

SITE EVALUATION COMMITTEE

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

SITE EVALUATION COMMITTEE:

Public Utilities Commission

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

N.H. Fish & Game Department

Public Utilities Commission

COUNSEL FOR THE PUBLIC: Peter C. L. Roth, Esq.
Senior Asst. Atty. General
N.H. Atty. General's Office

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

ALSO PRESENT: Reptg. Antrim Wind, LLC:

Susan S. Geiger, Esq. (Orr & Reno)

Rachel A. Goldwasser, Esq. (Orr & Reno)

Reptg. Antrim Board of Selectmen:

Galen Stearns, Town Administrator

John Robertson, Selectman, Town of Antrim

Reptg. the Harris Center for Cons. Edu.:

Stephen Froling, Esq.

Reptg. Antrim Planning Board:

Martha Pinello, Member

Charles Levesque, Member

Reptg. Edwards/Allen Intervenor Group:

Mary Allen

Reptg. the Abutters Intervenor Group:

Janice Longgood

Reptg. Audubon Society of New Hampshire:

Amy Manzelli, Esq. (BCM Envir. & Land Law)

Frances Von Mertens

Reptg. North Branch Group of Intervenors:

Richard Block

Loranne Carey Block

Annie Law

Reptg. Industrial Wind Action Group (IWAG):

Lisa Linowes

Reptg. Appalachian Mountain Club:

Kenneth Kimball

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P R O C E E D I N G

CHAIRMAN IGNATIUS: Good morning. I'd like to welcome everyone and open the hearing -- excuse me, the deliberation session in the SEC Docket 2012-01, which is the Application of Antrim Wind Energy, LLC. As everyone knows, the Site Evaluation Committee Subcommittee, which is here today, heard evidence on the Application of AWE, issued an Order on May 2nd, 2013. And, as allowed for under our rules and state law, there has been a period of time for motions for rehearing and responses to those. And, so, there have been numerous filings made.

It's now time for us to deliberate, go through all of those, and reach determinations on whether it's appropriate to rehear any aspects of the Order that we issued on May 2nd. It isn't a time for public testimony or witnesses or oral argument by counsel. It's really a discussion time among the members of the Committee to go through public deliberations. The fact that you're here, if there were any questions, we may turn to you for information, but that's not the norm. We probably will not. So, just so you know. You're very welcome to listen, to hear. You're also welcome to come and go, if you need to step out and make phone calls. Our

1 feelings are never hurt by that. So, don't feel you have
2 to sit silently as we debate these things.

3 We first are going to begin with
4 identification of the members. And, so, why don't we
5 start at the far right with Mr. Stewart.

6 DIR. STEWART: Harry Stewart, Director
7 of the Water Division, Department of Environmental
8 Services.

9 MS. LYONS: Johanna Lyons, with the
10 Department of Resources & Economic Development.

11 DIR. SIMPKINS: Brad Simpkins,
12 Department of Resources & Economic Development.

13 MS. BAILEY: Kate Bailey, Engineer with
14 the Public Utilities Commission.

15 MR. ROBINSON: Ed Robinson, New
16 Hampshire Fish & Game Department.

17 MR. DUPEE: Brook Dupee, Department of
18 Health & Human Services.

19 MR. GREEN: Craig Green, New Hampshire
20 Department of Transportation.

21 DR. BOISVERT: Richard Boisvert, New
22 Hampshire Division of Historical Resources.

23 CHAIRMAN IGNATIUS: And, I'm Amy
24 Ignatius. I'm Chairman of the Public Utilities

1 Commission, and am the presiding officer here. I'm also
2 Vice Chair of the Site Evaluation Committee. Also with us
3 is Mr. Iacopino, would you introduce yourself.

4 MR. IACOPINO: Thank you. Mike
5 Iacopino, Counsel to the Committee.

6 CHAIRMAN IGNATIUS: So, we have a quorum
7 of the Committee, we actually have the entire Committee,
8 and the very same people who sat throughout the
9 proceeding. And, that's really a lucky thing, that we
10 were able to gather everybody for this date and have the
11 full membership. So, I appreciate everyone being here.

12 There are numerous documents to go
13 through today. And, in order to keep some sort of focus
14 on where we are and keep moving through them, I think the
15 first thing, there are two motions to strike, related to
16 submissions made after the close of the hearings, after
17 the Order was issued. They were filed by entities who are
18 intervenors in this docket: One, the Gregg Lake
19 Association, and one, Ms. Sullivan, who is an individual
20 intervenor. I want to address those very quickly. Those
21 are within the authority of me, as presiding officer, to
22 address. And, so, let me just very quickly address those.

23 We, in our cases, we have both public
24 comment, people who don't need to intervene, they're

1 welcome to come to any of the public events, whether it's
2 a public hearing out in the community or any of our
3 hearing days, to make a public statement, many people did
4 that. We also allow letters to be submitted to the file,
5 and we've received numerous letters along the course of
6 the hearing process, and even after the issuance of the
7 Order. Those letters are all on file with the SEC website
8 maintained by Ms. Murray. They're all circulated by
9 e-mail once received, she sends them out to the full
10 service list. And, they're all available to the Committee
11 members, Subcommittee members, I know certain people have
12 read those.

13 The motions to strike address things not
14 filed by general members of the public, but by people who
15 chose to become intervenors. And, our tradition on the
16 side of the intervenors is you have standards, procedural
17 schedules, and deadlines when they can make filings, when
18 they're allowed to respond, deadlines that are imposed on
19 them. And, that's one of the burdens that comes with
20 becoming an intervenor. Because it's not the only way you
21 can speak your mind, we try to be clear with people that,
22 if they do seek that extra role as an intervenor, where
23 they have a right to present testimony and cross-examine
24 witnesses, that they recognize that they have got to also

1 follow by the rules that go with that.

2 And, it is my conclusion that the
3 submissions made by those two intervenor entities, Gregg
4 Lake Association and the individual comment of
5 Ms. Sullivan, are inappropriate, that they're filed after
6 the deadlines were established for intervenor statements.
7 And, so, I will grant the motions to strike on both of
8 those.

9 We now turn to the --

10 MR. ROTH: Excuse me, madam Chairman, a
11 point of order, if I may. I did, in the objection that I
12 filed to the motion to strike, request formally, in
13 writing, according to the rules, that the Committee waive
14 the rules and allow those two under Site 202.15. And, I
15 did not hear the Chairman mention that request or rule on
16 it, and I think it would be appropriate to grant that
17 request in this instance for the reasons stated therein.
18 And, that's as much as I'll say. Thank you.

19 CHAIRMAN IGNATIUS: Thank you. And,
20 you're right, you did make that, and it's in my notes, and
21 just didn't get mentioned. You, on behalf of those two
22 intervenors, filed a request to waive the deadlines, and
23 argued that there was no prejudice alleged by the
24 Applicant in those materials coming in, even though they

1 were late-filed, and noted that they're *pro se*, they may
2 not be able to follow all of the -- may not be familiar
3 with all of the rules.

4 I think, notwithstanding the fact that
5 they are *pro se*, and Ms. Sullivan stated that she had had
6 medical issues, and so there are some, you know, some
7 reasons that they may not have known what the right
8 standards are, notwithstanding that, I still would deny
9 the motion to waive. I think, although there -- although
10 there may not have been a prejudice alleged by the
11 Applicant in receiving those materials and having an
12 opportunity to respond, they're also -- I don't find a
13 compelling basis that the information should be brought
14 forward. They have made their point of view known in
15 other points in this proceeding as intervenors, and I
16 don't see a basis to waive the rules in this case. And,
17 so, the motion is denied.

18 MR. ROTH: Thank you.

19 CHAIRMAN IGNATIUS: So, we move to the
20 rehearing requests themselves. And, there are a number of
21 them. Before we get into them specifically, I would like
22 to ask Attorney Iacopino just to remind Committee members
23 of what the standard of review is in a rehearing. And,
24 after that, or as part of that, to also describe what, as

1 I think of it, sort of what are the tools available to a
2 committee in this stage of the game? Where are we in the
3 process? And, what would be appropriate to undertake or
4 would not be appropriate to undertake, when you're in the
5 phase of a rehearing request, after a decision has been
6 reached?

7 MR. IACOPINO: Thank you, madam Chair.
8 The legal standard for motions for rehearing is governed
9 by two types of law. The first is statutory law under RSA
10 541, and the second is the rules of the Committee, which
11 is Administrative Rule Site 202.29. Basically, or, first
12 of all, a request for rehearing can be made by any party
13 to the action or the proceeding, that would include any
14 applicant, Counsel for the Public, any intervenor. A
15 request for rehearing can also be made by any person who
16 is directly affected thereby. And, in this particular
17 case, we have at least one motion for rehearing that is
18 filed by parties that claim to be directly affected by the
19 ruling of the Committee -- or, the Subcommittee, and
20 that's the Antrim Landowners' motion.

21 A motion for rehearing is, really, it's
22 a two-prong -- it's a two-prong issue. It is necessary
23 for the parties, for any party who may seek to appeal a
24 decision of the Committee to the New Hampshire Supreme

1 Court, they must first file a motion for rehearing, and
2 set forth every ground that they believe exists for
3 rehearing, and every ground that they believe that the
4 decision of the Committee was unreasonable or unlawful.
5 The second reason for a motion for rehearing, obviously,
6 is the Committee -- the party who's filing the motion is
7 seeking for the Committee to actually rehear, to go back
8 and "reconsider", is another word for it, the action that
9 they have taken.

10 The Committee is required to either rule
11 in paper within ten days or suspend the Order. In this
12 case, obviously, it's impossible to get this Committee
13 together within ten days. So, the presiding officer did
14 issue an order suspending the Order and Decision in this
15 case, pending review of the motions for rehearing.

16 The purpose of the motion for rehearing
17 is to direct attention to matters that are said by the
18 parties to have been overlooked or mistakenly conceived in
19 the original decision, and to invite reconsideration upon
20 the record to which that decision rested. And, that's
21 language from a Supreme Court case, the *Dumais* case, from
22 1978. The Committee can find -- may grant a rehearing if
23 you find that there is good cause or a good reason to do
24 so. Keeping in mind that the purpose is to determine

1 whether or not you have overlooked or mistakenly conceived
2 something in your original decision. The motion for
3 rehearing can be denied, where no good reason or no good
4 cause exists, and that is you determine what is good
5 reason or good cause.

6 So, that's pretty much the standard that
7 you apply from a legal standpoint in deliberating on and
8 determining the motions for rehearing.

9 I'm sure you have some question about
10 "what can you consider, in terms of the motion for
11 rehearing or reconsideration?" And, you can consider
12 anything in the record that is before you. You can
13 consider the arguments made by the parties, you can
14 consider the evidence that you've heard during the course
15 of these proceedings, you can consider the things that
16 have been filed after-the-fact.

17 However, you have to remember that the
18 purpose of the rehearing is to determine whether you have
19 overlooked or mistakenly conceived in your original
20 decision, and whether or not you want to reconsider, based
21 on the record that already exists, that decision. That is
22 basically the standard that is before you. So, you can
23 use evidence received at any point in time to determine
24 whether or not you want to review the record that

1 presently exists and upon which your decision was rested.

2 So, I can't tell you what to do, but I
3 can tell you that that's the legal standard that applies
4 here. I don't know if that addresses everything that the
5 Chair wanted me to address, but trying to keep it as
6 simple as possible.

7 CHAIRMAN IGNATIUS: So, is it fair to
8 say that, if people felt a need for further evidence on a
9 matter, that would not be done today? We would schedule
10 an opportunity for further exploration of evidence, with
11 notice to everyone to participate?

12 MR. IACOPINO: Yes. If there was a
13 determination made by the Committee today, to either
14 rehear, to grant the motion for rehearing, or to grant --
15 there was also a motion to reopen the record pending, or
16 to grant the motion to reopen the record, due process
17 would require that a scheduling order issue to deal with
18 how that would occur. There would be -- there would have
19 to be a subsequent hearing so that the parties could all
20 address whatever issues the Committee wishes to rehear.
21 And, there would be a process. So, there would have to be
22 a further hearing. At that further hearing, you could
23 take whatever new evidence there may be, or, if there is
24 no new evidence, you could listen to arguments on why the

1 decision should be different on the record that exists.

2 CHAIRMAN IGNATIUS: And, you mentioned
3 the motion to reopen the record, we'll also be taking that
4 up. At this point, any information that's been submitted
5 as part of a request to reopen the record is not yet what
6 you would consider part of the record evidence, is that
7 correct?

8 MR. IACOPINO: That is correct.

9 CHAIRMAN IGNATIUS: So, if there is a
10 decision to grant that motion to reopen, and bring
11 forward, at another date, witnesses, offers of proof,
12 whatever the process might be to present that evidence and
13 put it into the record, then those things could be
14 considered. But, as of today, they request to be
15 considered, but they aren't yet part of the record?

