

[DELIBERATIONS]

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

February 5, 2013 - 9:08 a.m.
Concord, New Hampshire

DAY 1
MORNING SESSION ONLY
DELIBERATIONS

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. (*Deliberations*)

PRESENT:**SITE EVALUATION COMMITTEE:**

Amy Ignatius, Chairman
(*Presiding Officer*)

Public Utilities Commission

Harry T. Stewart, Dir.
Johanna Lyons, Designee
Craig Green, Designee
Brad Simpkins, Dir.
Richard Boisvert, Designee
Brook Dupee, Designee
Kate Bailey, Engineer

DES - Water Division
Dept. of Resources & Econ. Dev.
Dept. of Transportation
DRED - Div. of Forests & Lands
Division of Historic Resources
Dept. of Health & Human Services
Public Utilities Commission

COUNSEL FOR THE COMMITTEE: Michael J. Iacopino, Esq.

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN IGNATIUS: Good morning.

Welcome, everyone. I would like to reopen the proceedings in Docket 2012-01, the Site Evaluation Committee's consideration of the Application of Antrim Wind Energy, LLC, for a Certificate of Site and Facility for a renewable energy facility proposed to be located in Antrim, New Hampshire.

We are at the point now where the evidentiary record is closed, and today, and for as long as it may take this week, we are scheduled to engage in public deliberations of the evidence presented. As you can see, the proceedings are going to be recorded by a court stenographer. And, it's something that's open to the Applicant, the Intervenor, and the members of the public to attend, any members of the press to attend, if there are any, or if they come during the course of our deliberations. But what it is not an opportunity for is discussion from anyone other than Committee members. So, you're welcome to observe, you're welcome to come and go. Our feelings are never hurt if you get up and leave. But it's not a chance for posing questions to the Committee, responding, raising your hand to clarify anything you think that we have misstated. It's really just to

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1 observe, if you choose to.

2 What we will do, starting this morning,
3 is to work our way through the required sections of the
4 statute, the findings that we have to make as a Committee,
5 in order to reach an ultimate decision on the Application.
6 And, so, we're going to go through them in an order that
7 may shift as we go around. It may be that we come back to
8 issues, we may skip ahead to issues, because they're
9 intertwined. As you know, looking at the statute, the
10 evidence doesn't always fall squarely within one item or
11 another. So, there may be a bit of crossover.

12 But, in order to try and keep it as
13 structured, and not end up in kind of a swirl of
14 positions, and then not be certain we ever got to hear
15 from each other on each issue, we are going to try to
16 break it up. And, we've asked individual members of the
17 Committee to take the lead in summarizing and discussing
18 the case that was presented on each of these issues. Who
19 was assigned what doesn't mean anything. They maybe have
20 a point of view or not have a point of view. Many
21 Committee members may not know where they ultimately come
22 down on certain issues, because that's the point of public
23 deliberations, to be able to explore it, to share ideas,
24 to hear each other's thinking. And, you should not assume

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1 that people are coming in with a decision already made on
2 the issue that they're covering, on any other issue. And,
3 absolutely, you should know that we have not discussed it.
4 There's been no group deliberations. There's been no
5 group e-mails summarizing our point of view or sharing
6 where we're coming out or our interpretation of any of it.
7 We do it publicly starting today.

8 I will, just for the sake of the record,
9 ask all of the Committee members to identify themselves.
10 We don't need to take appearances, because it's not an
11 evidentiary day. But, for the record, why don't we do
12 that. My name is Amy Ignatius. I'm Chairman of the
13 Public Utilities Commission, and because of that, by
14 statute, also serve as the Presiding Officer over this
15 Subcommittee.

16 And, why don't we turn to Mr. Stewart
17 please.

18 DIR. STEWART: I'm Harry Stewart,
19 Director of the Water Division, Department of
20 Environmental Services.

21 MS. LYONS: Johanna Lyons, with the
22 Department of Resources and Economic Development.

23 DIR. SIMPKINS: I'm Brad Simpkins,
24 Department of Resources and Economic Development.

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1 MS. BAILEY: Kate Bailey, New Hampshire
2 Public Utilities Commission.

3 MR. DUPEE: Brook Dupee, Department of
4 Health and Human Services.

5 MR. GREEN: Craig Green, New Hampshire
6 Department of Transportation.

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

9 CHAIRMAN IGNATIUS: Thank you. Also
10 with us is Michael Iacopino, Counsel to the Committee.
11 And, one of our members was due to be here this morning,
12 and his wife was taken ill during the night. And, so,
13 he's not able to be here, Mr. Robinson. Hopefully, he
14 will be here, I don't know, later today, tomorrow, but he
15 had to take her to the hospital. So, hopefully,
16 everything is not going to be complicated for him.

17 I think, then, Mr. Iacopino, unless
18 there's anything else we need to take up before we begin
19 our first topic, is there anything?

20 MR. IACOPINO: I don't believe there's
21 anything, other than to get down to deliberations.

22 CHAIRMAN IGNATIUS: There's got to be
23 something we can do to put it off?

24 MR. IACOPINO: I'm sure there probably

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1 is, but I think that -- I guess, does any member of the
2 Committee feel that they don't have at their -- close
3 enough to them or at their fingertips any particular part
4 of the record that they may need during the deliberations
5 today? Before we began, I tried to see if everybody was
6 settled. If, at any point, you need anything, just feel
7 free to just ask me to find it for you, I'll do the best
8 that I can. Just let me know if you need it on paper or
9 electronically.

10 And, also, madam Chair, to the extent
11 that the Committee has a legal question that it seeks
12 counsel from me on, the Committee does have the
13 opportunity to go into executive session with counsel
14 privately. Of course, you can't deliberate in there, but
15 you can address legal issues with counsel.

16 CHAIRMAN IGNATIUS: All right. Thank
17 you. And, I think, for Committee members, we need to be
18 orderly for the sake of the court reporter and not cut
19 each other off, in the same way as with the testimony
20 phase, but don't feel you need to ask permission for a
21 follow-up question or, you know, just raise your hand, and
22 I'll try to recognize people and have as much give and
23 take. This really should be as much real sharing of
24 questions and information and posing of concerns or what

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1 gave you comfort on particular issues as we go through,
2 without too much worry about who has the floor, as long as
3 we can make sure the court reporter is getting it.

4 So, the first area that we want to take
5 up is the status of the various permits that are required
6 for the Project. As you know, it's not just the ultimate
7 certificate for this Project that we issue, but there's
8 multiple permits that are required. And, we've asked
9 Mr. Simpkins to take the lead in summarizing what's
10 required and the status of those permits. Mr. Simpkins.

11 DIR. SIMPKINS: Great. Thank you.
12 Before I get into permits, just one thing I wanted to
13 state for the record. I did miss a few hours on the
14 afternoon of November 1st and about thirty minutes on the
15 morning of November 2nd. And, I have gone back and read
16 those transcripts. I just wanted to get that in the
17 record.

18 CHAIRMAN IGNATIUS: Thank you.

19 DIR. SIMPKINS: So, I'll go over the
20 state permits. There were a number of state permits
21 required and agency reviews. I'll go over the list of all
22 the ones found, and then we'll kind of go through each
23 one, as far as the status.

24 There was a Wetlands Permit required by

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1 Department of Environmental Services; an Alteration of
2 Terrain Permit filed by -- or, from the Department of
3 Environmental Services; a Section 401 Water Quality
4 Certification Request, also through DES; an Individual
5 Sewage Disposal System requested through DES; a Blasting
6 Permit to be required by the Department of Safety;
7 Driveway Permits by Department of Transportation. There
8 was a review by the Natural Heritage Bureau within the
9 Department of Resources and Economic Development. There
10 was a review by the State Fire Marshal and the Department
11 of Safety. There was a review by the Department of Fish &
12 Game. There was consultation with the Department of
13 Cultural Resources/Division of Historical Resources.
14 There was also talk of a Permit to Move a Load in Excess
15 of Legal Limit that would have to be issued by Department
16 of Transportation. Those are primarily the state
17 permits/agency reviews.

18 Then, there was one federal. The
19 Federal Aviation Administration, regarding determination
20 of hazards to aviation and turbine lighting.

21 So, those were kind of the list of the
22 different permits and agency reviews. And, so, I'll kind
23 of go through each one, as far as the status. I'm not
24 going to mention every bit of testimony and every exhibit

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1 that was associated with those, because that will take a
2 long time, but I'll give a brief summary.

3 So, the first one is the Wetlands
4 Permit. And, the Application for a Wetlands Permit was
5 filed with DES on January 26th, 2012. And, that's Exhibit
6 AWE 2, Appendix 2A. And, a copy of that Application is
7 included with the Application for a Certificate of Site
8 and Facility. There was a -- there was a supplement filed
9 for that Wetlands Permits on August 6, 2012. That's
10 Exhibit AWE 6. And, that was for the purposes of the
11 laydown yard.

12 There are several -- several letters
13 that are of record regarding these, regarding this
14 Wetlands Permit. DES deemed the Application complete in a
15 letter dated February 22nd, 2012, which is Exhibit
16 Committee 2. There was a review letter by the U.S. Army
17 Corps of Engineer on March 5th, 2012, indicating this
18 Project would require a permit from them, the Water
19 Quality Certification. That's Exhibit Committee 4. DES
20 issued a Permit Review Status Update on May 23rd, that's
21 Exhibit Committee 6, indicating a final decision of the
22 issue by September 6. In that progress report, there are
23 a number of additional data requirements that were
24 requested.

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1 On August 31st, 2012, and this is
2 Exhibit Committee 12, after considering the Application,
3 DES did issue its final decision and recommended approval
4 of the Application, with numerous conditions. DES did
5 find that the Project would be a "major project", as
6 defined by their administrative rules, and there were 15
7 conditions that accompanied that permit. Again, that's
8 Exhibit Committee 12.

9 They also determined that there were not
10 many jurisdictional areas within the Project vicinity, and
11 the Project did not affect the wetland areas considered to
12 be of special value from a local, regional or state
13 perspective. So, that is the Wetlands Permit.

14 Next, I'll talk briefly about the
15 Alteration of Terrain Permit. Again, that was also filed
16 the end of January. In that permit, they proposed that
17 they would be disturbing approximately 60.8 acres of land
18 during the construction of the Project. A copy of this,
19 the Permit Application is filed again in the Application.
20 The Application was revised on August 30th, 2012, to
21 include an additional radar tower. That's for the
22 radar-activated lighting system. They would need to have
23 a -- I believe it's a 90-foot tower to put the radar on
24 top of. So, they had to modify their Alteration of

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1 Terrain Permit.

2 Again, in the letter of August 31st,
3 2012, the DES did issue an Alteration of Terrain final
4 decision, recommending approval of the revised
5 Applications, again, with conditions. There were 24
6 conditions listed under the Alteration of Terrain Permit.
7 That did include permit conditions from the Watershed
8 Management Bureau to satisfy the 401 Water Quality
9 Certification concerns that I mentioned earlier from the
10 U.S. Army Corps of Engineers. It also included
11 recommendations from the Drinking Water and Groundwater
12 Bureau to satisfy concerns regarding the blasting of ledge
13 and monitoring of Best Management Practices.

14 Some of the conditions, there were
15 several conditions, just a few to mention. It does
16 require the Applicant to employ an environmental monitor
17 to inspect the site during the activities causing the
18 alteration of terrain. They have to occur at least once a
19 week and under certain storm conditions. They have to
20 develop a Construction BMP Inspection and Maintenance
21 Plan; a turbidity sampling plan; a monitoring plan; spill
22 prevention; etcetera. As I mentioned, there's 24
23 different conditions that are part of that Alteration of
24 Terrain Permit.

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1 The third permit from the Department of
2 Environmental Services was the Individual Sewage Disposal
3 System from the Subsurface. And, this was for a -- to
4 approve a septic system that could accommodate 300 gallons
5 per day. That also was approved in the letter from DES on
6 August 31st, 2012, Exhibit Committee 12. That one had
7 two, two conditions attached to it.

8 So, those are the permits required at
9 the Department of Environmental Services. They have all
10 been approved based on a number of conditions that are
11 required to be followed.

12 Another permit that was required is the
13 Driveway Permit from the Department of Transportation.
14 The Applicant did file a Driveway Permit with the
15 Department of Transportation on January 26, 2012. That's
16 Exhibit AWE 2, Appendix 2D. This is for construction of a
17 permitted driveway off of Route 9, to get into and out of
18 the Project site. On September 4th, 2012, this is Exhibit
19 Committee 14, DOT did approve the Driveway Permit. And,
20 because of the heavy loads that this driveway will be
21 supporting, there were several conditions regarding the
22 construction of that driveway. Also, on September 4th,
23 another application was filed with the Department of
24 Transportation for a temporary access for construction.

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1 And, that's AWE 9, Appendix 2D. I have not found a
2 response in the record from DOT regarding that temporary
3 road. So, I believe that one is still under review.

4 There were a number of other State
5 Agency reports. Some of these I'm sure we'll get into
6 much more discussion during other parts of the
7 deliberation. One of those -- one of those reviews was by
8 the State Fire Marshal. There is a -- there is a exhibit,
9 it's Committee 1 in the record. On February 21st, 2012,
10 the state Fire Marshal did file a letter with the
11 Committee requesting conditions of any certificate to
12 follow the following codes: The International Building
13 Code, 2009 Edition; NFPA 1, Fire Code, 2009 Edition; NFPA
14 101, Life Safety Code, 2009 Edition; and NFPA 850,
15 Recommended Practice for Fire Protection for Electric
16 Generating Plants and High Voltage Direct Current
17 Converter Stations, 2010 Edition.

18 The Fire Marshal also seeks conditions
19 allowing review of final plans and compliance inspections.
20 And, again, that's Exhibit Committee 1. So, that's an
21 Agency review.

22 There was also Agency review from the
23 New Hampshire Natural Heritage Bureau within the Division
24 of Forests and Lands, Department of Resources and Economic

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1 Development. There are several exhibits within the record
2 regarding NHB. There was a letter that was sent back on
3 August 3rd, 2011 to the consultant for the Applicant,
4 regarding what type of plants they should be on the
5 lookout for in that area. The Natural Heritage Bureau did
6 visit the site on December 13th, 2011. On July 2nd of
7 2012, the Natural Heritage Bureau issued a letter
8 indicating a request for a second site visit during the
9 growing season. And, that's Exhibit Committee 7. They
10 did conduct that site visit on July 13th, 2012, and issued
11 a letter to the SEC on August 2nd, 2012, and that's
12 Exhibit Committee 10, indicating no rare plant species
13 were found, and determined it was unlikely that the
14 Project would impact rare plants or exemplary natural
15 communities.

16 Another Agency review was through the
17 New Hampshire Fish & Game Department. And, that was
18 primarily for the evaluation of the Avian and Bat
19 Protection Plan. That's Committee 16 exhibit. However, I
20 believe we're going to discuss those specifics in more
21 detail a little bit later. That was also an Agency
22 review.

