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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

September 21, 2015 - 12:08 p.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

IN RE: SEC Docket No. 2014-04
SITE EVALUATION COMMITTEE:
Site 100 through Site 300
Rulemaking Proceeding.
(Meeting for members to
discuss the Annotated Draft Final
Proposal on proposed rules and
the public comments thereto.)

| | |
|---|--|
| PRESENT: | SITE EVALUATION COMMITTEE: |
| Chrmn. Martin P. Honigberg <i>(Presiding as Chairman of SEC)</i> | Public Utilities Commission |
| Cmsr. Thomas S. Burack <i>(Vice Chairman of the SEC)</i> | Dept. of Env. Services |
| Cmsr. Robert R. Scott | Public Utilities Commission |
| Cmsr. Kathryn M. Bailey | Public Utilities Commission |
| Cmsr. Jeffrey Rose | Dept. of Resources & Economic Development |
| Dir. Elizabeth Muzzey | DCR-Div. of Historical Res. |
| William Oldenburg | Dept. of Transportation |
| Patricia Weathersby | Public Member |

Also Present: David K. Wiesner, Esq. (NHPUC)
Michael J. Iacopino, Esq. (Brennan Lenehan..)

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

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P R O C E E D I N G

CHAIRMAN HONIGBERG: All right.

Commissioner Scott will be back momentarily. We're going to start today's meeting to continue the discussion of the SEC's rules following the public comment hearing that took place last week, and the submission of numerous written comments. I haven't counted the number, but it's on the order of about 20 different submissions that we've received, some very general, some very specific, and they're still arriving. One arrived in today's mail from the Town of Monroe.

And, speaking of Monroes, the first item of business today is to introduce the new SEC Administrator, who was hired recently, went through approval processes with Governor and Council to get salary set properly. But she started last week, she is sitting in the back of the room. And, I would like to introduce everyone to Pam Monroe, --

MS. MONROE: Hello.

CHAIRMAN HONIGBERG: -- who is the new SEC Administrator. She comes to us from the New Hampshire Department of Environmental Services. Commissioner Burack, to my right, was not very happy with me at one point recently, but he's gotten over it, I think. But

1 we're very happy to have Pam here. We have -- we thought
2 about making her take this process over starting on
3 Friday, and Mr. Wiesner and I were going to completely
4 step out, but we figured that would be a little unfair.
5 So, at this point, Pam is observing the process, will
6 start helping us as soon as she can get herself up to
7 speed. She's got lots to do. I know there's a lot of
8 people in this room who work with the SEC on a regular
9 basis. So, you'll get used to dealing with Pam.

10 Before we go further, I will note that
11 we have eight SEC members here today, or -- and one
12 designee, seven members and one designee. So, let's
13 introduce ourselves, so everyone knows who's here today.

14 COMMISSIONER SCOTT: Good afternoon.
15 I'm Bob Scott. I'm with the New Hampshire Public
16 Utilities Commission.

17 CHAIRMAN HONIGBERG: I'm Martin
18 Honigberg. I'm also with the New Hampshire Public
19 Utilities Commission.

20 VICE CHAIRMAN BURACK: Tom Burack, with
21 the Department of Environmental Services.

22 COMMISSIONER BAILEY: Kate Bailey, with
23 the New Hampshire Public Utilities Commission.

24 MS. WEATHERSBY: Good afternoon.

1 Patricia Weathersby, public member.

2 DIRECTOR MUZZEY: Elizabeth Muzzey,
3 Department of Cultural Resources.

4 COMMISSIONER ROSE: Good afternoon.
5 Jeff Rose, Department of Resources & Economic Development.

6 MR. OLDENBURG: Good afternoon. William
7 Oldenburg, Department of Transportation.

8 CHAIRMAN HONIGBERG: And, I note,
9 Mr. Oldenburg, that your new commissioner was approved
10 last week by Governor and Council.

11 MR. OLDENBURG: Yes.

12 CHAIRMAN HONIGBERG: So, I held off
13 sending her an e-mail inviting her to these things. So,
14 I'm not even sure, has she started yet?

15 MR. OLDENBURG: She hasn't started yet.

16 CHAIRMAN HONIGBERG: All right. Well,
17 we'll get her involved just as soon as she's abled.

18 All right. We have to work through our
19 most recent draft, working with the comments that we
20 received. And, I'm going to be relying heavily on
21 Mr. Wiesner, who I know read these, as did I, over the
22 weekend. I'm sure all of you also read each one in
23 detail. So, we'll be able to have discussions about the
24 various issues that the commenters have presented. I know

1 we also heard from the Office of Legislative Services, the
2 lawyers who work on the rules, got some comments from
3 them.

4 I think the most effective way to do
5 this is to start at the beginning of the rules, rather
6 than try and work by commenter. So, Mr. Wiesner, you want
7 to get us started with where the first comments take place
8 or do you want to make some other suggestion as to how we
9 proceed?

10 MR. WIESNER: I think that probably
11 makes the most sense, probably the most efficient.
12 Several parties, several commenters did propose either new
13 or revised definitions. And, so, we should probably start
14 there.

15 So, this is in Part Site 102, which is
16 on the first page of the Draft Final Proposal for the 100
17 and 200 rules. And, if we're just going to go in straight
18 order, which probably makes the most sense, the first
19 comment is from the National Trust for Historic
20 Preservation, which proposes that we add a definition of
21 "adverse effect". And, I think that the goal of that
22 comment is to use a definition which tracks the federal
23 definition of "adverse effect" which is used in the
24 Section 106 review process for historical resources. And,

1 it's a fairly extensive definition, which appears in their
2 comments of September 18th, which came in a little bit
3 late. So, I don't think it was distributed to the
4 Committee members until this morning. It may make sense
5 for people to review that again, before we open the
6 discussion.

7 CHAIRMAN HONIGBERG: My quick memory of
8 reading that, as I'm flipping through trying to find it
9 right now, is that it had at least one phrase or concept
10 in there that we thought the Office of Legislative
11 Services probably wouldn't be very impressed with.

12 MR. WIESNER: The word "feeling" appears
13 in the definition.

14 CHAIRMAN HONIGBERG: "Feelings".

15 MR. WIESNER: Which may not go over too
16 well. I would also point out that, in the SEC context,
17 "adverse effects" is used in multiple contexts, to refer
18 to multiple different considerations, including aesthetics
19 and environmental concerns, wildlife. And, so, it may be
20 that a definition specifically tailored to the historical
21 review context may not be appropriate for a broader
22 application, even if it is appropriate for the historical
23 part of the review.

24 CHAIRMAN HONIGBERG: I see Commissioner

1 Scott nodding his head at that.

2 COMMISSIONER BAILEY: Mr. Chairman?

3 CHAIRMAN HONIGBERG: Commissioner
4 Bailey.

5 COMMISSIONER BAILEY: I was concerned
6 about that, after reading the comment, of the unintended
7 consequences of adding a definition to a term that may be
8 used in other places that it wouldn't be applicable to.

9 CHAIRMAN HONIGBERG: Does anyone want to
10 take this on and champion the proposal?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: Seeing none, we'll
13 move on.

14 MR. WIESNER: The next comment is from
15 the Various Energy Companies, which is to delete the
16 definition of "adaptive management". And, this is
17 consistent with their comments submitted previously, which
18 basically stated "adaptive management" is not a concept
19 that should be used in these rules, in terms of siting
20 criteria. At most, it may be appropriate, in certain
21 contexts, as a certificate condition, I think it's fair to
22 say is their point of view, and, therefore, not necessary
23 to have a definition. So, that's 102.03. And, again,
24 their comment is just to delete it entirely.

1 CHAIRMAN HONIGBERG: And, how is the
2 phrase used in the rules?

3 MR. WIESNER: I believe it's only used
4 once. And, it's used in the siting criteria as a means of
5 addressing concerns that perhaps could not be fully
6 addressed at the time of application and approval. I
7 mean, the concept of "adaptive management" is that there
8 would be a standard set to protect a certain type of
9 resource, and then the management of the facility to
10 achieve that objective may change over time, and, in fact,
11 should change over time in order to meet the standard.

12 Whereas another approach would be to set
13 a specific operational constraint, let's say, in the
14 certificate, in order to meet a concern. But, then, that
15 operational constraint would be specified at the time.
16 The notion of "adaptive management" is that the strategy
17 may change over time, depending on dynamic situations in
18 the environment, let's say, and advances in technology.

19 But their proposal to delete it is
20 consistent with their deletion of the term where it
21 exists.

22 CHAIRMAN HONIGBERG: Commissioner
23 Burack, while Mr. Wiesner looks for that.

24 VICE CHAIRMAN BURACK: Thank you, Mr.

1 Chairman. I would not be inclined to delete this. I
2 think that's a concept that we discussed at some length
3 and determined was an appropriate form of measure for us
4 to include in setting conditions on certificates. I think
5 it's something we have done in the past as a Committee.
6 And, I think it's appropriate that that kind of provision
7 stay in our rules.

8 MR. WIESNER: I'll just jump in and say
9 that it's on Page 19 of the Draft Final Proposal for the
10 300 rules. And, it's in Site 301.14(e)(7). And, this is
11 where the Committee is considering unreasonable adverse
12 effects on the natural environment, including wildlife
13 resources.

14 CHAIRMAN HONIGBERG: Does anyone want to
15 disagree with Commissioner Burack on this and take this
16 one as his or her own?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: It seems not.
19 Let's move on.

20 MR. WIESNER: The next comment is from
21 EDP. There is a definition of "adjudicatory hearing".
22 And, they correctly note that that particular term is not
23 used. However, the term "adjudicative hearing" and
24 "adjudicative proceeding" are used. So, I take that to

1 primarily be a language change proposal. And, I think we
2 should clean that up, so that the term as defined tracks
3 the term as it's actually used throughout.

4 CHAIRMAN HONIGBERG: Who will make the
5 motion to delete it? Commissioner Bailey.

6 COMMISSIONER BAILEY: I don't think he's
7 recommending that we delete it. I think he's recommending
8 that we change "adjudicatory hearing" to "adjudicative
9 hearing".

10 MR. WIESNER: Yes, because that term is
11 used.

12 CHAIRMAN HONIGBERG: But that's already
13 a defined term in the RSA 541-A, is it not?

14 MR. WIESNER: "Adjudicative proceeding"
15 is defined in 541-A. And, "adjudicative proceeding"
16 covers more than just an adjudicative hearing. But the
17 term "adjudicative hearing", and this is a holdover from
18 the old rules, but the term "adjudicative hearing" is used
19 throughout the rules, in a number of places, I should say.