16 MR. IACOPINO: Yes. If the Committee
17 determines additional testimony, evidence, or arguments
18 are necessary for a full consideration of the issues that
19 were presented at the hearing, then you have the option to
20 reopen the record and accept those, that additional
21 testimony, evidence, or arguments. And, then, there's --
22 we have a rule that requires that you schedule a date no
23 later than 30 days from the date of receiving the
24 testimony, evidence, or argument, by which other parties

1 get to respond to that. And, then, obviously, I believe
2 that, because of the nature of this Committee, you would
3 have to have a hearing on that.

4 CHAIRMAN IGNATIUS: Thank you. Any
5 questions on that, before we go into the motions?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: All right. We have
8 motions for rehearing filed by the Applicant, by the Town
9 of Antrim, by the Antrim Landowners, by the Counsel for
10 the Public, and there are responses filed to all of those
11 as well. And, when we go through them individually, I'll
12 note the objections that were filed to each of those.

13 So, the first one we will take up is the
14 Application -- I mean, excuse me, the Applicant's motion
15 to rehear. We'll set aside the motion to reopen until
16 later. All of you have it, I'm sure you've all read it,
17 and you know that it is extensive. There is, as I count,
18 46 pages on the motion to rehear. And, what I'd like to
19 do is take up the issues in the order that they're in the
20 motion itself. And, we will take votes on issues, if
21 people are ready to do so, after discussion of each of
22 them. We'll work our way through each of the issues that
23 are in that motion, and votes on them, if people feel
24 they're prepared to, and then move to the next motion for

1 rehearing, and just keep working our way through them.

2 So, let me summarize, just to start us
3 off, on the Applicant's motion. The first issue is on the
4 issue of aesthetics. And, there are numerous arguments
5 within the "aesthetics" section, that begins on Page 11 of
6 the motion. So, let me summarize the "aesthetics"
7 arguments, sort of section by section, and any objections
8 that have been filed in response to those.

9 The first argument made is that the
10 Committee, and I think, for ease, if I say "Committee", I
11 mean "Subcommittee". It gets so complicated trying to
12 remember that. Technically, the "Committee" is the full
13 Site Evaluation Committee of 14, 15 people, whatever it
14 is. We are a subcommittee, but I'm going to get it wrong.
15 So, let's just assume that, when I say "Committee", I'm
16 talking about us, unless I make a specific point of
17 identifying it as the full Site Evaluation Committee.

18 So, the allegation is that the Committee
19 failed to follow precedent of prior SEC determinations in
20 other wind applications in the area of aesthetics. And,
21 that we had similar visual impacts sought in other cases
22 and approved those. We used a different standard in
23 looking at this one, and didn't have any justification in
24 our Order distinguishing why that was necessary. That we,

1 by looking at it differently than had been done in other
2 cases, according to the Applicant, it caused an
3 unfairness, that it was not able to rely on the decisions
4 that had been made before. That we disregarded the
5 overall benefits when looking at visual impacts, because,
6 although there are some impacts, they're on a short-term
7 basis, and, in the long-term, there are greater benefits
8 that go out into perpetuity with conservation easements.

9 The Applicant argues that we used, for
10 the first time, used some sort of ratio between the height
11 of the turbines and the elevation of the land itself, and
12 that isn't a standard that's found in any statute or rule,
13 and, therefore, was improper. That we retroactively
14 applied some new standard, without any warning to the
15 Committee -- to the Applicant, and that was unfair and
16 unlawful.

17 That we used a term "viewsheds of
18 significant value", and that isn't something that had been
19 referenced before and was unfair, and that the properties
20 within the area of the project shouldn't qualify as things
21 that should have been evaluated, because they're not of
22 state or national significance.

23 That we relied on some decisions from
24 other jurisdictions that were not relevant. And, that we

1 failed to consider the mitigation that had been offered by
2 the Applicant to understand that, without the mitigation
3 effects of conservation easements, the properties could be
4 developed into something far worse than wind turbines, and
5 the impacts, the visual impacts could have been far worse,
6 and we should have taken that into account.

7 So, that's sort of a very brief summary
8 of Pages 11 through 27 of the Applicant's motion. There
9 were objections filed to that that I'll just briefly note,
10 and then I want to start working through the discussion of
11 all of those.

12 Audubon filed saying we're not bound by
13 prior determinations of the SEC. It's a case-by-case
14 determination, based on the facts and the circumstances of
15 each particular project.

16 The Edwards/Allen Intervenor Group also
17 argued we're not bound by those prior decisions, that each
18 project is going to be different. And, that intervenor
19 group also argued that the Applicant has overrated the
20 value of those conservation easements. And, so that, when
21 the balancing was done between the impacts and benefits,
22 it was not an improper balance found.

23 The Public Counsel objected, also saying
24 that we should not be bound by prior determinations.

1 These are case-by-case determinations. That the Committee
2 adequately evaluated those visual impacts and adequately
3 described them in the Order. Public Counsel argued that
4 the Applicant had asked us not to follow the methodology
5 used in prior cases, by which I think he means the
6 approach that Ms. Vissering, who had been a witness on
7 behalf of a project once before, was now a witness for Mr.
8 -- for Public Counsel. And, that the Applicant, by not
9 following that methodology, shouldn't -- I think I'm
10 muddling up this argument.

11 Can you finish this argument? I think I
12 made a mess of this. The argument that, by not following
13 prior methodology, that the Company should be estopped
14 from seeking to do so now.

15 MR. IACOPINO: Yes. Counsel for the
16 Public made that argument on Page -- I believe it's around
17 Page 5 of his objection. My understanding of the argument
18 is that Counsel for the Public claims that the Committee's
19 -- I'm sorry, that the Applicant specifically requested
20 the Committee not to adopt the methodology used by Ms.
21 Vissering. And, in doing that, I believe it's Counsel for
22 the Public's position that that's the reason -- that
23 that's the methodology that was used in prior dockets,
24 and, therefore, the Committee [Applicant?] should be

1 estopped from now saying that the methodology -- they
2 never asked for that methodology to be used, so they
3 should now be estopped from complaining that we didn't
4 consider prior cases, or the methodology used in prior
5 cases.

6 That's my understanding. And, I guess
7 it's -- my understanding is that's based upon Counsel for
8 the Public's belief and position that Ms. Vissering's
9 methodology was the same methodology that was used in
10 prior cases. And, in this case, the Applicant said "don't
11 rely on that methodology". So, therefore, they should be
12 now estopped from saying "compare our case to prior
13 cases". That's the argument that I believe Counsel for
14 the Public is making. And, I'm sorry, it's on Page 12 and
15 13 of the objection, not Page 5.

16 CHAIRMAN IGNATIUS: So, that is a
17 summary of the "aesthetics" arguments made in the motion
18 for rehearing and the objections' responses relevant to
19 that issue. It's a lot to take up. And, I would like to
20 have a discussion about whether you find a basis to reopen
21 or rehear the case on those arguments, or whether you do
22 not find a basis to rehear, and remain comfortable with
23 the Order that was issued on May 2nd.

24 And, I think I can start out with a few

1 comments of myself, but, really, I don't want to be the
2 one doing all the talking here. So, I'll give you a
3 chance to get ready.

4 That there have been very
5 project-specific analyses of visual impacts in the prior
6 cases that have been taken up by the Site Evaluation
7 Committee. Every project is different in its topography,
8 in its size, in the units that are being proposed to be
9 sited. And, there is not a uniform analysis of what is or
10 is not an "adverse visual impact", because there's not a
11 uniform project, and there's no uniform topography. A
12 very remote location, such as the Granite Reliable project
13 up in the mountains, the White Mountains, is a far cry
14 from the topography and circumstances of Lempster, and
15 that is also very different from the topography of Antrim.
16 And, so, there -- I believe implicit within the authority
17 of the Site Evaluation Committee statute is to evaluate
18 the visual impacts, evaluate all of the terms of the
19 determinations that we have to make in the context of that
20 particular project. And, so, it may be that sometimes
21 they will line up and be very similar from time to time;
22 it may be that they won't line up at all and you won't end
23 up with uniform determinations. I think that's inherent
24 in the analysis that we have to make when we evaluate

1 these. And, we look at it in the context of that
2 particular location. And, we have to make the
3 determinations that we find appropriate for the kinds of
4 impacts for those locations.

5 So, do people have any thoughts,
6 concerns about any aspects of the "visual impact"
7 arguments made? Ms. Bailey.

8 MS. BAILEY: I agree. I think that we
9 have to take it on a case-by-case basis. It seems to me
10 that if, and maybe I'm not completely understanding this,
11 but if we agreed with the Applicant's argument, then,
12 because we've approved three other projects, and because
13 the Site Evaluation Committee has approved three other
14 projects, then we can never find adverse impacts with
15 respect to aesthetics.

16 And, so, as you just articulated, you
17 have to look at it on a case-by-case basis, and the answer
18 is going to be different on a case-by-case basis, or the
19 statute should be changed, I think.

20 CHAIRMAN IGNATIUS: Other comments?
21 Dr. Boisvert.

22 DR. BOISVERT: I agree with what Ms.
23 Bailey said. That, as I look at it, we were required to
24 take it on a case-by-case basis. And, that the RSA, as I

1 read it, effectively prohibits us from letting a prior set
2 of decisions dictate current decision. And that, if that
3 were the case, then there wouldn't be much reason to have
4 a hearing.

5 So, I felt as though that the premise of
6 the argument did not hold. Furthermore, I was not
7 persuaded by the information that they gave.

8 CHAIRMAN IGNATIUS: Mr. Dupee.

9 MR. DUPEE: Thank you, madam Chair.
10 And, thank you for reminding me to use the microphone. I,
11 too, would agree with the thoughts you just expressed.
12 That what the Committee has done, and done consistently,
13 has applied the standards of RSA 162-H:16, IV(c), with
14 aesthetics. And, I think that it's a point well taken
15 that, if we were to have no flexibility in implementing
16 the statute, why would the statute exist? So, the fact
17 that we found in favor of a certain site prior to, does
18 not mean that we would automatically find the same
19 findings in a site that varied from the initial site.

20 CHAIRMAN IGNATIUS: Yes, Mr. Robinson.

21 MR. ROBINSON: I would agree that it
22 should be a case-by-case review. Just because other
23 projects have been approved, each one is different, and we
24 need to look at them differently. So, I would agree with

1 what's been said so far.

2 CHAIRMAN IGNATIUS: You know, there's an
3 element also in the argument that -- that there's nothing
4 worse in this project than has been previously sited. So,
5 it's not that, because it was once -- there was once a
6 wind facility sited, then you must always site them, but
7 that there's nothing here that's any more of an impact
8 than in those prior cases.

9 And, I really take issue with that.
10 That's not my understanding of the record. These are
11 taller towers. They are in an area that is not remote,
12 and so that creates different impacts. They are not in a
13 high mountainous area, and so that the impact of how they
14 are perceived within that location I think is significant.
15 I understand the argument that the lay person can't, from
16 some distance, tell the difference between a 200 and 400
17 foot tower, but that's not -- I don't think that was my
18 point, in looking at the notion that the towers, many of
19 them have been right within very close proximity to the
20 community itself, and not heading off, you know, down some
21 remote ridgeway, but sort of right -- some of it right in
22 the kind of heart and center of the community.

23 And, as I recall, the Order itself made
24 some of those distinctions, tried to articulate those

1 differences. I'm glad you're getting the Order, because
2 I'm about to turn to you, Mr. Iacopino. That, although
3 the Applicant has said we didn't distinguish and we didn't
4 articulate why we were doing what we did, I believe we
5 did. And, I guess I would ask if you can recount for us
6 where we are, what we addressed in the Order on that
7 issue, on the reasons why we found an adverse effect here,
8 unreasonable adverse effect, even though that hadn't been
9 found in other cases?

10 MR. IACOPINO: You want me to just list
11 them from the Order?

12 CHAIRMAN IGNATIUS: All right.

13 MR. IACOPINO: Okay. On Page 48 through
14 55 of the Committee's decision is where you have the
15 reasons that you found there to be an unreasonable adverse
16 impact on the aesthetics, especially with respect to the
17 visual impact. In your Order, on Page 49, you generally
18 explain the three reasons: "The impact of the Facility's
19 size and scope on the aesthetics of the overall community;
20 the impact of the Facility on the area referred to as
21 Willard Pond and the dePierrefeu Wildlife Sanctuary;" and,
22 thirdly, "the lack of any satisfactory mitigation for the
23 aesthetic impacts of the Facility."

24 You then go on, in your Order, you go

1 through the various reasons why those three major areas
2 caused you to find that there were unreasonable adverse
3 impacts. You talk about the fact that the "ridgeline is
4 2.5 miles in length". The turbines are approximately
5 "492 feet when measured from the tip to blade". You list
6 the site elevations that were provided in various
7 exhibits, specifically the Application at Appendix 2E and
8 the FAA determinations. And, you indicate that, you know,
9 that these turbines make up, in the viewshed between
10 approximately "between 25 and 35 percent of the elevation
11 of the ridgeline where they're located".

