by consultants. So, there is -- it just our Town  
20 Planner is a consultant, we don't have a full-time Town  
21 Planner, it's a consultant. So, when we choose our words,  
22 I'm just letting you know for the record that the Town  
23 Planner is a consultant.

24 CHAIRMAN IGNATIUS: And, so, with each

1 Application, the consultant is retained to review that  
2 Application?

3 MS. PINELLO: Yes, that's correct.

4 MR. IACOPINO: Even the Town Planner?

5 MS. VANDERWENDE: We don't have one.

6 MS. PINELLO: We don't have one, as of a  
7 year and a half ago.

8 MS. VANDERWENDE: It was cut from our  
9 budget. And, this was our best move.

10 CHAIRMAN IGNATIUS: Thank you. That was  
11 helpful. All right. Ms. Goldwasser, what was the next  
12 section we should turn to?

13 MS. GOLDWASSER: On Page 12, it's the  
14 last sentence in the heading, Paragraph or Section C.  
15 "The Board may require additional information as deemed  
16 necessary in certain situations and is not limited to only  
17 the subdivision requirements listed under C,1." That is  
18 an extremely broad indication. And, I think, when I  
19 referenced earlier this morning of the concern that the  
20 Planning Board could annunciate requirements, which are  
21 not set forth in the regulations and are unknown to us  
22 today and unknown to us whether they would be within the  
23 Planning Board's jurisdiction or not, we don't know what  
24 that information would be. And, we don't know if it would

1 fit within their jurisdiction. There's very little  
2 information that we can see would be necessary to make a  
3 decision on the subdivision that we've purposed, given the  
4 limited information that the Planning Board needs to  
5 consider to make a decision on that subdivision.

6 CHAIRMAN IGNATIUS: Mr. Roth, a  
7 response?

8 MR. ROTH: This seems to me goes to the  
9 application of the test that we've been talking about all  
10 day. And, that is, is it exercised in bad faith? Is it  
11 exercised in an exclusionary way? Otherwise, it's neutral  
12 and applies to everybody and it ought to be left alone.

13 MR. IACOPINO: Can I just ask a question  
14 of Ms. Goldwasser? Ms. Goldwasser, you -- I didn't read  
15 everything between Page 7 and Page 12, and there is -- the  
16 way that I'm reading this section is that it just --

17 MR. ROTH: Mike, just so you know, we  
18 decided not to fight about that anymore.

19 (Laughter.)

20 MR. IACOPINO: Okay. Well, I didn't  
21 read it. And, so, I'm just trying to figure out, it says  
22 "The Board may require additional information as deemed  
23 necessary". Again, this is -- is there a prior provision  
24 here that gives some approval authority to the Planning

1 Board? Or, is this just another place where they want  
2 information?

3 MS. GOLDWASSER: Look, I understand the  
4 concern that "information is not decision-making", but  
5 information is. Because, when you go to a planning board  
6 with an application, with a project with a timeline, and  
7 you go night after night to present, you know, "you asked  
8 for us to provide to you new traffic information", "you  
9 asked for this information in a traffic setting", and  
10 someone says, "well, I actually had this other question,  
11 too, about the traffic." And, then, you go to the next  
12 hearing and you bring that information. I mean, it  
13 becomes a recursive process that is difficult to get out  
14 of. So, the issue here is that, given the limited  
15 jurisdiction that a planning board would have, this  
16 information wouldn't relate to the decision that they need  
17 to make. I understand, you know, we had this conversation  
18 earlier, but I -- they have had an opportunity to seek a  
19 great deal of information via this process.

20 MR. IACOPINO: I understand your  
21 argument. But, my only question is that, in the document,  
22 in the pages that we skipped in going from 7 to 12, is  
23 there -- and the Committee will decide whether information  
24 is, you know, is exclusionary or not. But my question is,

1 is there a provision between where we just were and where  
2 we went to that gave the Planning Board any approval  
3 authority over this information that is supposed to be  
4 requested under Section C, on Page 12?

5 MS. GOLDWASSER: I think that that  
6 standard would actually be, and I'm sorry, I misunderstood  
7 your question, I think that standard would actually be in  
8 Section IX of the regulations, which is later on, because  
9 the substantive standards that the Applicant will be held  
10 to are in that section that applies to Site Plan  
11 Regulations. It's the same standards that apply to Site  
12 Plan Regulations and Subdivision Regulations.

13 The question you might -- you might be  
14 asking is, when the Planning Board is -- the Planning  
15 Board has a two-step process. The first step of the  
16 process is to determine that an application is complete.  
17 And, then, the second step is to consider the substance of  
18 it. I guess new information would be requested after an  
19 application was considered complete, because you provided  
20 the information that's required or sought a waiver for  
21 information that may not be available. And, then, they  
22 requested more information and sort of started that  
23 substantive process going down the line.

24 MR. IACOPINO: The difference between



1 Section IX and here is that Section IX there was actually  
2 substantive regulations that had to be followed the way  
3 that the rules were written. And, there was a provision  
4 that the Antrim Planning Board would have to approve.  
5 And, I'm just curious, I know that this is the "major  
6 subdivision" section, I know it says "the Board may  
7 require additional information". I'm just wondering --  
8 but I'll look, I'll read through it again. That's okay.  
9 And, I know I'm not being clear, but I'll read through it  
10 again and get my answer. Thank you.

11 MS. GOLDWASSER: And, I guess I would  
12 say for the record that the pages intervening, as Mr. Roth  
13 indicated, we agreed to disagree, because we've had the  
14 conversation with you already about whether that  
15 information is necessary or not, and the Committee will  
16 draw a conclusion about what's preempted and what isn't,  
17 and, therefore, what information is required and what  
18 isn't.

19 And, I think, to a large extent, the  
20 same may be said for the "major subdivision" section,  
21 which may apply to this Project, we don't know, which  
22 starts on Page 12.

23 CHAIRMAN IGNATIUS: Before you move on,  
24 can I just ask some other questions about this Section C

1 at the bottom of Page 12? As I read it, I thought it was  
2 similar to the consultant question we just went through,  
3 in that your concern is not additional information that  
4 relates to things that are within the Planning Board's  
5 jurisdiction, it's concerned about additional information  
6 that relate to the things that are not within the Planning  
7 Board's jurisdiction and that deal with the core functions  
8 of the SEC?

9 MS. GOLDWASSER: Yes, I think that's  
10 right. I think we're presuming that, when we delete that  
11 sentence, that we're correct about what the substance of  
12 the Planning Board's consideration would be, and that no  
13 additional information be required, because the  
14 considerations that the Planning Board would be given  
15 would be very limited in the sections that we discussed  
16 this morning.

17 CHAIRMAN IGNATIUS: But, if there were,  
18 for some reason, a request for additional information  
19 related to the non-core issues, would it -- why would it  
20 be improper for the Planning Board to inquire into that?

21 MS. GOLDWASSER: I guess, in that  
22 situation, the Planning Board would request the  
23 information, and we would have to provide it, because we  
24 would want a subdivision approval. So, this is probably

1 half of one, you know, I'm going to stay it wrong, but six  
2 of one, half dozen of the other at the end of the day.

3 I think the issue here, just reviewing  
4 this further, is the word -- is the second phrase in the  
5 sentence, which is that they can require additional  
6 information, which is not limited to the subdivision  
7 requirements. And, we have no idea what that would be.  
8 But that's requiring further analysis and information that  
9 isn't related to the requirements that they have in their  
10 regulations. And, maybe that's appropriate in another  
11 situation. But, in this situation, where this Committee  
12 is considering the full scope of the Application,  
13 including the substation and the access to the substation,  
14 that request should have been made here and shouldn't be  
15 brought into a new venue for a new analysis.

16 MR. ROTH: If I may?

17 CHAIRMAN IGNATIUS: One moment. When  
18 you gave the example of a legal issue on lot line, title,  
19 something, --

20 MS. GOLDWASSER: Absolutely.

21 CHAIRMAN IGNATIUS: -- I mean,  
22 conceivably, there could be something fairly narrow, but  
23 there might be something that would relate to this  
24 subdivision that isn't addressed by the SEC?