23 Another Agency review was the New
24 Hampshire Division of Historical Resources. Again,

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1 there's a number of exhibits within the record regarding
2 this, but -- and we're going to be discussing this more in
3 depth a little bit later, but just to summarize. The
4 Applicant did have a Phase 1A study conducted by
5 archeologists, after consultation with the Division of
6 Historic Resources and Army Corps of Engineer in the
7 Summer of 2011. A Phase 1B Archeological Walkover Survey
8 was conducted during November of 2011. And, then, the
9 results of these two things were combined in a Phase 1
10 Report and was filed with the Division of Historic
11 Resources in December 2011. And, that's Exhibit AWE 3,
12 Appendix 9B. That report indicated that the Project will
13 not adversely impact any known archeological sites. On
14 January 6, 2012, Historical Resources submitted a letter
15 to the Applicant, it's Exhibit AWE 3, Appendix 9C,
16 indicating concurrence that no known such -- no known such
17 archeological sites are known in the Project area and no
18 further studies are recommended.

19 There were also requests to Historical
20 Resources regarding National Register eligibility. Those
21 are Exhibits Committee 5 and 9. On August 30th, 2012,
22 Historical Resources sent a letter to the SEC regarding
23 Section 106 of the National Historic Preservation Act, and
24 again concluded that there are no known properties of

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1 archeological significance. That's Exhibit Committee 11.
2 The letter does request a few things of the SEC, such as
3 imposing a condition that requires, if any such
4 archeological resources are discovered or affected as a
5 result of project planning, that the Division of
6 Historical Resources is to be consulted on the need for
7 appropriate evaluative studies, determinations of National
8 Register eligibility, and mitigative measures. Also, if
9 any plans change, the Division of Historic Resources must
10 be consulted.

11 That letter also indicated that review
12 of the aboveground resources was not finalized, and
13 requested a second condition of the SEC be a completion of
14 the Section 106 process. And, again, I believe we're
15 going to be discussing that more in-depth in a little bit.

16 I also mentioned two other permits that
17 are listed in the record. One is a Permit to Move a Load
18 in Excess of Legal Limit and the blasting permits. Those
19 are not gotten at this time. They will need to be gotten
20 in the future, at the appropriate point in time when they
21 have to move turbines and those types of things.

22 There was one federal permit or review.

23 CHAIRMAN IGNATIUS: Mr. Simpkins, before
24 you go on?

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1 DIR. SIMPKINS: Yes, I'm sorry. Uh-huh.

2 CHAIRMAN IGNATIUS: I guess we can do it
3 either way. We can come back to go through your full
4 list, and then come back to some questions, or break it
5 up. Do you care?

6 DIR. SIMPKINS: The FAA was pretty much
7 the last one. I was just going to be finishing up on that
8 pretty much.

9 CHAIRMAN IGNATIUS: Why don't you finish
10 that then.

11 DIR. SIMPKINS: Okay.

12 CHAIRMAN IGNATIUS: Thank you.

13 DIR. SIMPKINS: So, as far as the
14 federal agencies, there was a review by the Federal
15 Aviation Administration, which is charged with aviation
16 safety. And, there is a letter from the FAA, that's
17 Exhibit AWE 2, Appendix 2E, on November 8, 2011,
18 indicating that the structures would have no substantial
19 adverse effect on navigable airspace and no hazard exists.
20 Each of the turbines was evaluated individually. There
21 are conditions in that letter that the structures must be
22 marked, all of them, with white paint, and most of them
23 also have synchronized red lights as a requirement by the
24 FAA letter.

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1 There was further testimony, and there
2 is an agreement in the record, AMC-5, where the Applicant
3 and the Appalachian Mountain Club have agreed to the use
4 of radar-activated lighting to reduce nighttime light
5 intrusion, once the FAA approves that lighting. At this
6 time, that lighting is still not approved. But there has
7 been an agreement made to use that, once it becomes
8 available and legal to use. And, I believe we'll discuss
9 that more when we get into aesthetics.

10 So, that's a summary of the different
11 State Agency permits and reviews, and the one Federal
12 Agency review.

13 CHAIRMAN IGNATIUS: Thank you. That was
14 extremely thorough and organized. That's very helpful. I
15 wanted to ask if you're aware, and do you recall from the
16 evidence, I don't, on blasting? Is there -- the reason
17 nothing is yet obtained is because what -- what is
18 required before you get to that final approval for a
19 blasting plan, do you remember?

20 DIR. SIMPKINS: Well, I found a couple
21 different things about blasting. There were some blasting
22 BMPs as part of the DES permit, and those conditions are
23 in the DES permit. However, it's mentioned that there is
24 a blasting permit that will be required by the Department

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1 of Safety. But I didn't really find a lot of other
2 information about it. I believe that would be primarily
3 the contractor who's actually going to be doing the
4 blasting, that would probably be something they would have
5 to do at that time, once they know the details. But there
6 are some blasting BMPs within the DES permits.

7 CHAIRMAN IGNATIUS: And, on the request
8 to move load over a certain threshold limit, is that
9 something that can only be defined when you get close to
10 the actual transport, and that's why it's not done in
11 advance? Or, do you recall any reason why it's not done
12 now?

13 DIR. SIMPKINS: Yes. I believe that's
14 going to be when the trucking company is identified,
15 that's something that they would have to get. It does --
16 I can see if I can find, I do remember reading that, it
17 did talk about when that would be gotten. But that is
18 something that would not be gotten quite yet.

19 CHAIRMAN IGNATIUS: All right. And, if
20 the Committee's interests were to do so, it could
21 obviously condition any ultimate certificate on obtaining
22 and having those two final permits in place, before,
23 obviously, before blasting or moving or construction were
24 to begin, correct?

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1 DIR. SIMPKINS: Yes.

2 CHAIRMAN IGNATIUS: Do others have any
3 questions, clarifying questions, on any of those permits
4 or any response? Anything else that you want to add?

5 DIR. SIMPKINS: I did find the section
6 on the Permit to Move a Load in Excess of Legal Limits,
7 that's in Exhibit AWE 1, Page 14. And, it says: "An
8 Application for a "Special Permit to Move a Load in Excess
9 of Legal Limit" will be submitted to the New Hampshire
10 Department of Transportation by the trucking contractor
11 who will be responsible for transporting the turbine
12 equipment and other oversized loads. The trucking
13 contractor will be chosen once all project permits are
14 issued, all commercial agreements are finalized, and
15 turbine equipment ordered."

16 CHAIRMAN IGNATIUS: Thank you. I'm
17 going to ask Attorney Iacopino to help us think through a
18 little bit about the status of each of these requirements,
19 and those that are completed, those that are not yet
20 obtained, and how we fit that all into our discussions and
21 decisions we have to make.

22 MR. IACOPINO: Thank you, madam Chair.
23 There's really two legal issues that generally come to
24 play with respect to the state permits. The first is RSA

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1 162-H, Section 16, I, which requires the Committee to
2 "incorporate into any certificate of site and facility the
3 terms and conditions specified to the Committee by any of
4 the other State agencies having jurisdiction, under state
5 or federal law, to regulate any aspect of the construction
6 or operation of the facility; provided, however, that the
7 Committee", you all, "shall not issue any certificate...if
8 any of the other State agencies denies authorization for
9 the proposed activity over which it has jurisdiction."

10 Now, generally, what this means, that if
11 you vote to grant a Certificate of Site and Facility, you
12 are going to have to include the conditions specified by
13 the State agencies who have actual jurisdiction to
14 regulate. So, that's the first issue. And, so,
15 ultimately, when you consider whether or not to grant the
16 Certificate in this particular docket, you will also, in
17 order to do so, you will have to incorporate in that
18 Certificate the conditions from the agencies that have
19 jurisdiction.

20 All of the State agencies that were
21 referenced by Mr. Simpkins do not have technically
22 jurisdiction to grant or deny a certificate. Some of them
23 are just it's their area of regulation, it's their area of
24 concern, and they provide reports to us. The DES permits,

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1 the Department of Transportation permits, are all
2 necessary permits, they are permits of a State agency
3 having jurisdiction to regulate.

4 For instance, the Fish & Game advice
5 given to us, there is no permit that Fish & Game issues or
6 authorizes, at least that I have seen in this particular
7 docket, so that is not something that the Committee needs
8 to adopt under the law. It's up to your discretion
9 whether or not to adopt any recommendations made by an
10 agency who has given us advice, but does not have
11 jurisdiction to regulate. So, that's the first thing.

12 The second thing, the second area where
13 State agencies come into play oftentimes with the Site
14 Evaluation Committee is you do have the -- you have the
15 authority to delegate the monitoring of certain activities
16 to a State agency who has jurisdiction over them. And, in
17 the past, this Committee has, in fact, done that. So that
18 that is -- I believe that might come into play, if you all
19 think it does, with respect to the two transportation
20 permits that were not actually filed with this particular
21 -- with this particular docket. They were mentioned,
22 there was reference that they would have to be applied for
23 in the future. You have the authority to delegate to, I
24 believe it's the Department of Transportation on that one

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1 as well, the authority to monitor and require such
2 conditions or methodologies as the Department of
3 Transportation in its expertise may require of, for
4 instance, the overload permit.

5 So, that's sort of how the RSA 162-H
6 wraps these state permits into your authority and into
7 your consideration here. I hope I was clear with that.
8 So, it's basically three issues: One, is if there is a
9 condition from an agency with jurisdiction to regulate;
10 number two, is -- well, it's not really a separate issue,
11 but those agencies should be differentiated from an agency
12 that might not have jurisdiction to regulate, but
13 otherwise provides you with advice; and, number three, you
14 can, in fact, delegate to State agencies the authority to
15 monitor and permit activities as construction or operation
16 of the facility progresses.

17 CHAIRMAN IGNATIUS: And, you had said
18 that -- made a reference to the "two DOT permits not yet
19 submitted". Can you -- you described one was the
20 overweight limit one. What was the other one you're
21 referring to?

22 DIR. SIMPKINS: The second one was a
23 temporary application or a application for a temporary
24 construction access off of Route 9, that was filed on

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1 September 4th, but I could not find a response yet by
2 Department of Transportation. So, I believe that one is
3 still under review.

4 CHAIRMAN IGNATIUS: Okay. Thank you.
5 So, it sounds like there's a -- the blasting permit is
6 something with Safety, Department of Safety, that still
7 has to be developed; the final word from the Federal
8 Aviation Administration regarding the use of the radar;
9 the two DOTs that we just talked about.

10 And, is there anything further from the
11 U.S. Fish & Wildlife that needs to be received? Again,
12 Mr. Iacopino, am I right that that's an entity that gives
13 guidance, but doesn't -- it's not being -- there is no
14 permit that we're awaiting, no official "yes" or "no" from
15 U.S. Fish & Wildlife?

16 MR. IACOPINO: In this record, and I
17 can't pinpoint it right now, but there is a reference that
18 the U.S. Fish & Wildlife has recommended to the Applicant
19 that they obtain a take permit for I forget which species
20 it was, one of the eagle species. It's not a requirement
21 of the U.S. Fish & Game, and, obviously, the Applicant,
22 you know, acts at its peril if it chooses not to. But
23 that is in the record. I will try to find that. I
24 believe it might be in the Applicant's actual exhibits.

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1 CHAIRMAN IGNATIUS: But there's nothing
2 that we must await a determination from U.S. Fish &
3 Wildlife in this case?

4 MR. IACOPINO: I do not believe so. I
5 have not been notified of anything. And, though, I do
6 know that they have provided guidance, I don't believe
7 that there's any particular permit that is required.

8 CHAIRMAN IGNATIUS: Thank you.
9 Dr. Boisvert.

10 MR. BOISVERT: Perhaps I'm preempting
11 you, but there's also a Army Corps of Engineers permit
12 that needs final approval. And, there's outstanding
13 issues there regarding aboveground historic resources.

14 CHAIRMAN IGNATIUS: Can you, to the
15 extent that you have further detail that you can
16 recollect, refresh us on that?

17 MR. BOISVERT: Well, that will come
18 under the historic resources that we'll discuss later.

19 CHAIRMAN IGNATIUS: Okay.

20 MR. BOISVERT: But it's an ongoing
21 process, and there are outstanding documents that the
22 Division of Historic Resources requires.

23 CHAIRMAN IGNATIUS: All right. We'll
24 come back to that then. Thank you very much. So, it

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1 sounds like we're going to be hearing more when we get to
2 the other -- some of the other categories, on Fish &
3 Game's review regarding the avian and bat protection; on
4 the cultural/historic resources that Dr. Boisvert just
5 mentioned; on the lighting, tower lighting issues. I
6 believe those are the ones I marked off as more to -- that
7 we need to discuss, but will probably make more sense to
8 talk about in the context of those substantive areas later
9 today or tomorrow.

10 Are there any other questions or
11 additional items that anyone is recollecting that we need
12 to put on the table? Yes, Mr. Stewart.

13 DIR. STEWART: Just I think, for the
14 record, the DES permits that were discussed are within the
15 Water Division, and these are -- the review stops at the
16 Assistant Director level, so I have no involvement with
17 those permits. I find the conditions to be quite
18 thorough, and particularly the requirements for monitoring
19 during construction I think are very important.

20 With regard to the blasting conditions,
21 the Department of Safety permit is generally related to
22 safety issues. We put conditions in our permits, where
23 blasting is involved, to address environmental concerns
24 that can arise if blasting isn't done properly. So that

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1 we anticipate that those won't conflict when DOS puts
2 their permit out, assuming they do.

3 And, finally, in terms of delegation,
4 typically, for the Alteration of Terrain, the Wetlands,
5 and the Subsurface System, the delegation would be to DES,
6 as -- so we would handle those in accordance with the way
7 we handle any other project.

8 CHAIRMAN IGNATIUS: Thank you for that.

9 MR. IACOPINO: Madam Chair, the
10 reference that I mentioned with respect to U.S. Fish &
11 Wildlife is Exhibit 43. It is the e-mail to Dana Valleau,
12 from Sarah Nystrom, Northern States' Bald and Golden Eagle
13 Coordinator. And, the take permit that they recommend,
14 I'll read the sentence: "The Service generally recommends
15 that projects with a risk assessment in the "moderate"
16 category pursue a take permit under the Bald and Golden
17 Eagle Protection Act." And, it points out that that
18 permit process is voluntary and at the discretion of the
19 developer.

20 CHAIRMAN IGNATIUS: That was Exhibit
21 what?

22 MR. IACOPINO: Forty-three, four three.

23 MS. BAILEY: AWE?

24 MR. IACOPINO: AWE 43, I'm sorry.

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1 CHAIRMAN IGNATIUS: All right. Anything
2 else anyone wants to add to the list?

3 MS. BAILEY: Can I just -- so, do they
4 have to have a -- do they have to have a permit from U.S.
5 Fish & Wildlife or is this e-mail just advice to them
6 saying "you should think about getting a permit for the
7 Bald and Golden Eagle Protection Act"? That's all they
8 need?