12 You also go on and talk about the fact
13 that "Tuttle Hill is a prominent topographical" region in
14 area. And, that the nature of the topography in the area
15 "creates a cradle" that includes a number of visually
16 sensitive areas. You list some of those areas.

17 You also go on to talk about how the
18 size of the proposed turbines "would appear out of scale
19 and out of context" with this topography. And, the fact
20 that it would -- again, the effect it would have on
21 various locations, which were contained in Ms. Vissering,
22 one of the expert witnesses, visual impact assessment. I
23 can go through those. Specifically, they were "Robb
24 Reservoir, Island Pond, Highland Lake, Nubanusit Pond,

1 Black Pond, Franklin Pierce Lake, Meadow Marsh, Pitcher
2 Mountain".

3 You make reference to the fact that
4 these would be the "tallest wind turbines ever to be
5 certificated in the State of New Hampshire". You make
6 reference to the prior -- the turbine heights in prior
7 cases, specifically, in Lempster, Granite Reliable, and
8 Groton Wind. You note that these are approximately --
9 well, you note that they're the tallest, but the other
10 projects, the height of the turbines were between 396 feet
11 and 411 feet, but these being 492 feet.

12 You found problems with the Applicant's
13 expert's analysis. You've indicated that you thought he
14 had an "overly restrictive approach", and that he
15 "misunderstood the status and values of viewpoints" in the
16 area. For instance, you point to the fact that he was
17 unaware of the Audubon's wildlife sanctuary being an area
18 to which state and federal funds had been designated and
19 had been applied.

20 You indicate that a majority of this
21 Committee agreed with Ms. Vissering's overall assessment
22 that the project was not appropriately scaled, and did not
23 work in this specific geographic setting. Basically, "the
24 turbines are too tall and too imposing in the context of

1 the setting. They would overwhelm the landscape and have
2 an unreasonable adverse impact upon valuable viewsheds."
3 That's a quote right from Page 51 of your Order.

4 You also then went on to talk about the
5 individual and particularly profound impacts that this
6 would have on the Willard Pond area and the dePierrefeu
7 Wildlife Sanctuary. And, you went into some detail on the
8 nature of those areas and why this project would have such
9 an impact on those issues.

10 Did you want me to address the lack of
11 the unsatisfactory mitigation issue as well or do you want
12 to deal with that separately?

13 CHAIRMAN IGNATIUS: Why don't we hold
14 off on that for a moment. We have a lot to digest of that
15 part, but keep a note there. Here's a stickie.

16 MR. IACOPINO: Thank you.

17 CHAIRMAN IGNATIUS: Is there anything
18 anyone else, after that recitation, it's clear there was
19 quite a bit of discussion about the specifics of this
20 project and the particular concerns that the project
21 raised regarding aesthetics, is there anything anyone
22 wanted to add to that? Mr. Stewart.

23 DIR. STEWART: As -- excuse me. Thank
24 you. As one of the dissenters to the decision, I think I

1 have to make clear that this is a very subjective
2 decision. And, that was the point of the dissenters, is
3 that it's very hard to determine, and I think, in our
4 dissent, we described it as a "bright line", between the
5 three that were approved and this that was denied. I'm
6 not clear what "too tall" is. You know, if they had come
7 in at an average height for the other three, would that
8 have been adequate? I'm not clear on what the relative
9 perspective on the landscape needs to be to be acceptable.
10 There's lakes that these turbines are seen from in various
11 of the other projects, villages. This is maybe less
12 remote than some of the other projects, but it's a
13 relatively remote area within New Hampshire.

14 So, this "bright line" and the criteria
15 for a decision, I find very difficult to deny in the
16 context, and did, in the context of the other three
17 projects.

18 CHAIRMAN IGNATIUS: All right. Anything
19 further on the issues thus far?

20 (No verbal response)

21 CHAIRMAN IGNATIUS: Then, why don't we
22 talk a little bit about the mitigation issue. And, that
23 was, as you recall, that the Applicant believes that the
24 Committee didn't properly consider the benefits of the

1 land put into conservation easements, and that any
2 assessment of undue adverse impacts has to be balanced
3 against the benefits of long-term conservation. And, that
4 we, by finding undue adverse impacts, we must have not
5 taken that into consideration.

6 Ms. Lyons?

7 MS. LYONS: Once again, it's almost a
8 subjective measure, that the thought that houses would be
9 worse or better than the conservation strategies. So, it
10 was not a mitigation for the resources that were being
11 changed, but a balance between "do you want house lots or
12 do you want a wind turbine?" So, it was also kind of a
13 subjective red flag that was thrown up.

14 CHAIRMAN IGNATIUS: Mr. Dupee.

15 MR. DUPEE: Thank you, madam Chair. I
16 would agree with some of the last points made. It is hard
17 to establish a specific "bright line", which is why I
18 think the statute was written the way it was, was to give
19 this Committee some ability to connect the dots between
20 different facts. And, so, I think that the Committee
21 spent a great deal of time deliberating this matter. And,
22 in fact, there was a split decision sort of suggested
23 among the discussion that was held, but -- I'll stop
24 there.

1 CHAIRMAN IGNATIUS: Dr. Boisvert.

2 DR. BOISVERT: I now have a microphone.

3 I agree that the tough decisions are subjective, but
4 aesthetics are supposed to be subjective. They're not
5 something that are readily quantifiable, such as decibels
6 or number of avian species that might be impacted
7 unintended by a blade. It is subjective. It is supposed
8 to be subjective. And, we are given a charge and some
9 direction within the RSA to go forward with that and give
10 our best decision. And, I understand it is very
11 difficult, and I can appreciate the dissenters' point of
12 view.

13 At the same time, I don't think that,
14 because it's subjective, it is somehow something that
15 should be set aside. We deal with it. And, you know, I
16 came to my decision, others came to theirs. But, to say
17 that there's a problem, because it's subjective, I think
18 is a nonissue.

19 CHAIRMAN IGNATIUS: Yes. I think you
20 really have to ask then, we would all agree there is a
21 subjective element to the interpretation, and it's not
22 quantifiable, and would be a lot easier if it were. So,
23 you have to be certain, is the determination reached based
24 on the evidence? Is it built off of the record and a fair

1 consideration of the record? Rather than some personal
2 bias that, you know, I may hate things that are orange,
3 you know, that's not a basis on which to make a ruling.
4 But what is the record evidence? And, in looking at the
5 record evidence, you also have to remember, it is the
6 burden of proof that rests with the Applicant, to show
7 that there is no undue adverse effect.

8 And, I stated in deliberations, and will
9 say again, I was not persuaded by the evidence presented
10 by the Applicant on this issue that there was no -- I
11 couldn't accept his conclusions that there was no undue
12 adverse effect, I didn't find his analysis to be very
13 specific to this actual project's circumstances. It
14 seemed very general. It seemed that he had a shifting
15 standard that he was applying the more he was questioned,
16 it was uncertain what criteria he was using. And, it -- I
17 found Ms. Vissering's presentation of the issues far more
18 organized, specific to the project, and really sound in
19 the analysis.

20 And, so, I concluded that the Applicant
21 had not demonstrated that there was no undue adverse
22 effect. And, there's nothing that I've seen in the motion
23 for rehearing on this issue that makes me reconsider that.

24 Mr. Simpkins.

1 DIR. SIMPKINS: Yes. I would just
2 mention, I concur with that. You know, looking at the
3 record and the evidence that was provided by the
4 Applicant's witness, you know, they were the ones who
5 talked about "resources of statewide significance", and
6 that that was a concern for the effect on those viewshed
7 areas. And, they provided the definition of what an "area
8 of statewide significance" was. In the prefiled
9 testimony, they had only identified two areas, the
10 Greenfield State Park and Powder Mill Pond. But it was
11 discussed on the record at length about other areas where
12 federal money had been put into conservation easements,
13 the Forest Legacy Program. These were not discussed, but
14 they fall under the definition that the Applicant provided
15 of "statewide significance". So, it was actually using
16 their own definitions, some of their own testimony in
17 coming to that decision.

18 And, as far as the mitigation portion, I
19 also know it was discussed that, you know, there's,
20 regardless of what happened with this project, there is
21 still planning and zoning in the Town of Antrim. So,
22 there is still some type of control over what would happen
23 on those mountaintops.

24 CHAIRMAN IGNATIUS: Thank you. And, I

1 think I veered us off a little bit from the mitigation
2 question. Other thoughts on the balance between the
3 short-term, as the Applicant describes it, short-term
4 impacts of the turbines during their useful life, versus
5 the long-term benefits of land put into easement?

6 (No verbal response)

7 CHAIRMAN IGNATIUS: And, I think I would
8 agree with the Applicant that there's a possibility that
9 something else could be done on that property that could
10 have impacts. I don't -- there's nothing that we can
11 really do about that. I mean, we're not charged with
12 finding the best way to preserve lands in the State of New
13 Hampshire. It's to look at the particular request for
14 siting of a facility. And, certainly, there are benefits
15 of conservation that would go towards offsetting impacts
16 of the turbines, there's no question about that. And, I
17 think our Order reflected that. It's just what the --
18 where we found the balance to be, and that, in this case,
19 found that the balance was -- that the conservation
20 easements, although those clearly have benefits, did not
21 outweigh the adverse effects of the turbines within the
22 community.

23 Mr. Iacopino, is there anything else on
24 those issues of mitigation that we should address?

1 MR. IACOPINO: No, I don't think so.
2 The only thing that was in your Order that you haven't
3 talked about, obviously, you've talked about the
4 conservation easements, in your Order you also discuss the
5 physical mitigation efforts, such as the color of the
6 towers and things like that. I don't know that you need
7 to discuss that, but that was part of your Order. And, in
8 your Order, you found that they are really pretty much
9 standard features. And, I guess the best way to summarize
10 the Order is it's not really mitigation of any sort, but
11 they're pretty much standard design features now in the
12 industry. They're talking about the color of the -- oh,
13 and the other thing that you also discussed in your Order
14 was the automatic lighting system, radar-activated
15 lighting. You also made a determination, although you
16 appreciated the use of that, that that did not
17 significantly add to mitigation. So, that's another --
18 those two, what you would consider "physical mitigation"
19 issues, were also addressed in your Order. I don't know
20 if you feel the need to address them in this hearing.

21 CHAIRMAN IGNATIUS: I mean, I think,
22 certainly, the radar-controlled lighting proposal is a
23 benefit. I think that we've now seen it, it was new in
24 this case, and the Applicant points out it was something

1 that they had offered, and at some expense, to take that
2 extra step. I believe, in another case that has been
3 brought before us since then, there is also talk of
4 radar-controlled lighting, and that that may become more
5 the norm down the road. We don't know. It hasn't yet
6 been approved, I don't believe. But, I think, as of the
7 Order, it hadn't been approved by the FAA.

8 But I don't mean to dismiss it as a
9 nonexistent factor, it certainly adds to the benefit. But
10 the Applicant's argument that we "must not have considered
11 it, because, otherwise, we would have found that the
12 visual impacts were not adverse", I think is a misreading
13 of what we did. We did consider it, just, in the balance,
14 the majority still found that the impact was sufficiently
15 adverse to reject the Application.

16 So, unless there's anything else to
17 discuss, I think it's time to take a vote on the question
18 of the aesthetics issue. Do you find a basis in the
19 Applicant's motion to rehear the issue of aesthetics in
20 this case?

21 Any discussion about that, before we go
22 to a vote? Ms. Bailey.

23 MS. BAILEY: I don't think that we have
24 overlooked or mistakenly conceived the record which

1 exists. The Applicant says, if we're going to change our
2 precedent, we have to explain why we're changing it. I
3 don't believe we're changing it. I think we're applying
4 the facts in this case, specifically to this case. And,
5 that's not really a change of precedent; the precedent is
6 to apply the facts in the case. And, so, I don't -- I
7 don't find a reason to rehear it.

8 CHAIRMAN IGNATIUS: Any other discussion
9 or are we ready for a vote?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: I guess we need a
12 motion. And, it would be as to, on the "aesthetics"
13 portion of the Applicant's --

14 DIR. STEWART: I have a question.

15 CHAIRMAN IGNATIUS: Yes.

16 DIR. STEWART: So, the question
17 ultimately is whether there's hypothetically more
18 information that could come into the -- I mean, we've got
19 information before us that the Committee, the full
20 Committee, the Subcommittee considered in making its
21 decision. And, so, you know, if we -- I guess the
22 scenario that I'm trying to mumble my way to is, if the
23 rehearing is on the same information, then there's really
24 no basis to arrive at a different conclusion. Am I

1 understanding the question right? That it would be a
2 rehearing on the existing information?

3 CHAIRMAN IGNATIUS: Mr. Iacopino, you
4 want to respond to that?

5 MR. IACOPINO: Well, it would depend --
6 I mean, theoretically, it could be limited to that. I
7 don't think that that is what would happen.
8 Theoretically, it could be limited to that, but I don't
9 think that that is what would happen, if you -- if you
10 granted a motion for rehearing. The purpose of the motion
11 for rehearing is to draw your attention to matters which
12 have been overlooked or mistakenly conceived in the
13 original decision, and to invite reconsideration upon the
14 record to which that decision rested.