1 MS. GOLDWASSER: So, if you turn to  
2 Page, you know, Pages 28 and 29, where we identified some  
3 narrow areas where, should the Committee determine that  
4 there's residual authority, that that's where you would  
5 find the vast majority of it. There are bounds and lot  
6 lines that we've identified. Now, there may be questions  
7 about, you know, for a surveyor to answer about how we've  
8 surveyed it, have we done it right, do they need to do it  
9 right, or there may be a question for a lawyer. Is this  
10 deed done properly? Is this title, you know, have they  
11 done this right?

12 They can hire, under these rules, a  
13 consultant to address those issues, which are directly  
14 related to a standard that they're going to hold the  
15 Applicant to. I mean, the problem is that the rules  
16 provide that they can seek information that's unrelated to  
17 a standard that they're holding the Applicant to and seek  
18 new reports. I mean, things that, if it were sought in  
19 the discovery process here, the Applicant may object to  
20 and the Committee may say "yes, you must develop this  
21 information", or "no, you don't need to develop this  
22 information." I mean, that's -- and, that's the  
23 possibility. I think we're talking about a narrow  
24 circumstance of unlikelihood. But, at the same time,

1 we're chartering new ground here. And, to look at the  
2 risks associated for an Applicant of coming forward to a  
3 Site Evaluation Committee for a project, and then having  
4 to complete an entirely new process, with potentially  
5 undefined scope, in terms of even information gathering,  
6 is an uncertainty that hasn't been an issue before the  
7 Committee before.

8 CHAIRMAN IGNATIUS: Mr. Roth, I cut you  
9 off.

10 MR. ROTH: That's okay. I was  
11 interrupting you. The Applicant has argued on numerous  
12 occasions that the Planning Board should have been asking  
13 for all of this kind of information here. But, I think it  
14 bears pointing out that, from the very beginning of this  
15 process, it has not been at all clear that this body had  
16 agreed to accept and exercise jurisdiction to a  
17 subdivision plan. So, the Planning Board cannot have  
18 known that it should have been prepared to make all of its  
19 information requests here. And, that I think it's sort of  
20 an unfair, sort of post hoc thing to expect of them.  
21 Hindsight is 20/20; foresight is often quite limited.

22 CHAIRMAN IGNATIUS: But wasn't it clear  
23 in the Application that there was a request for  
24 subdivision of this lot to be done by the SEC?

1                   MR. ROTH: It was clear that they were  
2 seeking that. But it was also clear from the process and  
3 your orders that the question of the ability to even do  
4 that was -- has been up in the air until today,  
5 practically. So, for them to sort of proceed as though  
6 this was going to, you know, this subdivision was going to  
7 be done here, I think would have provoked a number of  
8 objections from the Applicant as to relevance, and would  
9 have bogged down the process even more. So, I think it's  
10 not fair to expect the parties to have assumed that this  
11 whole process was going to be about subdivision, when such  
12 has never been done before here, as Attorney Goldwasser  
13 said, you know, we're charting new ground here. And, if  
14 anything, the ground that we were living in before showed  
15 that applicants would go to the planning board and get  
16 these kinds of approvals and submit the kind of  
17 information that they were looking for, as in the  
18 Holderness case and Groton Wind.

19                   The narrow point about the kind of  
20 information that the Planning Board might want under that  
21 sort of catch-all provision seems to me that, you know,  
22 the Planning Board, in any case, can ask for all kinds of  
23 stuff that people haven't really thought about in making  
24 an application or that's very situation and site-specific;

1 good, bad, ugly. And, there can be any number of things  
2 that get asked, and planning boards often do ask for some  
3 strange things. And, there could be also something very  
4 mundane. You know, like "are you going to be available  
5 next month?" You know, if you strike that provision, you  
6 know, arguably they couldn't even say, "Can you be here  
7 next month for a meeting?" Because that's no where else  
8 specified in the powers of the Planning Board. It seems  
9 to me that the analysis goes back to where we began, which  
10 is "is the request being made in bad faith or does the  
11 request have the result of being exclusionary?" And, if  
12 it's not, then it should be allowed to be carried out.

13 CHAIRMAN IGNATIUS: All right. Next  
14 section?

15 MS. GOLDWASSER: So, the following  
16 sections, which are clearly shown in the Exhibit A in our  
17 pleading. I'm not going to go back through, because it's  
18 going to be the same exact thing that we talked about this  
19 morning. If the Committee determines that something is  
20 preempted, then we don't believe it should be part of the  
21 Application to the Planning Board, because that's just a  
22 cause for confusion. Furthermore, a lot of this  
23 information, if not all of it, is available in the Site  
24 Evaluation Committee Application and the Application to

1 the Environmental Agencies that are on the record already  
2 in this proceeding.

3 I am going to direct your attention,  
4 however, to Page 17, which has a number of identified  
5 issues. Just to give you some context, it's under the  
6 rubric of "Additional Information" to be provided for  
7 major site plan review -- I'm sorry, major subdivision  
8 review.

9 CHAIRMAN IGNATIUS: I'm sorry, where are  
10 you?

11 MS. GOLDWASSER: Page 17, there's -- it  
12 starts at the top of the page with Paragraph (3).

13 CHAIRMAN IGNATIUS: Yes.

14 MS. GOLDWASSER: There are several  
15 pieces of information regarding things we've talked about  
16 before. But, if you look at Paragraph (8), it indicates  
17 that "the applicant may be required to submit: A  
18 Community Facilities Impact Study, Soil Erosion and  
19 Sediment Control Plan, Site Specific Soil Study". Those  
20 are studies that we discussed in the context of the  
21 substance. I just wanted to identify for you here that  
22 this is where in the regulations a planning board would be  
23 able to require additional studies associated with  
24 subdivision, which we would contend are preempted.



1                   The other paragraph I draw your  
2           attention to on this page is Paragraph (9). Which  
3           indicates that the Planning Board may "determine whether  
4           or not the development, if approved, would" -- excuse me,  
5           "could reasonably be construed as having the potential for  
6           regional impact." Now, that's a statutory process.  
7           Planning boards are given the authority to do regional  
8           impact -- the regional impact process provides that  
9           certain abutting towns and regional development  
10          authorities are given notice about a decision that a  
11          planning board is making. It establishes a much longer  
12          process, because additional hearings and information need  
13          to be submitted to the planning board or at least sought  
14          from the planning board. We would, obviously, contend  
15          that this paragraph falls directly into the Committee's  
16          jurisdiction in determining the regional development.

17                   MS. BAILEY: Which page were you on on  
18          that one?

19                   MS. GOLDWASSER: I'm on Page 17.

20                   MS. BAILEY: Okay.

21                   MS. GOLDWASSER: It's Paragraph (9).  
22          It's the last paragraph that's struck.

23                   MS. BAILEY: Yes. Got it. Thank you.

24                   CHAIRMAN IGNATIUS: Mr. Roth, a response

1 to that?

2 MR. ROTH: Again, number (9) is -- it's  
3 a determination, but it doesn't say all that stuff that  
4 Attorney Goldwasser just said it says. And, in any event,  
5 I think, when the drafters of this chose the word  
6 "development", they probably had something in mind in  
7 particular that doesn't sound like a minor subdivision or  
8 even one that's considered a major subdivision but doesn't  
9 have a development, so to speak. The development, as I  
10 understand it, in the common usage, is a number of  
11 residential houses together or commercial center or  
12 something else of that nature, not a single facility like  
13 this. So, you know, I don't -- I think it's irrelevant to  
14 this proceeding. But, to the extent that it attempts to  
15 do something, it seems to me that it's linked to something  
16 else further on in the rules. And, if that something else  
17 doesn't apply, then this won't ever come into being.

18 CHAIRMAN IGNATIUS: Well, it sounds --

19 MR. ROTH: And that brings us back to  
20 the same argument we had all morning about, you know, the  
21 information supply versus the actual substantive  
22 requirements.