9 MR. IACOPINO: It's a recommendation
10 from U.S. Fish & Wildlife.

11 MS. BAILEY: So, there's no other permit
12 that they need?

13 (Atty. Iacopino shaking head in the
14 negative.)

15 MS. BAILEY: Okay.

16 CHAIRMAN IGNATIUS: All right. If
17 there's nothing else, I think we have an outstanding list
18 to work off of, and a handful that we're going to be
19 discussing, continue to discuss. So, I don't think
20 there's anything to take even a straw vote on. Our plan
21 is, with each of these subjects, to take kind of a
22 nonbinding straw vote, just to see where the Committee
23 comes out, as we go through issue by issue.

24 But, in terms of sort of updating on

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1 status, I don't see it really something for us to be
2 voting on, other than to accept the extremely thorough
3 presentation from Mr. Simpkins with our gratitude.

4 The next issue then to take up is to
5 discuss available alternatives. There's a provision in
6 the Site Evaluation Committee statute, that's 162-H:16,
7 IV, that says: "The Site Evaluation Committee, after
8 having considered available alternatives and fully
9 reviewed the environmental impact of the site or route,
10 and other relevant factors bearing on whether the
11 objectives of this chapter would be best served by the
12 issuance of the certificate, must find that the site and
13 facility", and then works through the "financial,
14 technical, managerial capability" that we'll be discussing
15 later, "not interfere with the orderly development of the
16 region", we'll be discussing separately, and no
17 "unreasonable adverse effect on aesthetics, historic
18 sites, air and water quality,...environment, and public
19 health and safety", all of which we will be going through
20 methodically.

21 So, this is really just the precursor
22 to, you know, the set up to this Section IV, that says
23 "the Committee, after having considered available
24 alternatives." And, so, I'm going to ask Mr. Green, if

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1 you can summarize where we stand with evidence on that
2 please.

3 MR. GREEN: Okay. Thank you. Under RSA
4 162-H:16, IV, requires the Committee to consider available
5 alternatives. Under the Application, Eolian Renewable
6 Energy stated that they used a multiple criteria
7 evaluation model for the site suitability. There are
8 actually ten criteria that they use. The first one was
9 competitive wind resources. The energy potential of the
10 wind is unevenly distributed across the landscape, a
11 strong correlation between the elevation and the strength
12 of wind. Higher elevations experience stronger winds
13 compared to lowlands. Site also depends on speed
14 stability and consistency, wind direction and orientation
15 of the relevant land form for the prevailing wind. That's
16 stated on Page 47 of AWE 1.

17 AWE monitored the site with a 60-meter
18 meteorological tower, and they have done that since 2009.
19 They have evaluated wind resources using remote sensing.
20 They have performed analysis of the site found to have an
21 adequate wind resource. Other wind resource
22 characteristics are well suited for generating the wind
23 energy in this particular area. And, this was again on
24 Page 47.

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1 The second criteria was environmental
2 appropriateness, where they looked to site the facility to
3 minimize incremental impacts to sensitive environmental
4 resources. That's shown on Page 48. In the Application,
5 they stated that there were no conservation restrictions
6 on the site. There are no known critical habitats or
7 endangered species. At the time, they had 0.92 acres of
8 wetland impacts. And, the site would be located between
9 1,042 and 1,904 feet above sea level, which eliminates
10 impacts to high elevation alpine habitat.

11 Continuing on with Criteria Number 3
12 that they used, the "Compatibility with existing land
13 uses". The land is used as woodlots and open space.
14 That's discussed on Page 48 of AWE 1. The northern slope
15 of Tuttle Hill had been heavily logged. Landowners who
16 have leased the property are free -- are going to be free
17 to manage the bulk as they do today. And, that there is
18 substantial public support via third party opinion polls
19 and recent town votes. And, that's according to them in
20 their AWE 1, Page 48.

21 There also has to be -- the fourth
22 criteria had to do with the grid-interconnection. There
23 needed to be a reasonable proximity to electrical
24 infrastructure and existing infrastructure needs to be

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1 capable of receiving the new generation. This location
2 has both of those. It's within a half a mile. And,
3 again, that's on Page 48 of AWE 1.

4 Accessibility to needs -- accessibility
5 was the fifth criteria, and that needs to be located --
6 the site needs to be located within close proximity to
7 transportation infrastructure. And, they are located
8 adjacent to New Hampshire 9. That's on Page 49.

9 Adequate setbacks from residences and
10 recreational resources. They want to avoid -- they want
11 the site to avoid potential public health and safety
12 risks. We'll be talking about that later on. But, in
13 their Application, AWE 1, Page 49, they noted that the
14 closest non-participating residence is at 2,800 feet, and
15 that there are no known -- there are no public
16 recreational facilities within 1,000 feet of the site.

17 Criteria Number 7 they used dealt with
18 the distance from the roads. The site needs to have a
19 safety setback to public roads and rights-of-way. New
20 Hampshire 9 is more than 3,000 feet away, and there are
21 two private roads that are more than 2,800 feet away.
22 And, that's on Page 49 of AWE 1.

23 Criteria 8, they want to be compatible
24 -- the site has to be compatible to local, regional, and

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1 state long-range planning goals. There has to be a need
2 to focus on energy and land use. And, that was -- this
3 was discussed on Page 49, as well as Appendix 15, Page
4 IV-11, and Appendix 16, Page 79. And, that they talk
5 about the Antrim Master Plan speaks to need for renewable
6 energy. Calls for the Planning Board and the Planning
7 Department to encourage renewable energy.

8 Point 2 addresses the Southwest Regional
9 Planning concern for the impact of the region, because of
10 the lack of renewable energy and alternatives and energy
11 costs.

12 And, Point 3, the state planning and
13 zoning laws require planning regulations and zoning
14 ordinances encourage the installation of renewable energy.

15 Criteria Number 9, the site has to be
16 available -- has the availability of privately owned
17 lands. The site needs to require the use of privately
18 owned land and landowners take an active interest in the
19 development of their land for renewable energy purposes.
20 This is stated on Page 49 of AWE 1. AWE has a threshold
21 -- or, a leasehold interest on approximately 1,850 acres.
22 That's shown on Page 49. The leases have an initial term
23 of 25 years, with an option to extend 25 years. And,
24 that's on Page 50.

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1 And, finally, Criteria Number 10,
2 cultural resources: The site must avoid negative impacts
3 to historic resources to the greatest extent possible.
4 And, that's on Page 50. And, they note that all
5 components sited do not cause any adverse direct effects
6 on Precontact or historical archaeological or
7 architectural resources.

8 So, those were the criteria that they
9 used to site the location. They did look at four
10 alternative analyses or did four alternative analyses. I
11 guess the one thing I do want to mention is that, under
12 AWE 1, Application, Page 47, the result of their siting
13 criteria process, the Applicant considered potential sites
14 in Marlow and in Stoddard. And, they found that the
15 Marlow site was less -- site to be less suitable than the
16 Antrim site because of extensive wetlands and considerable
17 distance to transmission resources. The Stoddard site was
18 determined to be less suitable than the Antrim due to the
19 extensive conservation easements and access issues.

20 So, they did consider different
21 site-specific design configurations to take into account
22 the road and installation of foundations and the erection
23 of turbines and other site infrastructure.

24 Alternative 1 was they had proposed

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1 initially a larger project size. They had initially
2 designed for a layout of 11 turbines. They eliminated
3 Turbine 11 to the south, on the flank of Willard Mountain,
4 due to the wind resource suitability, engineering
5 constraints, and impacts. They proposed providing a more
6 compact footprint and maintain a greater distance to
7 Willard Pond.

8 Alternative 2 was to look at different
9 access routes to the site. One of the access routes from
10 New Hampshire 9 was further west, at the junction of
11 private -- of a private road named "Russell Road". They
12 eliminated this particular alternative due to legal issues
13 around the property ownership. And, this is on Page 50
14 and 51 of AWE 1.

15 Another alternative had access from the
16 south using town roads. Would have required transport of
17 heavy machinery closer to a residential area and town
18 recreational resources, such as Gregg Lake. And, that's
19 why they eliminated that particular one. And, that's on
20 Page 51. The final design route was selected because of
21 the shortest acceptable routes that minimized impacts to
22 the site.

23 Alternative 3, they looked at different
24 turbine models, Page 51. They looked at efficient,

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1 reliable -- they looked for a turbine that would be
2 efficient, reliable, cost-effective, looked at transport
3 specifications, construction requirements, spacing
4 constraints, and overall suitability for the site. They
5 assumed in the study that they would use an Acciona
6 AW-116/3-megawatt turbine, also known as "AW-116/3000",
7 with a turbine height, from foundation to blade tip, of
8 492 feet. On that particular issue, and we will be
9 discussing it later, there were questions that came out
10 during some of the testimony during the days. There was a
11 question "if the turbine had gone through the design
12 certification process?" And, it had gone through the
13 design certification process by a third party, and covered
14 the sort of engineering for that particular turbine group.

15 If I get into too many details here, if
16 you want me to hold up, then you need to let me know.

17 CHAIRMAN IGNATIUS: Well, it's really
18 helpful to hear that, and then also understand that we're
19 going to get into the substance of those --

20 MR. GREEN: Okay.

21 CHAIRMAN IGNATIUS: -- controversies,
22 when we get to it. But, as part of -- it really is in two
23 camps at once.

24 MR. GREEN: Yes.

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1 CHAIRMAN IGNATIUS: So, what you're
2 doing is very helpful. To just remind the Committee
3 members, what we're going to discuss in a moment is "has
4 the Applicant given us adequate alternatives to consider?"
5 As opposed to debating each of the issues within each of
6 those that we're going to be talking about, in the context
7 of environmental impacts or wildlife or historic resources
8 or whatever.

9 MR. GREEN: Okay.

10 CHAIRMAN IGNATIUS: So, this is very
11 good. Thank you.

12 MR. GREEN: Okay. Thank you.
13 Continuing on with the turbine model, they did note during
14 the Day 2 that there would be a type certification done by
15 a third party. And, at this point in time, the AW-3000
16 machine, that type certification is underway. I don't
17 know if it's been completed or not. It's also, according
18 to Sally Wright, who was the -- during her testimony,
19 Page 160 on Day 2, "It's very common right now that a
20 turbine manufacturer expands an evolutionary process from
21 an existing design, and that was the case" in that
22 particular one.

23 She also mentioned that her firm "is the
24 agency that is certifying the Acciona-116/3-megawatt

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1 turbine to a standard of the IEC 61400-1. That is the
2 "International Electrotechnical Commission". That's the
3 standard that modern turbines are designed to." And,
4 that's on Page 161 of Day 2 of Sally Wright.

5 The fourth alternative that was looked
6 at by the developer was alternative plant layouts, and
7 that was on Page 51. This again was just described.
8 There was several access road layouts. There were ten --
9 they said that they looked at ten different turbine
10 layouts. They noted that they had looked at three
11 different locations for the electrical substation and the
12 maintenance building. The final location of the operation
13 and maintenance building was going to be based on
14 minimizing wetland impacts and maximizing construction
15 efficiency. The collector system for the power they
16 indicated was going to be located underground, as opposed
17 to aboveground, to minimize the visual impacts and
18 potential risks to avian and bat species. And, that's on
19 Page 51 of their Application.

20 That really is a summary of their
21 alternatives that they looked at. I did note, when I went
22 through some of the memorandums, the post hearing
23 memorandums, I don't know if you want me to talk about
24 those at this point or do we want to wait?

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1 CHAIRMAN IGNATIUS: If there's anything
2 that particularly struck you, an argument you found
3 persuasive or not persuasive that you want to note for the
4 Committee, that would be fine.

5 MR. GREEN: Okay. I guess I'll go
6 through it. And, if you think I'm going in the wrong
7 direction, just halt me.

8 Some of the concerns expressed, the
9 Audubon Society was concerned that the access road or the
10 proposed access road would go through an area of glacial
11 boulders and boulder fields. And, these were considered
12 to be valuable features of the landscape and unique
13 wildlife habitat. And, that's on Page 19 of the post
14 hearing memorandum. And, then called for re-routing the
15 road to avoid all effect on glacial boulders. And, that
16 was on Page 25 of the post hearing memorandum. These are
17 just some of the concerns that were expressed. Though,
18 I'm not giving all of them for sure.

19 Robert Edwards and Mary Allen, in their
20 closing memorandum, were concerned that there were no
21 alternative options of possible road placement
22 alternatives, alternative turbine heights or sizing, or
23 alternative turbine placements. And, they asked that
24 consideration be given to eliminate Turbines 9 and 10,

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1 which were the most prominent to Willard Pond, Bald
2 Mountain, and Goodhue Hill. And, that's on Page 14 of
3 their closing memorandum. It would also ask that the use
4 of smaller turbines be considered. They felt that the
5 proposed turbines would overwhelm the ridgeline in the
6 scale of the landscape. And, that's on Page 14 as well.
7 And, they also asked for the size of the clearing be
8 reduced, and to reduce the size of the cuts-and-fills, and
9 eliminate turbines in areas where visibility could be
10 high. And, they also asked for revegetation of the
11 cut-and-fill slopes using indigenous species.

12 The Conservation Commission, in their
13 final brief of 1/14/13, on Page 6 of 17, they asked or
14 they say -- the Stoddard Conservation Commission, I want
15 to make sure I said that, this is from the Stoddard
16 Conservation Commission.

17 CHAIRMAN IGNATIUS: Thank you.

18 MR. GREEN: They asked that Towers 9 and
19 10 be removed. They asked that the -- they asked to
20 strengthen the proposed conservation protection of this
21 area by expanding the proposed conservation easements.
22 And, they asked for strengthening conservation easements
23 prohibiting any development, residential or otherwise.

24 The Antrim Conservation Commission, in

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1 closing, in their closing memorandum, are concerned that
2 the Applicant provided unconvincing testimony in the
3 consideration of alternatives for the design of the road,
4 the turbine placement and height. They did not provide
5 comparison tables, drawings, engineering plans, or other
6 graphics, and didn't really give any reason why the
7 alternatives considered were inappropriate. They also
8 noted that, during the testimony on Day 4 of Butler and
9 Martin, Page 67 and 68, the consultants did not consider
10 alternatives in their reports. The recommendation of the
11 Antrim Conservation Commission asked that Turbines 9 and
12 10 be eliminated. They ask that they reduce -- to reduce
13 the height of the remaining eight towers. And, they asked
14 to provide screening and plantings to shield the roadway
15 and the turbine pads.

16 The AMC, in their post hearing brief,
17 they were concerned with the height of the turbines and
18 the visual effect, mostly due to the lighting, and they
19 asked for the use of radar-activated lighting.