20 CHAIRMAN HONIGBERG: So, we should
21 change "adjudicatory" to "adjudicative" and move on?

22 MR. WIESNER: That will work I believe.

23 CHAIRMAN HONIGBERG: Director Muzzey.

24 DIRECTOR MUZZEY: I do see that, under

1 definitions 102.03, we define "adjudicatory hearing"
2 meaning "adjudicative proceeding". So, if we delete one,
3 we should get rid of the definition as well.

4 CHAIRMAN HONIGBERG: This is more
5 confusing than I think it needs to be. Commissioner
6 Burack.

7 VICE CHAIRMAN BURACK: I don't think
8 we're talking about deleting either one of them. I think
9 what we're talking about doing is just, because the term
10 "adjudicative hearing", as well as the term "adjudicative
11 proceeding", appear in various places in the rules, but
12 the term "adjudicatory hearing" does not appear, all we're
13 going to do is take 102.03 and just modify it slightly by
14 changing "adjudicatory", the very first word there, to
15 "adjudicative", and otherwise leave it exactly as it is.

16 CHAIRMAN HONIGBERG: So, the phrase
17 means what the phrase means in 541-A?

18 VICE CHAIRMAN BURACK: Right.

19 MR. WIESNER: And, it may be worthwhile
20 to look at the places where "adjudicative hearing" is used
21 and consider changing that to "adjudicative proceeding".
22 And, I'm hopeful that that's more of an editorial exercise
23 than substantive.

24 CHAIRMAN HONIGBERG: Well, if we did

1 that, then we wouldn't need the definition.

2 MR. WIESNER: It might still make sense
3 to say "that "adjudicative proceeding", for these
4 purposes, means what it means in 541-A." But we wouldn't
5 need a definition of "adjudicative hearing".

6 CHAIRMAN HONIGBERG: It's going to be a
7 long afternoon. Somebody make me an offer? Commissioner
8 Burack.

9 VICE CHAIRMAN BURACK: Mr. Chairman, I
10 suggest that we ask Attorney Wiesner to do a universal
11 search for the term "adjudicative hearing". Review each
12 of the instances where it appears. If it appears that it
13 could appropriately be rephrased as "adjudicative
14 proceeding", we do that in each of those instances, and
15 then we modify Site 102.03 to be a definition of
16 "adjudicative proceeding". By deleting, really, the first
17 clause there, ""adjudicative hearing" means", and just
18 have ""adjudicative proceeding" means "adjudicative
19 proceeding" as defined in RSA 541-A:1, I", *etcetera*, as it
20 appears here now.

21 But, if it turns out that making such
22 adjustment in each of the places where "adjudicative
23 hearing" appears just doesn't make sense in those
24 contexts, then we should retain this definition as we've

1 discussed it here, just modifying "adjudicatory" to
2 "adjudicative".

3 CHAIRMAN HONIGBERG: That makes a lot of
4 sense to me. Anybody else?

5 (Multiple members nodding in the
6 affirmative.)

7 CHAIRMAN HONIGBERG: All right. Sounds
8 good. Next.

9 MR. WIESNER: I just want to raise a
10 question about Site 102.08, which is the definition of
11 "area of potential visual impact", which appears on Page 2
12 of the Draft Final Proposal covering the 100 and 200
13 rules. We have deleted, in the Draft Final Proposal, the
14 cross-reference to 301.05(b)(4), and that is the section
15 where the specific limitations or distances are specified
16 for various types of projects. Wind farms, for example,
17 10 miles, and transmission line, it depends on where they
18 are located.

19 And, I'm just wondering whether that
20 doesn't have an unintended consequence of opening up this
21 definition so that it's not specific and does not track
22 the study requirement, which appears in the
23 cross-referenced section?

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: Thank you.
3 Attorney Wiesner, would the only limitations be those --
4 on that definition be those that would be found in
5 301.05(b)(4), or are there other places in the rules where
6 they would also apply, given that this applies -- this
7 definition would be applicable to presumably all different
8 forms of energy facilities?

9 MR. WIESNER: That's correct. And, I
10 believe that an aesthetic study that might be done for
11 another type of facility would not have a specified
12 definition. In that case, it might be construed to be
13 limited by the area that was studied, unless that itself
14 is a subject of litigation in the proceeding.

15 I guess my concern was where we have set
16 specific limitations for the area which is required to be
17 studied, it would seem to make some sense to incorporate
18 that into the definition. So that that defined area, if
19 you will, the area that has been studied, becomes the
20 defined area for considering the aesthetic impacts of the
21 facility. And, we can, you know, when we get to that
22 section, there are comments clearly as to the scope of
23 those distances and whether they're sufficient.

24 VICE CHAIRMAN BURACK: My question was

1 intended to get at exactly that, and I'm sorry if I didn't
2 phrase it clearly enough. I would tend to agree with you
3 that we should ensure that this definition is not broader
4 than what the limitations of the rule would otherwise
5 cause it to be. And, all I was searching to understand
6 was, if we simply put the language back in that's
7 currently deleted, at least in the August 27, 2015 redline
8 annotated Draft Final Proposal, would that cover us or are
9 there other places in the rules, other than 301.05(b)(4),
10 that would include these kinds of limitations?

11 MR. WIESNER: I think there are places
12 where the defined term is used where it seems clearly
13 intended that it is -- that it's meant to cover the area
14 that was studied for visual impact. And that, for these,
15 you know, for wind farms and the transmission lines is
16 subject to the limitations that are specified in those --
17 in the study section. And, so, my concern was removing
18 that means we have a defined term, which just seems to say
19 "any place where you could see it", whether it had been
20 studied or not, is now the defined term of "area of
21 potential visual impact".

22 VICE CHAIRMAN BURACK: And, I --

23 MR. WIESNER: Which means there may not
24 be a record as to the impact of what is seen from that

1 alternate location.

2 VICE CHAIRMAN BURACK: So, what would be
3 the remedy for fixing that? How would we address that?
4 What language would you suggest we put back here?

5 CHAIRMAN HONIGBERG: Would it be to
6 restore the cross-reference?

7 MR. WIESNER: I think that works.
8 That's why we included it, without including the specific
9 language here, the specific distances, which appear in the
10 study requirements. But I'm just concerned that, by
11 removing that, we're removing any limitations on the
12 definition, and you could end up with a definition of an
13 area which is not, in fact, what was studied.

14 COMMISSIONER BAILEY: I think that --
15 Mr. Chairman?

16 CHAIRMAN HONIGBERG: Yes, Commissioner
17 Bailey.

18 COMMISSIONER BAILEY: I think restoring
19 the reference to "subject to the limitations in Site
20 301.05(b)(4)" works. The problem, just to give you an
21 idea, if you look at 301.05(b)(5) and (6), so, (b)(4)
22 tells you what you're supposed to study, and then (b)(5)
23 says you have to "identify all scenic resources within the
24 area of potential visual impact", which is, if you take

1 that reference to "301.05 (b)(4)" out, it's, you know,
2 from any place that you can see it.

3 I don't believe that there are any place
4 in the rules that further refine these study areas.
5 That's where -- I think that's Commissioner Burack's
6 concern, Mr. Wiesner. Is that there's another part of the
7 rule somewhere that says, you know, "you have to study
8 electric transmission lines longer than a mile" with some
9 other provision. But I don't believe that's the case.

10 MR. WIESNER: Not for aesthetics. Not
11 for visual impact.

12 COMMISSIONER BAILEY: Right.

13 MR. WIESNER: And, yet, the defined term
14 is used elsewhere. And, essentially, you know, my belief
15 is that it's used elsewhere as a shorthand for the area
16 that was studied.

17 COMMISSIONER BAILEY: Yes.

18 MR. WIESNER: And, so, in that case, the
19 limitations would seem to be appropriate.

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 COMMISSIONER SCOTT: I just want to add,
22 I concur, putting it back in seems to make sense.

23 CHAIRMAN HONIGBERG: Does anyone have
24 any other or further thoughts on this? Do people

1 generally agree we should put the cross-reference back in?

2 I see nodding heads. That's good. All
3 right. Let's move on.

4 MR. WIESNER: Next definition is 102.15,
5 "cumulative impacts". And, a couple comments here. The
6 Various Energy Companies take the view that "cumulative
7 impacts" should only apply to wind facilities, based on
8 their analysis of the statute, and the fact that the term
9 is only used in Section 10-a of 162-H, which specifically
10 refers to wind project siting.

11 EDP, EDP's comment is that "cumulative
12 impacts" should not extend to energy facilities for which
13 a certificate -- excuse me -- EDP's comment is that you
14 should not be including in "cumulative impacts" those
15 projects "for which an application has been accepted, but
16 no certificate has been issued". And, I think their
17 concern is primarily one of timing. An application maybe
18 have -- perhaps has been submitted and recently accepted.
19 And, then, a new applicant has to take that into account
20 before they're able to submit their application.

21 And, this is something that we had
22 talked about before. And, we had essentially decided that
23 the language as it appears is appropriate. And, it was
24 the decision of the Committee that cumulative impacts

1 analysis should apply to all energy facilities, not just
2 wind. So, to some extent, we're covering ground that we
3 had covered before. The Various Energy Companies believe
4 that you should not include facilities for which a
5 certificate has been granted, as well as those for which
6 an application has been accepted. And, as I said, EDP is
7 looking to limit the list of facilities that need to be
8 considered, to exclude those for which there's only been
9 acceptance of an application.

10 CHAIRMAN HONIGBERG: All right. I'll
11 say I disagree with the second, the second suggestion. I
12 think we have covered that numerous times about what is
13 appropriate for an applicant to have to look at and
14 provide information about cumulative effects of multiple
15 possible projects. And, when -- once an application is
16 filed, you know generally what it's going to look like,
17 and where it is, and you should be able to figure out how
18 yours would look with theirs, and vice versa.

19 I'm more interested in the first
20 argument. Is there -- they're making a legal argument
21 that the statute only puts this issue in play for wind.
22 That's what they're saying?

23 MR. WIESNER: That's correct. And, they
24 made that argument previously, and I believe the Committee

1 had considered it.

2 CHAIRMAN HONIGBERG: And, the statute
3 doesn't preclude us from asking for that information
4 related to others, just we weren't directed to by statute?

5 MR. WIESNER: That's correct. I mean,
6 if you read the legislative intent, such that the word
7 appears in one place and not another, and, therefore, you
8 can do it in one place, but not another, that seems to be
9 the thrust of the Various Energy Companies' comment. And,
10 as I said before, I don't think that that's limiting.
11 There's nothing that expressly restricts the Committee
12 from doing a cumulative impacts analysis for a broader
13 range of energy facilities, not just wind.