23 CHAIRMAN IGNATIUS: But doesn't it sound  
24 an awful lot like the provisions in 162-H about us

1 determining whether the proposal impacts the orderly  
2 development of the region?

3 MR. ROTH: Yeah, it does.

4 CHAIRMAN IGNATIUS: Doesn't it seem like  
5 it's sort of crossing into the 162-H world?

6 MR. ROTH: Yes. Yes, I agree.

7 CHAIRMAN IGNATIUS: And, then, if you  
8 agree, to me that would lead to it should be on the  
9 preemption side.

10 MR. ROTH: If this -- if this was  
11 anything more than a determination. The determination  
12 doesn't necessarily give it any legs. It seems to me the  
13 legs for this are somewhere else. As Attorney Goldwasser  
14 said, there, you know, there's this process that they go  
15 through to, you know, involve all the other regional  
16 planning committees and the like. That, and I could be  
17 wrong about this, but it seems to me that that's invoked  
18 somewhere else. And, the determination all by itself  
19 doesn't really go anywhere.

20 CHAIRMAN IGNATIUS: All right. What  
21 next?

22 MS. GOLDWASSER: On the following two  
23 pages, just a couple of comments. There are requirements  
24 for plan submissions and requirements to whether changes

1 are made to the final plan. And, I would merely indicate  
2 on the record that those changes and plan submissions  
3 should only be required to reflect those elements of the  
4 subdivision -- only those elements of the Project that are  
5 the subdivision that are under the jurisdiction of the  
6 Planning Board. And, by saying that, I mean, if a change  
7 is made to the Site Eval -- in the Antrim Wind Project  
8 that requires return to the Site Evaluation Committee on  
9 an issue that's unrelated to the substation, that just to  
10 be clear on the record, the Applicant should not be  
11 required to go back to the Planning Board to seek approval  
12 of that change, because that change is wholly unrelated to  
13 any subdivision jurisdiction that might be retained by the  
14 Planning Board.

15 I believe that the rest of those  
16 sections are pretty much encompassed by the conversations  
17 we've already had. And, we've -- Mr. Roth and I have  
18 agreed that we're not going to discuss site plan review  
19 today, for obvious reasons, that a site plan review is not  
20 before this -- the issue of site plan review is not before  
21 this Committee. I will note, however, that the standards  
22 that an Applicant would be held to on site plan are  
23 identical to the standards that would be applied in  
24 subdivision. And, I think that that's telling, given the

1 fact that there's no question that an Applicant would not  
2 be required to go to a planning board and seek site plan  
3 approval for a energy facility. I think it's telling  
4 that, in this situation, with these regulations, the  
5 requirements are -- the substantive requirements are  
6 identical for those two analyses. So, in effect, what  
7 we'll be doing is a substantive site plan analysis.

8 CHAIRMAN IGNATIUS: Mr. Roth.

9 MR. ROTH: Well, I don't know what  
10 exactly her point is, other than we both agree that  
11 Section VI is preempted and is not in the residual power.  
12 I think, even, you know, if they could give you a candid  
13 assessment, I would -- my guess is that even the Planning  
14 Board would agree with that. But, obviously, they can't.

15 CHAIRMAN IGNATIUS: But they're always  
16 candid, I don't have any concern about that. I think you  
17 feel constrained by the law.

18 MR. ROTH: That's right. I wasn't  
19 implying they would give you a false one, they would just  
20 give you a careful one.

21 CHAIRMAN IGNATIUS: All right. Any  
22 questions from the Committee?

23 (No verbal response)

24 CHAIRMAN IGNATIUS: Were there any other

1 sections or does that complete it, Ms. Goldwasser, that  
2 you had identified that you wanted to note in particular?

3 MS. GOLDWASSER: Can we just have one  
4 moment? I just want to confer.

5 CHAIRMAN IGNATIUS: Sure. And, Mr.  
6 Roth, I'm going to ask you the same, so think about that.

7 (Short pause.)

8 MS. GOLDWASSER: I think we're done  
9 dragging you through the regulations, unless you want us  
10 to drag you through further.

11 CHAIRMAN IGNATIUS: Mr. Roth, anything  
12 else that you want to address on the regulations?

13 MR. ROTH: I think we agree that Section  
14 VIII is preempted, VIII.

15 MS. GOLDWASSER: And, we agreed also,  
16 not to interject, that we disagree about Section VII.A,  
17 but we agree about the rest of Section VII. And, we won't  
18 drag you through that analysis. You can, I think, glean  
19 what you will from the other statements we've made today.

20 CHAIRMAN IGNATIUS: Mr. Dupee.

21 MR. DUPEE: Thank you, madam Chairman.

22 MR. ROTH: And, we are all in agreement,  
23 this is all very happy, X, XI, and XII.

24 CHAIRMAN IGNATIUS: Thank you. Mr.

1 Dupee.

2 MR. DUPEE: Thank you, madam Chairman.  
3 Just a general question for the Applicant and the other  
4 parties. This goes back to Page 17, (9) says "The Board  
5 shall determine whether or not development, if  
6 approved, --

7 (Court reporter interruption.)

8 MR. DUPEE: Referring you to (9), Page  
9 17, "The Board shall determine whether or not the  
10 development, if approved, could reasonably be construed as  
11 having the potential for regional impact." And, the  
12 question I have of the parties is, as you read through the  
13 rules, anybody found a place where the Board makes any  
14 sort of decision based upon that fact? Or, is this just  
15 simply disconnected from anything else we're doing? I  
16 read through it. I couldn't find a place in here where,  
17 because of this, they made a decision.

18 MS. GOLDWASSER: I don't know if the  
19 representatives of the Planning Board would like to speak  
20 to this. I dealt with this issue in another -- in a  
21 totally separate circumstance. My understanding was that,  
22 if there's a determination that there's a regional impact,  
23 there's a statute that governs. And, under that statute,  
24 certain procedures must be followed to obtain the advice

1 of other boards. And, that can get very complicated. But  
2 I was involved in a situation with a blasting project that  
3 was on a border between two towns, and we ended up having  
4 many, many hearings, in both towns, in order to meet our  
5 obligations under the regional impact section. I believe  
6 it's statutory. That probably should be subject to check  
7 because I can get that to you. But that's where that  
8 language, I believe, comes from. And, I don't know if the  
9 representatives of the Planning Board have any further  
10 comment on that.

11 MS. VANDERWENDE: Everyone's looking at  
12 me. I'm the junior most member of the Board. And, I'm  
13 probably the least familiar with our regulations. I do  
14 think that that's the intent here. They're merely  
15 identifying it. What happens after that --

16 (Court reporter interruption.)

17 MS. VANDERWENDE: I believe this merely  
18 instructs the Board to identify or make a determination  
19 whether there's a potential for it.

20 MS. GOLDWASSER: If we continue, I'll  
21 look and try to get back to you on that.

22 CHAIRMAN IGNATIUS: All right.

23 MR. ROTH: And, if I can --

24 CHAIRMAN IGNATIUS: Mr. Roth.



1 MR. ROTH: I haven't found anything in  
2 here that, in these rules, that invokes them to do  
3 anything about it. But I would again point out, I just  
4 don't think this deals with subdivision, I don't think  
5 that's a subdivision issue.

6 MS. GOLDWASSER: It's in the --

7 MR. ROTH: That, to me, looks like a  
8 site plan review issue. Because it talks about the  
9 "development", and what we're talking about, in my  
10 construct of this, subdivision is the outline, the  
11 footprint of the new lot, and the provision of municipal  
12 services to that, and a few discrete things that have to  
13 do with the new lot, not with the development on the lot.

14 MS. GOLDWASSER: I guess maybe Mr. Roth  
15 and I agree, because this is in the "major subdivision"  
16 section of the regulations. So, they would seem to  
17 believe that the major Subdivision Regulations include a  
18 determination of regional impact. So, maybe we agree that  
19 it's not relevant to the case here. I would say to  
20 preempt it. I don't think he agrees with me about that.  
21 But it is in the major subdivision chapter of the regs.