20 And, finally, New Hampshire Fish & Game,
21 Day 3 of the hearing of the merits, on the afternoon,
22 Page 106, the testimony of Valteau, it was stated that
23 they had asked to avoid tree clearing until August 1st, in
24 order to avoid impacting nesting birds. They asked for a

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1 natural revegetation of the road-clearing. And, they also
2 said that this Project is sited, that it is close to the
3 existing transmission line, which can tap into without any
4 additional impact to transmission construction, and other
5 than the tie-in, which is essentially a tap into the line.
6 It's close to State Route 9, so it doesn't need a lot of
7 infrastructure outside of the footprint developed, and the
8 road length is only 4 miles for the ten turbines, which is
9 relatively a short piece of road for that many turbines.
10 So, it was thought that this site was actually well-suited
11 for this particular development, turbine farm.

12 That's all I have. Thank you.

13 CHAIRMAN IGNATIUS: Thank you very much.
14 Extremely helpful. And, some of those issues, they're
15 good reminders of things that we're going to get into in
16 far greater detail when we grapple with the substance of
17 the issues. Here, we're right now only thinking about
18 "Have alternatives been presented to the Committee?" Has
19 there been an adequate presentation by the Applicant to
20 satisfy that term that alternatives be presented to us and
21 that we have the opportunity to review them before we make
22 all of those next findings that we're going to be
23 discussing over a number of hours today.

24 Do the Committee members have any

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1 reactions to that question? Ms. Lyons.

2 MS. LYONS: I'm not sure that we've
3 considered all the alternatives. I find this document to
4 be very inward-looking, once the site was picked. Then,
5 we were fooling around at the margins. And, I have no
6 relationship to the larger community or the region. So, I
7 just felt as though we were kind of like dropped on the
8 site, and, you know, then made to fool around with the
9 small details.

10 CHAIRMAN IGNATIUS: So, are you feeling
11 -- is this partly a frustration with the statute or is it
12 more frustration with the materials that were presented by
13 the Applicant?

14 MS. LYONS: I think it's partly with
15 materials that were presented. As I said, it just became
16 "Here's the site, and it was developed through a model",
17 which may be proprietary. But I don't even have any
18 relationship to other sites that were evaluated through
19 this model. So, I just don't know how it really fits into
20 the alternative development.

21 CHAIRMAN IGNATIUS: All right. Others
22 with reactions either to that or to other issues on the
23 issue of "alternatives"? This is one of the harder ones
24 to grapple with, I have to say. Because we are required

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1 to study the alternatives that the Applicant presents, and
2 any of the arguments that intervenors make on that issue.
3 At the same time, we're not put in the position of being
4 the developer and deciding "if I were to develop a wind
5 facility, where would I put it?" And, so, we're kind of
6 in between those two roles. And, it's, I think, one of
7 the more difficult determinations to make because of that.

8 MS. LYONS: I also found that there were
9 no maps provided. So, to have -- to show the site
10 alternatives for access routes or project size or layout.
11 So, it was hard to really evaluate those proposals,
12 because we didn't have a visual representation of that.

13 And, I will also found that the
14 alternatives that they presented were really not
15 alternatives, they were just evaluation statements of
16 where they came. There was never a alternative that was
17 wrapped in of all the issues over the time. It was not a
18 reasonable range of alternatives. It was just more of an
19 evaluation of each individual section that they were
20 looking at.

21 I do alternative development for a
22 living. I'm a planning specialist. And, usually have the
23 "no effect", you know, to "full build-out". And, I didn't
24 see that as a range of alternatives, other than like they

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1 were just asked to look at individual evaluations. I
2 don't really think there was a full alternative
3 development.

4 MR. IACOPINO: You mean "no build"?

5 MS. LYONS: Right.

6 MR. IACOPINO: "No build" alternative to
7 "full build-out"?

8 MS. LYONS: Yes.

9 CHAIRMAN IGNATIUS: Thank you. Yes, Ms.
10 Bailey.

11 MS. BAILEY: Perhaps this is a question
12 for Mr. Iacopino. In evaluating the statute, could you
13 tell us what exactly the statute says. And, then, I don't
14 know if this is appropriate or not, but could you discuss
15 what kind of evidence the Committee has considered from
16 prior proceedings to decide whether the Applicant has met
17 the statutory requirement?

18 MR. IACOPINO: Sure. The statute
19 requires that the Committee move on to considering the
20 impacts of the proposed project, after having considered
21 available alternatives. It does not require the Committee
22 to consider every alternative. It only requires the
23 Committee to consider available alternatives. In past
24 dockets, that has been interpreted by the Committee to

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1 require the Applicant to provide to the Committee a range
2 of the available alternatives that it considered to its
3 present Project, to the Project that it's proposed. And,
4 essentially, the Committee considers what those
5 alternatives were, considers if they were satisfactory.
6 And, then, you know, I guess the distinction has been made
7 that the Committee does not feel, in prior decisions, the
8 Committee has made the distinction that it cannot go out
9 and say "okay, you know, this other ridge over here would
10 be a better alternative." The Committee has also said
11 that it does not make an alternatives analysis based upon
12 "well, would a wood burner plant be a better alternative
13 than, you know, a fuel selection?" So, those are
14 decisions that the Committee has made in prior -- in prior
15 dockets on applications.

16 So, in general, it's been "has there
17 been" -- "has the Applicant satisfied us that they have
18 considered suitable alternatives?" And, you know, I'll
19 leave it to you to decide, obviously, because it's your
20 role to decide whether or not the Applicant has provided
21 you with available alternatives here. If you like, I can
22 take a minute and find relevant passages from prior orders
23 with respect to available alternatives, if reading those
24 would be helpful to the Committee. And, of course, madam

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1 Chair, if that is, the Committee can take a break at any
2 time, if they want to sit down and look over what the
3 specific findings have been in prior dockets. That's
4 certainly something that you can do as part of your
5 deliberations.

6 CHAIRMAN IGNATIUS: All right. Let's
7 keep talking a bit, and then we may come back to that on
8 whether that would be helpful. Mr. Dupee.

9 MR. DUPEE: Thank you, madam Chair.
10 And, thank you for the remainder to use the microphone.
11 In looking through the list of AWE siting criteria, and I
12 note, when I compared that list to the statutory
13 requirement we have, one of the requirements we have to
14 deal with is "will not have an unreasonable adverse effect
15 on aesthetics, historic sites, air and water quality, the
16 natural environment, and public health and safety." I
17 wasn't able to discern, and maybe someone saw it and I
18 didn't, as to where the siting criteria addressed the
19 issue of aesthetics.

20 CHAIRMAN IGNATIUS: Mr. Green, did you,
21 when you were going through the things that the Applicant
22 had laid out for the criteria it used, was aesthetics and
23 the impact on aesthetics one of the ones that they
24 addressed?

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1 MR. GREEN: I thought that maybe during
2 the testimony some of that came out, as far as the visual
3 effects on the -- from the site. I don't recall
4 specifics, I guess.

5 CHAIRMAN IGNATIUS: Yes. And, I think I
6 remember you saying earlier this morning that, from the
7 Applicant's point of view, and this may or may not be a
8 satisfactory conclusion that any of us would draw, but,
9 from the Applicant's point of view, by going to places
10 that did not have sensitive lands or recreational
11 facilities or something, there was some sort of language
12 like that from the Applicant's point of view, directed
13 areas to place turbines and places not to include
14 turbines. Is that a fair recollection?

15 MR. GREEN: Right. Yes.

16 CHAIRMAN IGNATIUS: And, I think my
17 sense from Ms. Lyons is that "well, that's fine to say,
18 but what does that really mean? I mean, is there a plan
19 we can see that shows another way of routing the towers
20 that were really considered or a different number or a
21 different height, that sort of thing, that would really
22 evaluate the impact to be able to compare one against the
23 other?" Real data to compare them, those sort of
24 conclusions?

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1 MS. LYONS: That's true.

2 CHAIRMAN IGNATIUS: Okay. Okay. There
3 is one other piece of this that we did see, "we" being
4 those who were part of the first proceeding here, and
5 there was reference to it on and off, but much less so,
6 and that was before the Committee even took jurisdiction
7 and was debating whether that was appropriate, having been
8 requested to look at that. There was a different
9 configuration of towers, different height, different
10 number of towers total, that had been presented to us at
11 the time, and even that was somewhat evolving. Because,
12 when it was still before the municipal officials, before
13 the Committee took jurisdiction, the size of the Project
14 and the actual location was still under development and
15 was not fixed at that point. So, there were some
16 alternative concepts that involved a lesser number of
17 turbines and involved smaller turbines, smaller generation
18 capability and smaller size.

19 But, when it finally came before the
20 Committee in this docket, the 2012 docket, once we had
21 formally taken jurisdiction, the final development of the
22 plan was -- the final proposal was for larger turbines,
23 larger number of turbines, and greater capacity.

24 So, in a sense, those were some further

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1 alternatives that were being considered by the Applicant,
2 I think, as they were developing a proposal, although it
3 never quite came to us to vote on those in a formal sense.

4 It seems to me some of the alternatives
5 that were presented, I guess I take it pretty much at face
6 value and don't find a need for more detail. Things like
7 the further away you get from the electrical
8 infrastructure, the less attractive those become, because
9 then they would require both expense and disruption of
10 construction to be able to interconnect. And, so,
11 although we didn't see engineering and financial work-ups
12 on proposals that involved going to Marlow and to other --
13 what was the other?

14 MS. BAILEY: Stoddard.

15 MR. IACOPINO: Stoddard.

16 CHAIRMAN IGNATIUS: Thank you, Stoddard.

17 I guess I wasn't troubled by that, because it seemed
18 fairly logical that the further away you get from
19 available infrastructure, the increasingly less viable a
20 project becomes. In my mind, I see that a little
21 different from, when you sort of close in now, are you
22 going to have Turbines 9 and 10 there or not? Are you
23 going to, you know, have them in the configuration they're
24 in or a kind of variant, shifting them slightly? Those, I

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1 think, are closer to what -- that your comments, Ms.
2 Lyons, resonate on those issues to me more than on some of
3 those alternatives that seem fairly straightforward
4 reasons to say "We looked at it. It just wasn't going to
5 work for us."

6 MS. LYONS: That's correct.

7 CHAIRMAN IGNATIUS: Other reactions,
8 comments, thoughts on the alternatives issue? Because I
9 think what I'd like to do is either move to a sort of
10 straw vote on whether you feel the Applicant has provided
11 adequate alternatives for your consideration or to ask if
12 you want to look back at other prior cases to see what
13 language was used there. My recollection is, there's
14 nothing real extensive on alternatives, but I may be
15 forgetting something. Ms. Bailey.

16 MS. BAILEY: I think of the standard as
17 "did the Applicant consider other alternatives?" There's
18 evidence that says they did. If the standard really is
19 "did they look for a better place than where they
20 ultimately sited it, so that they could compare the two
21 and show us that this one was the best, but this other
22 alternative was possible?" They didn't give us evidence
23 on that, but I'm not sure that that's required. And, I'd
24 like some help from, I guess, from Mr. Iacopino on that.

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1 And, I don't know if we need to go off record or if he can
2 say that.

3 CHAIRMAN IGNATIUS: Mr. Iacopino,
4 anything you can help us with on that?

5 MR. IACOPINO: I'm working on -- I'm
6 working on finding the language for you.

7 MS. BAILEY: Thank you.

8 MR. IACOPINO: That's been used in
9 other --

10 CHAIRMAN IGNATIUS: We're close to a
11 time for a break anyway for the court reporter. So, why
12 don't we use that, instead of making everyone wait while
13 we look for things. Take a break until, it's now 20 after
14 10, let's say until 10:40, and reconvene at 10:40. Thank
15 you.

16 (Recess taken at 10:20 a.m. and the
17 hearing reconvened at 10:40 a.m.)

18 CHAIRMAN IGNATIUS: All right. We are
19 back on the record. Attorney Iacopino was going to look
20 through some prior orders for any additional examples in
21 other cases of how this issue of alternatives had been
22 addressed. So, you found some prior order materials to
23 share with us?

24 MR. IACOPINO: Yes, madam Chair. And,

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1 if those of you who are electronically turned on, I would
2 refer you to, first, to the decision in the Laidlaw/Berlin
3 BioPower, it's Site Evaluation Committee Docket 2009-02,
4 on Page 36, there is a lengthy discussion of consideration
5 of alternatives for that wood burning plant. Now, it's
6 not the same type of plant that you're considering here,
7 but some of this language is instructive. I'm not going
8 to read every word of it, but I will read some selected
9 portions. The section begins on Page 36 to state: "Under
10 RSA 162-H:16, IV, the Subcommittee should consider
11 "available alternatives" in deciding whether the
12 objectives of this statute would be best served by the
13 issuance of a certificate." I'm going to exclude the
14 internal quotations. "The term "available alternatives"
15 is not defined by the statute. Historically, the
16 Committee considered alternatives presented by the
17 Applicant." This decision then quotes the decision in
18 Granite Reliable Power, Docket Number 200804 -- 2008-04,
19 where the Committee stated: "The Site Evaluation
20 Committee usually considers the evidence of alternatives
21 presented by an applicant. The Committee also considers
22 any other evidence in the record pertaining to alternative
23 sites."

24 In the Laidlaw docket, the Committee

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1 went on to say that, "in the past, the Committee has
2 considered other locations for the facility, technologies
3 used by the facility, and other alternatives to the size
4 of the facility." Then, again, references the Groton
5 Wind, and says, "For example, in evaluating an application
6 for a certificate for a wind turbine facility, the
7 Committee considered the Applicant's site selection and
8 possibility of approving a smaller size project with fewer
9 turbines. In a decision pertaining to the issuance of a
10 certificate for a gas compression unit, the Committee
11 considered alternative sites, routes of pipeline approach,
12 and operation methods", and then cites to the Tennessee
13 Gas Pipeline docket, 2008-02.

14 In this, in the Berlin docket, Berlin
15 BioPower docket, what the Committee ultimately did was
16 rejected one of the intervenor's considerations -- one of
17 the intervenor's arguments that we had to consider
18 competing facilities, facilities competing in the market
19 against each other or scheduled to be built and would
20 compete against each other. The Committee rejected that
21 notion. And, what they actually did was they went on to
22 review what the Laidlaw/Berlin BioPower folks had
23 submitted. And, this is typical in virtually every
24 Application. There's a paragraph that begins: "In its

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1 Application, the Applicant stated that, while selecting
2 the site for the construction of the facility, it
3 considered the following factors", and, in the
4 Laidlaw/Berlin Power, "whether the site had an existing
5 infrastructure, proximity to fuel suppliers, accessibility
6 to truck routes and/or rail lines for delivery of fuel,
7 proximity to transmission lines, electrical
8 interconnections, water supply and delivery systems,
9 wastewater treatment infrastructure and treatment
10 capacity, and a local workforce with skills necessary to
11 operate the generating facility." And, the Committee then
12 went on to assess the various details of the alternatives
13 that had been presented by the Applicant.