15 So, in terms of determining the motion
16 for rehearing, if you believe that there is good cause to
17 grant a rehearing, in order to correct something that you
18 have overlooked or mistakenly conceived in the original
19 decision, in other words that some new information brings
20 you to reconsideration of the record that you already
21 have, then, in that case, you should vote for a rehearing.
22 If you believe that you have not mistakenly misconceived
23 or mistakenly over -- I'm sorry, mistakenly conceived or
24 overlooked anything in the record, then you should vote

1 against the rehearing. Does that explain anything for
2 you?

3 DIR. STEWART: Yes, that is helpful.

4 MR. IACOPINO: Okay.

5 CHAIRMAN IGNATIUS: And, I think that
6 the difficulty of this is what to make "is there new
7 evidence?" Not new information about the evidence that we
8 already had, that's sort of what the rehearing gets at.
9 But is there new evidence to be considered? And, that's
10 part of the motion to reopen the record, and add new facts
11 to the record itself, that we haven't yet taken up.

12 So, let's assume we're talking about the
13 record that was built through the adjudicative process.
14 Is there any new information about that evidence that
15 causes you to rethink, think we need to reopen it and
16 reconsider the evidence that we had before us? Did we
17 forget something? Did he mistakenly overlook something?
18 Was there something that we misconstrued that makes us
19 come to a time to re-evaluate that evidence that was in
20 place at the close of the hearings?

21 All right. Is that clear?

22 (No verbal response)

23 CHAIRMAN IGNATIUS: Are people -- is
24 there a motion then to take a decision on that aspect of

1 the Applicant's motion for rehearing?

2 MR. DUPEE: Could I ask Counsel for the
3 Committee to frame the motion, I will make it?

4 MR. IACOPINO: Well, I don't know --
5 well, what do you want to do?

6 CHAIRMAN IGNATIUS: Yes. It could be a
7 motion to grant on the issues of aesthetics. It could be
8 a motion to deny on the issues of aesthetics.

9 MR. IACOPINO: I mean, that would
10 basically be the type of motion the Chair is looking for.
11 To either grant or deny with respect to Issue Number 1 in
12 the Applicant's motion for rehearing, which involves
13 aesthetics.

14 MR. DUPEE: In that case, I would move
15 that we deny.

16 CHAIRMAN IGNATIUS: To deny the request
17 to rehear on the basis of the aesthetic arguments?

18 MR. DUPEE: On an understanding that
19 we're talking about the record that exists today, and then
20 maybe a new vote on a --

21 (Court reporter interruption.)

22 MR. DUPEE: My apologies one more time.
23 The answer is, that's correct. That we are talking only
24 about the rehearing, not new facts in this case.

1 CHAIRMAN IGNATIUS: All right. Is there
2 a second?

3 (Dr. Boisvert indicating by raising his
4 hand.)

5 CHAIRMAN IGNATIUS: Mr. Boisvert. All
6 right. Any other discussion or are we ready for a vote?

7 (No verbal response)

8 CHAIRMAN IGNATIUS: All right. All
9 those in favor of the motion to deny the request to rehear
10 on the basis of the aesthetic issues, please signify by
11 saying "aye"?

12 (Multiple members indicating "aye".)

13 CHAIRMAN IGNATIUS: Opposed?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: Already, that is
16 unanimous.

17 DIR. STEWART: No.

18 CHAIRMAN IGNATIUS: Oh, I'm sorry.

19 DIR. STEWART: Sorry. Have a show of
20 hands?

21 CHAIRMAN IGNATIUS: Would you rather a
22 show of hands?

23 DIR. STEWART: Sure.

24 CHAIRMAN IGNATIUS: All right. Let's do

1 a show of hands. Then, so, the same vote on the motion
2 for deny on the basis of the aesthetic arguments, please
3 signify by saying -- by raising your hands?

4 (Show of hands.)

5 CHAIRMAN IGNATIUS: All right. Those
6 opposed?

7 (Show of hands.)

8 CHAIRMAN IGNATIUS: And, so, that is an
9 8-1 vote to deny.

10 MR. IACOPINO: And, that's with
11 Mr. Stewart opposed.

12 CHAIRMAN IGNATIUS: Thank you. All
13 right. The next issue is "financial capability" that's
14 raised in the Applicant's motion for rehearing. This
15 starts at Page 34, and runs to 41.

16 The arguments briefly summarized are
17 that the Committee failed to make a determination on
18 financial capability, although it said that it would, and
19 it said that we would loop back to that, and then failed
20 to do so. And, that we are obligated to rule on each item
21 in the statute, and, so, we should have, and we should
22 make such a finding, you know, rehear it and make such a
23 finding that the evidence supports a finding for financial
24 capability.

1 The objections, I guess I won't go into
2 the details of what the reasons were for such a finding,
3 because I think we would get to that if there is a
4 decision to reopen on the specifics about the financial
5 capabilities of the Applicant's personnel. Although, I'll
6 mention an argument that we misconstrued and put focus on
7 the financial package of the project itself, rather than
8 the financial capability of the individuals who were
9 working to develop the project.

10 The Applicant also argued that we should
11 have accepted their request to make a certificate
12 conditional upon obtaining construction financing, and
13 that no construction could begin until that was fully in
14 place, as was done in the Granite Reliable case. And,
15 that our failure to do so rendered that an impermissible
16 aspect of our Order.

17 There were objections to the financial
18 capability issue filed by the Edwards and Allen Group,
19 saying that it was appropriate not to make a ruling, that
20 there is no justification to find that the Applicant has
21 the financial capability, because they have failed to
22 prove that they have such capability.

23 That Public Counsel responded to this
24 issue and said that it was the Applicant's failure to

1 prove financial capability that resulted in it being
2 appropriate that the Committee did not make a finding
3 regarding financial capability. And, I think that was it
4 for responses received.

5 I think, to start the discussion of
6 this, I'd like to ask Mr. Iacopino, could you -- this is a
7 little bit of a different one, because we didn't make a
8 finding. The Applicant is correct that we didn't do so,
9 at the final stage of the deliberations, that another very
10 significant issue had been found to be an adverse impact.
11 And, since you've got to find all of those terms not to
12 pose an adverse impact, the project wasn't -- couldn't be
13 certificated at that point. And, so, we didn't make the
14 ruling on financial capability.

15 But could you address the sort of
16 legality or the legal issues that are raised in this
17 aspect of the motion for rehearing?

18 MR. IACOPINO: I would just point out to
19 you that there, on Page 33 of the Applicant's motion,
20 dealing with the fact that -- on Page 33 of the
21 Applicant's motion, dealing with the fact that you did not
22 make a finding regarding the Applicant's financial
23 capability, that's on Page 33 and 34 of their motion.
24 They don't cite any statutory requirement that you do so,

1 they don't cite any case law that you do so, nor am I
2 aware of any that requires you to make that finding, given
3 the finding that you made with respect to the other, the
4 other issue, that being the aesthetics issue.

5 I don't know of any law that would have
6 required you to continue to deliberate on any other issue,
7 once you've determined that you weren't going to grant the
8 certificate because of the unreasonable adverse impact
9 under another section of the statute.

10 So, I guess what I'm telling you is I
11 know of no law that requires you to make that finding.
12 That the Applicant is saying that it was unlawful or
13 unreasonable for you not to do so, I don't know of any law
14 that supports that statement contained in there. Nor do
15 they cite any in their motion.

16 I would also point out that the Order
17 itself, actually, it essentially tracks the actual
18 deliberations that you followed. So, that's all I can say
19 from a legal standpoint.

20 CHAIRMAN IGNATIUS: Ms. Geiger, yes?

21 MS. GEIGER: Yes. May I make an oral
22 motion for late-filed authority, madam Chairman?
23 Basically, I would point the Subcommittee in the direction
24 of the 541-A:35. Which says that "A final decision shall

1 include findings of fact and conclusions of law,
2 separately stated. Findings of fact, if set forth in
3 statutory language, shall be accompanied by a concise and
4 explicit statement of the underlying facts supporting the
5 findings."

6 So, I apologize for the oversight. But,
7 at this point, I would ask that my motion be supplemented
8 with additional authority, 541-A:35. And, thank you.
9 And, I apologize for the interruption.

10 CHAIRMAN IGNATIUS: That's all right.

11 MR. ROTH: Madam Chairman, I would
12 object most strenuously to that. This is a deliberative
13 session, not an opportunity for a motion for rehearing on
14 her motion for rehearing.

15 CHAIRMAN IGNATIUS: 541 --

16 MS. MANZELLI: Madam Chair, Audubon
17 would concur in that objection.

18 CHAIRMAN IGNATIUS: All right. 541-A
19 governs all of what we do. It is always in play. It's
20 always the standard for any administrative proceeding
21 before us. And, so, I don't find that to be an
22 impermissible item to identify. Whether you cite it or
23 not, we're bound by 541-A:35, and the rest of 541-A as
24 well. So, I'll accept your comment. I don't know if it

1 significantly changes the discussion. We ought to discuss
2 whether or not it does.

3 There's one thing I wanted to clarify
4 before we get to that. Mr. Iacopino, in the Applicant's
5 motion there's references to your statements that we must
6 make a ruling, and that, you know, the implication is that
7 we, the Committee members, ignored your legal advice, and
8 sort of disregarded the requirement that we make a ruling.
9 Can you respond to that?

10 MR. IACOPINO: Well, I always like it
11 when the Committee takes my advice. But I don't think
12 that that is legal, I mean, I can't tell you that that is,
13 in fact, any kind of legal error. I think that they are
14 using that as an argument to buttress their claim that it
15 was somehow unlawful or unreasonable not to make a final
16 decision on financial capability. That that in and of
17 itself is not a legal basis, as I indicated before.

18 And, I can read 541-A:35 to the
19 Committee, if you would like? So, that you have the
20 entire thing, and then we can get it printed out and
21 provide it to the Committee, if you would like. But
22 541-A, Section 35, is entitled "Decisions and Orders".
23 And, it states: "A final decision or order adverse to a
24 party in a contested case shall be in writing or stated in

1 the record. A final decision shall include findings of
2 fact and conclusions of law, separately stated. Findings
3 of fact, if set forth in statutory language, shall be
4 accompanied by a concise and explicit statement of the
5 underlying facts supporting the findings. If, in
6 accordance with agency rules, a party submitted proposed
7 findings of fact, the decision shall include a ruling upon
8 each proposed finding. Parties shall be notified either
9 personally or by mail of any decision or order. Upon
10 request, a copy of the decision or order shall be
11 delivered or mailed promptly to each party and to a
12 party's recognized representative."

13 CHAIRMAN IGNATIUS: Do you have an
14 opinion as to whether the Order that was issued May 2nd in
15 this case complies with 541-A:35?

16 MR. IACOPINO: Your Order issued on May
17 2nd -- is it May 2nd? The final -- the Decision and Order
18 on the certificate issued in this case, in my opinion,
19 complies completely with RSA 541-A, Section 35. And, I
20 say that because there's nothing in that that requires you
21 to do anything more than what you did in the decision that
22 ran some 71 pages, and addressed each and every issue,
23 addressed the findings -- addressed the facts in each and
24 every issue, and addressed the ultimate issue as to

1 whether or not you are going to grant or deny a
2 certificate. I do not believe that the fact that you did
3 not rule on the financial aspect -- on the financial
4 capability of the Applicant in any way triggers any kind
5 of error under RSA 541-A, Section 35.

6 CHAIRMAN IGNATIUS: Thank you. Ms.
7 Bailey.

8 MS. BAILEY: Mr. Iacopino, you just said
9 that you believe the Order addresses each and every fact?

10 MR. IACOPINO: Yes. What the Order does
11 is you actually discussed, during your deliberations, the
12 facts regarding the financial capabilities.

13 MS. BAILEY: Right.

14 MR. IACOPINO: And, the Order -- and,
15 the Order summarizes those facts that you reviewed. But
16 then indicates that you did not take a final vote. So, --

17 MS. BAILEY: So, does that mean we made
18 findings of fact on the financial aspects?

19 MR. IACOPINO: No. But what it means is
20 that you considered -- you considered them, and the Order
21 specifically identifies what, in fact, the Committee did,
22 so that it's clear to anybody who reads the Order that you
23 did, in fact, deliberate to some degree on this, but you
24 did not reach a final decision.

1 MS. BAILEY: And, it seems logical to
2 me. And, I don't think 541-A:35 says that -- it says "A
3 final decision or order adverse to a party...shall be in
4 writing...include findings of fact and conclusions of law,
5 separately stated." We made plenty of findings of fact, I
6 think, and conclusions of law that concluded that the
7 certificate should not be granted. I don't think this
8 says that you have to say every fact that's possible has
9 to be concluded, if you read this with the other statute.

10 MR. IACOPINO: I don't want to get into
11 deliberation. I've been asked to give my legal opinion on
12 whether or not the order complies with 541-A:35.