22 CHAIRMAN IGNATIUS: Ms. Bailey.

23 MS. BAILEY: Mr. Roth, if you think that  
24 this is a site plan issue, and you agree that the site

1 plan stuff is all preempted, why wouldn't this be  
2 preempted?

3 MR. ROTH: Maybe it is.

4 MS. BAILEY: Okay.

5 MR. ROTH: So, --

6 MS. BAILEY: All right. Thank you.

7 MR. ROTH: I mean, I'm not going to fall  
8 down over this one. But it's an odd one. Nobody here  
9 seems to -- you know, Attorney Goldwasser has the best  
10 understanding of it, but nobody can point to anything that  
11 actually happens as a result of this.

12 MS. BAILEY: Okay.

13 MR. ROTH: And, it's in an odd place, if  
14 that's what it is.

15 CHAIRMAN IGNATIUS: All right. Any  
16 other questions from the Committee?

17 (No verbal response)

18 CHAIRMAN IGNATIUS: Anything else that  
19 any of the parties wanted to bring forward that got lost  
20 along the way?

21 MS. GEIGER: I think just one thing I'd  
22 point out as a matter of fact, and I'm sure the Committee  
23 members are aware of this. But the subdivision that we're  
24 talking about, the substation that we're talking about,

1 was presented to the Committee in the Applicant's  
2 Application and in the Supplemental Application. So, the  
3 substation is not something new. It's something that has  
4 been evaluated by the Project's consultants in terms of  
5 all of the criteria that -- all the criteria that we've  
6 been talking about today that may apply to the local  
7 reviewing authority.

8 So, you know, I just want to clarify for  
9 the record that the fact that we are seeking subdivision  
10 approval for this substation really comes about as a  
11 result of, after having done all of our studies about the  
12 whole project, including the substation, the Applicant was  
13 told by PSNH that it needed to own the land under the  
14 substation, which thereby necessitated a subdivision of  
15 the lot where the substation is proposed to be located.  
16 So, I just wanted to put that out there to give more  
17 context and background about why it is that we're here  
18 today.

19 CHAIRMAN IGNATIUS: All right. Anything  
20 further? Ms. Pinello.

21 MS. PINELLO: I would like to, I guess,  
22 in closing, is to reiterate the Planning Board's position  
23 that we are -- have a sovereign responsibility, an RSA  
24 responsibility to the citizens as the Planning Board. We

1 are elected officials who have been, through state RSA,  
2 granted certain responsibilities. And, we understand that  
3 parts of those may indeed be preempted. But I think it's  
4 important to understand that we are elected officials,  
5 responsible to the RSAs that govern us, that -- so, we  
6 have, as we spoke earlier, we have a shared responsibility  
7 with the SEC with that residual authority.

8 The other part is important to remember  
9 that the process to get to a registered plat is through  
10 the Planning Board. It is not given to any other  
11 quasi-judicial, other elected group; it is through the  
12 Planning Board. And, so, while we have discussed that we  
13 do have some residual authority, and where that line is,  
14 there is still elements of our responsibility that are  
15 part of our responsibility as elected officials within a  
16 municipality, within a state, and those are granted by the  
17 General Court.

18 CHAIRMAN IGNATIUS: And, I think we  
19 looked at this at the prior session on this and had some  
20 discussion about what one would do to have the plat  
21 eligible for recording in the Registry of Deeds, what  
22 signatures would be required? If it wasn't processed  
23 through the Planning Board, how would one get to the point  
24 of having it able to be recorded by the Registrar of

1 Deeds? I assume that's the issue you're getting to now?

2 MS. PINELLO: I just -- it's just that  
3 that is within the RSAs. I just want to be -- we're  
4 trying to parse these small residual things, I think it's  
5 important to also remember that, within the balance of  
6 power within communities and quasi-judicial boards, and  
7 how we share our responsibility for subdivision and land  
8 use. It's important to remember there are many roles.

9 CHAIRMAN IGNATIUS: And, I guess, ask  
10 Mr. Iacopino, do you know, in the Groton case or any  
11 other, where there may have been issues that the SEC  
12 undertook, with the consent of the Applicant, perhaps,  
13 that would normally have been done by a planning board,  
14 who ends up signing the plat and how does it get recorded  
15 at the Registry of Deeds?

16 MR. IACOPINO: The issue of subdivision  
17 and recording of a plat has never come up.

18 (Court reporter interruption.)

19 MR. IACOPINO: The issue of a  
20 subdivision and the recording of a plat has never come up,  
21 at least in my experience with this Committee. I do  
22 understand that there have been other cases where they  
23 have been either told or determined that they needed some  
24 kind of subdivision approval, such as the Groton Wind case

1       -- I'm sorry, the -- yes, Groton wind case. And,  
2       actually, at one point or another we had a subdivision  
3       approval that we had been told about, that subdivision had  
4       been approved by the Town.

5               So, this is the first case that I'm  
6       aware of where this Committee has been called upon to make  
7       this type of determination. Did I answer your question?

8               CHAIRMAN IGNATIUS: No. But it was an  
9       interesting answer to a different question. Do you know  
10      of any situation where the SEC, in effect, signed or  
11      ordered someone to sign something that then allowed it to  
12      be recorded at the Registry of Deeds?

13              MR. IACOPINO: No. Just doesn't come  
14      up. I mean, it's not the nature of the beast.

15              CHAIRMAN IGNATIUS: All right. Mr.  
16      Roth, any final comments? Mr. Simpkins, maybe go ahead  
17      first, and then go back to --

18              MR. SIMPKINS: Well, this is just more  
19      of a general question. I was trying to recollect to our  
20      previous hearing in early September. One of the reasons  
21      we're discussing this whole issue in the first place is  
22      because PSNH has this requirement. And, if I remember  
23      correctly, we had discussed at the previous hearing about,  
24      you know, "is that an absolute requirement by PSNH or are

1       there other tools or something like that?" And, I didn't  
2       know, that hasn't come up yet today, probably should have  
3       asked earlier on, but is it just -- have you had any  
4       discussions with PSNH? It's this or nothing? I mean,  
5       there's easements, there's all types of other real estate  
6       tools. We wouldn't be going through all of this, if one  
7       of those other tools may be allowable. So, I was  
8       wondering if you could just speak to that.

9                   MS. GEIGER: Oh, yes. We have revisited  
10       this subject with PSNH --

11                  MR. SIMPKINS: Okay.

12                  MS. GEIGER: -- for this very reason, in  
13       the hope that we could get everyone that's in the room  
14       today out of the exercise that we just went through. And,  
15       they made it very clear to us, and, unfortunately,  
16       Attorney Lane, who is also from Orr & Reno, was here this  
17       morning. She's the one who has had the most direct  
18       communication with PSNH through Attorney Chris Allwarden  
19       there, who made it clear to her that it is that Company's  
20       policy only to accept a fee simple interest in the  
21       property underlying its substations. They will not accept  
22       an easement, they will not accept a lease. They will only  
23       take title to that property, so that they actually own it  
24       in fee simple, and thereby requiring, in our case here,

1 based on the land and the configuration of the property,  
2 where we propose to locate the substation, to subdivide  
3 the lot, so that PSNH can own that piece of property under  
4 the substation in fee simple.

5 MR. SIMPKINS: Okay. Thank you.

6 MR. ROTH: If I can just add one point  
7 to that? It's my understanding that the lease agreement  
8 that the Applicant has for this property that's being  
9 subdivided gives them the opportunity to purchase it  
10 outright, the entire parcel, from the owner. And, that  
11 would avoid the need for a subdivision, because they could  
12 purchase the whole thing and deed it to PSNH. So, it  
13 really comes down to, this is a money issue for the  
14 Applicant.