14 Similarly, in our most recent full
15 decision on an Application, in Groton Wind, the Committee
16 wrote: "Historically, the Committee considers
17 alternatives presented by the Applicant", and then quotes
18 the same portion of the Groton Wind site, saying that "the
19 Site Evaluation Committee normally considers evidence of
20 alternatives presented by the Applicant, the Committee
21 also considers any other evidence in the record pertaining
22 to alternative sites. Accordingly, the Applicant
23 explained its alternative analysis, which included
24 different site locations, different size of the Project,

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1 interconnection alternatives, different turbine types, and
2 different road configurations."

3 And, one other note is that, later on in
4 the Groton Wind decision the Committee notes "rejects
5 arguments that would require consideration of the entire
6 universe of energy facilities, rather than available
7 alternatives, and does not require the Subcommittee" --
8 "and the statute does not require the Subcommittee to
9 consider every possible alternative, including ones that
10 may be unavailable to the Applicant."

11 So, that's what's been written by the
12 Site Evaluation Committee in its recent decisions on
13 applications. And, if you have further questions, I don't
14 -- I want to refrain from doing anything that smacks of
15 deliberation, because that's your job. But those are the
16 prior orders that are available to you to use as an
17 administrative regulatory agency to determine what this
18 undefined term means. That's the way it's been dealt with
19 in the past by the agency.

20 CHAIRMAN IGNATIUS: And, let me add one
21 thing, as someone who participated in a number of the
22 cases that were cited, though not all of them. The
23 evidence that has been presented in dockets past has been,
24 I think, similar to the sorts of evidence that was

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1 presented in this case. The specifics are different and
2 the circumstances of each case are their own. But, for
3 example, we have not, in the past, seen a financial
4 work-up that would price out a project that is located a
5 number of miles, you know, to the east of where it's been
6 proposed or what the visual impacts would be if it were
7 cited in a different location or a different height.
8 There's been -- it's been more of the sort of description
9 of alternatives and why one is considered better or worse,
10 rather than the sort of data-driven, fully engineered or
11 fully financially developed proposal. So, and that
12 doesn't mean necessarily that what has been submitted here
13 is to everyone's liking, and that's a vote that we can
14 take, that we will take.

15 But, for those who haven't participated
16 in one of these before, I don't want you to assume that
17 it's always been done at a greater level of detail and
18 somebody dropped the ball this time and did it
19 differently. I think the kind of information that's been
20 presented has been -- is similar to the kind of
21 information presented in years past.

22 But we are empowered to make the
23 decision we think is right. And, if we think that that's
24 the way it should be for the -- make changes for the

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1 future and want to see something different, don't find
2 that what was presented was appropriate, that's within our
3 right to say, as long as I just want people to understand
4 kind of the context that this grows out of.

5 Other discussion? Ms. Bailey.

6 MS. BAILEY: I had a chance to look at
7 the statute. And, it looks to me like this is sort of a
8 threshold issue that we make a finding on sort of at the
9 end of all of our deliberations, because it says "the Site
10 Evaluation Committee, after having considered available
11 alternatives and fully reviewed the environmental
12 impact...and other relevant factors...must find that the
13 site and facility: The Applicant has the adequate
14 financial, technical", all the things we're going to get
15 to later.

16 So, I think, in our deliberations, we
17 may talk about whether Turbines 9 and 10 should be
18 eliminated, and that's going to be considering available
19 alternatives in part. So, maybe this isn't the way you've
20 done it in the past, and tell me if I'm wrong, but I think
21 that that determination, of whether we've considered
22 available alternatives has been done, should come at the
23 very end.

24 CHAIRMAN IGNATIUS: I think that's fine.

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1 I don't think we have to do it as a threshold. It is a
2 slightly different question, though, of "did the Applicant
3 meet its obligation to present alternatives for us to
4 consider?" Than what the specific alternatives are and
5 the impact of each of those that we're going to get into
6 on those items that we're about to launch into.

7 But, if people would prefer to put
8 further discussion of the alternatives off for the time
9 being and come back to that, that's perfectly fine. Is
10 that everyone's preference? Ms. Lyons.

11 MS. LYONS: I agree that we're going to
12 be getting into some of these nuts and bolts. But it's --
13 I see this as an opportunity that would have been a good
14 summary of what we're looking at, as we open up the
15 Application. "Here's what we" -- "how we got to the point
16 that we are. Here's our preferred alternative. And, this
17 is the reason why." And, I don't have that kind of
18 summary statement to start off with here.

19 CHAIRMAN IGNATIUS: All right. Well,
20 then, why don't we -- I think this has been really helpful
21 to bring to the forefront the issues that we really do now
22 have to start grappling with on the substance. And, so,
23 Mr. Green, your description of it was really great,
24 because it not only identified how the alternatives were

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1 presented by the Company, but also the issues that each of
2 those substantive areas raised and controversial matters
3 among parties that we really do now have to take on. So,
4 I appreciate it.

5 Why don't we move then to the next
6 category, which is determination of the Applicant's
7 financial, managerial, and technical capability. And, I
8 am the lead person on that.

9 So, I will describe to you what the
10 evidence is to support, the requested findings of those
11 things. And, I'm going to break them apart, into the
12 "technical and managerial" on one side, and then
13 "financial" as a separate category, although they somewhat
14 cross over.

15 If you recall, Antrim Wind Energy is a
16 creation that's a mixture of Eolian Antrim, which is a
17 part of Eolian Renewable Energy, and Westerly Antrim,
18 which is a part of Westerly Wind, and its parent company
19 is U.S. Renewables. The two partners that come together
20 to sponsor this Project, in general, I think it's fair to
21 say the Eolian side is there on the Project development
22 and management side of it, and the Westerly Wind side is
23 more of a private equity firm investor in it and also
24 assisting in the development of the Project. Both

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1 entities literally built in with the management team of
2 Antrim Wind Energy.

3 And, then, in addition to the people who
4 are direct employees of either of those two entities, you
5 have the consulting experience that has been brought in
6 for development of the Project, and some expertise to be
7 brought in during the operations of the Project. On the
8 development side, there's CP Energy, and remember Mr.
9 Pasqualini, of CP Energy, providing assistance in the
10 development and financing alternatives.

11 On the operations, once constructed,
12 Acciona would enter into a services agreement to support
13 the operations, provide its own direct employees on-site,
14 as well as Antrim Wind Energy employees would be there,
15 and the back-up support of Acciona, housed out of both
16 support operations in Iowa, I believe, and in Chicago.
17 And, they would also bring with it all of the automated
18 remote monitoring, so that, during periods of time when
19 staff is not there after hours and over weekends, the
20 monitoring continues, and systems in place that, if
21 there's any anomaly in the data being produced, for some
22 reason, if it's not being conveyed, the system shuts down
23 in order to figure out what's going wrong.

24 So, you have, really, a combination of

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1 direct experience of the officers and employees of Antrim
2 Wind Energy and their parents that come together for this
3 Project, and the expertise of the Acciona folks who have
4 said that they would enter into a service agreement once
5 construction has taken place.

6 What we were also told, however, is
7 there is no agreement now in place. That it's standard to
8 do it. It would be anywhere from five years, possibly
9 renewed to be longer. And, Mr. Segura-Coto had said that
10 he thought a 15-year term was possible to provide that
11 kind of support. Who exactly would do what and under what
12 terms, the answers were fairly general, and stated that it
13 hadn't yet been negotiated, and questions on what other
14 ones look like, I think the response was "well, that's
15 difficult to discuss, because those are often
16 proprietary." And, so, there wasn't a lot of clarity
17 about who exactly would be operating which functions in
18 the ongoing operations, other than it's fairly standard in
19 the industry to have that sort of an O&M agreement,
20 support services agreements in various ways, and that
21 Acciona does that with a number of projects that it has
22 been a vendor on.

23 In terms of the direct employees and
24 officers of the entities that come together for this

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1 Project, on the Eolian side, Mr. Kenworthy is the primary
2 person that we heard from. And, you will recall he comes
3 to this with about ten years of involvement with
4 renewables, and with looking for development
5 opportunities, there are projects in Vermont and Maine
6 under development, as well as the Antrim proposal. There
7 are some others that are not as far along that are also
8 under consideration by the Company, maybe they're not yet
9 pending with applications in two other locations, if I'm
10 correct, another one in Maine and one in Pennsylvania.
11 And, the prior experience before that for Mr. Kenworthy
12 was a very small tower in the Bahamas that he was a part
13 of when he first went down there after college. He never
14 has claimed that that very tiny tower somehow is the
15 equivalent of this Project. Some have criticized to say
16 "well, if that's all you've built, then that's, you know,
17 that's -- you're just not ready for this yet." And, he
18 said "well, I've never suggested that those things are
19 equivalent." But that, over the course of those ten
20 years, he's been involved in a lot of other project
21 development, not specifically turbines, until recently,
22 with these in the development stage, but other projects
23 that required complex organization, financing. And, the
24 Deloitte report that the Public Counsel presented made

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1 note of that, and said "here's somebody who's obviously
2 shown some success, from a kind of entrepreneurial
3 perspective, of gathering the right people together to
4 make some things happen."

5 Other experience, on the technical and
6 managerial side, brought to Antrim Wind Energy, from the
7 Applicant's testimony, include Mr. McCabe, who is a part
8 of the Westerly Wind operation. He comes in with many
9 years, about ten years in the power industry, and recently
10 more focused on wind and other renewables, a more
11 extensive background in this field perhaps than Mr.
12 Kenworthy has had. And, he's been part of the day-to-day
13 development team and development of what's appropriate for
14 the support and management of the Project once
15 constructed.

16 In addition, Mr. Cofelice, as part of
17 the Westerly Wind side, he comes to this point with 15
18 years with the American National Power Company, lots of
19 project development, had been a president of Catamount
20 Energy, where Mr. McCabe also worked, and developed and
21 financed a number of wind projects. If I have this right,
22 Catamount I think has been responsible for over
23 500 megawatts of renewable projects, and, in fact,
24 preferably wind projects. So, even more extensive

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1 experience with wind development there, and also
2 considerable financial development side of it that we'll
3 get to in a little bit.

4 So, those are the main players that are
5 direct officers and principles within the two groups that
6 come together for Antrim Wind. On the experience side of
7 the consultants brought in, we know that Acciona, as I
8 mentioned, will bring some support. Ms. Wright was
9 brought in, replacing Ms. Crivella in her testimony, and
10 she, an engineer, if you recall, who testified to the wind
11 industry trends that she was seeing, her understanding of
12 operations at these sorts of facilities, and helping to
13 guide in the development and sort of help put the package
14 together. She would not maintain a relationship with the
15 Project, she wouldn't be part of the ongoing operations.
16 And, so, her role I think was really just in the
17 development of an application and in helping the Company
18 to make a sound proposal.

19 On technical issues, I think the open
20 questions that other parties raised concerns about, first,
21 "is this" -- "are the people involved adequately
22 experienced to be able to take on something as large as
23 this Project?" Another issue is, "are the facilities that
24 they intend to erect adequately tested and proven to be

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1 reliable?" And, that's the issue of the Acciona tower,
2 this 3000/116 model that is not yet commercially
3 operational. We heard that this new turbine has been
4 operating as a prototype in a couple of locations, in
5 order to really sort of test it out in the field. There
6 have been single turbines erected, two in Spain and one in
7 the United States, to be running really as a prototype.
8 And, then, they're on order for some other projects and
9 will be, if all of those go as hoped, will become
10 commercially operational fairly soon. But there is no
11 wind facility, you know, of numerous turbines of this
12 particular model to be able to turn to. There's no track
13 record to be able to say, you know, "how has it played out
14 over the last year or two or five years?" Because it's
15 just not yet at that stage. We have heard that there's
16 ten ordered for a project in Nova Scotia, so that there
17 will be -- there should be some real operational history
18 soon, but there is not yet.

19 The Company's response to that, the
20 Applicant's response is, "well, the fact that lenders are
21 showing interest in developing these and financing the use
22 of these tells you that the financial community finds that
23 they're sound and ready to be put into operation. And,
24 so, that should be adequate to rely on them. And, Ms.

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1 Wright said "well, part of what always goes on is you have
2 things that are considered "not proven", but that doesn't
3 mean that they're untested or unsafe, that they go through
4 many, many periods of operational cycles before they're
5 considered to be "proven", but they're still financed,
6 they're still operational, they're still sound.

7 The Applicant also says "we're the ones
8 taking the risk here. If these don't produced as
9 promised, that falls to us and not to anyone else. And,
10 if we're willing to take that risk and find that it's
11 appropriate, that shouldn't -- you know, that should be
12 adequate assurance." They will all come with a warranty,
13 Acciona points out, and that that's further demonstration
14 that they will be commercially viable, even though there
15 isn't a current track record right now.

16 One of the intervenors, the North Branch
17 Group, said that a sign of technical and managerial
18 concern and lack of capability is that the Project has not
19 been smooth through the community, that there have been a
20 lot of changes in what is being asked for, the explanation
21 of things have shifted from time to time, the Project
22 layout was smaller and kept changing, and that the Project
23 has only grown in size, and yet, to their view, the
24 management wasn't competent to handle the smaller project,

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1 there's no reason to think that it should be capable of
2 managing a larger project, and should not be given a
3 certificate for that reason.

4 The Industrial Wind Action Group also
5 took issue with technical and managerial experience. Said
6 that, although Ms. Wright had found the capabilities to be
7 there, that should be discounted because she was working
8 as a consultant for the Applicant, and similar with the
9 reassurances given by Mr. McCabe. She -- IWAG noted that
10 Mr. Segura-Coto had provided certain credentials that
11 Acciona would bring to the table, but that doesn't mean
12 that it brings any credentials to AWE itself. And,
13 because contracts aren't in place yet, there's really no
14 evidence to be able to conclude that there's technical or
15 managerial experience here.

16 The Edwards and Allen Group found that
17 there was some direct experience in wind energy
18 development, but fairly limited in the actual operations,
19 specifically, this one very small turbine in the Caribbean
20 ten years ago, and didn't find that there had been
21 adequate demonstration to meet the requirements of the
22 statute of technical and managerial competence.

23 The Deloitte report submitted by Public
24 Counsel, I think I mentioned, concluded that the

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1 management team did have direct experience in wind energy
2 development and did not take issue with that aspect of the
3 Application. Counsel for the Public did actually go
4 beyond what the Deloitte report had said on this issue,
5 argued that the Applicant has not demonstrated technical
6 or managerial capability. And, as a basis for that, he
7 points to the things that haven't been submitted; that
8 there is no O&M contract, there's no construction
9 contractor selected and a contract for that construction,
10 no mock-up draft agreements, nothing that identifies
11 individual terms, just the explanation that there's more
12 yet to come, and that, when financing is in place, all of
13 those things will still be developed and submitted. And,
14 he compares it to some other dockets that, although not
15 every piece was in place and signed off, there were more
16 items that were finalized or there were draft documents
17 that had not reached full execution, but were getting
18 closer and closer. And that, in this case, there's
19 neither the finalized documents, nor the draft, you know,
20 standards that are getting close to what a file document
21 might appear to be.