13 MS. BAILEY: Okay. And, you think it
14 does.

15 MR. IACOPINO: And, my legal opinion is
16 that it does.

17 MS. BAILEY: Thank you.

18 CHAIRMAN IGNATIUS: Other discussion of
19 this issue?

20 (No verbal response)

21 CHAIRMAN IGNATIUS: So, on the issue of
22 financial capability overall, not just that final piece,
23 but is there -- are we ready for a motion? And, if so,
24 does anyone have a motion to make, either to grant

1 rehearing on the basis of the financial capability
2 arguments raised by the Applicant or to deny rehearing on
3 the basis of the financial capability arguments?

4 Dr. Boisvert.

5 DR. BOISVERT: I move that we deny the
6 motion for rehearing on the basis of financial capability.

7 CHAIRMAN IGNATIUS: Is there a second?

8 MR. GREEN: I'll second.

9 CHAIRMAN IGNATIUS: Second. Okay. All
10 right, moved and seconded. Any further discussion of this
11 issue?

12 (No verbal response)

13 CHAIRMAN IGNATIUS: If not, are you
14 ready for a vote? All right. All those in favor of the
15 motion to deny rehearing on the basis of the financial
16 capability arguments, please raise your hand?

17 (Show of hands.)

18 CHAIRMAN IGNATIUS: All those opposed?

19 (No indication given.)

20 CHAIRMAN IGNATIUS: Any abstentions?

21 (No indication given.)

22 CHAIRMAN IGNATIUS: That's a unanimous
23 nine to one vote to deny.

24 MR. IACOPINO: Did you say "unanimous

1 nine to one"?

2 CHAIRMAN IGNATIUS: It's ironic, in the
3 discussion of financial capability, I just got nine to
4 equal ten. Nine to zero. Thank you.

5 All right. The next issue is on sound
6 standards and the findings -- actually, one moment off the
7 record.

8 (Chairman Ignatius conferring with the
9 court reporter.)

10 CHAIRMAN IGNATIUS: So, we're back on
11 the record. Before we begin a new area, why don't we take
12 a break for the sake of the court reporter, and all of you
13 to have a chance to stretch your legs. We will resume in
14 ten minutes, just before 11:30, try to be back and get
15 rolling again. And, we're going to pick up the issue of
16 sound standards. Thank you.

17 (Whereupon a recess was taken at 11:18
18 a.m. and the deliberations resumed at
19 11:34 a.m.)

20 CHAIRMAN IGNATIUS: We are back. And,
21 we now pick up the question of the Applicant's issues
22 raised regarding sound levels. This is roughly Pages 41
23 to 48 of the motion. And, in a very brief summary, the
24 Applicant argues that the Committee applied, but didn't

1 fully apply, the World Health Organization guidelines of
2 2009. Though, we said we were going to, we then deviated
3 from that somewhat. Also, that the Committee didn't
4 follow SEC precedent regarding sound levels from other
5 cases, without any explanation for why it should have been
6 different. And, didn't consider the noise restrictions
7 that had been agreed to by the Town, and gave no
8 explanation for why we failed to do so, failed to consider
9 those noise restrictions.

10 There were objections attending to the
11 sound issues that were submitted by the Industrial Wind
12 Action Group, arguing that the restrictions are not
13 unreasonable, that those are case-by-case determinations
14 that reflect the circumstances of each project, and that
15 the sound level adopted was consistent with the 2009 WHO
16 standards, with some practical substitutions, if that's a
17 fair way to characterize that.

18 Public Counsel also spoke to this issue,
19 saying that the Committee fully considered the noise
20 issues, and it set the conditions that it deemed
21 appropriate, given the facts of the case.

22 So, do people have any questions or
23 comments about what we did in the Order regarding sound
24 and the allegations that are made in the Applicant's

1 motion for rehearing? Ms. Bailey.

2 MS. BAILEY: I'll take a stab at this.
3 On the issue about how we misapplied the WHO Guidelines
4 and what they say, I think that the Applicant concludes
5 that based on a sentence in the order that says "The
6 Subcommittee relied upon the newer 2009 WHO Guidelines in
7 establishing a sound level condition." And, we had, on
8 Day III of the deliberations, an extensive discussion
9 about a decision that we had made the day before to set
10 the sound standard at 40 dB during the night. And, then,
11 we talked about, on Day III, that the WHO Guideline
12 standard was really an average annual standard of 40 dB.
13 And, we talked a lot about that. And, we concluded that
14 it would be very difficult to figure out a way to monitor
15 the average for the year. And, at the end of those
16 deliberations, we decided to make the nighttime standard
17 40, 40 dB.

18 And, so, I think what the sentence in
19 the Order means is, we did look at, you know, we relied on
20 them, we looked at the newer 2009 WHO Guidelines, we
21 understood that they were talking about an average annual
22 measurement. But they also said something to the effect
23 of, you know, that at least what I remember, was that
24 there were no public health effects if the standard was at

1 40. And, so, I think that's what we all concluded, and I
2 think that that's what that sentence means.

3 I disagree with the Applicant that we
4 didn't understand that, if that's the argument, that we
5 didn't understand that it was an annual nighttime average.

6 CHAIRMAN IGNATIUS: Thank you. Other
7 comments?

8 (No verbal response)

9 CHAIRMAN IGNATIUS: Another thought I
10 had in reading the materials, the argument that we were
11 breaking from precedent in prior cases, the prior cases
12 have not been a one uniform standard that has been
13 consistently applied, and then we stepped away from that.
14 I mean, the standards have been slightly different of the
15 different projects that have been looked at, Lempster,
16 Granite Reliable, and Groton, prior to this one. And, so,
17 it's -- it is an area that I suspect will continue to see
18 some modification. And, I think we, in this case, we
19 heard far more evidence and conflicting scientific
20 evidence than in the Lempster case that I participated in.
21 And, I think this is an area that is going to continue to
22 evolve. And, there will be further information that
23 committees in the future will hear, and there may be other
24 determinations.

1 But my question, as I look at this, is
2 "Is the determination that we made regarding sound based
3 on the record?" Did we have an adequate basis to reach
4 the conclusions that we did? And, did we adequately
5 describe it in the Order itself?

6 And, I guess I'd turn again to
7 Mr. Iacopino. Can you summarize briefly what we did
8 recount in our order on this issue?

9 MR. IACOPINO: Yes. I'm sorry. Yes,
10 madam Chair. In your order, you went through, at Pages 65
11 through 67, you recounted the evidence that you heard in
12 particular from the experts, Mr. O'Neal, Mr. James, and
13 you recounted sort of the issues and the evidence that you
14 heard from them with respect to what the predicted sound
15 levels would be and what the effects would be.

16 You indicated in your Order that you
17 considered -- I shouldn't say "considered", you noted
18 existing standards, such as the EPA guidelines and the
19 1999 WHO Guidelines, that's "W-H-O" Guidelines. The next
20 sentence, on Page 68 of the Order, then says "The
21 Subcommittee relied upon the newer 2009 WHO Guidelines in
22 establishing a sound level condition. The Subcommittee
23 also agreed that there was insufficient data to determine
24 that the turbines will emit low frequency inaudible or

1 infrasound that would cause harm to human health." And,
2 then, you listed the conditions out, which were, as
3 already been stated, "45 dBA or 5 dBA above ambient,
4 whichever is greater" during the day. And, "40 dBA or 5
5 dBA above ambient, whichever is greater" at night. And,
6 then, you required some sound testing to occur. That's
7 what the Order sets out.

8 CHAIRMAN IGNATIUS: All right. Any
9 further discussion of the sound level issues?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: Are people ready to
12 take a vote on this issue? If so, is there a motion? Ms.
13 Bailey.

14 MS. BAILEY: I move that we deny
15 rehearing based on the Applicant's argument about sound.

16 CHAIRMAN IGNATIUS: Is there a second?
17 (Dir. Stewart indicating by raising his
18 hand.)

19 CHAIRMAN IGNATIUS: We've got
20 Mr. Stewart. All right. Any further discussion?

21 (No verbal response)

22 CHAIRMAN IGNATIUS: All right. Then,
23 are we ready for a vote? Those in favor of denying
24 rehearing on the basis of the sound arguments in the

1 Applicant's motion, please raise your hand?

2 (Show of hands.)

3 CHAIRMAN IGNATIUS: Those opposed?

4 (No indication given.)

5 CHAIRMAN IGNATIUS: Abstaining?

6 (No indication given.)

7 CHAIRMAN IGNATIUS: All right. That is
8 unanimous, nine to zero.

9 Those are the arguments presented in the
10 motion for rehearing by the Applicant. We'll set aside
11 the Motion to Reopen until later, which was part of the
12 same document, but really a separate motion.

13 So, we move to the next rehearing
14 request. And, what I would like to do is take next the
15 Town of Antrim's motion. This argued that the Committee
16 overlooked evidence that the project would not be visible
17 by 95 percent of the locations within 10 miles, and thus
18 the visual impact shouldn't be considered unduly adverse.
19 That the Committee failed to consider the Town's position
20 in favor of the project, identifying some votes taken.
21 And, that we should reconsider our determination in light
22 of the letter agreement that has since been filed by the
23 Town.

24 There were objections filed by the

1 Edwards/Allen, plus other Intervenors, Group. There was a
2 joint objection by the Edwards/Allen Group, the North
3 Branch Group, and the Abutters Group, working together,
4 arguing that there are no facts that have been overlooked
5 or misconstrued. That these are prior positions simply
6 being restated, and thus not appropriate for rehearing.
7 That the Town agreement to -- I'm sorry, that the
8 Applicant's offer of money to the Town for Gregg Lake
9 Association impacts is beyond the timeframe of the docket,
10 because it came in after -- it all occurred after the
11 Order was issued. That the votes described as being taken
12 by the Town were mischaracterized. That the PILOT
13 Agreement, Payment in Lieu of Taxes Agreement, has been
14 voided by the Superior Court on Right-to-Know 91-A
15 grounds. And, that the new agreement -- I'm sorry, that
16 the motion for rehearing filed by the Town was also
17 developed, in this group's view, in contravention of 91-A
18 standards.

19 Public Counsel also responded, arguing
20 that the Committee's Order did adequately consider the
21 Town's position and address it. That the Town should not
22 now be addressing whether the visual impacts are not
23 adverse, because it made no statements regarding views
24 during the hearing. That the Subcommittee's Order did

1 adequately identify that the -- I think I may be getting
2 this wrong -- that the evaluation of the aesthetics was
3 somewhat different than in prior decisions. And, that the
4 letter agreement shouldn't be considered, because it's
5 after-the-fact of the Order, and it is new evidence that
6 shouldn't be presented as not being -- issues not being
7 preserved, and, so, it should be outside of our
8 consideration.

9 So, that's really a combination of
10 arguments about the Order itself and issues on the new
11 evidence that we'll be taking up in the Motion to Rehear.

12 Are there any comments on that? I don't
13 know, Mr. Iacopino, do you want to give us an overview of
14 what we did address on any of these issues that we haven't
15 already talked about?

16 MR. IACOPINO: Well, in actuality, you
17 did address the issue. I believe that the Town's motion
18 suggests that you overlooked Mr. Guariglia's opinion that
19 there would not be visibility within 95 percent of the
20 affected area. And, actually, you, in your order, you
21 did, in fact, specifically reference that. I'm trying to
22 find the page number for you.

23 DIR. SIMPKINS: Page 47, I believe.

24 MR. IACOPINO: You're quicker than I am.

1 Thank you, sir. Yes. At Page 47, you did specifically
2 reference Mr. Guariglia's report in that regard. You also
3 compared the testimony of Ms. Vissering in doing that.
4 With respect to consideration of -- I believe what the
5 other argument that the Town made was that you didn't
6 consider the votes in the Town, is that one of the ones
7 that you listed?

8 CHAIRMAN IGNATIUS: Yes.

9 MR. IACOPINO: In Section -- on Page 40
10 -- I think it's 41, you did specifically make reference to
11 a general understanding that at least the votes tended to
12 demonstrate -- I'm sorry, Page 42, that the townspeople
13 "generally supported the development of the proposed
14 Facility." But you also noted the split between the
15 Boards and Commissions within the Town of Antrim, and also
16 the views of the Stoddard Conservation Commission, the
17 neighboring town.

18 So, I mean, there is reference in there.
19 If you all believe that you -- that there is a
20 misconception or mistaken belief in the decision that you
21 made in those regards, obviously, you should vote to
22 rehear. If you do not believe that it was mistaken, then
23 you should probably vote not to rehear.

24 And, I didn't write down each one of the

1 lists that you went through, but I had those two.

2 CHAIRMAN IGNATIUS: I think the only
3 other issue is the letter agreement coming in later. And,
4 maybe we should take that up as part of the discussions of
5 the Motion to Reopen?

6 MR. IACOPINO: From a purely legal,
7 practical standpoint, I think that that does come up
8 better in the context of a motion to reopen the record.
9 But, I think that, in the context of a motion for
10 rehearing, if you believe that that filing somehow
11 indicates that you have misconceived or misunderstood
12 something in the record as it presently exists, it can be
13 used for that purpose to grant the motion to rehear.