15 MS. GEIGER: Could we speak to that  
16 please?

17 CHAIRMAN IGNATIUS: Please.

18 MR. KENWORTHY: If I may? Our option  
19 agreement I think that Attorney Roth is referring to  
20 allows for us to buy up to -- it allows for us to buy up  
21 to ten acres. And, the actual parcel that we're going to  
22 be subdivided from is actually a parcel with a home on it  
23 where our lessor currently lives. So, it's not as though  
24 this is a vacant lot. It's about a 30-acre lot, and our



1 lessor lives there.

2 So, I think the notion of kind of buying  
3 that 30 acres with a home on it, and conveying that to  
4 PSNH, if they would even accept that, goes beyond kind of  
5 scope of what we're entitled to do and what the landowner  
6 is willing to do.

7 CHAIRMAN IGNATIUS: So, Mr. Roth's  
8 statement that you have the right under the agreement to  
9 buy the entire parcel is not correct?

10 MR. KENWORTHY: That is not correct.

11 MR. ROTH: Then, I stand corrected.

12 MS. GOLDWASSER: The other piece of  
13 information, and the Applicant can correct me if I'm  
14 wrong, is that some of Antrim Wind's facilities are also  
15 on that lot. And, so, if the entire lot even could be  
16 transferred to Public Service, with the home on it, then  
17 Antrim Wind's facilities would be on Public Service of New  
18 Hampshire property. And, I have a sneaking suspicion that  
19 that would contravene some of their policies as well.

20 MR. KENWORTHY: And, it's also our  
21 understanding that, even an alternative, such as an  
22 easement, were feasible, it would still require  
23 subdivision. Because this becomes a -- essentially, the  
24 substation becomes a component of PSNH's transmission

1 system, and is expected to outlive the wind facility.  
2 And, so, that easement is not a 50 year easement, like a  
3 lease would be, but is -- and that kind of drives the need  
4 to own that property in fee. And, so -- but, even if  
5 there were a permanent easement, that would necessitate a  
6 subdivision in any event, and we'd have the same issue  
7 here in front of us.

8 CHAIRMAN IGNATIUS: All right. Anything  
9 further? Mr. Roth, you didn't get your chance on any sort  
10 of final comments to what we've been doing all day here.  
11 Anything you'd like to add?

12 MR. ROTH: No, ma'am. I'll stand on  
13 what I've said.

14 CHAIRMAN IGNATIUS: Thank you. Unless  
15 there are any other questions from the Committee?  
16 Mr. Iacopino? No?

17 MR. IACOPINO: No, I don't have any  
18 further questions for the witnesses -- for the counsel.

19 CHAIRMAN IGNATIUS: All right. Then, I  
20 think we can conclude this portion of what we've been  
21 doing. I appreciate everyone's patience in going through  
22 it. It's kind of an odd situation, with an odd format  
23 here, so it wasn't quite our normal procedure. So, thank  
24 you. It is almost 2:30. I would suggest we take a break,

1 and then talk a little bit about procedure and  
2 expectations for next week, also discuss publicly with  
3 members, if people feel they want to undertake  
4 deliberations now, and any other matters we have to  
5 address. I think we're down mostly to kind of the final  
6 procedural details, getting ready for next week. Let's  
7 first just take a break for ten minutes.

8 (Recess taken at 2:28 p.m. and the  
9 hearing resumed at 2:35 p.m.)

10 CHAIRMAN IGNATIUS: All right. We're  
11 back. Thank you, everybody, for taking a quick break. I  
12 think a couple things we need to do now. First, is the  
13 question of deliberations. If we want to, we could take  
14 up the deliberations of all of these issues, but we don't  
15 have to. We could defer it until a later date, even  
16 include it as kind of part of the final deliberations at  
17 the conclusion of the case, or to create a separate day  
18 just on this one issue. And, so, I want to get the  
19 Committee's view on what you think is preferable. I can  
20 tell you my sense is, I don't feel ready to do it, and  
21 would want to defer it probably until the final day, when  
22 we've done final deliberations at the close of the case in  
23 its entirety.

24 But are there people who would have a

1 different view, would like to undertake it this afternoon?  
2 Ms. Bailey.

3 MS. BAILEY: I'm sorry. I feel like  
4 it's fresh, and I understand it all right now. And, if we  
5 wait two weeks, it's going to be -- we're going to have to  
6 catch up again. And, so, I think it would be easier to do  
7 it now. But I will defer to the Chairwoman.

8 CHAIRMAN IGNATIUS: Others have a view  
9 on that?

10 MR. DUPEE: I would agree with your  
11 approach, madam Chair.

12 CHAIRMAN IGNATIUS: Mr. Iacopino, do you  
13 have a recommendation either way, on sort of the legality  
14 or the process that we're heading into?

15 MR. IACOPINO: It's at your discretion  
16 at to when you undertake the actual deliberations. My  
17 recommendation is the same as the Chair's, only because I  
18 think that there are a lot of other things that you're  
19 going to be deliberating on. And, it is possible that, if  
20 you do deliberations now in a piecemeal fashion, then  
21 something occurs or some other issue sort of overlaps  
22 this, and then we have to return here, I think it's just  
23 more efficient to do the deliberations all at one time.  
24 That would be my recommendation. But, again, legally, if

1       you choose to start deliberating on this issue right now,  
2       I think you are legally able to do that.

3                   CHAIRMAN IGNATIUS:   Any other comments?  
4       Mr. Stewart.

5                   DIR. STEWART:   I was pretty much ready  
6       to go, but I would defer.  I think the idea of integrating  
7       into the final deliberations makes sense.  I think a lot  
8       of issues will be addressed along the way, on the  
9       technical, a practical level.

10                  MR. SIMPKINS:   My concern is just that,  
11       based on how long it's taken us to get to this point, I  
12       don't see how we could possibly finish today.  So, I  
13       think, then we'd be in the middle of deliberations on this  
14       issue and still have to do it later.  So, --

15                  CHAIRMAN IGNATIUS:   All right.

16                  MR. GREEN:   I support your position.

17                  CHAIRMAN IGNATIUS:   Putting off?

18                  MR. GREEN:   Yes.

19                  CHAIRMAN IGNATIUS:   All right.  Then,  
20       why don't we defer until the end.  And, there's, you know,  
21       some issues that came up that I felt I needed to think  
22       through more, that I hadn't thought about before.  A  
23       little more time, in my case at least, would be helpful.  
24       So, thank you.

1                   We now need to talk about just some  
2                   procedural issues for Monday. I'm going to ask Attorney  
3                   Iacopino to explain some of the nuts and bolts of start  
4                   time, how -- what kind of days to expect as we're there,  
5                   where we stand with exhibits. And, after that, I want to  
6                   talk a little bit about the potential for disruption  
7                   because of the Hurricane Sandy. But let's first do some  
8                   of the nuts and bolts.

9                   MR. IACOPINO: Why don't I start by  
10                  giving you a brief report, oral report, there is a written  
11                  one that's in the process, of the prehearing conference  
12                  that we held yesterday. All of the parties, except for --  
13                  there were a few individuals that did not attend. But,  
14                  for the most part, all the parties attended. We tried to  
15                  get an estimate, we identified who the witnesses would be,  
16                  and how they're going to be presented, in terms of panels  
17                  or individually, that will all be in the written report,  
18                  and you'll have it sort of as an agenda or a road map  
19                  going forward once it's distributed to you. I hope to get  
20                  that distributed over this weekend. The substantive  
21                  result of identifying the witnesses and sort of asking the  
22                  parties "how much time are you going to spend with each  
23                  witness?" Resulted in an estimate, and these are just  
24                  estimates, of 26 hours of cross-examination on the

1 witnesses presented -- that are going to be presented by  
2 the Applicant, and 30 hours of examination for the  
3 remaining witnesses. Those would be the witnesses of  
4 Public Counsel and the various intervenors. For a total  
5 of 56 hours, which, obviously, means there may not be  
6 enough time next week to complete the adjudicatory  
7 hearing. These estimates do not include times for  
8 Committee questions, and I'm sure that the Committee will  
9 have questions. That's not been factored into these  
10 timeframes.