22 And, in his view, that was leaving too
23 much to be conditioned. It was not appropriate under the
24 statute to just say "well, it, you know, could be

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1 approved, provided you get us all those things before
2 you're at a final point of construction." That that was
3 really putting too much on the condition side, and that,
4 in his view, the Applicant had not demonstrated adequate
5 financial and managerial technical -- managerial and
6 technical capability.

7 So, switching to the financial side of
8 things, the Applicant asserts that it has demonstrated
9 that primarily through the testimony of Mr. Cofelice, Mr.
10 Pasqualini, some aspects of the Deloitte report, the fact
11 that investors and consultants have been supportive of the
12 Project. The Company has made clear that the financial
13 package is not yet in place. That that still has to be
14 developed, and has said that that's not unusual. That you
15 need to have certificates and permits obtained often
16 before people get serious about the financing side of
17 things. And, that its intention is to get to a purchase
18 power agreement, if it's able to obtain one, a PPA, for
19 the output of the wind facility. And, once that's in
20 place, that will bring investors/lenders to the table and
21 put the construction financing in place.

22 The Applicant noted in the hearings, you
23 recall a discussion of the PPA bid being "shortlisted",
24 that the Company had bid on supplying power through a

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1 competitive bid of a utility in Rhode Island. It had
2 gotten a positive nod to be among some number of
3 applicants, but it didn't know how many, to be considered.
4 We never heard a further determination of what came of
5 that. So, we have nothing in the record that tells us
6 that a PPA has been executed or is any closer to being
7 executed.

8 The Company also said, if a PPA were not
9 possible to be negotiated, there are alternative ways to
10 obtain the revenue certainty that you get from a PPA that
11 would provide the sort of assurance that a lender would
12 want to see. You remember references to "derivative
13 swaps" and things like that. And, those are sort of other
14 forms of finding a revenue stream for the Project.
15 There's nothing in the record that actually lays out what
16 that would be, other than it's -- there are things out
17 there, there are certain transactions in the market that
18 might serve that purpose, but not that anyone has drafted
19 one or been interested in entering into one.

20 There was also discussion of the
21 possibility of additional investor equity being put into
22 the Project. And, there could be a combination of, you
23 know, of lenders and investors to get to the point of a
24 financing package. The Applicant made clear, however,

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1 that its equity firm part of the Project, the Westerly
2 Wind side, which has contributed \$4 million to the
3 Project, is not going to be giving more to this Project.
4 There was no suggestion that maybe they would make up a
5 significant piece of the financing, but that the amount
6 given is pretty much what it is going to be. And that, if
7 there are other equity investors as part of the Project,
8 it would be from someone other than the Westerly Wind or
9 the U.S. Renewables parent company providing that.

10 The financial expertise brought to the
11 Project, again, we have the direct involvement of
12 employees or officers of the entities who are sponsoring
13 this Project, particularly Mr. Cofelice, who is CEO of
14 Westerly Wind, LLC, I believe, and has been part of that
15 operation, and U.S. Renewables. He brings tremendous
16 experience in the financing and development world,
17 particularly in wind facilities. And, he would continue
18 to be a part of this operation. Mr. Pasqualini was the
19 other energy finance person that had been guiding this
20 Project. He is with CP Energy. And, we understand that
21 there is a contract that's been in place for his services
22 that expired, I believe, in September of 2012, and was
23 renewed, but only through the end of 2012. So, we have
24 nothing in the record to suggest that Mr. Pasqualini's

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1 expertise will continue to be a part of the operations of
2 the Project. Similar to Ms. Wright's, it sounds as though
3 it was more for the development phase and the application
4 phase, but not as an ongoing part of the team.

5 On substantive matters of finance and
6 the financial viability of the Project overall, you'll
7 recall a lot of discussion about capacity factor of the
8 Project. That's the percentage of time that the facility
9 is projected to be operational. And, in the case of wind
10 facilities, that's really dependent on wind conditions.
11 That it's either running full-tilt or it's not running at
12 all pretty much in the world of wind facilities. And, the
13 capacity factor is a critically important issue, because
14 those are the hours where you're really generating energy
15 to offset the fixed prices of the unit otherwise. There's
16 no fuel cost, but every other cost, particularly, the
17 purchase of the equipment and coverage of all of its debt
18 for that is high, and, so, you need power generation to be
19 able to offset that.

20 The Company has projected 37.5 to
21 40.5 percent capacity factor as a range. And, there was
22 discussion during the hearing and debate about whether
23 that was a range that was really appropriate for these
24 units or was too high. The arguments that it was

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1 appropriate were from the Applicant, that these are new
2 models, they continue to evolve and get better. As they
3 get larger and with greater rotors, the ability to produce
4 more power increases. And, although that may be a higher
5 percentage than a number of projects historically have
6 demonstrated, that's appropriate because they are newer
7 models, continuing to evolve in effectiveness.

8 The other piece in how you reach the
9 capacity factor is the wind studies that are done and the
10 V-Bar study of wind potential that the Applicant produced.
11 And, it's reading of that V-Bar study was that there are
12 adequate wind resources that will justify that high a
13 capacity factor.

14 There are those who took issue with
15 that. Industrial Wind Action asserted that the capacity
16 factor was too high compared to others in the region. And
17 that, although this may be a new turbine only recently
18 designed, it isn't yet operational to be able to know how
19 it has produced, how it will operate. And, that there are
20 a number of units that are a fairly recent vintage as well
21 that aren't producing that level of capacity factor.

22 The North Branch Intervenor Group found
23 the capacity factor projections too high, and, in its
24 view, found the wind resource to be not particularly

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1 strong, and did not take the V-Bar study to be of much
2 consequence in contradicting its view that it didn't think
3 the wind resource was that strong in the area.

4 The Applicant's response to all of that,
5 again, that the Acciona model is capable of running
6 higher, you should be comparing it to the right thing, not
7 to something that historically may have been very
8 different, different size design, different height,
9 different rotors makes a big difference. And, Ms. Wright
10 concurred with that, and said that you really have to
11 focus on the units that are under discussion.

12 The Applicant also reminds again that,
13 if they're not able to meet these levels, the risk is on
14 them, not on anyone else. And that, if they think that
15 they're sound projections and that are worthy of taking
16 that risk, that that should be sufficient for our
17 determination.

18 Another financial issue raised and some
19 controversy is over what the market has been doing and
20 what the market price of wholesale power has been and is
21 expected to be in coming years. You will remember
22 discussions about the price of natural gas, how that has
23 been dropping in the last couple of years, because of the
24 advances in, right, in bringing shale gas to the market

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1 through a process known as "fracturing" or "fracking", and
2 that that has brought about a significant drop in the
3 wholesale price of energy, which follows the natural gas
4 pricing. So that it's brought the whole regional market
5 down in wholesale prices, except for anomalies like last
6 week's cold snap.

7 The response of the Applicant is, "while
8 that may be the case that fracking has changed the
9 wholesale market of energy, and that may continue for some
10 years or not, you know, not" -- I don't think there's a
11 lot of speculation about where it's going, but didn't
12 disagree that there are those who say that those prices
13 are going to remain low, it's really looking at the wrong
14 market, and that wind should be taken in the context of a
15 submarket of renewable resources, where there's a
16 particular demand for those things set by both individual
17 interest in it and by State requirements that providers
18 have certain percentages of renewable based power and
19 various classifications, and wind being one of them,
20 what's known as the "RPS", "Renewable Portfolio Standard".
21 And, that that market has remained high, that their wind
22 will continue to be dispatched, even though it may be
23 priced higher than the rest of the power, because there
24 are particular reasons to have to obtain wind, because of

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1 these Renewable Portfolio, more policy-driven reasons to
2 obtain that power.

3 The Renewable Portfolio Standards that
4 are in place in New Hampshire and most of the New England
5 states have shown a continuing significant demand for
6 wind, according to the Applicant. And, that Renewable
7 Energy Certificates, RECs, that are produced by renewable
8 generators have shown prices up since May of 2011,
9 although they were lower before that. And, in the view of
10 the Applicant, they will continue to be strong. And,
11 that's a revenue source for the Applicant going into the
12 future.

13 Again, the Applicant says all of this is
14 risk that we, as the Applicant, are undertaking. The
15 requirement of a certificate is not to demonstrate that
16 this will be a profitable venture, but that it's -- that's
17 a risk that the developer takes on. And, that's the fact
18 that people are financing these sorts of projects tells
19 you that there is support for a wind facility going
20 further into the future.

21 One other key fact I forgot to mention
22 is that, you remember during the hearings there was a lot
23 of discussion about the Production Tax Credit and the
24 Investment Tax Credit that were due to expire at the end

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1 of December of 2012. And that, if those dropped off,
2 another revenue source for this Project, and others like
3 it, would drop off and make the financing and the
4 viability of a project more difficult. Since December,
5 the Production Tax Credit/Investment Tax Credit were
6 renewed as part of the "fiscal cliff" negotiations. And,
7 so, the concern that it wouldn't be in place is no longer
8 there. How long those will remain, and whether this
9 company would qualify for them is a separate question.
10 The fact that they're now back on the books is clear.
11 There are certain things you have to meet in order to
12 qualify for them. And, that's not a certainty for any
13 particular applicant, but neither was it before. So,
14 we're sort of back to where we were before, that the
15 structure is in place, that these, the financial tools
16 remain available for someone to try to compete for it. I
17 shouldn't say "compete", it's not a competitive process,
18 for someone to try to qualify for.

19 So, I think those are all the sort of
20 underlying pieces that we have to consider, and now we'll
21 get to what to make of all of them. The Applicant has
22 said "we recognize that not everything is in place, and
23 what would be appropriate is to condition a certificate on
24 a demonstration of a construction financing in place, and

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1 that that won't really come together until other things
2 happen, you know, with the moving to a certificate,
3 obtaining of a PPA, or working out some other form of
4 revenue stream akin to a PPA, a lender coming forward or a
5 group of lenders, possible other equity investors. And,
6 so, make it a condition that that be demonstrated before
7 any construction begins, and that will satisfy the
8 requirement of the financial capability."

9 And, it's certainly been the case that,
10 in other projects, there have been conditions imposed to
11 say, "Before construction commence, you must demonstrate
12 construction financing has been in place and the document
13 is filed with the Site Evaluation Committee." That was
14 done recently in the Granite Reliable case, 2008-04, and
15 probably other cases as well. I think the Laidlaw/Berlin
16 BioPower Project had a similar sort of requirement,
17 although, in that case, there were draft documents, it was
18 a voluminous financing materials, lenders that were
19 showing significant interest in the Project, they hadn't
20 yet signed on the dotted line, but they were lining up.
21 And, after the certificate was issued, all of those things
22 did come together to a closing fairly quickly after that.

23 So, I think the challenge for us is to
24 ascertain how comfortable we are with the packages of both

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1 the sort of technical/managerial expertise that will come
2 together at the point of construction, and how comfortable
3 we are that the financial package will come together at
4 the point of construction.

5 And, I guess -- well, I guess, before we
6 begin that, are there questions people have, I've been
7 talking a long time, I know, are there questions people
8 have about any of the sort of factual underpinnings or
9 additional items I forgot that you think are important in
10 the building blocks that we have to work with or
11 disagreements, things that you recall differently that you
12 want to correct?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: All right. Then --
15 oh, and let me -- it's always a good idea to look back at
16 your notes. There were a couple of other things that the
17 Counsel for the Public mentioned that -- actually, a
18 number of people mentioned, I skipped a whole page. So,
19 some of the other comments having to do with financial
20 status. Counsel for the Public submitted the Deloitte
21 report. And, as I mentioned I think before, the Deloitte
22 report found that there was financial capability on the
23 part of the principals coming together here. But was
24 concerned that the costs may be somewhat underestimated,

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1 costs of the Project, when compared to other similar sorts
2 of projects in the region. There also was a concern that
3 the capacity factor may be overstated, but the Deloitte
4 author said they're not qualified to evaluate that and
5 didn't take a position on whether it was or was not within
6 an appropriate range.

7 The report noted difficulty in obtaining
8 PPAs recently, and that it's not always a smooth path to
9 get to them. And that, even if the Production Tax Credit
10 were to be extended, which we now know it has been, the
11 ability to obtain financing, in its view, was low. I
12 don't think that was a reflection of this Project. As I
13 read it, it wasn't saying "you can finance tons of these
14 projects, not this one." It was saying "the ability to
15 obtain financing for any of these sorts of projects right
16 now is tight." The Deloitte report noted uncertainty in
17 REC pricing, and that, although they have been higher in
18 some months and lower in others, there is tremendous
19 uncertainty about what the future is on REC prices, and
20 that they tend to be fairly volatile and go through boom
21 and bust periods. And, so, the drafters of the report did
22 not see a sort of easy trajectory of REC pricing.

23 They found nothing negative regarding
24 the financial background or experience of any of the

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1 participants, looked for all the sorts of warning signs
2 that you might look for, and found nothing suggesting a
3 problem at all, and gave a somewhat couched recommendation
4 to say "if you can get a PPA, and you can get project
5 financing, there's no reason to think this isn't a
6 financially viable project." Those are fairly big "ifs".
7 "If you have the financial support, you will have the
8 financial support", in some ways, is what it meant to me.
9 So, although there was no negative conclusion, and
10 certainly a positive about the capabilities of the
11 individuals, I found it a fairly conservative and
12 qualified analysis of the financial strength of the
13 Project as a whole.

14 Counsel for the Public was more critical
15 of the financial package than the Deloitte report had
16 been. In Attorney Roth's view, the Applicant has failed
17 to demonstrate financial capability. And, similar to the
18 technical argument, that demonstrated in his view through
19 what isn't here. That there is no construction contract
20 in place, no construction contractor selected, no PPA or
21 draft PPA, no O&M agreement or draft or identification of
22 key terms, no turbine supply agreement, no interested
23 lenders who's shown through a letter of support, let alone
24 commitment to lend, an unknown capital structure, no

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1 identification of new equity investors. And, so that all
2 of the pieces to be assembled are simply not -- don't
3 really exist yet. They're just concepts of what one might
4 be able to turn to, but they're not there yet to be able
5 to assemble. And that, by comparison, in his view, other
6 projects have come in with not everything in place, but
7 either more things that are in place, with a few still to
8 be resolved, or more things that are further along the
9 pipeline, in terms of getting to a real definition than
10 here. And, it would be, in his view, a violation of the
11 statute to take this many items under the "let's just put
12 a condition in and make sure that they get turned in
13 before we're finalized." That we would need more to
14 evaluate in order to make a determination of the financial
15 capability and the financial strength of the Project.

16 Other parties who took on this issue,
17 the Industrial Wind Action Group had concerns about
18 financial capability, but was frustrated with the lack of
19 ability to see things that had been presented under
20 protection, and, so, said that she was incapable of really
21 being able to evaluate financial issues, because those
22 things were not being released.