14 CHAIRMAN HONIGBERG: Does anyone want
15 to -- yes, Commissioner Bailey.

16 COMMISSIONER BAILEY: Sorry. I was not
17 here for that part of the discussion. That predated my
18 membership on the Committee. And, I was kind of persuaded
19 by the argument that "this really should only apply to
20 wind projects."

21 I think, if you think of, you know, a
22 gas pipeline project, that goes for miles and miles, how
23 do you assess that on a cumulative basis? And, so, you
24 know, I guess I'm not going to change the Committee's

1 determination on this point, but I don't think that it
2 should include anything other than wind.

3 MS. WEATHERSBY: I would disagree. I
4 would think that it is important that all energy
5 facilities be considered. I think it only makes sense,
6 and is important for the people that are affected to know,
7 to have that studied what the cumulative impact of the
8 various substations and wind turbines and, you know, how
9 concentrated things are in a certain area. I think that
10 would be important information for the Committee.

11 CHAIRMAN HONIGBERG: Commissioner
12 Burack.

13 VICE CHAIRMAN BURACK: I would concur.
14 I think it's appropriate that we look at cumulative
15 impacts for all types of energy facilities. I don't --
16 while I hear the legal argument, I don't think it's a
17 compelling legal argument. And, I think we have
18 sufficient authority under our existing -- the existing
19 extent of our authority to be able to consider cumulative
20 impacts for all types of projects.

21 CHAIRMAN HONIGBERG: Commissioner Scott.

22 COMMISSIONER SCOTT: I concur. To the
23 extent we're asking for this information in the
24 application, I think it educates the Committee. And, I

1 would hate to not have that kind of information otherwise.
2 And, again, the contexts are, you could have a power
3 plant, next to a transmission line, you know, this
4 additive thing I think is important for us to understand
5 and have that context. And, I'm concerned, without that,
6 we wouldn't have the context necessarily. What we do with
7 that, of course, is another issue. Thank you.

8 CHAIRMAN HONIGBERG: Commissioner
9 Bailey, you want to fight this any further?

10 COMMISSIONER BAILEY: No.

11 CHAIRMAN HONIGBERG: Didn't think so.
12 Next.

13 MR. WIESNER: So, I'm hearing "no change
14 to that definition".

15 CHAIRMAN HONIGBERG: That's what I'm
16 hearing, too.

17 MR. WIESNER: Next comment is on Page 3,
18 this is the definition of "fragmentation", which is a new
19 definition that we included, based on input from DRED,
20 because the term is used in the context of the effect of
21 the proposed facility on wildlife habitat. AMC is
22 proposing that some additional language be included that
23 make it clear that fragmentation is effectively a
24 continuous process, that begins with -- the term that they

1 use is the "initial perforation" of a habitat or a
2 migratory route, let's say, through increasing isolation
3 of wildlife populations. And, so, that needs to be taken
4 into account as well. The specific language is in their
5 comments, on Page 2 of their comments.

6 VICE CHAIRMAN BURACK: What's the date
7 of their comments?

8 MR. WIESNER: Their comments are Sept --

9 CHAIRMAN HONIGBERG: September 18th.

10 MR. WIESNER: September 18th, yes.

11 VICE CHAIRMAN BURACK: Thank you.

12 MR. WIESNER: So, they would add the
13 language "including the full range of impacts from the
14 initial perforation of continuous habitat by roads and
15 other linear corridors through later stages of increasing
16 isolation of habitat in discrete patches."

17 CHAIRMAN HONIGBERG: When I read that,
18 when it came in, and I'm reading it now, that's not a
19 definition. That is not a continuation of the definition
20 of "fragmentation". It is a description of a process that
21 leads to further fragmentation or something like that.
22 They take -- maybe there's a point in there, but I have a
23 problem with that language, because they have taken it in
24 a different direction from defining the phrase -- or,

1 rather, the word "fragmentation". So, that bothered me
2 when I first read it. I'm not feeling any better about it
3 now.

4 Commissioner Scott.

5 COMMISSIONER SCOTT: I struggled even
6 within the proposed language with the word "linear". I'm
7 not sure, are we talking a straight line? And, why is
8 that important in this context? So, I was a little bit
9 not quite understanding it all.

10 CHAIRMAN HONIGBERG: I assume that means
11 "one leads to another, leads to another, leads to
12 another".

13 COMMISSIONER SCOTT: Thank you.

14 MR. WIESNER: I took that to be "roads
15 and other linear corridors", for example, a transmission
16 corridor or a pipeline. So, that -- that construction in
17 a wilderness area would itself potentially lead to
18 fragmentation, which could be -- which I think the notion
19 of this comment is that fragmentation is a process that
20 occurs over time. It's not a one-time thing, it's not a
21 static thing, it's a dynamic process. And, that maybe
22 that that's difficult to capture in a definition, and then
23 this is not the best way to do it.

24 CHAIRMAN HONIGBERG: I look at this, at

1 the definition that's in the Final Proposal, and I see
2 nothing that limits it to a snapshot. I see nothing about
3 that definition that in any way limits one's ability to
4 say "This fragmentation will get worse. This
5 fragmentation is going to accelerate." It describes the
6 thing. The process is not specified in here or the
7 timeline to get there. I don't see anything in this
8 definition that's so limiting.

9 MR. WIESNER: In which case, the process
10 of fragmentation is something that could be addressed by
11 the applicant through its studies or through its
12 opponents.

13 CHAIRMAN HONIGBERG: And, intervenors,
14 yes.

15 MR. WIESNER: Through intervenors
16 through the hearing process.

17 CHAIRMAN HONIGBERG: That's my take.
18 Does anyone want to take that on differently or have any
19 other thoughts or comments?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: All right. Seeing
22 none.

23 MR. WIESNER: The next comment is
24 102.20, which is a definition of "historic sites". And,

1 the Various Energy Companies are proposing that the last
2 clause be deleted, which is the language "and may include
3 rural, designed, traditional and natural landscapes". I
4 think they -- and EDP is also echoing that comment. The
5 motivation for that comment, I believe, is their view that
6 that additional language goes beyond the federal
7 definition, and adds additional substantive requirements
8 that are not consistent with the federal process.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: My memory, when we
11 last talked about this, is that I went into some
12 explanation as to federal and state laws, rules,
13 regulations, standard and guidance. And, I attempted to
14 explain that, although these specific words are not
15 included within the definition of "historic property",
16 they are, if you drill down into the various meanings that
17 are present in all of those laws, rules and regulations.

18 As a point of practice, any professional
19 in the field would understand that they had to look not
20 only at an historic farmhouse, but the fields that go with
21 it, because that's all part of one larger entity, that
22 includes both land -- landscapes and buildings.

23 I think this was also added to address
24 the idea that landscapes are particularly important to New

1 Hampshire, given our development patterns. And, so, this
2 was added to recognize that the landscape of New Hampshire
3 is an important resource.

4 It's something that would be covered
5 anyway, given how things are done in the field. But
6 removing it would take away the concept that landscapes is
7 an important aspect to New Hampshire.

8 CHAIRMAN HONIGBERG: So, your
9 recommendation would be not to change the definition,
10 correct?

11 DIRECTOR MUZZEY: Not changing it would
12 not mean extra work for the applicant. Changing it --

13 CHAIRMAN HONIGBERG: -- in the double
14 negative there. So, "the current definition does not add
15 work", is what you are saying?

16 DIRECTOR MUZZEY: Correct.

17 CHAIRMAN HONIGBERG: All right. Other
18 thoughts or comments?

19 Commissioner Bailey.

20 COMMISSIONER BAILEY: I think, if it
21 doesn't add additional work, it's already covered, we
22 should leave it in the definition, because it makes it
23 clearer to the applicants, you know, and people who aren't
24 as familiar with the laws, rules, and regs as you are.

1 DIRECTOR MUZZEY: Right.

2 COMMISSIONER BAILEY: So, I think it
3 helps.

4 DIRECTOR MUZZEY: And, that was the
5 initial point, exactly.

6 CHAIRMAN HONIGBERG: I see no great
7 desire up here to start to make changes to this
8 definition.

9 Okay. Move on.

10 MR. WIESNER: Now, this would be on Page
11 5, going by the alphabet, this would be a new definition,
12 a definition of "region" and "regional". And, this is a
13 comment proposed by New Hampshire Wind Watch and Parker
14 Griffin. Essentially, to define those terms using the
15 type of language which appears further on in the rules,
16 where we have attempted to define the communities that
17 need to receive notice or the communities that need --
18 whose interests need to be taken into account in
19 connection with orderly development of the region. And,
20 essentially, where we landed after the most recent set of
21 SEC meetings was some language which includes "the host
22 communities, abutting communities, and communities which
23 are referenced in the studies that are submitted with the
24 application or referenced in the application". And,

1 whether that's the best language, we'll get to further on.

2 But the immediate question is "do we
3 take this opportunity to define "region"? Which is a term
4 which is used in the statute and used in the rules, and is
5 most relevant in the section on orderly development of the
6 region, which is where we look at economic effects,
7 primarily jobs, and property values, let's say, and
8 whether it's appropriate to define "region" in that
9 context to include those communities.

10 CHAIRMAN HONIGBERG: Commissioner
11 Burack.

12 VICE CHAIRMAN BURACK: Mr. Chairman,
13 thank you. I believe, when we discussed this at the last
14 meeting, there were some compelling arguments made as to
15 why it made sense to add a definition of "region" and
16 "regional". And, I'm just looking to see where we might
17 find the actual specific language that's being suggested.

18 CHAIRMAN HONIGBERG: It's in
19 Mr. Griffin's written submission that he gave us during
20 the public comment hearing. I think it was also in
21 someone else's written comments, was it not, Mr. Wiesner?

22 MR. WIESNER: Well, yes. Wind Watch
23 makes the same comment. And, essentially, what they're
24 doing is taking the language that we've used in a number

1 of places. And, I think it's 301.09 is one place where
2 you would see it. And, this is where the applicant needs
3 to address effects on the orderly development of the
4 region. And, for example, in 301.09, in the introductory
5 paragraph, this is where the "master plans", as it
6 currently exists, the "master plans and zoning ordinances
7 of the proposed facility host municipalities and
8 unincorporated places, municipalities and unincorporated
9 places abutting the host municipalities and unincorporated
10 places, and other municipalities and unincorporated places
11 that are the subject of or covered by studies included
12 with or referenced in the application."

13 And, in certain contexts, that probably
14 is broader than what may have been required in the past.
15 For example, when the term is used in connection with who
16 gets notice of an information session, which appears in
17 the 200 rules.

18 Here, it's not clear whether that would
19 be broadening or limiting, in terms of the scope of the
20 region that needs to be studied, in terms of economic
21 effects, let's say, or real estate values, tax revenues,
22 community services and infrastructure.