11 Based upon those timeframes, we pretty  
12 much figured that the Applicant's witnesses, without the  
13 hurricane, would begin Monday, and probably go through  
14 Wednesday. There are a couple of scheduling issues. It  
15 appears as though we're going to have to take the visual  
16 impact witnesses out of order, and that is Mr. Guariglia,  
17 for the Applicant; Ms. Vissering, for Counsel for the  
18 Public; and the AMC, Dr. Kimball, is primarily -- their  
19 concerns are primarily with visual as well. So, I did  
20 indicate to them that we would accommodate that. So,  
21 Friday appears as though to be the visual day. Since that  
22 time, I've gotten an e-mail from Mr. Block, who has  
23 indicated that one of his wildlife experts, Susan Morse,  
24 cannot be available until Friday also. I have not made

1 him any -- I haven't told him anything except "I'll see  
2 what we can do." And, I think that we may need to have  
3 more conservations with him about that witness's  
4 availability.

5 The other thing is, is that, if, in  
6 fact, there are 56 hours, it may be that that witness has  
7 to testify on another day in another week. And, we will  
8 try to sort that out and get days when the Committee is  
9 available. So, that's sort of the idea of just overall  
10 what the amount of testimony will be expected.

11 For you all, in order -- several of you  
12 have written to me or called me and asked about, you know,  
13 "what is the record of the case consisting of?" We will  
14 be providing you -- we marked exhibits yesterday as well,  
15 there's lots of them. I didn't tally them up. But there  
16 is an exhibit -- a Master Exhibit List being prepared.  
17 Each of you have indicated to me whether you prefer -- if  
18 you wish to have the exhibits in hard copy, those copies  
19 are all being made and being ready for the folks who  
20 wanted them. I will also have an electronic version of  
21 all the exhibits.

22 In order to be prepared, you should be  
23 familiar, as I'm sure most of you are, with the  
24 Application and its supplements, and all of the prefiled



1 testimony, and the exhibits that are -- or, the  
2 attachments that are attached to the prefiled testimony.  
3 There will be some exhibits that you will see for the  
4 first time on Monday, because the parties have marked  
5 them. And, they will -- I assume they will work them into  
6 their presentation somehow. Those will be part of what I  
7 provide to you, to the extent they have been provided to  
8 me. And, this time around, actually, I think, with the  
9 exception of maybe two or three total exhibits, all of the  
10 exhibits have, in fact, been provided. Now that doesn't  
11 mean that, as we go along, somebody might say "well, I  
12 want to introduce something new as an exhibit", and that  
13 will be left to our fearless Chair to determine whether  
14 those things should be done or not, should be permitted or  
15 not.

16 But you all will have access to the  
17 exhibits, both electronically and, for those of you who  
18 wanted a paper copy, will have a paper copy. The only  
19 thing that won't be in the paper copy is the Application  
20 volumes, which are marked as "Applicant's Exhibits 1",  
21 "2", "3", the supplements, which are in there, I think it  
22 goes 1 through 9 total, with the supplements and the  
23 volumes of the Application itself. I just physically  
24 cannot remake copies of those for folks who wanted paper

1 copies. So, bring your copies that you received at the  
2 beginning. And, as a practical matter, you will probably  
3 wind up sharing those as well as we go through. I'll have  
4 a copy there of those for anybody that may need to look at  
5 it as we go along.

6 So, it's going to be a lengthy process.  
7 And, as I told the parties at the prehearing conference  
8 yesterday, if you have any questions, give me a call. You  
9 all should have my cellphone. If you don't, you will  
10 before we leave today. I don't know the weather forecast.

11 CHAIRMAN IGNATIUS: Well, let's hold off  
12 on that.

13 MR. IACOPINO: Yes.

14 CHAIRMAN IGNATIUS: Is there an order of  
15 witnesses that have been agreed on?

16 MR. IACOPINO: There is. Yes. There  
17 will be in the -- I may actually have it here. I can at  
18 least give you the first half of it here.

19 The Applicant will start off on Monday  
20 with Mr. Kenworthy. Following Mr. Kenworthy, there will  
21 be a panel consisting of Mr. McCabe, Mr. Segura-Coto, and  
22 Ms. Wright, I think it is. And, they will -- as you know,  
23 Mr. Kenworthy is the Project Manager. The  
24 McCabe/Segura-Coto panel will testify about managerial and

1 technical expertise. We'll then hear from Colin High for  
2 the Applicant, who will testify about air and air quality.

3 There is an issue with the -- the next  
4 panel is Mr. Cofelice and Pasqualini, who will testify  
5 about the financial capabilities of the Applicant.

6 Mr. Pasqualini has a personal appointment that he has to  
7 deal with, and may not be available till Tuesday, if I  
8 have that correct. Follow -- that panel will be followed  
9 by, I forget if he's a Ph.D or not, but Matt Magnusson,  
10 with respect to orderly development of the region and real  
11 estate values. He will be followed by the panel of Mr.  
12 Will and Stevenson, who are the historic sites witnesses.  
13 They will be followed by Butler and Martin, who will talk  
14 about the construction, water quality, and public health  
15 and safety.

16 They will be followed by Mr. Valleau and  
17 Mr. Gravel on natural environment, wetlands, and avian and  
18 bat issues. And, they will be followed by Rob O'Neal, the  
19 Applicant's sound witness. And, then, Mr. Guariglia, we  
20 reserved the time on Friday for visual impact -- visual  
21 impacts.

22 It is also my understanding, and there  
23 was agreement amongst the parties, that after  
24 Mr. Guariglia testifies, Counsel for the Public's witness,

1 Jean Vissering, will testify. She is Counsel for the  
2 Public's witness with respect to that. And, also,  
3 Dr. Kimball from the AMC will testify on that issue. So,  
4 those three witnesses we know won't be until Friday.

5 CHAIRMAN IGNATIUS: So, we might, if we  
6 finish the Applicant's testimony, except for that final,  
7 Mr. Guariglia, we might begin --

8 MR. IACOPINO: Yes.

9 CHAIRMAN IGNATIUS: -- intervenors, then  
10 go back on Friday, go back to him, --

11 MR. IACOPINO: Actually, we will --

12 CHAIRMAN IGNATIUS: -- and take those,  
13 with Vissering and Kimball, all at the same time?

14 MR. IACOPINO: Actually, I thought I  
15 brought it with me, but the order of the parties, I  
16 believe we had next, and correct me if I'm wrong, I  
17 thought we had Counsel for the Public going next in the  
18 presentation of witnesses.

19 MR. ROTH: I think that's correct.

20 MR. IACOPINO: Yes. And, following his  
21 witnesses, on -- following everybody, all the ones we just  
22 went over, except for Mr. Guariglia, would be  
23 Mr. Lloyd-Evans on avian and bird issues, and then  
24 Mr. Tocci on sound issues.

1 MR. ROTH: And, as I mentioned, Mike,  
2 Mr. Lloyd-Evans is not available on Thursday,  
3 unfortunately.

4 MR. IACOPINO: It seems like the day  
5 that it's mostly --

6 MR. ROTH: Would have been most likely  
7 for him. But he just informed me this morning that he  
8 couldn't. He has a board meeting that day.

9 MR. IACOPINO: And, I think I gave my  
10 list on the order to my assistant who came with me  
11 yesterday, so she could get the report typed up.

12 CHAIRMAN IGNATIUS: Does anyone else  
13 recall, after Public Counsel's witnesses, --

14 MR. IACOPINO: No, I have it. I'm  
15 sorry.

16 CHAIRMAN IGNATIUS: Okay. Good.

17 MR. ROTH: I have a note with the order  
18 of presentation. Would you like to look at that?

19 MR. IACOPINO: That's what I have here.

20 MR. ROTH: Okay.

21 MR. IACOPINO: It's the Applicant,  
22 followed by Counsel for the Public, so we've gone through  
23 theirs. The next group for presentation would be the  
24 North Branch Group by Mr. Block. He's their spokesperson.