23 The Audubon Society mostly took on the
24 issue of technical and managerial experience, and the open

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1 questions on what the warranty really meant, on what the
2 service agreement might be from Acciona, and what would
3 happen after the initial period. There was talk that it
4 might well be extended, but there's no commitment that
5 there be anything beyond an initial period, and that, with
6 that uncertainty, there was no basis to be able to
7 conclude that there was ongoing technical and managerial
8 experience for the Project.

9 The Edwards and Allen Group argued that
10 the lack of an O&M contract or any real definition of
11 terms made it difficult to make any finding of capability
12 here. If the financing is to be open with conditions,
13 that the condition be that you obtain all of this to the
14 -- and produce to the Committee within six months, that
15 would be construction financing, bonding, a power -- a
16 PPA, executed O&M contract, that all of those things be
17 set as a condition that would have to be satisfied within
18 six months.

19 Now, is there anything else anybody
20 thought of that we've forgotten about? I think I actually
21 read all my pages.

22 (No verbal response)

23 CHAIRMAN IGNATIUS: So, the "what do we
24 do with all of that?" question now comes before us. And,

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1 so, let's take up first the technical and managerial
2 question. Do people have a sense that you are comfortable
3 or not comfortable on the technical and managerial side of
4 things, between the combination of their direct
5 experience, the people who will be involved in this
6 Project, and the people who will be part of it through
7 support services? Anybody want to start with that?
8 Dr. Boisvert.

9 MR. BOISVERT: As I look at the
10 information, it seems that the actual operation of the
11 wind farm, the day-to-day management, will be -- is
12 proposed to be taken on by Acciona manufacturers of the
13 turbines, which makes sense. If they make them, they
14 should know how to operate them. There's no agreement in
15 place, as I understand it. And, the question then, in my
16 mind, is does that not put Acciona completely in the
17 driver's seat as to how much to charge for operating the
18 system? Might they decide to, that they would only do it
19 for an amount that might either highly stress or even
20 overstress the finances of the Project. In other words,
21 if it might -- the cost of getting that management team in
22 might become high, to the point that it would affect the
23 economic viability of the Project. And, alternatives are
24 unknown to me. As I said, it would seem logical that you

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1 would go with the manufacturer, but is there someone else?
2 I don't know. That was never really discussed. And, it's
3 only something that came across my mind because of the
4 uncertainty. They will negotiate a deal; where is their
5 leverage? And, I'm not quite sure what the answer to that
6 is.

7 Tangentially related, and we may have to
8 circle back, is the capacity factor. And, that, in the
9 large equation, it's based upon a certain amount of
10 capacity that it can really generate from. And, it is
11 possible that the development of the Avian and Bat
12 Protection Plan, as I recall, might require the taking off
13 line some or all of the towers for specific periods of
14 time, and that's something we will discuss later. But
15 that, in my mind, would be another part of the capacity
16 factor. It isn't just, when the wind blows and from what
17 direction, it's when they may be required to turn it off
18 or to stop accepting the power. And, that gets back to
19 the financing.

20 And, then, at a higher level, as I look
21 at it, the Applicant has said they're willing to take the
22 financial risk. It's their time, their reputation, their
23 money. And, I need to think through, "okay, what are the
24 negative effects, if they do undertake the Project and it

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1 fails?" There's a decommissioning process. But might
2 there be a situation that it fails before it gets to a
3 point that it can be decommissioned. What are the
4 permanent impacts to the land, to the community, for a
5 project that goes part way and fails? And, I don't feel
6 like I'm really here to worry about whether or not they
7 make a profit and how much. I'm here to worry about what
8 is in the public interest, and would that failed partially
9 constructed or even fully constructed project be an
10 acceptable impact?

11 So, those are the issues that I have,
12 looking at the managerial and technical, interwoven with
13 the financial. And, I guess I would like to hear from
14 other members of the panel who have more experience with
15 these. You know, are my concerns unique and trivial or is
16 there some greater bearing?

17 CHAIRMAN IGNATIUS: I think those are
18 all good points. And, I'd encourage, not just people who
19 have had experience with these before, but everybody has
20 got impressions, you've all heard the same evidence. I
21 think one thought I had, when you talked about "putting
22 Acciona in the driver's seat", I think that's true. I
23 think the thing working against that, I would imagine, is
24 that we heard that they're in the business of providing

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1 this sort of support, as probably how they sell their
2 units, they want to be able to make that an attractive
3 piece of the package that they can offer, and that they
4 even have provided that support for some projects, I
5 think, that weren't their units necessarily. There was
6 talk of some additional projects that I didn't think were
7 theirs that they work on. So, pricing themselves out of
8 the market doesn't help for that, and doesn't make them --
9 it doesn't help people want to buy their products.

10 But, you're right. If all of the
11 expertise is going to be at that second stage, I don't
12 think you're saying all of it, but a significant piece of
13 it, then that does put them in a powerful negotiating
14 position.

15 Mr. Stewart.

16 DIR. STEWART: Concerning technical
17 capacity to get the Project built, first, I agree with the
18 Chairman. Acciona, you know, they have a lot of stake in
19 making sure the Project is built properly, it's their
20 equipment. They seem to have a reasonable track record in
21 that regard. And, also, with regard to the operations, to
22 make sure that, you know, that, ultimately, the turbines
23 are operating properly.

24 As far as the project management of

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1 getting the Project built, the Applicant has TRC, a
2 consulting firm, a national consulting firm on board.
3 And, they certainly have the capability to do project
4 management to get this Project built, capability and
5 experience, and a fairly deep bench, so to speak. So, the
6 project manager goes away, there's more around. So, there
7 is a capability from an engineering and management
8 perspective, and from equipment and vendor perspective, to
9 get the Project built and operating.

10 As far as the financial capability,
11 that's a lot trickier to me. This all hinges on three
12 things, I think. Given that there's some inherent cost to
13 build the Project, the power purchase agreement, the
14 Production Tax Credit, and the capacity factor all have to
15 work in order for the Project to work. You know, two of
16 those are national or regional policy in nature. So,
17 they're in place, particularly the power purchase
18 agreement, if and when there actually were one, which
19 there isn't, but presuming, that's the deal with the
20 regional policy and -- or regional portfolio standards.
21 And, the Production Tax Credits is national tax policy,
22 which is strictly on a year-to-year basis. And, as I
23 understand it, if the Project were to start construction
24 in 2013, that PTC is in place.

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1 The biggest variable I think is the
2 capacity factor. Because that drives, you know, as I
3 understand it, with a purchase power agreement, it's the
4 purchased power, not the potential for power. So, the
5 unknown is how much downtime there will be and how much
6 time will the Project be, in fact, producing power. Now,
7 to me, if the Applicant, you know, blew the capacity
8 factor, so to speak, and it's an optimistic estimate,
9 then, ultimately, the cash flow isn't there and the
10 project doesn't work, and potentially goes bankrupt.
11 Under that scenario, someone else buys it and operates it
12 at a lower capacity factor. So, there probably is still
13 power being generated, but just less power than assumed,
14 based on our experience with some other facilities that
15 have gone through those kinds of cycles and come back to
16 the Committee asking for ownership change and so forth, or
17 for the bank to take a project. So, that's what I have to
18 offer.

19 CHAIRMAN IGNATIUS: Thank you. Other
20 comments? Ms. Lyons.

21 MS. LYONS: I'm also kind of thinking
22 about the managerial and technical capability. And, I
23 know we have a short term of construction and getting it
24 operational. And, okay with contracts with third parties

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1 to do other technical things, but it talks about having a
2 site manager and site administrator who worked for Antrim
3 Wind. And, it's just kind of a passing remark. It's not
4 anything that's kind of fleshed out about job
5 descriptions, qualifications, or even where they fit into
6 the organizational chart of the organization itself. And,
7 I think that's really the -- the long term is what we
8 should also be looking at. This is going to be a facility
9 around for 20 to 50 years, and I'm not seeing anything
10 over the horizon, so to speak.

11 CHAIRMAN IGNATIUS: Thank you. Other
12 comments? Ms. Bailey.

13 MS. BAILEY: I, in large part, agree
14 with a lot of what Mr. Stewart said. But I think that the
15 real difficulty in deciding financial ability is the
16 likelihood that they're going to get a PPA for the amount
17 that they need to get it. I asked Ms. Wright some
18 questions about the capacity factor based on a table that
19 was in the Deloitte report that showed some, I'm trying to
20 find the -- I'm trying to find my cross-examination of
21 her, I found it a minute ago, but there's a table in the
22 Deloitte report, which is PC 7, that shows some existing
23 projects with capacity factors. And, Ms. Wright verified
24 that, for another installation of a different model, with

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1 similar hub site, the capacity factor was well above what
2 they're projecting. So, I think it's possible that they
3 can achieve that capacity factor. So, my concern is more
4 about whether they're really going to get a PPA, than
5 whether they have a capacity factor in the right range.
6 And, also, for the reason that Mr. Stewart articulated,
7 that, if they don't achieve that capacity factor, then,
8 financially, then the risk is theirs and they're not going
9 to make a profit. So, I don't think it benefits them to
10 overstate the capacity factor well above what they think
11 it's actually going to be.

12 CHAIRMAN IGNATIUS: I do recall that
13 questioning, and there was a figure that was over
14 58 percent.

15 MS. BAILEY: Yes.

16 CHAIRMAN IGNATIUS: And, you asked like
17 "Really?" And, she said "yep", and that didn't strike her
18 as unreliable. And, certainly, that's unusual.

19 MS. BAILEY: It was on Day 2, around
20 Page 225, maybe 226.

21 CHAIRMAN IGNATIUS: Other Committee
22 members, any reflections on this? Mr. Simpkins.

23 DIR. SIMPKINS: I would just kind of
24 echo about the PPA, that's kind of what I see is the crux

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1 behind this. As far as the managerial and technical
2 capability, I agree with what others have said about that.
3 But, certainly, and I believe past projects, although I
4 haven't sat on the subcommittee for past projects, I
5 believe they have been a condition of the certificate, as
6 far as obtaining that project financing, such as a PPA.
7 And, I believe that certainly makes sense.

8 The capacity issue, you know, that is
9 still a question in my mind, because there's the capacity
10 factor, if it's running as planned. But, as Mr. Boisvert
11 pointed out, you know, there's other things, as far as
12 curtailment, the curtailment for the avian and bat issues,
13 and then there's also, I know we've talked about it at
14 some point in the past, there's also a -- you can reduce
15 the noise by, I believe, one to four decibels by noise
16 reduction, and I'm not sure what the power reduction would
17 be for that. So, capacity -- capacity could be an issue.
18 But I think the PPA is really the crux, getting that
19 issued.

20 CHAIRMAN IGNATIUS: Thank you. I can
21 tell you my views on it. On the technical and managerial
22 piece of it, I'm satisfied that the mixture of the direct
23 experience of the people who are principals within the
24 Applicant and the support that they would bring forward

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1 for operation is sufficient and it meets the technical and
2 managerial requirement of the statute. These people have
3 experience in project development and in -- have access to
4 people with experience that will be supplementing that
5 with a services agreement. The fact that that's not yet
6 executed with Acciona I don't find unusual. That seems
7 not to be odd that, before they even finalized it, that
8 they would have entered into an agreement. And, the fact
9 that terms aren't fully spelled out, I don't think there's
10 that much variation in what it is that they're responsible
11 for doing. We've never seen really significant
12 differences in what one -- one of the sorts of support
13 agreements would provide. And, so, I'm not troubled by
14 that personally. So, on the technical and managerial, I
15 find that to be sufficient and satisfies the statute.

16 On the financial side of it, I'm far
17 more concerned. Because of the issues we've talked about,
18 there is -- it's open-ended and uncertain on every
19 possible front. There's no lender. There's no big equity
20 investor. There's no PPA. There's no letter of interest
21 from a lender. There's just -- it still seems to be at
22 the drawing board of all of the things that one is going
23 to have to go out looking for to make this work. And, to
24 be at this stage of the process and still have all of

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1 those people -- or, those issues open I find troubling. I
2 don't know if that's a suggestion that it's a financially
3 weak proposal or that it's an offering in the market that
4 the market's not that interested in, and has nothing to do
5 with this particular project. Whether it's something
6 about the amount of work the Applicant has made to
7 actually develop that level of support at this stage or
8 has been more concerned about getting the certificate in
9 hand, and then, if that is concluded, then start looking
10 for financing. I don't know. But it's different from the
11 kinds of things that we've seen before.

12 And, I think the suggestion that, for
13 each of those items, to say "well, just put a condition on
14 it, and make sure you file it with us before we're all
15 said and done", just goes too far for what I'm comfortable
16 with. There is a role for conditions, no question. But I
17 feel like that's too many layers of financial, the
18 financial components being set into the "let us know when
19 you work it out" category, for me to be comfortable that
20 this is financially appropriate.

21 So, I personally don't think I can find
22 that they have made the demonstration of financial
23 capability. And, by that, I don't mean the individuals
24 don't have capability, as people of quality and some

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1 experience, but that the package overall of the project
2 doesn't meet a financial capability test in my mind.

3 Ms. Bailey.

4 MS. BAILEY: Just a question or a
5 thought. If we found that everything else was acceptable,
6 could we make a condition that said something to the
7 effect of "they have to come back and demonstrate
8 financial capability", so that we don't make that finding
9 today? You know, once they get the PPA, and maybe we even
10 put some kind of term limit -- you know, some time limit
11 on that, so that -- and, I'm not sure we're going to get
12 to that point that everything else works.

13 But, if everything else worked, would it
14 be possible to put a condition on it to say they have to
15 come back and we have to still make the finding on
16 financial capability?

17 CHAIRMAN IGNATIUS: I think so. I think
18 what you're saying is, there's conditions that say "submit
19 a copy for the file", and it's sort of a compliance filing
20 and it just gets logged in, but there's no real
21 proceedings to follow. But you're talking about something
22 different. More of a condition that says "bring it back
23 and we gather again and really pour through it, and
24 understand the terms, and maybe we'll find it acceptable

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1 and maybe we won't." Is that -- it's more of the second,
2 correct?

3 MS. BAILEY: Yes.

4 CHAIRMAN IGNATIUS: I think the only
5 concern about that is the question of timing. That the
6 SEC, and I'm going to look to Mr. Iacopino here, so get
7 ready, that the statute requires you reach a final
8 conclusion, a final order within a certain number of
9 months of the Application being found complete. And,
10 we're already over that time limit by statute, and the
11 Applicant agreed to allow us to sort of slip that a bit,
12 because of just the inability to get through all of the
13 hearings in time, but has made clear that, you know, it
14 can't just keep sort of waiting and waiting and waiting.
15 And, so, I think that's the difficulty.