23 So, I do have some concern about
24 unintended consequences, even though it seems to be -- it

1 seems to make some sense to pick up that language and use
2 it as a definition in the places where we have used it.
3 It's four lines of text, which may lend itself to a
4 definition of some type. But "region" is a term which is
5 used in the statute, but not defined in the statute. And,
6 I believe there is precedent at the Committee that it's
7 more than just the local communities, not all of New
8 England, and not necessarily all of the state, depending
9 on the type of facility that's being reviewed.

10 CHAIRMAN HONIGBERG: Let me ask a
11 question, before I go to you, Commissioner Burack. I'm
12 looking at Attorney Iacopino mainly, I think. Is there a
13 context issue as well that what "region" has meant
14 historically at the SEC depends, in part, on what question
15 you're asking?

16 MR. IACOPINO: Oh, yes. Yes. And, it
17 basically depends, in large part, on the type and scale of
18 the facility that you are -- that you are considering. If
19 you're considering a linear, you know, transmission line,
20 that's going to go through six counties or a pipeline
21 that's going to go through three counties, the region may
22 be much larger than if you're considering a wood burner in
23 the middle of a city. So that, I believe that in the
24 past, although there's never been a -- that I recall,

1 anyway, a decision that compares one with the other for
2 determining, what the "region" should be. I think that
3 there is, throughout the rulings that the Committee has
4 made over the years, an undercurrent that the region that
5 they're considering is specific to the individual project.

6 CHAIRMAN HONIGBERG: Commissioner
7 Burack.

8 VICE CHAIRMAN BURACK: Thank you for
9 that, Attorney Iacopino. I think that's right. And, I
10 think there have been instances where we've looked at a
11 region as sort of being an entire county, for example, or
12 the better part of a county, recognizing that,
13 particularly, if you want to look at orderly development
14 issues, you need to understand what the impacts are going
15 to be across a broader geographic area. So, it
16 wouldn't -- it wouldn't just be limited to host
17 municipalities and abutting areas.

18 And, so, this is a definition that needs
19 to be flexible for sure. And, I guess where this is
20 leading me to think is that, if we are to include a
21 definition, it would probably have to be one that sort of
22 describes a minimum area, but acknowledges that the area
23 might be broader, depending on the context. But even that
24 might be difficult to make work. And, I'm starting to

1 wonder whether we can construct a definition that's going
2 to be -- that can be practically applied here.

3 MR. IACOPINO: I don't know about a
4 "minimum". But I know that the issue raised by Mr.
5 Griffin dealt specifically with a specific issue, that
6 being the studies of real estate values. And, he made a
7 good point, that the smaller area that you study, the
8 larger impact you're likely to see on the real estate
9 values. And, he criticized the broad studies that we
10 sometimes get. So -- and, there might be another way to
11 deal with that particular problem without defining the
12 word "region".

13 CHAIRMAN HONIGBERG: Make me an offer?

14 MR. WIESNER: I'm going to suggest that,
15 if the main thrust of this comment is that we're using
16 four lines of text repeatedly, and it's confusing, that we
17 could incorporate that in a definition, which isn't the
18 definition of "region". It could be a definition of
19 "affected communities" or "relevant communities" or
20 something along those lines. And, it wouldn't necessarily
21 predispose that that is -- represents the definition of
22 "region" as it may be used in different contexts
23 throughout the rules or in relation to the statutory
24 criteria.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: I'm comfortable
3 with that suggestion. I was just going to add on, with
4 the word "regional", I think we do need to retain the
5 ability to look at multilayers. An example in my eyes
6 that comes before us, if ISO-New England has a reliability
7 project for the electrical grid, they are saying that's
8 needed for the whole New England region, the six-state
9 region, to keep the lights on, that is certainly an
10 aspect, something we would want to consider. So, I don't
11 think we want to be too narrow.

12 Having said that, I understand the need
13 to look at it more granular also.

14 CHAIRMAN HONIGBERG: I think where we're
15 settling is not to define "region" or "regional", but that
16 language that is within this definition, that many others
17 have commented on, is a place where we might look to
18 define a term. I think you said "relevant communities",
19 and that might be a -- might be a way to go at this.

20 So, we want to take that language up
21 when we get to it? Or, do we want to segue into that
22 language, since it is sort of right in front of us, and a
23 number of people commented on it?

24 MR. WIESNER: We can talk about it now.

1 I mean, the real issue that's been raised, I believe, is
2 where we're referring to "communities that are referenced
3 in studies that are submitted with or referenced in the
4 application". And, a number of commenters have suggested
5 that that may be overly broad. And, that there may be
6 studies that are included in the application package, for
7 background or for some other purpose, that cover
8 communities or reference communities which are completely
9 remote from the proposed site of the facility. And, you
10 know, if a facility were in northern New Hampshire, but it
11 referred to the original Lempster studies, then it's hard
12 to see how the Town of Lempster would be relevant for many
13 purposes, for example, receiving notice or for aesthetic
14 impacts, or perhaps property values, if it was, you know,
15 100 miles from the site of the proposed facility.

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: Mr. Chairman, I
19 think the notion that we're starting to pursue here is one
20 that does make sense, which is to really look at a notion
21 of "affected communities". Exactly how we choose to
22 define that term, I don't know, and the context in which
23 it would appear, but we certainly need to distinguish
24 between communities that are referenced as sort of a

1 base -- as baseline information or for point of
2 comparison, as opposed to communities that would actually
3 be affected, either directly or indirectly, by the actual
4 proposal itself.

5 I'm also struck by the particular
6 example that was raised here, which is the concern about
7 studies of impacts on real estate values. And, maybe we
8 just need to look, in each of these instances, in the
9 rules where we're going to be asking for or requiring
10 studies of those kinds of things, to ensure that the
11 geographic scope of those studies is appropriate, in light
12 of what we're -- what we want to make sure we all are
13 studying and understanding.

14 So, it may be that we need to look in
15 several different places in the rules as we go through
16 them, and make sure that we can tailor the studies to
17 those areas that would be most affected.

18 MR. WIESNER: And, when we get to that
19 section, there are comments on that that may be helpful in
20 addressing that concern. I mean, it's really 301.09, on
21 "orderly development", I think, which is most relevant,
22 and the commenters have focused on in, you know, the
23 definition of "region", or the lack of definition, and, in
24 fact, what that does incorporate.

1 CHAIRMAN HONIGBERG: So, you just want
2 to deal with it when we get to 301.09?

3 VICE CHAIRMAN BURACK: Sure.

4 CHAIRMAN HONIGBERG: Which would be at
5 roughly 3:48 this afternoon -- no.

6 MR. WIESNER: I think we can probably
7 come up with some language changes that make it more clear
8 that, when we talk about "communities referenced in a
9 study", that there's some sense that those are communities
10 that are local in some way to the facility. I'm not
11 exactly sure how we'll do that. But, if that's the
12 concern, I'm pretty confident that we can fix that through
13 some language changes that exclude communities that may be
14 referenced in studies, which are -- that really are not
15 going to be impacted by the facility.

16 CHAIRMAN HONIGBERG: Yes.

17 MR. WIESNER: Exactly where you draw
18 that line, I'm not sure.

19 CHAIRMAN HONIGBERG: I think there's a
20 lot of people in the room who have thought about this.
21 Unfortunately, no one provided an alternative suggestion
22 about how to phrase that. When I think there's a lot of
23 people out there in the room right now who do understand
24 the concept that we're talking about, I think there's

1 maybe some wordsmithing that people could be doing on
2 scratchpads, that, when we get to that, someone might
3 offer to Mr. Wiesner at a break, and then we'll see if we
4 can come up with a definition that people understand, and
5 doesn't carry the latent ambiguity that a number of
6 commenters identified.

7 So, why don't we move on, and assume
8 that we'll have this problem solved by the time we get to
9 301.09.

10 MR. WIESNER: And, we say "moving on",
11 but I skipped one. So, I apologize for that.

12 CHAIRMAN HONIGBERG: Moving backward.

13 MR. WIESNER: Moving backward, to
14 what -- well, this is on Page 4 alphabetically, this is,
15 again, a proposal for a new definition from the AMC and
16 the Forest Society and Audubon, a definition of "migration
17 corridors". And, this would be used in the siting
18 criteria, again, for natural resources and the
19 environment. And, their proposal is to add a new
20 definition, which I believe would be "102.24", as they
21 have it, "meaning routes followed by fish or wildlife when
22 traveling between seasonal habits that are necessary to
23 maintain flourishing fish and wildlife populations."

24 I'm not sure if our friends in OLS will

1 like the word "flourishing". But the concept is "routes
2 that wildlife use to travel between various habitats".
3 And, they are proposing language in siting criteria,
4 301.14(e)(3) that address migratory wildlife
5 considerations, and use this definition, this new
6 definition, as they propose it, of "migration corridors".

7 CHAIRMAN HONIGBERG: Attorney Iacopino,
8 to your -- is your memory good enough to tell us whether
9 that's ever been an issue in the past in SEC proceedings?

10 MR. IACOPINO: The definition or the --

11 CHAIRMAN HONIGBERG: No. The effect on
12 migratory wildlife, and whether a facility is somehow
13 going to interfere with the migration patterns?

14 MR. IACOPINO: Yes. As recently as the
15 Granite Reliable Project, we just amended their
16 certificate when they wanted to widen the roads. There
17 was quite a bit of controversy over migration caused by
18 the widened roads, and how it would actually open up to
19 predator species the upper regions of that. And, there
20 was much testimony about, I don't know if the term
21 "migration corridor" was specifically used, but,
22 basically, the same concept was the subject of that
23 proceeding. There was, I can't remember his name, but an
24 expert from the University of Vermont who testified quite

1 a bit.

2 We've also heard, in the past, from some
3 folks at Fish & Game from time to time, although not in
4 quite -- not quite to the same extent.

5 CHAIRMAN HONIGBERG: Commissioner Scott.

6 COMMISSIONER SCOTT: Two things. And, I
7 believe, too, when we look at wind farms, we look at
8 migratory patterns for birds and bats also.

9 MR. IACOPINO: Yes.

10 COMMISSIONER SCOTT: I'm supportive of
11 including this. I think, given that -- that was my
12 concern, too, on "flourishing", I'm not sure if it would
13 quite get through OLS. But I'm not sure taking
14 "flourishing" out hurts anything. "Maintain fish and
15 wildlife populations", I think it has the same impact
16 without the fight we would have to have with OLS. So, I'm
17 suggesting we incorporate this, but take "flourishing"
18 out.