1 The North Branch Group, he's the individual who called me  
2 today about one of the witnesses, Susan Morse, needing to  
3 testify on Friday as well. But the other -- yesterday,  
4 the order was going to be Mr. and Mrs. Block were going to  
5 testify as a panel, Ms. Voelcker, Mr. Cleland, and Ms. Law  
6 were also going to -- were going to follow them as a  
7 panel, followed by a panel consisting of Susan Morse --  
8 I'm sorry, followed by Susan Morse, followed by Richard  
9 James. And, we have prefiled testimony from all of those,  
10 those folks.

11 There was some question as to whether  
12 the Stoddard Conservation Commission representative,  
13 Geoffrey Jones, would testify at the same time with  
14 Ms. Morse. I don't -- that was not resolved yesterday,  
15 because Mr. Jones couldn't be there. Mr. Block is to  
16 report back to me on that. So, that's the -- and, then,  
17 following the North Branch Group is the Audubon Society,  
18 and they were going to present all of their witnesses as a  
19 panel. That would be Carol Foss. Is it Paul Nickerson?  
20 And Peter Brown. So, they would present one panel.  
21 Followed by the Edwards/Allen panel, which again would be  
22 Mr. Edwards and Ms. Allen together as a panel. Followed  
23 by the Planning Board witnesses, which again was going to  
24 be a panel with Ms. Pinello and Mr. Levesque. Followed by

1 the Antrim Conservation Commission, Peter Beblowski. And,  
2 followed by the Stoddard Conservation Commission. That is  
3 that Mr. Geoffrey Jones. And, as I said before, there may  
4 be some consolidation there.

5 The AMC would be -- I'm sorry, not the  
6 AMC. There's a group, an intervenor's group of the  
7 abutting landowners, of Ms. Longgood, Mr. Craig, and I  
8 forget the other person's name.

9 FROM THE FLOOR: Schaefer.

10 MR. IACOPINO: What is it, I'm sorry?

11 FROM THE FLOOR: Schaefer.

12 MR. IACOPINO: Schaefer, right. They  
13 weren't there, but we're assuming they would testify as a  
14 panel together. Ms. Sullivan was not there either. She  
15 has sent me an e-mail saying she has a very hard time with  
16 her health in that hearing room. She believes that  
17 there's mold in the air conditioning. So, she sent me an  
18 e-mail saying she's willing to come in and answer any  
19 questions. She'd just like to spend as little time in the  
20 building as possible. So, whether there will be any  
21 questions with respect to that, with respect to her, I  
22 suppose it's really -- the parties can determine if they  
23 want to cross-examine her. A couple people did indicate  
24 that they would want to cross-examine her at the hearing

1 yesterday, but I will talk to them about reconsidering  
2 that. Then, we would have the Industrial Wind Action  
3 Group, which is Ms. Linowes. And, that would be the end  
4 of the order of presentation and the manner in which it  
5 would be presented.

6 Again, all of the witnesses that I said  
7 do have prefiled testimony already filed. It's available  
8 to you, it is on the website, if you need to take a look  
9 at it in advance. I also, I sent out, and I took that --  
10 did that handwritten sort of adaptation of the website,  
11 just to point out where the prefiled testimony was, so you  
12 didn't have to go through all, look at every document  
13 that's on there. And, I had emailed that to you all. So,  
14 you have that as well. We will have -- this oral report  
15 that I'm giving you, probably a much more economical way  
16 is in writing, will have all this listed as well. And,  
17 you'll have that probably over the weekend.

18 And, that's what we're looking forward  
19 to.

20 CHAIRMAN IGNATIUS: All right. We begin  
21 at 9:00. I think there's a concern that, we usually run  
22 until 4:00 or 4:30, and that, with so much to do, we're  
23 not going to get there, concluding, even starting at 9:00,  
24 it's going to be too tight. And, I think we've talked



1 about, and I don't know if you've shared with everyone the  
2 possibility of running longer days, until 6:00 or even  
3 7:00, and whether people are able to do that. We wouldn't  
4 do it -- we wouldn't do it Monday. If there's a raging  
5 storm, that wouldn't be a day to run late either, I  
6 recognize. But, to the extent you're able to find other  
7 arrangements for carpooling, you know, commitments you  
8 have after hours, that would be helpful that we not lose  
9 people. Obviously, if somebody's got to go, and they just  
10 can't make other arrangements, there is always the option  
11 that they review the transcript of the section that they  
12 miss, as long as we still maintain a quorum. So, we can't  
13 have everybody leaving. And, it's, obviously, harder, the  
14 more in and out you are, and the consistency of people  
15 there really helps. But I understand that there are just  
16 things you have to do. And, if it's not possible, it's  
17 not possible.

18 Even running late hours, I'm not sure  
19 we'll get there. You know, it remains to be seen how we  
20 go. And, we ought to be thinking about possible further  
21 dates. I think you, Mr. Iacopino, you may have already  
22 shared with people some dates that we had identified on  
23 the Commission calendar that I could make into the next  
24 week of November 5th, 7th, and 8th. I don't know if they

1 work for all of the participants and the Committee  
2 members, but they're possibilities. So, if you haven't  
3 already looked at those, please do. And, after this, get  
4 back in touch with Mr. Iacopino on your availability those  
5 days. If they don't work or if we don't conclude, you  
6 know, we not only have to get through all of the evidence,  
7 we then have to do a public deliberations process. And,  
8 that could easily be a day.

9 MR. IACOPINO: Actually, the last one  
10 was three days.

11 CHAIRMAN IGNATIUS: I don't find that a  
12 helpful comment.

13 MR. IACOPINO: Well, just I don't want  
14 anybody to be, you know, surprised.

15 CHAIRMAN IGNATIUS: All right. So, we  
16 have to also -- we also have to plan dates for public  
17 deliberations.

18 So, take a look at those. Understand  
19 we'll do what we can to move quickly, but we're not going  
20 to rush people. We need the time we need, for the  
21 Committee, for all of the parties, to have a fair  
22 opportunity to question people. And, so, even though I  
23 get impatient and snappy sometimes, I really don't mean to  
24 be rushing people along, and just we're not going to

1 shortcut due process in an effort to get to the end point.  
2 We have to find that right balance of being efficient, and  
3 still give everybody a full opportunity.

4 People should, obviously, bring your  
5 materials. There may be a little shuffling in and out of  
6 exhibits and swapping things out and remarking. But we're  
7 hoping that we don't have to delay the start of the  
8 hearings to do that. So, if you're there a little early,  
9 and you could begin, that's good. And, if you can be  
10 doing that while testimony is going on and still be paying  
11 attention, that's good. We hate to lose an hour while  
12 pipeline shuffle their papers in and out.

13 I think the other big question is the  
14 storm. And, it's still uncertain whether it's -- how hard  
15 it's going to hit us. Clearly, something's coming. There  
16 have been calls going on, the State is underway with its  
17 emergency planning, the Emergency Operations Center is  
18 open, and they have been working the last couple of days  
19 in getting ready for that. And, so, the hope is we plan  
20 to the nth degree and don't have to actually implement any  
21 of those things, because it ends up bypassing us, that's a  
22 good result. I think they're still looking at a couple  
23 different weather tracks that make a big difference on how  
24 hard it's going to hit us. We're going to have rain no

1 matter what. But, that's okay. If the rain is  
2 significant enough, we end up with some flooding issues,  
3 and that will -- can be a problem for travel and for some  
4 of the Committee members who have to deal with State  
5 properties and roads.

6 We may have public utility issues, if  
7 lines are down, both electric lines and telephone lines.  
8 And, that depends a bit on how much of the wind is hitting  
9 us and how much rain falls. I think we don't look at ice  
10 and snow, the tracks are, even though there's a cold front  
11 hitting at the same time, the talk thus far is "it's not  
12 that cold." And, so, even in the North Country, it  
13 shouldn't be a snow event.