14 CHAIRMAN IGNATIUS: Thank you. Any
15 discussion, comments on any of those issues raised by the
16 Town?

17 (No verbal response)

18 CHAIRMAN IGNATIUS: I mean, it's my view
19 reading it that it's really arguing the same positions
20 previously argued. It's another pitch for why we made the
21 wrong decision and should have granted the certificate.
22 But I don't see any new information that makes me
23 recognize an error in how we construed the evidence,
24 anything that warrants rehearing, personally is my view.

1 So, are you ready for a vote? And, if
2 so, do we have a motion? Mr. Simpkins.

3 DIR. SIMPKINS: I'll make a motion that
4 we deny the Town of Antrim's Motion for Rehearing.

5 CHAIRMAN IGNATIUS: All right. Any
6 second?

7 (Mr. Green indicating by raising his
8 hand.)

9 CHAIRMAN IGNATIUS: Mr. Green seconds.
10 All right. Any further discussion?

11 (No verbal response)

12 CHAIRMAN IGNATIUS: If not, then all
13 those in favor of denying the Town of Antrim's Motion for
14 Rehearing please signify by raising your hand?

15 (Show of hands.)

16 CHAIRMAN IGNATIUS: Those opposed?

17 (No indication given.)

18 CHAIRMAN IGNATIUS: Any abstentions?

19 (No indication given.)

20 CHAIRMAN IGNATIUS: All right. That is
21 a nine to zero unanimous vote to deny the Motion to Rehear
22 submitted by the Town of Antrim.

23 The next motion was submitted by the
24 Antrim Landowners Group. This was Mr. Ott, Antrim Limited

1 Partnership, Steven Cotran, Paul Whittemore, and the
2 Whittemore Trust. And, they're collectively referred to
3 as the "Antrim Landowners". They are owners of parcels of
4 land that had been leased to the Applicant. And, they
5 argue that the Committee's decision deprives them of the
6 freedom to use the property as they wish, and deprives
7 them of the benefits of the leases that they negotiated
8 and entered into.

9 They also argued that we failed to
10 consider the long-term impacts, beneficial impacts by
11 putting lands into conservation, and we focused more on
12 the short-term impact of the wind turbines themselves.
13 And, note that they are free to do other things with their
14 land. There could be other impacts that might not be
15 received as beneficial to the community, and that would be
16 within their rights to do, and we failed to recognize
17 that.

18 There were responses filed to that. The
19 grouping of intervenors that we saw before, the
20 Edwards/Allen Group, the North Branch Group, and the
21 Abutters Group joined together in a joint response, that
22 argued that there are no new facts presented or arguments
23 that justify rehearing. That these were not issues that
24 had been raised prior -- during the course of the hearing

1 itself, so, they should not be allowed to bring them up at
2 this time. That the leases and the benefits to be
3 received from them are all conditional on obtaining an
4 approval from the SEC. And, so, there's no right to those
5 benefits. That their valuation of the benefits of the
6 easements themselves has been overestimated. And, that
7 they were wrong in arguing that the Committee was heavily
8 influenced by one landowner in particular, the Audubon
9 Society.

10 Public Counsel also filed a response,
11 arguing that this group of landowners has no standing to
12 even raise the issues, because it failed to intervene,
13 they failed to intervene in the docket. And, they further
14 have shown no evidence that any rights of theirs have been
15 affected, which is a requirement of standing that you have
16 rights that are affected. And, that they still, even if
17 this project doesn't go forward, they still have the
18 ability to use their land, to lease it for another wind
19 project, another commercial project, or any other purpose
20 within the local zoning standards. And, no new issues
21 have been raised here, and it should not be the basis for
22 a rehearing.

23 I guess one of the first questions to
24 look at it then, in evaluating this, is the question of

1 standing. Is it appropriate to even be before us for --
2 to have a motion for rehearing filed by someone who is not
3 an intervenor, not a party to the case?

4 Does the law, and, Mr. Iacopino, I'll
5 ask you to explain if I get this wrong, the law allows for
6 any party who is aggrieved by a decision and is directly
7 impacted by a decision to be -- to have the right to seek
8 rehearing under 541, is that correct?

9 MR. IACOPINO: Yes. The statute says
10 that "any party to the action or proceeding before the
11 Commission, or any person directly affected thereby, may
12 apply for a rehearing." And, that's RSA 541, Section 3.
13 And, of course, that's the administrative appeals statute.
14 And, that applies not only to the Site Evaluation
15 Committee, but to every other administrative agency
16 adjudicative decision as well.

17 So that it may seem unusual in the
18 context of how our cases are generally considered. But
19 you have to remember it does affect every other state
20 agency as well. And, there may be other circumstances
21 where the actual hearings are not as much the subject of
22 publicity or knowledge about what's going on as ours is.

23 So, the statute specifically permits any
24 person who is directly affected by the decision of the

1 Committee to file a motion for rehearing. So, the
2 decision that the Committee would have to make in the
3 first instance is whether they believe that the Antrim
4 landowners are directly affected by the decision of the
5 Committee.

6 CHAIRMAN IGNATIUS: Comments?

7 (No verbal response)

8 CHAIRMAN IGNATIUS: I mean, to me, the
9 fact that they -- they're not guaranteed an approval of
10 this project, and just because they negotiated an
11 easement, doesn't -- a lease, doesn't mean that they are
12 guaranteed payment under it. It's conditional on approval
13 of the SEC, as noted by some of the objections.

14 But, notwithstanding that, I would
15 consider them to be directly affected by the decision.
16 That the decision not to issue a certificate directly
17 impacts their expected benefits under the leases and the
18 uses of their land. And, so, I would construe them as
19 being directly affected and having standing.

20 Any opposing view? I'm happy to hear it
21 argued out. Ms. Lyons.

22 MS. LYONS: I'm going to take the
23 opposing view. Because our decision doesn't really say
24 how the use of their land is interrupted. It's purely a

1 financial transaction. It has nothing to do with the use
2 of their land. So, I don't think they have standing.

3 CHAIRMAN IGNATIUS: And, I think it is
4 true that it's -- well, I think it's two things, though.
5 Remember, it's the financial benefits of the leases. It's
6 also the long-term easements that would -- well, the
7 conservation easements that would flow from an approval as
8 well that is affecting the use of their land. So, it's
9 both of those things.

10 MS. LYONS: And, once again, it doesn't
11 stop them from conveying an easement to any other party at
12 any time.

13 CHAIRMAN IGNATIUS: That's a good point.
14 So, it's -- I think your argument is there's nothing that
15 forecloses them from other -- entering other agreements,
16 doing other protective easements, other commercial
17 development, the Order didn't prescribe that for them in
18 the future. I think, though, that the Order did impact
19 their expectation of proceeds from the leases and the
20 expectation of the conservation easements by our decision
21 not to grant a certificate. So, I guess I'd still come
22 back saying it's directly affected. But I understand your
23 argument, and others may share that.

24 MS. LYONS: And, you know, I understand

1 that some work has been done on the properties already
2 with that anticipated perhaps certification. But that's
3 just the cost of doing business. Sometimes projects fail,
4 sometimes they don't, and you take that risk.

5 CHAIRMAN IGNATIUS: All right.
6 Dr. Boisvert.

7 DR. BOISVERT: I'm not sure which work
8 you're referring to, but my recollection regarding the
9 timber cutting, was the case was made forthrightly that
10 they were just cutting the timber because the timber
11 needed to be cut. It wasn't preparation for the wind farm
12 itself. Coincidentally, various places where towers were
13 marked on the timber cut, but they made the case, and the
14 forester said it was just to do proper timber management.

15 So, there may have been some other
16 things that were done. But my recollection was that they
17 said that the timber cutting wasn't for the wind farm.
18 And, I'm sort on the fence about whether or not they're
19 directly affected. But, I did, you know, that could be
20 argued either way regarding timber cutting.

21 CHAIRMAN IGNATIUS: Anything else on
22 whether you find them to be directly affected and
23 therefore have standing or find them not to be directly
24 affected and therefore would not have standing to raise

1 the motion for rehearing? Mr. Simpkins.

2 DIR. SIMPKINS: I would just say, I
3 think, to err on the side of caution, we should give them
4 standing.

5 CHAIRMAN IGNATIUS: Why don't we take a
6 vote on it, and that way it's clear. So, Mr. Simpkins,
7 are you making a -- you want to make that a motion?

8 DIR. SIMPKINS: Yes. I'll make a motion
9 that we give the landowners standing in this matter.

10 CHAIRMAN IGNATIUS: So, finding that
11 they are directly affected and, therefore, we'll entertain
12 their motion?

13 DIR. SIMPKINS: That is correct.

14 CHAIRMAN IGNATIUS: Second?

15 DIR. STEWART: Second.

16 CHAIRMAN IGNATIUS: Mr. Stewart. All
17 right. Any other discussion?

18 (No verbal response)

19 CHAIRMAN IGNATIUS: Seeing none, then
20 all those in support of the motion to find that the Antrim
21 Landowners have standing, are directly affected and
22 therefore have standing please raise your hand?

23 (Show of hands.)

24 CHAIRMAN IGNATIUS: All those opposed?

1 (Show of hands.)

2 CHAIRMAN IGNATIUS: All right. We have
3 Ms. Lyons and Dr. Boisvert voting "no", and the remaining
4 seven voting "yes". So, a finding that they do have
5 standing, because they are directly affected.

6 We now then go to the substance of their
7 rehearing. And, again, that we have deprived them of the
8 freedom to use their property as they wish and obtain the
9 benefits of the lease that they negotiated, and failed to
10 consider the long term benefits of the conservation
11 easements, and looked too much at the short-term impacts
12 of the turbines themselves.

13 Other comments? Any -- Mr. Simpkins.

14 DIR. SIMPKINS: I would agree with Ms.
15 Lyons' previous comments, that there is nothing
16 prohibiting them from seeking a conservation easement
17 moving forward. This in no way prohibits them from
18 putting an easement on their property. I also don't think
19 it's any legal charge of this body to ensure that any
20 private landowner gets revenue or any other benefit from
21 another private party. That's not part of our
22 decision-making by statute.

23 And, furthermore, in reading, I didn't
24 see any new information that would warrant a rehearing.

1 CHAIRMAN IGNATIUS: Anything else?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: Are people ready
4 then for a vote? Do we have a motion? Ms. Bailey.

5 MS. BAILEY: I agree with Mr. Simpkins
6 and Ms. Lyons on this point. And, I will move to deny the
7 rehearing of the Antrim Landowners.

8 CHAIRMAN IGNATIUS: Is there a second?
9 (Dr. Boisvert indicated by raising his
10 hand.)

11 CHAIRMAN IGNATIUS: Dr. Boisvert
12 seconds. All right. Are we ready for a vote? All right,
13 seeing -- counting the nods. All those in favor of the
14 motion to deny rehearing of the -- as requested by the
15 Antrim Landowners, please signify by raising their arm?

16 (Show of hands.)

17 CHAIRMAN IGNATIUS: Those opposed?
18 (No indication given.)

19 CHAIRMAN IGNATIUS: I see none. That's
20 a unanimous nine to zero to deny.

21 We have one final motion for rehearing,
22 and that was filed by Public Counsel. The summary of the
23 arguments are that the Committee need not have -- I'm
24 wrong about that. That the finding of technical and

1 managerial capability was not supported by the evidence;
2 that there was no need to rule on the financial
3 capability, given the ruling on undue adverse impact on
4 the basis of aesthetics; and that I believe I'm correct in
5 saying that, because of the finding on aesthetics, we
6 should have found -- the technical and managerial
7 capability ruling should have been withdrawn, because it's
8 now moot, because for other reasons or one other
9 significant reason the project was not going to be
10 approved.

11 There was also an argument that the
12 agreement with the Town had been voided by the Court
13 order, a corrected motion did not make that argument. So,
14 I'm assuming that that is not part of the -- not part of
15 the argument in the motion itself.

16 The Applicant filed a response to that,
17 disagreeing that the Committee was appropriate in finding
18 technical and managerial capability, and that the evidence
19 fully supported that finding. Pointed out that the Public
20 Counsel had made no showing of facts that would question
21 that ruling regarding technical and managerial capability,
22 or why in any way that the Commission's finding -- or,
23 excuse me, the Committee's finding was in error. And, as
24 to the -- well, I guess I could ignore that, the issue of

1 the agreement, because I don't think it's in the corrected
2 motion.

3 All right. Mr. Iacopino wisely suggests
4 to double check with you, Mr. Roth, whether the issue of
5 the Town agreement being voided on the Right-to-Know
6 issues is within your motion or not?

7 MR. ROTH: It is not.

8 CHAIRMAN IGNATIUS: Thank you.

9 MR. ROTH: Only the second motion was
10 actually filed. The first motion was served and sent to
11 Ms. Murray. And, then, I asked Ms. Murray immediately not
12 to file it. And, then, I sent out an e-mail to all the
13 parties sometime after that informing them that only the
14 second motion was operative.