16 If you're at a point where the choice is
17 on the basis of what's currently in hand, the answer is
18 "no". But, on the basis of what could be produced in a
19 matter of another 6 or 12 months, the answer might be
20 "yes". Does that throw it back to the Applicant to
21 consider which deal to take? I'm not sure. I guess,
22 Mr. Iacopino, do you want to help with that? And, I don't
23 want to presume other people's votes on any of this, but
24 just sort of taking the question as you posed it. I'm

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1 sort of thinking out loud here.

2 MR. IACOPINO: The Commission is
3 required to make findings with respect to financial
4 capability of the Applicant under RSA 162-H:16. The
5 Committee also has the authority, under I believe it's
6 Section 4 of the statute, to condition the certificate.
7 It depends. You would be lawfully permitted, if you found
8 that the issuance of a certificate, on the terms of a
9 condition to be met by the Applicant, you're on sound
10 legal ground to do that. In essence, what you are doing
11 there is you're delaying your final determination on
12 financial capability until some condition has been met.
13 If it is the type of condition that the Chair mentioned,
14 where a -- well, in this particular case that you're
15 talking about, there would be a financing package, I
16 assume, or a PPA along with a financing package, submitted
17 to the Committee for the Committee to review and then make
18 a final determination as to whether or not that is
19 satisfactory to meet the financial capability requirement.

20 So, I do think that you can, in fact,
21 impose that condition. We have imposed conditions
22 somewhat similar, under different circumstances, in the
23 Laidlaw/Berlin BioPower case. They were required to
24 provide to us their financial closing package upon -- as a

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1 condition precedent to commencement of construction, to
2 provide us with a financial closing package. That wasn't,
3 although there was I believe a hearing on the filing, it
4 wasn't really much of a hearing. It was, "okay, they have
5 the financing." In that case, the financing was before
6 the Committee, or a draft of it, and the potential lenders
7 were before the Committee as part of that docket when they
8 were at this stage of the proceeding.

9 So, I guess the short answer is, I
10 believe that you could, you could, in fact, structure such
11 a condition. I would want you to be careful about how you
12 did it. And, you know, so that you comply with both of
13 your obligations under the statute to make a finding, and
14 also, if you're going to have a condition, to make sure
15 that the condition has parameters that you don't overstep
16 your lawful authority.

17 And, also, I think that you might have
18 to have some consideration about timing, and whether or
19 not it is in the public interest to extend the
20 deliberation schedule for the purposes of that part of the
21 analysis, that part of your consideration, because the
22 statute does, in fact, allow you, if you find it's in the
23 public interest, to suspend the deliberative process.

24 So, that's my answer. It was probably

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1 clear as mud. But it is an interesting issue. In the
2 past, the Committee has, in fact, had conditions like
3 that. And, of course, you also have to provide due
4 process at the time of filing to the other parties in the
5 proceeding. There would have to be a hearing. There
6 would likely be some kind of procedural order that would
7 have to be issued, so that the parties can test whatever
8 the filing is before the Committee.

9 CHAIRMAN IGNATIUS: Thank you. Ms.
10 Lyons.

11 MS. LYONS: I have a question for Mike.
12 What's the difference between a conditional --

13 CHAIRMAN IGNATIUS: Certificate?

14 MS. LYONS: Yes, a certificate. Or,
15 well, a condition versus something that's been deemed as
16 "incomplete"?

17 MR. IACOPINO: That's why I make the
18 distinction between what you finding --

19 (Court reporter interruption.)

20 MR. IACOPINO: I'm sorry. That's why I
21 made the distinction at the outset about what your finding
22 has to be and your condition. The finding would be that
23 the -- well, the finding would be that the Applicant would
24 have the financial capability, that's what we're talking

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1 about here, if it meets the condition of providing us with
2 an acceptable PPA or an acceptable construction financing,
3 or whatever it is you all decide as the deciders is the
4 condition that you need to be imposed. So, that would be
5 the way that I would envision such an order being.

6 If you find that, regardless of what --
7 if you find that you, regardless of what conditions might
8 apply, you do not believe they have met -- that they can
9 meet their financial capability requirement under RSA
10 162-H:16, then you should not vote for that finding. You
11 should vote that they have failed to meet their statutory
12 burden of proving their financial capability.

13 So, it's sort of, you know, in order to
14 do what was asked by Commissioner Bailey, is there would
15 have to be a finding of financial capability, accompanied
16 by a condition. So that "we believe that there would be
17 financial capability if the following conditions are met."
18 And, then, that's the way that you would have to deal with
19 it. And, again, it does raise other logistical concerns,
20 both within the statute and without. That being, you'd
21 probably have to suspend deliberations, the deliberative
22 process, and you'd have to provide due process to the
23 other parties. Unless you've decided, as we have in some
24 other cases, and it's quite often done, for instance, with

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1 ISO documents, that file -- the condition is that you file
2 the final interconnection study with the Committee. And,
3 that's what the Chairperson was talking about a little bit
4 earlier. Some conditions are just filing conditions.
5 And, there is really nothing that happens, except we
6 recognize "okay, there's been an ISO final study." And,
7 that's for your purposes, so that you can continue in the
8 future to monitor and enforce any certificate.

9 So, there are those, it's really a
10 two-part consideration. It's findings that you must make,
11 and the finding must be conditioned.

12 MS. LYONS: Thank you.

13 CHAIRMAN IGNATIUS: Ms. Bailey.

14 MS. BAILEY: My suggestion was more a
15 question of "whether we could defer the finding until we
16 have more evidence?" And, I think I'm hearing you say
17 "no, we have to make a finding based on certain
18 conditions", is that correct? Or, could we defer a
19 finding?

20 MR. IACOPINO: If the Committee wanted
21 to simply defer the finding itself, you would have to
22 essentially defer the issuance of the rest of the
23 certificate as well, I believe, because you would be in
24 the situation where you're saying "we're not ready to rule

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1 on this particular piece."

2 There is, I mean, it opens up a whole
3 can of worms, but there have been record requests that
4 have occurred during the course of deliberation in the
5 past, where a record request has gone out to a party, and
6 deliberations have been suspended upon the obtaining of
7 more information from the party. That has been done in
8 the past. I believe it was done with Granite Reliable.
9 So, there -- I mean, that has occurred. But there is no
10 final decision on the rest of the docket in the interim.

11 MS. BAILEY: I understand.

12 CHAIRMAN IGNATIUS: Mr. Dupee.

13 MR. DUPEE: Thank you, madam Chair. I
14 guess that raises with me the thought there would be like
15 a never-ending hearing. That neither the Applicant, nor
16 those who spent a lot of time --

17 (Court reporter interruption.)

18 MR. DUPEE: A never-ending hearing, so
19 that neither the Applicant, nor the individuals who spent
20 a lot of time attending these hearings ever get to a point
21 of closure. It seems to me that there's a statutory
22 deadline in there, I suspect, partially for that purpose,
23 so that everybody has an understanding we will be done at
24 a certain time, so then business decisions can be made and

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1 local decisions can be made.

2 CHAIRMAN IGNATIUS: I don't disagree
3 with that.

4 MR. IACOPINO: And, if I can just be
5 clear, that decision is one that you all make in your
6 context of your deliberations here today or tomorrow or
7 whenever you decide to make it. But, you know, I'm simply
8 answering what's been done in the past and what it seems
9 to me that the statute requires in each case. And, I'm
10 not giving any kind of opinion on what's the right thing
11 to do. That's for you all to decide.

12 CHAIRMAN IGNATIUS: Mr. Stewart.

13 DIR. STEWART: Yes. I would be -- I
14 think a requirement for a power purchase agreement at the
15 time of application is an ambiguous question, you know,
16 from an applicant perspective. And, so, I'm not sure how
17 we now require a PPA as we go forward. I understand the
18 analysis for financial/management capability, but I just
19 question that.

20 There's a whole cascading of
21 uncertainties here. That the PPA, you know, leads to the
22 potential for financing, which leads to putting shovels in
23 the ground. The Applicant needs to do that by December
24 31st. So, there's an inherent deadline, assuming that the

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1 Production Tax Credit only lasts another year, who knows.
2 There's other uncertainties, though. I mean, the Acciona,
3 I don't know if they have a contract with Acciona to build
4 and operate. So, in theory, Acciona could fall apart, in
5 terms of the actual purveyor of the machines, and the
6 consultant is not under contract, I don't believe. So,
7 there's a lot of uncertainties that we tend to handle in
8 the decisions by conditions. And, I just throw that out.
9 The PPA is one of several uncertainties that, you know,
10 ultimately need to get resolved before the project is
11 built.

12 CHAIRMAN IGNATIUS: Well, let's see if
13 we can -- can we reach agreement in a sort of straw
14 proposal way, just show of hands, on any issues that we're
15 not still grappling with? Are people comfortable with a
16 sort of non-binding straw show of hands on whether the
17 Applicant has demonstrated managerial and technical
18 capability? Are people comfortable with sort of taking a
19 vote on that one at this point? I think we are.

20 Those who think, at this stage of the
21 game, and, obviously, we're going to reevaluate everything
22 at the end, but based on what we've discussed this far,
23 that the Applicant has met the standard for demonstrating
24 managerial and technical capability, can you raise your

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1 hands?

2 (Show of hands.)

3 CHAIRMAN IGNATIUS: And, those who think
4 they have not met the standard?

5 (Show of hands.)

6 CHAIRMAN IGNATIUS: And, any who are
7 uncertain where they come out on that or would abstain on
8 that?

9 (No indication given.)

10 CHAIRMAN IGNATIUS: I'm getting one
11 that's not voting either way here.

12 MR. BOISVERT: Let me move to the
13 "abstain".

14 CHAIRMAN IGNATIUS: Okay. And, that's
15 fine. And, you know, we're not trying to box people in
16 before they're ready. I'll just put you in the "not
17 certain" category yet here. And, all right. The harder
18 question, I think, based on the discussion, is a question
19 of whether people feel comfortable concluding at this
20 point where they're leaning in terms of financial
21 capability, and whether you would say -- let's first say,
22 without condition, if there were no condition imposed, do
23 you find that the Applicant has unconditionally satisfied
24 the requirement of demonstrating financial capability?

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1 Ms. Bailey, is that a vote or a
2 argument?

3 MS. BAILEY: No. No. I want to read
4 what the statute says. And, the statute says that we
5 "must find that the site and facility applicant has
6 adequate financial...capability to assure construction and
7 operation of the facility". And, without financing,
8 without deep-pocket investors, and without any PPA, I
9 don't think we can make that finding today.

10 CHAIRMAN IGNATIUS: All right. Are
11 people comfortable with taking a straw vote on that issue?
12 All right. So, for those who feel that the Applicant has
13 adequately demonstrated the capability for construction
14 and operation of the facility, please raise your hands?

15 (No indication given.)

16 CHAIRMAN IGNATIUS: For those who think
17 that the Applicant has not demonstrated the financial
18 capability for construction and operation of the facility,
19 please raise your hands?

20 (Show of hands.)

21 CHAIRMAN IGNATIUS: And, any who are in
22 the "uncertain where you're coming out yet" phase?

23 (Show of hand.)

24 CHAIRMAN IGNATIUS: Mr. Stewart.

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1 MR. BOISVERT: I voted that it did not.

2 CHAIRMAN IGNATIUS: Okay.

3 MR. BOISVERT: I'm going to have to sit
4 higher. I voted with the larger group.

5 CHAIRMAN IGNATIUS: All right. Now,
6 what we do with that uncertainty, there are different ways
7 to resolve it. I think it's whether there are conditions
8 imposed or whether it's not something that can be
9 conditioned. And, why don't we hold that aside for now
10 and continue to work through the other issues, and come
11 back to that again at the end. Is that fair? Okay.
12 Mr. Stewart.

13 DIR. STEWART: I'm interested in what
14 conditions have been imposed on other certificates with
15 regard to financial capability, and where we are relative
16 to those conditions. That's really my concern.

17 CHAIRMAN IGNATIUS: All right. And,
18 perhaps we can do that after a break, too.

19 MR. IACOPINO: I'll see if maybe I can
20 pull that up over lunch.

21 MS. BAILEY: I have a specific --

22 CHAIRMAN IGNATIUS: Yes.

23 MS. BAILEY: -- question about that.

24 Can you, when you're looking in the research, can you tell

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1 us if there have been other applications where they not
2 only didn't quite have the financing finished up, but
3 whether they didn't have a PPA also?

4 MR. IACOPINO: I think I can answer that
5 one right now. I think the only -- I don't think anybody
6 has had a PPA at the time of the filing of the
7 application, at least in recent history that I remember.
8 The Laidlaw plant had a draft PPA I believe at some point
9 in the process. But Granite Reliable did not have a PPA
10 when it came before the Committee. I'm uncertain about
11 Groton, I will have to check that. But --

12 MS. BAILEY: And, I think the Applicant
13 testified that, and maybe somebody can help me if you read
14 this, that "getting the certificate helps them get the
15 financing". And, I can't remember if it helps them get
16 the PPA, or if helps them get the PPA, which helps them
17 get the financing.

18 CHAIRMAN IGNATIUS: Certainly, the PPA
19 helps with financing, we were told a number of times that
20 that was really a key. And, if it couldn't be a PPA,
21 something that was going to be close enough in terms of
22 revenue certainty. And, there was definitely testimony
23 that a certificate in hand then allows other things to
24 come forward, but I'm not sure if I remember the clarity

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1 of whether it was "certificate leads to PPA", "PPA leads
2 to construction financing" or whether it was a little bit
3 more general a description. But there was no question
4 that the testimony was that, once the permitting part is
5 resolved, people get more serious about the financial
6 piece of it. And, I think -- and, we've seen that in
7 other cases.

8 My concern in this case is that, in
9 other matters, it seems to me we've had more -- been
10 further along or more pieces falling in place than what we
11 have here. So that, although there may be more to come
12 that would follow from a certificate, we're at a -- so far
13 back as a starting point on a financial package is what's
14 of concern to me.

15 Anyway, why don't we -- why don't we
16 move to another topic, first take a -- move to a lunch
17 break, and we're going to come back to all of this again.
18 I'll tell you, just so people know what to be planning
19 for, the next issue that I was expecting we would
20 undertake would be that whether the project "will unduly
21 interfere with the orderly development of the region".
22 And that, in turn, would pick up issues of local planning
23 bodies, the real estate values question, and economic
24 development issues raised as part of the Application, with

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1 Ms. Lyons leading us on that. So, are we good for that to
2 begin when we resume?

3 All right. It's now 12:20. I think we
4 should make every effort to reconvene at 1:20 ready to go.
5 So, if people can be back here by 1:15 and get started
6 again, that would be great. Thank you.

7 (Whereupon the lunch recess was taken
8 and this ***Deliberations Day 1 Morning***
9 ***Session ONLY*** ended at 12:21 p.m. The
10 deliberations to resume in a transcript
11 to be filed under separate cover so
12 designated as "***Deliberations Day 1***
13 ***Afternoon Session ONLY***".)