19 CHAIRMAN HONIGBERG: Commissioner
20 Burack.

21 VICE CHAIRMAN BURACK: Thank you. I
22 concur. I would also request that we try between now and
23 when we next meet on Wednesday, to see if our folks in
24 DRED and Fish & Game, to the extent they have any

1 particular experience addressing these issues of wildlife
2 corridors, if they might look at that particular language
3 and see if there's any changes or alternatives that they
4 might suggest to us that could be consistent with -- I
5 just don't know if this term is described or defined
6 anywhere else in a state statute or state regulations.
7 So, it would be helpful to just confirm that, understand
8 that.

9 CHAIRMAN HONIGBERG: So, yes.

10 COMMISSIONER ROSE: I'd be happy to take
11 a look at that with my team.

12 CHAIRMAN HONIGBERG: And, Attorney
13 Wiesner, can you get in touch with Fish & Game please?

14 MR. WIESNER: I'll do that. And, I'll
15 try to review the state statutes and regulations, time
16 permitting, to see if there's already a definition that we
17 can incorporate.

18 CHAIRMAN HONIGBERG: But, generally, I
19 think Commissioner Scott and Commissioner Burack have both
20 expressed support for the suggested changes to 301.14,
21 which are -- which follow along the proposed definition
22 that caused us to go back to Page 4. And, these are in
23 the comments of the AMC, the Society for the Protection of
24 New Hampshire Forests, and the Audubon Society, with the

1 proposed definition on the first substantive page, and
2 then the proposed changes to 301.14, looks like four pages
3 later.

4 Does anyone else have any other comments
5 or thoughts on this? Are others supportive of the
6 proposal? Director Muzzey.

7 DIRECTOR MUZZEY: I would support that
8 proposal as well. I think it just serves to better --
9 provide more explanation as to the actual actions of
10 animals as they either live or migrate, and it's
11 clarifying.

12 CHAIRMAN HONIGBERG: I see nodding
13 heads. So, the inclination of the group is to include
14 this definition and the new language in 301.14, subject to
15 questioning within DRED and at Fish & Game. Agreed?

16 MS. WEATHERSBY: Yes.

17 *(Multiple members nodding in the*
18 *affirmative.)*

19 CHAIRMAN HONIGBERG: All right. Next.

20 MR. WIESNER: The next comment is,
21 again, from the National Trust for Historic Preservation,
22 on the definition of "scenic resources". This is
23 "102.41", on Page 6 of the Draft Final Proposal. And,
24 their comments -- the current language reads "'Scenic

1 resources" means resources to which the public has a legal
2 right of access that are", and then there is a long list
3 of the types of locations that would be included in that
4 definition. But, given the preamble language, every one
5 of them has to be, essentially, publicly accessible. And,
6 the Trust's comment is to remove that qualifier. So that
7 I would read that then to say that it would "include
8 resources even if the public has no legal right of access
9 to them", private property, let's say. And, I think their
10 motivation for doing that is probably to cover (e), which
11 is "Historic sites that possess a scenic quality", that
12 may not necessarily be "publicly accessible".

13 But I am concerned, I do have some
14 concern that that's broadening the definition beyond what
15 we had understood it to cover.

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: Attorney Wiesner,
19 can you just help us, again, remind us where in the
20 statute the term "scenic resources" is used? What the
21 context is?

22 MR. WIESNER: It's used in the study
23 criteria for aesthetics. And, I believe it's also used in
24 the siting criteria themselves, which would be 301.14.

1 So, for example, and this appears on Page 17, this is
2 301.14(a)(4). And, the siting criteria is "The scope and
3 scale of the change in the landscape visible from affected
4 scenic resources". And, throughout this section, the
5 language focuses on "scenic resources". In (6) as well,
6 there's a criteria where it says "Whether the proposed
7 facility would be a dominant feature of a landscape in
8 which existing human development is not already a
9 prominent feature as viewed from affected scenic
10 resources".

11 So, again, in each case, these are
12 viewpoints which are accessible to the public, under the
13 current definition, and that qualifier would be deleted if
14 the Trust comment is accepted.

15 CHAIRMAN HONIGBERG: Ms. Weathersby.

16 MS. WEATHERSBY: Just going back to what
17 Director Muzzey said before about the farms and the
18 fields, and that together constituting a scenic viewpoint,
19 scenic resource. A lot those types of places are
20 privately owned, and yet they -- we all benefit from
21 looking at them. So, I'm kind of leaning towards
22 accepting this change.

23 VICE CHAIRMAN BURACK: Mr. Chairman?

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: I'm still trying
3 to wrap my head around the notion of whether we are
4 looking "at these properties" or looking "from these
5 properties". And, where I think a lot of our confusion is
6 coming from is, it may be that some are interpreting this
7 statute as requiring us to do both. That is, to be
8 looking from the vantage point of a scenic resource, which
9 is a public scenic resource, and what do you see from that
10 point looking out? And, I think we'd all agree that, if
11 it's a public resource, it is a point at which many
12 members of the public, as well as the applicant, could
13 actually go to study and understand what that impact is.

14 But, if we were to broaden this
15 definition to include private -- privately held or
16 privately owned scenic resources, a place that you are
17 looking out from, I just don't know what that means, in
18 terms of how you would go about applying this definition.

19 Maybe there are ways that at least
20 visualization studies or photosimulations could be somehow
21 done from such an outlook. But I'm not sure quite how you
22 would do that.

23 So, that's -- those are some of the
24 questions, and I don't pretend to have answers to those,

1 but those are some of the things that are kicking around
2 in my head, as I am trying to understand how, in practice,
3 this term actually gets applied. Are we only talking
4 about properties that we're looking from? Or, are we also
5 talking about properties that we're looking at? Or both?
6 Does it depend on the different contexts? And, I don't
7 know whether anybody, either Director Muzzey or Attorney
8 Iacopino, can shed any light on that potential ambiguity
9 here.

10 DIRECTOR MUZZEY: I'm afraid I share
11 your ambiguity. In that there are a tremendous number of
12 things in a very practical sense that we would consider
13 "scenic resources" that are privately owned, but that we
14 all benefit from their presence here in New Hampshire.

15 I think this is an important point they
16 raise. And, I think we do need to clarify the difference
17 between a scenic resource that has value, regardless of
18 ownership, and a viewpoint that is used to gauge the
19 impact of a project. I think it's an area we need a
20 little more work on.

21 MS. WEATHERSBY: As I'm going through
22 the rules, it looks like "scenic resources" is used both
23 ways. As being the spot where someone is standing and
24 observing out, and someone is looking at the scenic

1 resource from a different point. If you look on 301.05 --

2 *(Court reporter interruption.)*

3 MS. WEATHERSBY: 301.05(b)(6).

4 CHAIRMAN HONIGBERG: Do you have a page
5 number on that?

6 MS. WEATHERSBY: On Page 8 of the second
7 set of rules. "Characterization of the potential visual
8 impacts of the proposed facility, and of any visible plume
9 that would emanate from the proposed facility, on
10 identified scenic resources". So, that -- there you're
11 looking at the resource.

12 Whereas, earlier, in (b)(1), you're
13 looking, on the previous page, you're looking at the
14 facility "that would be visible from the scenic resource".
15 So, it appears as though it's being used both ways. And,
16 that should probably be clarified here.

17 CHAIRMAN HONIGBERG: When you said it
18 appears to be viewing "of the scenic resources", which
19 sections are you saying do that? Because, for the most
20 part, all I'm seeing is statements that are discussing the
21 effect on the view "from the scenic resource".

22 MS. WEATHERSBY: Well, (6), the
23 301.05(b)(6), it actually kind of has it both ways. If
24 you look at the first introductory paragraph of (6), it's

1 the visual impacts "on the identified scenic resource, in
2 high, low, medium", *etcetera*. And, then, when you go
3 further down, it's, you know, concerning the "distance
4 from the scenic resource".

5 CHAIRMAN HONIGBERG: I'm still seeing
6 that as "from the scenic resource".

7 MS. WEATHERSBY: "Visible from the
8 scenic resource". So, like in (c) and (d), you're
9 standing at the scenic resource, but up above it's -- to
10 me it seems to be flipping it. Perhaps I'm just
11 misreading it.

12 CHAIRMAN HONIGBERG: I'm seeing it all
13 being "from the perspective of the scenic resource, what
14 do you see?"

15 MS. WEATHERSBY: Okay. We have another
16 in 301.14(a)(2), on Page 17. Word searching is wonderful.

17 VICE CHAIRMAN BURACK: So, where are
18 you? Where are you again?

19 CHAIRMAN HONIGBERG: Page 17.

20 MS. WEATHERSBY: 301.14.

21 CHAIRMAN HONIGBERG: 301.14(a)(2).

22 MS. WEATHERSBY: (a)(2), "The
23 significance of affected scenic resources", this is
24 what -- considering whether something "has an unreasonable

1 adverse effect on aesthetics", one of the things we are to
2 consider is "The significance of an affected scenic
3 resource and their distance from the proposed facility".

4 CHAIRMAN HONIGBERG: So, it's clearly,
5 if you're at the scenic resource and looking at the
6 facility. That's that same perspective.

7 MS. WEATHERSBY: Uh-huh.

8 CHAIRMAN HONIGBERG: And, I really think
9 that's how the phrase is used in these rules. It is used
10 as an inquiry into how the facility would affect the view
11 from the affected scenic resources. Commissioner Burack.

12 VICE CHAIRMAN BURACK: Mr. Chairman, I
13 think this conversation has been very instructive. And, I
14 think it would be helpful if we could ask counsel, in the
15 limited period of time we have between now and next
16 Wednesday, just to go through the rules and just confirm
17 that we are correct in what appears to be our hunch, that,
18 really, the only context in which the term is used is
19 really as one standing at a scenic resource and looking
20 out, as opposed to standing elsewhere looking at a scenic
21 resource.

22 If that's the case, then I guess I would
23 make the argument that we are, in fact, in these rules,
24 using the term "scenic resource" in a more limited way

1 than presumably is intended or is the standard way in
2 which the various federal and state guidances that are
3 referenced here, at least indirectly, by the National
4 Trust for Historic Preservation, in which those documents
5 or those guidances would use that term. And, if that's
6 correct, then I think it would be appropriate for us to
7 leave our definition as it is, with the clause "to which
8 the public has a legal right of access".

9 CHAIRMAN HONIGBERG: I would just
10 emphasize, when Commissioner Burack says "next Wednesday",
11 he means really the next Wednesday on the calendar,
12 meaning two days from now.

13 MR. WIESNER: And, I'll just point out
14 that, you know, we have a separate section -- separate
15 sections that deal with the impacts of the facility on
16 historical sites. And, it may be that, in context with
17 that, that the aesthetic impacts on an historic site, even
18 if it is privately owned and not publically accessible,
19 would be taken into account. And, therefore, the
20 definition of "scenic resources" being limited to
21 "publicly accessible sites" is not problematic in terms of
22 protecting those historical resources and the aesthetic
23 quality viewed from those sites of the facility.