15 CHAIRMAN IGNATIUS: All right. Thank
16 you. So, on the issue of whether the Committee ruling
17 regarding technical and managerial capability is supported
18 by the evidence, Mr. Iacopino, can you recount what the
19 Order said on those issues?

20 MR. IACOPINO: Yes. Thank you. The
21 technical and managerial capability of the Applicant is
22 addressed on Pages 29 through 34 -- 35 of the Order. And,
23 basically, the reasoning adopted by the Committee, to find
24 that there was sufficient technical and managerial

1 capability to construct and operate the project, was you
2 relied upon what you determined to be the Applicant's
3 team's "considerable experience". The fact that "the
4 manufacturer of the turbines, the Acciona company, would
5 be the entity that was primarily responsible for the
6 initial installation and operation of the turbines for
7 approximately five years." You recognized them as "a
8 world-wide leader in the field of wind power generation."
9 You indicated, although there were some concerns "about
10 the terms and conditions of the Operation and Maintenance
11 contract", you recognize that those types of relationships
12 between the manufacturer and developer "are routine in the
13 wind industry".

14 And, you found ultimately that, based
15 upon the association between Acciona and the Applicant,
16 that they demonstrated sufficient technical and managerial
17 capability required for the construction and operation of
18 the Facility. And, you relied on both the internal
19 experience of the Applicant and the employment of Acciona
20 in doing that.

21 You also, at Pages -- your conclusions
22 were at Page 35 of the order. But, also, at Pages 29
23 through 34, you sort of went through the various evidence
24 that that you had heard and considered. And, that's much

1 lengthier. That's basically a rendition of what evidence
2 was presented to you. So, that was the basis for your
3 determination.

4 CHAIRMAN IGNATIUS: Thank you. Ms.
5 Bailey.

6 MS. BAILEY: I have a question for
7 Mr. Iacopino. In Public Counsel's motion, he says, if
8 "the Subcommittee withdrew the findings of the technical
9 and managerial capability and enter a non-binding
10 discussion", as we did with financial capability, he
11 "would not be bound to cross-appeal on the issues
12 concerning technical and managerial capability." And, I
13 don't understand what that means. Is it -- are you
14 allowed to tell me what -- why would he cross-appeal and
15 what is a "cross-appeal"?

16 MR. IACOPINO: "Cross-appeal", many
17 times when a court or administrative agency makes a
18 ruling, more than one side of the coin is upset with the
19 ruling. And, it is possible for a cross-appeal to be
20 filed.

21 So that, in this particular case, if the
22 Applicant were to appeal, and Counsel for the Public
23 determined that he wanted to cross-appeal, he could do
24 that. There are procedural deadlines for that set by the

1 Supreme Court, which we don't need to get into, but he
2 would have to meet those procedural deadlines, and
3 basically indicate to the Supreme Court what issues he
4 believes we erred on in this Committee.

5 So, he does have a right to do that. I
6 think what he's saying in his motion is that he feels that
7 he is bound to do that, in order to preserve his ability
8 to address that issue in the Supreme Court. I don't
9 represent his client or him, so, I mean, that's a
10 determination that he believes, and I don't really feel
11 competent on telling you procedurally whether he would
12 have to file a cross-appeal or not. I think that's
13 something that I haven't researched. He believes that he
14 has to -- he would have to do that to preserve his rights.

15 MS. BAILEY: Because he thinks we got it
16 so wrong? He's --

17 MR. IACOPINO: No, I think it's more
18 procedural, because the Order -- this Order would be
19 appealed by the Applicant. And, one of the things that
20 was in the Order was that we found sufficient technical
21 and managerial capability. He disagrees with that. So,
22 in order to preserve his right to disagree with that in
23 the Supreme Court, he feels he would have to file a
24 cross-appeal. In other words, he doesn't want to be in a

1 position where there's an appeal filed, and, let's say the
2 Applicant wins on appeal and it comes back here, and the
3 Applicant then says "Oh, no. We've already decided
4 technical and managerial capability."

5 MS. BAILEY: Oh.

6 MR. IACOPINO: "You didn't raise that in
7 the Supreme Court." Whether or not he has to or not is
8 his decision to make. And, I can't give advice to him or
9 anybody else with respect to that. But that's part of his
10 rationale for asking us to withdraw that, or asking the
11 Committee to redraw that finding here in this proceeding.

12 MS. BAILEY: I understand. Thank you.

13 CHAIRMAN IGNATIUS: Thank you. Any
14 further comment?

15 MR. IACOPINO: But I just thought I
16 probably ought to add, but the determination that you have
17 to make is really not based on the convenience of Counsel
18 for the Public or the decision of counsel for the Public.
19 You have to decide whether or not you believe that you
20 have misconceived or made a mistake on the record that's
21 been presented to you.

22 MS. BAILEY: Thank you.

23 CHAIRMAN IGNATIUS: Thank you. Any
24 comments?

1 (No verbal response)

2 CHAIRMAN IGNATIUS: I can tell you I
3 don't see a basis on what's been filed to question the
4 finding of financial -- excuse me, of managerial and
5 technical capability, and don't see a basis to rehear.

6 MR. ROTH: Madam Chairman, I'm sorry to
7 interrupt. I don't want there to be a misunderstanding
8 about what the argument was, and I'm afraid that there
9 might be. And, I think the argument --

10 CHAIRMAN IGNATIUS: I'll allow you a
11 very brief explanation, please.

12 MR. ROTH: Thank you. There are
13 basically two parts to it. One is, it's my opinion, you
14 know, in setting it out for purposes of an appeal, would
15 be that there wasn't enough evidence to support it, and
16 I'm not going to go through all of that. But the other
17 part is is that, in making your order, you were not
18 required to, and did -- and sort of I think went, as there
19 was a discussion this morning about financial capability,
20 you were not required to make a ruling on that, on
21 financial and managerial capability, because you're
22 essentially finished once you decided the aesthetic issue.
23 And that, because you did that, now you're putting us in a
24 position where we have to appeal that in order to preserve

1 it. That's all. Thank you.

2 CHAIRMAN IGNATIUS: Thank you. All
3 right. We're -- any further discussion?

4 (No verbal response)

5 CHAIRMAN IGNATIUS: Are people ready for
6 a vote? Do we have a motion, either to grant or deny the
7 Applicant's Motion for Rehearing?

8 MS. BAILEY: Public Counsel's.

9 CHAIRMAN IGNATIUS: Excuse me. Thank
10 you. Public Counsel's Motion for Rehearing.

11 DIR. STEWART: Yes.

12 CHAIRMAN IGNATIUS: Mr. Stewart.

13 DIR. STEWART: I'll make the motion that
14 we deny.

15 CHAIRMAN IGNATIUS: Thank you.

16 MR. DUPEE: I'll second.

17 CHAIRMAN IGNATIUS: So moved by Mr.
18 Stewart, and seconded by Mr. Dupee, to deny the Public
19 Counsel's Motion for Rehearing. Is there any further
20 discussion?

21 (No verbal response)

22 CHAIRMAN IGNATIUS: If not, then ready
23 for a vote? All those in favor of the motion to deny the
24 Applicant's [Public Counsel's?] Motion for Rehearing,

1 please signify by your hand?

2 (Show of hands.)

3 CHAIRMAN IGNATIUS: Any opposed?

4 (No indication given.)

5 CHAIRMAN IGNATIUS: Appears none. That
6 would be a nine-zero unanimous motion -- vote to deny the
7 Applicant -- the Public Counsel's Motion to Rehear.

8 I am not aware of any other motions for
9 rehearing or reconsideration. We still have the Motion to
10 Reopen. But is there any other motion for rehearing under
11 consideration, Mr. Iacopino?

12 MR. IACOPINO: No. The only thing that
13 -- the only thing that I would point out, madam Chair, is
14 that I just passed out, when we came back from the break,
15 an objection that was apparently filed this morning by the
16 North Branch Intervenors to the filing of the revised
17 Exhibit F, I believe it was, or Attachment F. I passed
18 that around. And, quite frankly, I haven't even had a
19 chance to read it. I don't know if it requires any action
20 at this point. But we might want to take a moment to, off
21 the record, for you and I and the Committee to at least
22 look at that and see if that requires any.

23 CHAIRMAN IGNATIUS: Well, and this is in
24 response to the filing by the Applicant yesterday,

1 July 9th, of this revised Attachment F, and the cover
2 letter that describes some other issues. The Attachment F
3 is a conservation easement, not just an example, it looks
4 like an actual conservation easement. And, the letter
5 describes the changes, in the first paragraph of the cover
6 letter, and then also goes on to talk about the new
7 payment in lieu of taxes agreement, and a few other
8 changes. So, that was filed yesterday. I hope all of the
9 parties have copies of that.

10 Then, the objection submitted this
11 morning from the North Branch Intervenor Group addresses
12 some aspects of that. I also have not yet read it. And,
13 attaches a Voters' Petition submitted June 24th, 2013 to
14 the Antrim Selectboard. So, this is extremely recent.
15 And, I think it's important to put all of this in the
16 context of the discussions we're going to have on the
17 Motion to Reopen the Record and admit new evidence.

18 Let me suggest this. It's almost 12:30.
19 Let me summarize what the Motion to Reopen and the
20 objections that we've received address. And, then, we
21 take a break, probably a lunch break, and over that time
22 ask the Committee members to read those two documents, if
23 you have them. If anybody doesn't have a copy of either
24 of those two, let us know and we'll make copies. And,

1 then, when we come back from the break, we can take up
2 that, that issue.

3 The Motion to Reopen seeks to go back
4 into developing the record further on a number of issues.
5 One being the offer by the Applicant to redesign the
6 program to take Turbine 10 out of the picture, and some
7 other changes to the design in order to do that, cutting
8 back on some of the roads and some of the both visual
9 impacts and some of the impacts on the ground. Also, an
10 offer by the Applicant to add an additional 100 acres of
11 conservation land that would protect all turbine location
12 -- ridgeline locations. An agreement with the Town to, by
13 the Applicant, to present \$40,000 for Gregg Lake, to
14 mitigate Gregg Lake impacts, to the extent there are any,
15 and, in the Town's discretion, to do as it sees fit with
16 those funds, to improve the recreation experience at Gregg
17 Lake. That's a paraphrase, I may not have gotten it quite
18 right. An offer by the Applicant to Audubon for a \$40,000
19 payment to offset any perceived visual impacts. And,
20 also, a reference to place in the record that a new
21 financial -- a person with financial expertise is on board
22 with the Applicant. That actually, I think, is already in
23 the record, because it had been earlier submitted. There
24 was a motion to strike, which I denied. So, I think that

1 piece of information is already in the record. And, I
2 apologize, I'm drawing a blank, it's Mr. Schauer or
3 Schumer or something. Forgive me for getting that wrong.
4 So, I think that one is, although it's identified as new
5 evidence, that actually was already in the record.

6 There were responses filed to that.
7 Audubon filed a response saying that this is information
8 that is not material to the decision to -- whether to
9 reopen, and there is nothing that isn't duplicative of
10 other information already in the record. But, if there is
11 a decision to reopen, to be sure to give maximum time to
12 parties to respond to it.

13 The Edwards/Allen, North Branch, and
14 Abutters Group jointly filed a response, saying that the
15 new mitigation information, the additional acreage is not
16 significant, and shouldn't be a basis to reopen, the
17 financial letters of interest -- oh, I'm sorry, I forgot
18 to mention that. That there are also financial letters of
19 interest from two lenders, two banks, saying that if
20 certain other financial thresholds are met, they would be
21 -- that they would find AWE to be a project worth funding.
22 So that the Edwards/Allen, and others, Group said that the
23 letters of interest are of no real value, and that this is
24 not new evidence that should be introduced.

1 The response from Public Counsel was
2 that, if there's new information to be taken up, it should
3 come in the form of a new application, rather than
4 reopening the record in this docket. That the information
5 that's being offered would not mitigate the adverse
6 impacts. And, that the Applicant has an obligation to
7 file a complete application, and it can't -- I don't think
8 Counsel used those words, but effectively can't be
9 supplementing it at a later date with filings now. And
10 that, when the case came out of the first round, which is
11 over whether to take jurisdiction, there was a deadline
12 set for a complete application no later than January 1st,
13 2012, and that time has come and gone. So, there should
14 be no new information being submitted.

15 Anything else, Mr. Iacopino, on the
16 Motion to Reopen, to put kind of in people's minds and
17 think about before we come back?

18 MR. IACOPINO: I think you've fairly
19 explained both, what exists on both sides.

20 CHAIRMAN IGNATIUS: And, the legal
21 posture we will be in when we take this up, what is the
22 standard to consider a request to reopen the record?

23 MR. IACOPINO: We actually have a rule
24 regarding reopening the record. It's New Hampshire Code

1 of Administrative Rules, Site 202.27. Which says that "A
2 party may request that the record be re-opened to receive
3 relevant, material and non-duplicative evidence or
4 argument by written motion. The record shall be reopened
5 to accept additional evidence or argument, if the
6 presiding officer determines that additional testimony,
7 evidence or arguments are necessary for a full
8 consideration of the issues presented at the hearing."
9 And, then, it has language that I cited to you earlier
10 about setting a date for the presentation of such evidence
11 and a date for responses thereto.