14 We'll know more as the weekend goes on  
15 and all the State agencies working on this are going to  
16 continue to meet by phone, and meet with the Governor on  
17 Monday morning. And, so, if we know that it's getting  
18 worse, and the potential for very significant impacts are  
19 coming on us, we're going to want to factor that in to the  
20 scheduling here. The best guess is, if it's really bad,  
21 it's going to be really bad Tuesday, and out of here by  
22 Wednesday. And, whether that means all of Tuesday and  
23 Wednesday would be thrown off, or only one of those days  
24 would be thrown off, it's still a little up in the air.

1                   We've gotten the emergency numbers, cell  
2                   numbers and all for all of the Committee members. If  
3                   there is a decision that the Governor declares a State of  
4                   Emergency, obviously, we will cancel those days of  
5                   hearings and not have people traveling in. And, we will  
6                   call Committee members. We'll have to get contact for the  
7                   parties and have you each fan out to your witnesses to let  
8                   them know.

9                   We will post, to the extent we're able  
10                  to, we will post on our website, the PUC website and the  
11                  SEC website, if the hearings are not going forward that  
12                  day. And, that's useful, as long as you can get  
13                  electricity to get into the website. If anyone has any  
14                  other recommendations on how to communicate, that aren't  
15                  Web-based, I'm happy to hear it. I don't know if there's  
16                  any other suggestions?

17                 MS. LYONS: Can you change the message  
18                 on the answering machine?

19                 MR. SIMPKINS: Yes.

20                 CHAIRMAN IGNATIUS: To put on -- that's  
21                 a good point. If we put at the PUC's main number an  
22                 announcement that the hearing has been delayed, that's a  
23                 very good point. We can do that. And, that number would  
24                 be 271 --

1 MS. BAILEY: 2431.

2 CHAIRMAN IGNATIUS: -- 2431, would be  
3 the number to call. That kicks over to an answering  
4 machine after hours, and, if somebody is not there, if  
5 it's early morning. And, so, we would put a recording on  
6 that. That's a great idea. Thank you, Ms. Lyons.

7 Any other storm-related thoughts anybody  
8 has? Mr. Stewart.

9 DIR. STEWART: Yes. I don't know about  
10 the other Committee members, but I am the Water Division  
11 Director, and these events come with water. If it really  
12 hits, I can pretty much guarantee that I won't be here  
13 next week, because it just becomes all-hands-on-deck.  
14 And, so, we'll see, you know. If it's a glancing glow  
15 blow, there's a decent chance. But, my experience with  
16 these is that it's not the day of the storm, it's the  
17 three or four or five days afterwards where the real  
18 effort is. So, I just want to let everybody know that  
19 that's a possibility.

20 And, I don't know about the other  
21 Committee members and your roles in these.

22 MR. SIMPKINS: Usually, my role is the  
23 same. I'm usually straight out if there's an event --

24 (Court reporter interruption.)

1                   MR. SIMPKINS: I said, my role is the  
2 same within our department as Emergency Management. So,  
3 if it does hit us, that's going to occupy a lot of my  
4 time. But I'll do my best to try to get coverage.

5                   CHAIRMAN IGNATIUS: Yes. I'm in the  
6 same boat. I think the danger is that, we can lose one,  
7 maybe we can lose two, but we can't go below a quorum.  
8 And, so, we'll just have to be in touch with each other.  
9 Obviously, I will find other coverage, and that's the  
10 easiest, probably, of the ones to resolve. So, I'll be  
11 here.

12                   But we'll just have to play it  
13 day-by-day and see where we are. I think the hope is that  
14 all of this is -- turns out to be not really such a big  
15 deal, but we just don't know yet.

16                   So, we should make certain we've got a  
17 list here, why don't we add to it emergency numbers for  
18 the people who are here today, so that we can reach out to  
19 you as well. And, maybe afterwards, we'll divvy up and  
20 work on who calls who so that you're not stuck calling  
21 everybody. I don't know if we have numbers for any of the  
22 other intervenors who are not here.

23                   MR. IACOPINO: They have my number.

24                   CHAIRMAN IGNATIUS: All right. So,

1 maybe we will put out a request that they call you to be  
2 certain what's happening, if it hits at a particularly bad  
3 time and we can't announce that in advance. And, we'll  
4 have Jane Murray put out a notice maybe of all of that, so  
5 that it goes out to everyone equally. And, we appreciate  
6 everyone being flexible about this.

7 Are there any other procedural matters?

8 MS. LYONS: I just have one.

9 CHAIRMAN IGNATIUS: Yes.

10 MS. LYONS: I'm one of the people who  
11 signed up for electronic. Can we make sure there's enough  
12 power available, if we're going to have long days, so we  
13 keep our laptops running?

14 CHAIRMAN IGNATIUS: Yes. We'll work on  
15 that. Where you sit, it's got a plug nearby.

16 MS. LYONS: Right.

17 CHAIRMAN IGNATIUS: Not everything has  
18 got a plug. But --

19 DIR. STEWART: I've been bringing  
20 extension cords.

21 MS. LYONS: Okay.

22 DIR. STEWART: And, I'll bring a little  
23 surge protector.

24 MS. BAILEY: We have that.



1                   MR. IACOPINO: You always go over and  
2 sit on the one side.

3                   DIR. STEWART: Yes, that's right.

4                   MR. IACOPINO: Are there plugs over  
5 there?

6                   DIR. STEWART: There's a plug in back  
7 there.

8                   MR. IACOPINO: If you sit at the front  
9 bench, there's lots of plugs.

10                  DIR. STEWART: Uh-huh.

11                  MR. IACOPINO: The front bench, where  
12 the Committee -- where the Commission usually sits.

13                  CHAIRMAN IGNATIUS: I didn't even know  
14 that.

15                  MR. IACOPINO: Yes.

16                  MR. BOISVERT: Yes.

17                  CHAIRMAN IGNATIUS: Is that true?

18                  MR. BOISVERT: There's even grommet  
19 holes, so you can run your wires down through.

20                  CHAIRMAN IGNATIUS: Okay. Anything  
21 else?

22                  MR. ROTH: If the power is out, if the  
23 roads are passable, we will we be proceeding by  
24 candlelight?

1 MS. BAILEY: Jack-o-lanterns.

2 CHAIRMAN IGNATIUS: That's right. Let's  
3 make it festive. All right.

4 MS. BAILEY: I have a procedural  
5 question. Recently, in the last couple of days, I got an  
6 e-mail with testimony from somebody, it was late-filed, it  
7 was somebody who was motioning for late intervention. Is  
8 that something we have to be prepared to deal with? Is  
9 there any cut-off date to when people can file testimony?

10 MR. IACOPINO: That is a supplemental  
11 filing -- supplemental prefiled testimony of one of the  
12 Audubon witnesses. The determination will be made by the  
13 Chair as to whether or not that prefiled testimony is  
14 accepted. I asked the parties to talk about coming to  
15 some kind of agreement on that issue yesterday. I don't  
16 know if they have yet. But that motion just came in  
17 yesterday. At that point, the parties hadn't even had a  
18 chance to look at it to decide what -- what type of  
19 position they would take. So, I don't -- we won't know  
20 that until Monday. I did ask them to be prepared to tell  
21 us on Monday what --

22 MS. BAILEY: That's okay. Monday is  
23 fine.

24 CHAIRMAN IGNATIUS: All right.

1 MR. IACOPINO: And, again, that would be  
2 they're about fourth or fifth in line in the order of  
3 presentation for that particular party.

4 MS. BAILEY: So, we aren't going there  
5 Monday.

6 MR. IACOPINO: Right.

7 MS. BAILEY: That we do know.

8 CHAIRMAN IGNATIUS: All right. Anything  
9 else? It's -- wow, it's almost 3:15.

10 (Laughter.)

11 MR. BOISVERT: So, when the clock's  
12 right, we get to leave.

13 DIR. STEWART: Three minutes.

14 CHAIRMAN IGNATIUS: All right. Then,  
15 we'll adjourn for today. Thank you again for your  
16 patience and hard work in getting through this. And, we  
17 will see you Monday, at the PUC, 9:00, ready to begin.  
18 Thank you. We're adjourned.

19 (Whereupon the hearing ended at 3:10  
20 p.m.)

21

22

23

24