24 CHAIRMAN HONIGBERG: Seems like the

1 consensus now is not to change the definition?

2 *(Multiple members nodding in the*
3 *affirmative.)*

4 CHAIRMAN HONIGBERG: All right. Next.
5 Well, actually, before we move off of that, the other
6 aspect of the change that the National Trust made was to
7 change the "ands" to "ors", for fear that the definition
8 would require it to be all of those things in order to be
9 a scenic resource.

10 I didn't read that way when I first read
11 it. But, seeing the word "or" having been proposed, I get
12 the change.

13 VICE CHAIRMAN BURACK: Mr. Chairman, I
14 would certainly support making that change. I don't
15 think, actually, you even need to insert the "or" after
16 each of those. I think you could just put an "or" after
17 item (e) and you'd be there.

18 CHAIRMAN HONIGBERG: I actually think it
19 works either way. I just understand why they wanted to
20 make the change. It's just, when you define it that way
21 "scenic resources are all of these things", it's "these
22 things, these things, and these things". That's not a --
23 those aren't criteria, those are a list of different
24 things. I just wanted to make sure people saw that. I

1 don't think you need to make the change. But I just
2 wanted to make sure that people saw what they were
3 proposing and understood their concern.

4 I think you would want it to be that
5 way, if the definition were stated in a singular, "a
6 scenic resource is one that is this, this, this or that",
7 "this or this or this or that". But, when you're talking
8 about plural, "scenic resources are all of these things",
9 you can use the "and", or no word at all, and finish with
10 the word "and", and you don't have any ambiguity.

11 So, are we good with that?

12 VICE CHAIRMAN BURACK: Mr. Chairman, may
13 I just suggest that we consult with Office of Legislature
14 Services, who is reviewing the rules, and see what they
15 prefer, given our intentions here, what is the preferred
16 way of expressing that.

17 CHAIRMAN HONIGBERG: Works for me.

18 Next.

19 MR. WIESNER: Now, the next comment that
20 I have noted is in 201.01(b), this appears on Page 11.
21 And, we've already covered this to some extent, but now
22 perhaps we can take a closer look at the language. This
23 is, I believe, the first place where we described the
24 "municipalities and unincorporated places", the

1 communities that should receive notice of a public
2 information session. And, this is the first place where
3 we are including those "communities that are the subject
4 of or covered by studies included with or referenced in
5 the application". And, EDP suggested that that clause be
6 deleted. And, Wagner Forest Products notes that "it's
7 unclear what "referenced" means. And, I do believe that
8 we can make an attempt to come up with some language which
9 is clarifying and addresses those comments, and,
10 hopefully, others can help us in that effort.

11 CHAIRMAN HONIGBERG: I would suggest
12 that we hold off on that until after the next break,
13 because I'm certain -- or, after the first break that we
14 take, because I'm confident that, during that break, one
15 of the talented wordsmiths in the back of the room is
16 going to come up with a way to phrase that, so we don't
17 have to work through it in public.

18 So, what's the next item?

19 MR. WIESNER: The next comment is on
20 Site 202.05. This appears on Page 14. And, this is the
21 section of the procedural rules that covers "Participation
22 of Committee and Agency Staff". So, in 202.05(a), there's
23 a reference to "The administrator and committee staff
24 designated by the chairperson shall participate in

1 adjudicative proceedings on an advisory basis." And, EDP
2 questions what that role would be as "advisory", and
3 whether, in fact, that the "administrator and staff", in
4 that context, if so designated, would be subject to the *ex*
5 *parte* rules? And, I think an analogy might be the
6 designation of staff advocates in the PUC process, as
7 opposed to the more general accepted role of staff at the
8 PUC, in which case the *ex parte* rules would not apply.

9 CHAIRMAN HONIGBERG: Although, in the
10 PUC context, the designation is really the reverse of how
11 it's articulated here, is it not? Only when the PUC
12 designates Staff as Advocate Staff does their status
13 change from "advisory" to "advocacy", "advice" to
14 "advocacy", is that right?

15 MR. WIESNER: That's correct. And, this
16 is language that I believe appears in the existing rules,
17 except for the new reference to the "administrator".

18 CHAIRMAN HONIGBERG: So, I guess that
19 does lead to the question, would parties to a proceeding
20 be able to communicate with the administrator without
21 violating rules against *ex parte* communication with
22 decision-makers?

23 MR. WIESNER: Certainly, in the instance
24 where, for example, the Chairman had designated the

1 administrator to play that advisory role. And, I think we
2 did cover this to some extent during one of the previous
3 meetings. And, I think we agreed that we could live with
4 the language as it's stated, but the comment has been
5 renewed.

6 And, this section probably could benefit
7 from some clarification as to the role that would be
8 played, and maybe making it clear that "advisory" is not
9 the same as being an advocate for a particular point of
10 view.

11 CHAIRMAN HONIGBERG: Well, it's clear
12 already, is it not, that the administrator or any staff
13 who was participating in a matter on an advisory basis
14 wouldn't be part of deliberations? They would be where
15 Mr. Iacopino is sitting, for example, in a lot of
16 proceedings, and providing guidance and input, but
17 wouldn't be participating in the deliberations.

18 Attorney Iacopino, it looks like you
19 have something you want to add?

20 MR. IACOPINO: No. I was just going to
21 add to what Mr. Wiesner had just said about, not only do
22 you have to delineate between staff that, which we don't
23 have any right now in the SEC, that would -- may be
24 designated to act as an advocate, but you, really, I think

1 what you're trying to discern here is that the Staff has
2 an advisory role to the Committee, but they're not
3 decision-makers, and they don't advise or advocate to the
4 Committee on what decisions to make. And, that way,
5 they're not subject to any *ex parte* communications
6 prohibitions.

7 CHAIRMAN HONIGBERG: Director Muzzey.

8 DIRECTOR MUZZEY: Would it be helpful to
9 add the word "only"? "Shall participate in proceedings
10 only on an advisory basis"?

11 MR. IACOPINO: I think the problem is
12 more with what definition is given to the term "advisory".
13 I mean, that's, I think, where the rubber really meets the
14 road on that, on that issue. One way to deal with it
15 might be to not have the rule at all, and have your
16 Committee -- your Committee staff do what they have always
17 done.

18 CHAIRMAN HONIGBERG: Commissioner
19 Burack, it looks like you agree with that.

20 VICE CHAIRMAN BURACK: Mr. Chairman,
21 that has been my instinct. I'm trying to understand why
22 this language -- I'm trying to (a) recall whether or not
23 this language was here in the original version of the
24 rules, and (b), if it is, why it was there? But, also,

1 whether it really is necessary? That is, if the statute
2 clearly lays out who it is who has to make these
3 decisions, I don't think we need anything in the rules
4 that further speaks to.

5 I mean, I think it's -- it would be
6 entirely appropriate for the Committee, under certain
7 circumstances, to turn to the staff, and now that we have
8 an administrator, to say, in a particular instance, you
9 know, "what do you advise or what do you recommend that we
10 do here?", understanding that it's ultimately our
11 decision. But I don't think we need anything in statute
12 that clearly says that we have the right to do that, or
13 anything in the rule that says that. And, I think -- I
14 think statute already gives us that authority. Perhaps
15 others will disagree with me on that.

16 But I would be comfortable with striking
17 this 202.05(a), because I'm not really sure what it adds.

18 CHAIRMAN HONIGBERG: Anyone? I see a
19 couple of nodding heads. Commissioner Scott.

20 COMMISSIONER SCOTT: I concur. If it
21 has the same meaning without it, less is more, I think.

22 CHAIRMAN HONIGBERG: I see lots of
23 nodding heads. All right. So, we'll take that subsection
24 out, try and avoid the problem that way.

1 MR. WIESNER: The next comment is in
2 Subparagraph (c) of the same section. And, this is where
3 "the presiding officer [in a proceeding] may request the
4 attendance of a participating state agency's designated
5 liaison at a session of the committee or any subcommittee,
6 if that person could materially assist the committee or
7 the subcommittee in its examination or consideration of a
8 matter." The Various Energy Companies have proposed to
9 add, after that first sentence, a new sentence that would
10 provide that "the applicant, counsel for public, or any
11 party to a proceeding may examine the agency liaison with
12 respect to any matter for which the agency liaison's
13 attendance has been requested." And, I think the notion
14 here is that, if, effectively, that liaison is going to be
15 testifying as to matters relevant to contribution of an
16 application, that that person should be subject to
17 cross-examination by interested parties in the case, as
18 well as the applicant.

19 CHAIRMAN HONIGBERG: Commissioner
20 Burack.

21 VICE CHAIRMAN BURACK: Mr. Chairman,
22 thank you. It's important, I think, to understand the
23 context in which this -- in which a designated liaison
24 might be asked to come before the Committee. And, that

1 would be, just as an example, this is what I would think,
2 and, again, people need to understand, we would not be
3 expecting the agency personnel to be experts on the
4 subject matter or for anybody to treat them as their
5 experts, or to try to turn them into their experts, *per*
6 *se*, unless that was what the agency itself intended when
7 they decided to engage in the matter.

8 But, I think, if they were to engage as
9 an intervening party, I think that would probably put them
10 outside of the context of participation. I could be
11 mistaken about that, but that's the way I would read this.

12 What I would imagine this would entail
13 would be a situation where the Committee, for example,
14 wanted a better understanding of what the status was, what
15 the concerns were that had been raised in a Wetlands
16 Permit application filed with the DES. And, so, the
17 applicant really wanted to understand -- or, I'm sorry,
18 the Committee wanted to understand where -- where does
19 this stand? What are the issues or concerns that have
20 been raised by DES? Why has DES recommended some
21 particular condition related to -- related to the permit
22 that they recommend the Committee issue as part of the
23 certificate? And, under those limited circumstances, I
24 could see an opportunity for cross-examination.

1 But I would not, as a general matter,
2 anticipate that the agency liaisons would be involved in
3 the entire pre-discovery process involved in filing -- in
4 preparing prefiled testimony and all that kind of thing,
5 unless the particular agency itself, as I said, were to be
6 an intervening party in a proceeding, in which case, you
7 know, then they might be in a different circumstance.

8 But I think that this is really very
9 limited in scope, in terms of its applicability.

10 CHAIRMAN HONIGBERG: Commissioner
11 Bailey.

12 COMMISSIONER BAILEY: If we don't add
13 the language, does that mean that parties would be or the
14 applicants would be prohibited from asking that they be
15 allowed to ask questions of an agency staffer who came to
16 testify on one particular issue?