12 So, basically, it's a determination as
13 to whether or not "additional testimony, evidence or
14 arguments are necessary for a full consideration of the
15 issues presented".

16 CHAIRMAN IGNATIUS: All right. Then,
17 with that, it's now 12:30. We should take a break for
18 lunch, and ask that everybody be back at 1:30. We will
19 then take up the Motion to Reopen and any other matters
20 that are still before us. Thank you.

21 (Whereupon a lunch recess was taken at
22 12:30 p.m. and the deliberations resumed
23 at 1:34 p.m.)

24 CHAIRMAN IGNATIUS: Good afternoon.

1 We're back for the afternoon session. And, we're going to
2 take up the final issue of the Applicant's Motion to
3 Reopen the Record. And, I think, as part of that, we can
4 also talk about the July 9th filing from the Applicant and
5 the July 10th objection from the North Branch Group. I
6 have summarized before what the Motion to Reopen contains
7 from the Applicant. And, again, you know, that's part of
8 the same document that was the Motion for Rehearing, it's
9 really the latter portion of that, mostly Section -- Pages
10 46 through 55. And, I summarized the objections that we
11 had received from the Public Counsel, Audubon, and the
12 consortium of different intervenor groups. Mr. Iacopino
13 described the legal standard that's in place, the
14 administrative rule applicable to the Site Evaluation
15 Committee for a motion to reopen the record. One thing to
16 note is the rule says that the "presiding officer may
17 decide". So, you know, I think I have the authority under
18 the rule to do this on my own, but I'd love to share the
19 joy with all of you. And, since we're here, and it's, you
20 know, a matter of import, I think it's appropriate to make
21 this a decision that we all participate in.

22 I hope you had a chance to review
23 materials over the lunch break and think about the Request
24 to Reopen, and the objections, and the standard to apply.

1 Are there comments, any discussion about
2 it? Do you want me to summarize again? Has anyone lost
3 track of any of the details? You know, again, it's
4 whether or not the -- the rule says whether or not it's
5 "determined that it's necessary", reopening for further
6 evidence would be "necessary for a full consideration of
7 the issues presented at the hearing".

8 Ms. Bailey.

9 MS. BAILEY: I have a question for
10 Mr. Iacopino. Have we -- is there any precedent on the
11 Committee's interpretation of this rule in the past?

12 MR. IACOPINO: No. We have reopened the
13 record prior to a decision in the past, but never after a
14 decision had actually been entered. And, in fact, in the
15 case that I'm thinking of, it was because of new evidence
16 that was actually received towards the end of the
17 adjudicatory proceedings, and we just -- and we scheduled
18 more hearings. Not even sure that it was actually styled
19 as a "motion to reopen" it, but it was, in effect, what we
20 did.

21 But, as far as a motion to reopen after
22 a decision has been made, I don't think that there is any
23 precedent, at least in my memory, of that occurring or
24 even being requested for, at least in recent history of

1 the Committee.

2 MS. BAILEY: Thank you.

3 CHAIRMAN IGNATIUS: Thoughts of
4 Committee members on this issue?

5 (Short pause.)

6 CHAIRMAN IGNATIUS: I'll tell you a
7 concern that I have, as I think about presiding over
8 whether it's the SEC or Commission proceedings, is that
9 you need a point of -- you also have the danger of sort of
10 drifting on, and need some sort of definition of when
11 you're -- when you're done and what the record is, things
12 are always in flux. And, so, finding the appropriate
13 cut-offs for that I think is always a challenge.

14 In the example of the case where we
15 haven't yet made a decision, something has come up either
16 that supplements or clarifies an issue that was raised in
17 the hearing, or let's say there had been a provision about
18 a -- or, discussion of a regulatory ruling in another
19 agency, and, after the hearing, but before the decision,
20 it's learned that the regulation has changed, and now it
21 doesn't even apply anymore. That would be the kind of
22 thing that in the normal course you see a request to
23 reopen and get the full picture before you make a
24 decision.

1 What we're looking at here, I think, is
2 different. It's certainly after the decision. And, so,
3 we need to think about that. And, it also is not just
4 updating or clarifying or correcting or bringing the rest
5 of the story in on something that was addressed at the
6 hearing, but actually changing some of the provisions of
7 the proposal itself, either reducing a turbine is a
8 significant change, changes in the conservation
9 provisions. So, these are, you know, these are not just
10 little updates, they're fairly significant. And, so, I
11 can't think of a case where we've had that before.

12 One of the concerns I have is that,
13 because it's post decision, you would, and I don't suggest
14 this is what's going on here, but you would never want to
15 create an incentive where an applicant would make their
16 case under one set of -- under one proposal, see how it
17 goes, if it doesn't go well, you know, start changing the
18 proposal, negotiating different terms, and come back and
19 sort of retry the things that it decided might be -- might
20 have a better shot at success. That strikes me as a very
21 bad precedent to create, if that were a sort of perverse
22 incentive for people to not put their full -- their best
23 offer on the table, and wait and see how it goes, and then
24 come back. And, I don't have any evidence that that is

1 what's going on here. But I think I'm always trying to
2 think about not only the current case, but, you know,
3 looking down the road, and that's one that concerns me.

4 Ms. Lyons.

5 MS. LYONS: I'm in the same vein as you
6 described there. I was trying to figure out what is that
7 cut-off? When is it clarifying versus new? And applaud
8 the Applicant for actually listening, because I think they
9 did address some of the concerns we had. But it does
10 become a slippery slope, because it just becomes "well,
11 let me fix this, let me fix that", and it's bleeding all
12 the time. And, at some point, you wonder "how does it
13 affect the larger application, with all these small
14 changes over time?"

15 So, it is -- it is disturbing which way
16 to go. When does it become "reapply" versus "reopen"?

17 CHAIRMAN IGNATIUS: Thank you.

18 Mr. Dupee.

19 MR. DUPEE: Thank you, madam Chair. I
20 would reflect your comments and those of Ms. Lyons. It's
21 very difficult to judge where that bright line would be or
22 any sort of line. We certainly want applicants to come to
23 us and have an opportunity to make their case in an
24 efficient sort of way. But the point of "keep trying the

1 same case over and over until you reach a solution" is not
2 an efficient use of resources. So, I think that would be
3 one of the downsides of that slippery slope.

4 CHAIRMAN IGNATIUS: Dr. Boisvert.

5 DR. BOISVERT: When I looked at the
6 change of removing one of the turbines -- turbines, it
7 struck me as an attempt to address aesthetic issues. But
8 it raised in my mind questions about financial viability,
9 because we're now talking about a project with 10 percent
10 less generation capacity. At the same time, there were
11 letters from individuals who said that they thought they
12 might want to invest in the project. But did they know
13 that before or after it went from ten to nine?

14 And, what then processed through my mind
15 was, this would be essentially redoing the entire -- not
16 the "entire", much of the Application. And, it seemed to
17 me, this was going beyond what I thought naively would be
18 reopening it. It would be looking forward to hearings
19 that would be nearly as complex as what we've already been
20 through. And, the question in my mind was, "what is the
21 threshold? Why isn't this coming back as a
22 reapplication?"

23 And, for that reason, I felt like this
24 -- we didn't -- this was reaching too far for reopening.

1 And, also, the question in my mind was, "I thought it was
2 over." This suggestion seemed to me too late and too
3 complex.

4 MR. IACOPINO: Madam Chair, can I point
5 out one -- may I point out one fact?

6 CHAIRMAN IGNATIUS: Please.

7 MR. IACOPINO: I just want to point out,
8 because Mr. Boisvert raised this issue about the letters
9 from the financial institutions, Attachment H-1 and H-2 to
10 the Motion for Rehearing and to Reopen, specifically makes
11 reference to a "27-megawatt nameplate capacity".

12 DR. BOISVERT: So, it was considered.
13 Okay. All right, I missed that.

14 MR. IACOPINO: So, I just wanted to
15 point that fact out to the Committee. And, they both --
16 both those exhibits reference a "27-megawatt nameplate
17 capacity".

18 CHAIRMAN IGNATIUS: Thank you for that
19 clarification. That's a good catch. Any other thoughts?

20 Ms. Bailey.

21 MS. BAILEY: I'm looking at the words in
22 the rule about when you should reopen it. And, based on
23 the discussion that -- the discussions that we've had, I
24 really think that it's reasonable to interpret this rule,

1 "If the presiding officer determines additional testimony,
2 evidence or arguments are necessary for a full
3 consideration of the issues presented at the hearing, the
4 record shall be reopened", means before the final decision
5 is reached. I don't see how you can interpret that to
6 mean "after the decision is reached", for all the reasons
7 that were just discussed.

8 CHAIRMAN IGNATIUS: All right. Anyone
9 else?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: Yes, I guess I --
12 I'm not sure I'd go so far as to say it has to be -- it
13 "could only be in a case before a decision is reached",
14 but for -- only for those matters where it's necessary to
15 make sense of what we heard in the hearing. And, it, I
16 guess, conceivably could be after a decision, but that
17 something changed --

18 MS. BAILEY: But that would be a motion
19 for reconsideration then, wouldn't it?

20 CHAIRMAN IGNATIUS: Well, possibly.
21 Possibly. Excuse me. In this case, it strikes me that
22 the things that are being sought to be introduced are
23 fully within the control of the Applicant. They aren't
24 any things that occurred outside that now affect what

1 we're considering that need to come to our attention, you
2 know, because another jurisdiction had a ruling or some
3 further fact about some factual matter that we had taken
4 up. This is really redesigning the project in a number of
5 cases. I mean, as Ms. Lyons points out, it's responsive
6 to the concerns at hearing. And, so, there's good -- I
7 recognize there's some positive aspect to the proposals.

8 But, I guess my fear is, as
9 Dr. Boisvert's is, that you take these four, five issues,
10 and you're going to be retrying an awful lot of the
11 evidence about the turbine design and the sound impacts
12 and the visual impacts and the ridgeline protection. It
13 strikes me as really pretty significant. It's not just
14 reopening it on a particular matter or an update or a
15 clarification. It's really a new modified proposal. And,
16 it's not what I would have envisioned that rule was
17 designed to do. And, I have a hard time finding that it's
18 appropriate as being necessary to -- "necessary for a full
19 consideration of the issues presented at the hearing".
20 It's really new, it's all new issues would be presented,
21 not all, but a number of new issues to be presented. So,
22 I would -- I guess I'd come out not supporting the Motion
23 to Reopen.

24 Further discussion?

1 (No verbal response)

2 CHAIRMAN IGNATIUS: Do people feel ready
3 for a vote? Then, do we have a motion? Dr. Boisvert.

4 DR. BOISVERT: I'll move that we deny
5 the Motion to Reopen.

6 CHAIRMAN IGNATIUS: Is there a second?

7 MS. LYONS: I'll second it.

8 CHAIRMAN IGNATIUS: Ms. Lyons seconds.
9 All right, moved and seconded. Any further discussion?

10 (No verbal response)

11 CHAIRMAN IGNATIUS: If not, then all
12 those in favor of the motion to deny the request that we
13 reopen the record filed by the Applicant, please signify
14 by raising your hand?

15 (Show of hands.)

16 CHAIRMAN IGNATIUS: Any opposed?

17 (No indication given.)

18 CHAIRMAN IGNATIUS: Abstentions?

19 (No indication given.)

20 CHAIRMAN IGNATIUS: I see none. It is a
21 nine-zero unanimous vote to deny reopening the record.

22 That being the case, I don't think
23 there's a reason then to have to take up the filing
24 July 9th by the Applicant to substitute the new Attachment

1 F or the objection of the North Branch Group that was
2 objecting to that July 9th filing that came in this
3 morning.

4 Is there anything further, Mr. Iacopino,
5 that I've forgotten on our To Do List?

6 MR. IACOPINO: I don't believe so.

7 CHAIRMAN IGNATIUS: Okay. Any Committee
8 members have any other loose ends you're aware of?

9 (No verbal response)

10 CHAIRMAN IGNATIUS: If not, then I think
11 the only remaining matter is to check with Mr. Iacopino.
12 Do you have adequate guidance to be able to develop a
13 draft order memorializing our deliberations, so that you
14 can circulate it to the Committee members?

15 MR. IACOPINO: Yes, I believe I do.

16 CHAIRMAN IGNATIUS: Then, unless there's
17 anything further?

18 (No verbal response)

19 CHAIRMAN IGNATIUS: I'll entertain a
20 motion to adjourn?

21 MR. DUPEE: I'll move we adjourn.

22 MS. BAILEY: Second.

23 CHAIRMAN IGNATIUS: Probably don't
24 really have to do that in a formal motion, but -- but we

1 will adjourn. Thank you very much.

2 (Whereupon the deliberations ended at
3 1:50 p.m.)