17 MR. WIESNER: I think that would be at
18 the discretion of the presiding officer. And, the purpose
19 of the rule is to say "you will have that right", and not
20 leave it to the presiding officer's discretion.

21 CHAIRMAN HONIGBERG: The purpose of the
22 proposed addition.

23 MR. WIESNER: The proposed, right,
24 exactly, the proposed language from the Various Energy

1 Companies is to give them that right, and not leave it to
2 the discretion of the presiding officer in circumstances.

3 COMMISSIONER BAILEY: Mr. Chairman?

4 CHAIRMAN HONIGBERG: Commissioner
5 Bailey.

6 COMMISSIONER BAILEY: I think it's
7 probably better to leave it to the presiding officer,
8 because that way they can limit the scope of the
9 questioning more easily. If you add that kind of language
10 to this rule, then somebody, you know, we could have a
11 whole debate about what that person is supposed to testify
12 to, and whether they have to answer data requests about
13 their report and that kind of thing.

14 So, I think it would be better to leave
15 it to the discretion of the presiding officer.

16 CHAIRMAN HONIGBERG: Does anyone have
17 any other or further thoughts on this?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: Seeing none, we'll
20 move on.

21 MR. WIESNER: All right, we're in the
22 300 rules now.

23 MS. WEATHERSBY: Mr. Chair, excuse me?

24 CHAIRMAN HONIGBERG: Yes.

1 MS. WEATHERSBY: Before we go to the
2 300s, there was another issue that was raised in the 200s,
3 201.02, by Representative Brown, concerning notice to
4 abutters.

5 CHAIRMAN HONIGBERG: Commissioner Scott
6 has just flagged the same item, in 201.01, in the "Public
7 Information Sessions"?

8 MS. WEATHERSBY: Right. And, it appears
9 again in 201.02, concerning who is to receive notice of
10 the sessions.

11 I think his comment was just that notice
12 should be sent to all abutters, because there's nothing in
13 our regulations now that specifically notify each abutter.
14 It's just the municipalities, and then the notices in the
15 papers. And, certainly, on local zoning and planning
16 matters, the abutters all receive notice. And, I
17 understand that this would be probably a larger pool that
18 would need to be sent notice. But, at the same time, they
19 would all have been clearly identified previously, I would
20 think, by the -- by the applicant, particularly in the
21 "after application" phase.

22 So, to me, it makes sense, if it's not
23 too burdensome. But I'm interested in others' thoughts.

24 CHAIRMAN HONIGBERG: Commissioner Scott.

1 COMMISSIONER SCOTT: Generally, I
2 support that addition. I guess I would, so we don't
3 create any more controversy, I would suggest we change his
4 language. We define "abutting property", but not
5 "abutter". So, perhaps, instead of "abutter", "owners of
6 abutting property", or something of that effect, would be
7 consistent with our definitions.

8 MR. IACOPINO: Mr. Chairman, just from
9 an application processing standpoint, if you're going to
10 do that, we will need the application to contain a list of
11 addresses for those folks, rather what we've traditionally
12 received is a map, which shows the properties. Which I'm
13 sure we could sit down and take hours to try to figure out
14 the property address and what the mail address for the
15 individuals are. So that, if you're going to require
16 specific notice to abutters or owners of abutting
17 property, we would need to require, as a part of the
18 application, that a list of all abutters be provided, with
19 their mailing addresses, so that we can notify them and
20 not take the better part of days to figure out who they
21 all are.

22 CHAIRMAN HONIGBERG: This has not been a
23 requirement in the past, correct?

24 MR. IACOPINO: It has not. Nor is it a

1 requirement of the statute as it presently exists.

2 CHAIRMAN HONIGBERG: Commissioner Scott.

3 COMMISSIONER SCOTT: For Attorney

4 Iacopino, can you clarify? I'm reading this as the --

5 it's a requirement of the applicant to issue the notice.

6 Your statement just led me to believe that we would issue

7 the notice?

8 MR. IACOPINO: There are subsequent

9 places where we would be required to send the notice. For

10 instance, there's a 45-day hearing, and then there's a

11 hearing 90 days out, a public hearing.

12 CHAIRMAN HONIGBERG: Well, as I --

13 Representative Brown's proposal, as I read it, just covers

14 201.01.

15 COMMISSIONER SCOTT: Right.

16 CHAIRMAN HONIGBERG: Which is the public

17 information sessions prior to the application. That is a

18 new requirement under Senate Bill 245. His proposal did

19 not go beyond that, at least I don't think, at least the

20 letter that I'm looking at dated September 17th. That

21 would be the applicant's process. That would be a that is

22 potentially a massive undertaking, but -- and there's lots

23 of massive undertakings associated with these projects.

24 MR. IACOPINO: My only viewpoint is from

1 the staff viewpoint. It's not from -- if it's limited to
2 what the applicant must do, then, you know, then forget my
3 comment. But, if it's going to be -- I anticipated that
4 it would be brought through on each of these three areas
5 where that "14-day notice" requirement is continued.

6 If you're considering only putting that
7 burden on the applicant, then I don't have the same
8 concern.

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: My support was just
11 for the initial notice in 201.01. And, I think, reading
12 the representative's concern was, it was intended, at
13 least I think, reading his submission, that there would be
14 an initial notice for the abutting property owners, and by
15 which they would know the process is going on. And, if
16 they wish then to follow, they could do so. So, I don't
17 see any need, following that logic, to include that in the
18 rest of the proceedings, if we were to add this.

19 CHAIRMAN HONIGBERG: Commissioner
20 Bailey.

21 COMMISSIONER BAILEY: Attorney Iacopino,
22 does the Committee have any experience with abutters who
23 missed notification, because they didn't see the public
24 notice at the library or the newspapers or all the other

1 places that the applicant's required to publish?

2 MR. IACOPINO: We have had abutters
3 complain that they never received notice. I don't know if
4 they actually said "well, I never saw the notice" or
5 "never knew of the proceedings going on". But we have
6 had -- we have had abutters come in, particularly in the
7 Groton Wind matter, came in and said "well, I never got
8 any notice." Of course, what they were complaining about
9 was something that the Committee had not received notice
10 of either, which were some changes in the configuration of
11 the facility.

12 So, yes. But we have had abutters claim
13 that they did not receive notice.

14 CHAIRMAN HONIGBERG: Does the statute
15 regarding the public information sessions prior to
16 application have a notice provision in it? I forgot what
17 the specific cite is.

18 MR. IACOPINO: I believe it's the same
19 language that's in the rule as presently proposed, that
20 they must "publish in the newspaper". I could double
21 check it for you.

22 MR. WIESNER: Our original rules
23 proposal tracked the statute very closely. And, now we
24 have also added the requirement that "notice be mailed to

1 the various communities", the "affected communities", or
2 whatever we'll end up calling them. But it's never been a
3 part of the proposed rules or, my understanding, the
4 existing process to provide notice to individual abutting
5 property owners.

6 CHAIRMAN HONIGBERG: I think that's
7 right. I'm just now interested in making sure I know what
8 the statute that we're implementing says.

9 MR. IACOPINO: RSA 162-H, Section 10,
10 requires that --

11 CHAIRMAN HONIGBERG: Wait. It's RSA
12 162 --

13 MR. IACOPINO: H.

14 CHAIRMAN HONIGBERG: -- H.

15 MR. IACOPINO: Section 10.

16 CHAIRMAN HONIGBERG: Okay.

17 MR. IACOPINO: I, which deals with the
18 pre-filing application, requires that the applicant
19 publish -- "publish a public notice not less than 14 days
20 before such session in one or more newspapers having a
21 regular circulation in the county in which the session is
22 to be held", and then it goes on to say what needs to be
23 within the notice. And, then, "Not less than 10 days
24 before the session, the applicant shall provide a copy of

1 the public notice to the chair of the committee."

2 CHAIRMAN HONIGBERG: And, as Mr. Wiesner
3 just pointed out, this proposed rule adds specific mailing
4 of notice to the municipalities that we're going to work
5 on defining, correct?

6 *(Multiple members nodding in the*
7 *affirmative.)*

8 CHAIRMAN HONIGBERG: I see nodding
9 heads, yes.

10 So, this proposal would go well beyond
11 that. And, it would be a massive undertaking for some of
12 these projects. I'm not a municipal lawyer. So, in the
13 zoning/planning context, people making -- proposing to
14 make changes do have to give notice to all the abutters,
15 do they not?

16 MS. WEATHERSBY: They do, for the
17 initial hearing. And, as the process continues, they then
18 have notice. But they don't have to get a notice of every
19 continued meeting that's discussing the same matter. So,
20 I think that would be applicable here, to get notice of
21 the initial meeting. And, then, they're on their own.
22 It's up to them to know, you know, when the next hearing
23 is, *etcetera*, if they want to follow along or not.

24 And, I think it is important that, and

1 people younger than myself tend not to read newspapers,
2 or, if they read them online, which just shows the
3 articles and not the advertisements and the legal notices.
4 So, I think that there's some generations of folks that
5 read differently than I do, and may tend to miss this,
6 and, yet, it will affect their home and their children.
7 So, I'm in favor of it.

8 CHAIRMAN HONIGBERG: Mr. Oldenburg.

9 MR. OLDENBURG: I think we also have a
10 lot of property owners in this state that don't live in
11 this state, that would be hard-pressed to get
12 notification, they don't get the local newspapers. They
13 might not live here, but they own property, or they're
14 seasonal. So, I don't know if their legal address is
15 out-of-state, they might not receive a notice or see the
16 notice, unless it's mailed to their "billing" address or
17 tax address.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I think both the last
20 two comments made are very valid, given where we are
21 today. And, I would support both of those concepts. And,
22 we do see a range of projects before this Committee. For
23 some, this would be a very easy task. It may just be a
24 handful of people. You know, at the opposite extreme,

1 there would be some projects that this would be a more
2 difficult one. However, I think we do have to recognize
3 that there are a range of projects in size that come
4 before us, and not all of them would have such a difficult
5 time with this.

6 CHAIRMAN HONIGBERG: Although, there are
7 many who disagree that this is the way things should be,
8 it is pretty much the law that the Site Evaluation
9 Committee does step into the shoes and replace local
10 zoning and planning authority, correct, Mr. Iacopino?

11 MR. IACOPINO: Yes.

12 CHAIRMAN HONIGBERG: I know the Town of
13 Monroe's letter dated September 15th takes issue with
14 that. But that's a matter to take up with the Legislature
15 regarding possible constitutional amendments, is it not?

16 MR. IACOPINO: Yes. And, there are a
17 number of towns in the North Country that have passed what
18 they -- I believe they call them "home rule" ordinances,
19 which suggest that they have a different -- that they have
20 control over what goes on in their town, despite what the
21 state might otherwise legislate.

22 CHAIRMAN HONIGBERG: Wasn't there a
23 constitutional amendment proposed that would have given
24 the local municipalities such power 10, 15 years ago?

1 MR. IACOPINO: I think, back around the
2 time of the construction of the Seabrook Nuclear Power
3 Plant there was such a suggestion, I don't know what year
4 the constitutional year was.

5 CHAIRMAN HONIGBERG: Oh, I know there --
6 there was one more recent than that. There was one in the
7 late '90s, maybe early 2000s, that actually went on the
8 ballot, that was defeated. That would have made us a
9 local "home rule" type of state.

10 MR. IACOPINO: And, there are some
11 states that do have -- that are like that. But New
12 Hampshire specifically is not. It's not the way we're --

13 CHAIRMAN HONIGBERG: Given that the SEC
14 has that status under state constitution, the state
15 constitution and state laws, maybe it is appropriate to
16 require notice to abutters for the first event, the public
17 information sessions prior to applications.

18 MR. IACOPINO: It may be appropriate as
19 a policy decision that the Site Evaluation Committee can
20 make. I don't believe that the statute requires you to
21 make that policy determination, though. You certainly can
22 do it within the context of your own administrative
23 regulations.

24 CHAIRMAN HONIGBERG: And, that's where

1 we are.

2 MR. IACOPINO: Yes.

3 CHAIRMAN HONIGBERG: We're talking about
4 administrative regulations.

5 MR. IACOPINO: Exactly. But you're not
6 required to, I guess is my point.

7 CHAIRMAN HONIGBERG: All right. What's
8 the sense of the group? Commissioner Bailey.

9 COMMISSIONER BAILEY: I'm sympathetic to
10 the argument that abutters should be made aware of these
11 kind of things. But I'm also thinking about how difficult
12 it would be for an applicant, with a really large project,
13 to figure out mailing addresses for everybody in the
14 project, or abutting the project. And, how -- you know,
15 are we making a rule that is impossible to comply with?
16 Do you have any thoughts on how an applicant would get
17 mailing addresses for all the abutting property owners on
18 a really large project?

19 MR. IACOPINO: If I were guessing, I
20 would say they do it the same way they do it when you're
21 building a shopping center or something within a town, you
22 go to the town tax map and then you go to the town clerk
23 and you obtain those addresses.

24 I would also think that, for many

1 projects that we see which are in existing right-of-ways,
2 there are already contractual agreements between many of
3 the abutters and the applicant. So, they may have a
4 database there that they can go to. For instance, Public
5 Service has a Right-of-Way Division, I believe. I assume
6 that they have names of the people who they have
7 right-of-way contracts with or right-of-way easements
8 with. I don't know if they're up-to-date with their
9 present address, and whether they live within the state or
10 outside of the state. But I think that there are ways
11 that it can be done.

12 I do think that it does add layers of
13 complexity to that initial task. By the same token, it
14 also guarantees more notice than what is presently
15 required, under both the statute and our current
16 regulations.

17 CHAIRMAN HONIGBERG: Commissioner Scott.

18 COMMISSIONER SCOTT: I understand, for a
19 larger project, it would be more of a burden, but I am not
20 swayed by that. You know, a small -- a smaller project,
21 with less landowners, doesn't mean, because I'm abutting a
22 smaller project, doesn't mean I'm impacted differently
23 than a very large project that -- a linear project that
24 I'm still abutting. I still have that kind of impact as

1 an abutting landowner. So, you know, from that
2 perspective, I don't see why it should make a difference.
3 I would also argue large projects have typically more
4 resources, etcetera.

5 So, I think it is appropriate to make
6 this initial notice. Again, if the language that's being
7 suggested uses the word "known", so, we're not asking for
8 some Herculean, you know, finding something -- somebody
9 that disappeared someplace. We're just saying "Go to your
10 town office, figure out who's the abutter. If you can,
11 show us that you issued a certified mail to them", and
12 that's the end of it. Then, it's their business whether
13 they want to participate.

14 But I understand that's adding yet
15 another layer, but I think it's appropriate.

16 CHAIRMAN HONIGBERG: All right. We're
17 going to take a ten-minute break here for Mr. Patnaude and
18 others. While we are on break, members of the Committee
19 are going to be thinking about whether to add this
20 requirement.

21 Others in the audience are going to be
22 working on language to fix the -- what seems to be an
23 ambiguity on "affected communities". Those who have
24 cellphones with them are going to put them on "mute" or

1 "vibrate". And, we will be back in about ten minutes.
2 Thank you.

3 (Recess taken at 1:45 p.m. and the
4 meeting resumed at 2:05 p.m.)

5 CHAIRMAN HONIGBERG: All right. We're
6 going to resume. We're going to pick up pretty much where
7 we left off, with this question about "notice to
8 abutters". Commissioner Burack, you have something you
9 wanted to say.

10 VICE CHAIRMAN BURACK: Thank you, Mr.
11 Chairman. Trying to think this through, and recognizing
12 that so many of these things that we do are fraught,
13 whether we like it or not, fraught with complexity. And,
14 what I'm struggling with a bit here is how we apply this
15 rule -- would apply such a rule that is notice to abutting
16 landowners in different situations.

17 I think it's fairly clear how it would
18 be applied in a circumstance where there was a piece of
19 property that had been specifically identified, for
20 example, for a wind energy facility or for a -- building a
21 generating station, for example, that's not a linear-type
22 project. I think that, when we get to linear-type
23 projects, there then become additional complexities.
24 Because you first have to determine whether or not the

1 corridor is already owned by the parties, in whole or in
2 part or not, what rights they have or don't have to that.

3 And, where I think this would get
4 particularly complex is, if we're in a situation where
5 parties are not going to be able to acquire or have not
6 actually acquired properties, but are instead expecting to
7 avail themselves of eminent domain powers granted
8 presumably through federal law. And, then, it's a
9 question of "What's the corridor? And, do you notify
10 parties within the corridor? And, what are the abutting
11 properties relative to where the proposed project would be
12 located?"

13 And, I'm really having a hard time
14 trying to understand how you would apply something like
15 this, particularly in that circumstance, where the
16 expectation is to -- is to exercise eminent domain in
17 whole or in part.

18 I'm not opposed to the concept of trying
19 to find a way to provide constructive notice directly to
20 affected parties. I'm just struggling with how, in
21 application, it can really work. And, wondering also
22 whether that initial hearing would be the best place in
23 the process to do it, or whether there might be changes
24 in, for example, where a corridor might go, between the

1 time of initial public notices and when an application is
2 actually filed, such that you could have different parties
3 affected at the time of the actual filing of the
4 application.

5 So, I'm just trying to put all those
6 different pieces together.

7 CHAIRMAN HONIGBERG: Commissioner Scott.

8 COMMISSIONER SCOTT: I wonder, given
9 that, would you feel better if the language were amended
10 to "notice shall be mailed to all known", I was going to
11 say "abutting landowners", what did I agree to? I
12 suggested "owners" --

13 MR. IACOPINO: "Owners of abutting
14 property".

15 COMMISSIONER SCOTT: Thank you. "Who
16 are known at the time", or something to that effect? I
17 mean, is your concern of somebody after-the-fact saying
18 "the route has changed and I wasn't notified, so,
19 therefore, start all over again"? Is that one of your
20 concerns?

21 VICE CHAIRMAN BURACK: Well, that would
22 certainly would be -- if I may, that certainly would be
23 one the things that we'd -- I think we'd want to be sure
24 to address.

1 But, again, the issue of, if there is
2 going to be a taking through eminent domain proceedings
3 for a corridor, certainly, every property that would be
4 affected by that taking would -- should be getting notice.
5 And, then, the question is, how are we defining abutters
6 beyond that, beyond that affected corridor? And, I think
7 it could get somewhat complicated, is all I'm suggesting
8 here. And, I don't have an answer to how we do that. I'm
9 just trying to suggest we need to think through how that
10 might be done.

11 CHAIRMAN HONIGBERG: It is complex. The
12 Legislature did not direct such notice to be given. I
13 think it would be well within the appropriate or
14 reasonable things for us to do, to leave the notice
15 provision as we've expanded it greatly already, as it is,
16 expanded greatly beyond what the Legislature specified,
17 and not take that up in this rulemaking, leave it for
18 another day, if that becomes something that people feel is
19 appropriate in the future.

20 Director Muzzey.

21 DIRECTOR MUZZEY: Given Commissioner
22 Burack's thoughts, I was looking at Page 3 of the next
23 section of rules, which talks about what an application
24 should contain. And, 301.01(c)(6) [301.03(c)(6)?]

1 addresses what stage an applicant might be at as to
2 ownership or some other legal right to the property, as
3 well as any permission from a federal or state action to
4 provide the applicant with the right of eminent domain.
5 And, I'm just wondering if this sheds a little bit of a
6 light on what stage that type of process might be at at
7 the time of application, and whether that's helpful at all
8 to our concern for the complexity of noticing abutters?

9 CHAIRMAN HONIGBERG: Attorney

10 Weathersby.

11 MS. WEATHERSBY: When an applicant
12 starts the process, to the point where they're having the
13 initial public hearings, it has, if it's a transmission
14 line or a pipeline, they have a route in mind. And, I
15 think, if we give, whether they have control over the site
16 or they're going to have to do their -- go through eminent
17 domain proceedings, I think, if the folks that are
18 abutters to that initial desired corridor that's been
19 identified, they get notice. That's a real step in the
20 right direction.

21 The fact that a route may change
22 slightly, and I'm not in favor of putting in an additional
23 burden, so, when the route changes, then those folks need
24 to get notice, and it goes on and on and on every time

1 there's a change. But, I think, if we just say, you know,
2 they come to the public and to us with an idea of this
3 corridor, it's all mapped out, they're identifying in the
4 materials to us. And, if the people that are abutters to
5 that corridor receive direct notice, I think that that's a
6 real step in the right direction.

7 CHAIRMAN HONIGBERG: Attorney Weathersby
8 proposes that we essentially adopt Representative Brown's
9 proposal. Is there a second for that motion by Attorney
10 Weathersby?

11 Commissioner Scott.

12 COMMISSIONER SCOTT: I second that.
13 Again, I wouldn't mind adding language to the
14 representative's comments, "as known at the time of the
15 session" or something to that effect. Again, I think it
16 could be useful to signal the public, who are not
17 expecting, as Attorney Weathersby just mentioned, who are
18 not expecting this iterative process every time something
19 changes. This is for an initial notice at the start of
20 the public sessions.

21 CHAIRMAN HONIGBERG: It's the pre-filing
22 public information sessions that we're talking about.

23 All right. We have a motion and a
24 second. Commissioner Bailey.

1 COMMISSIONER BAILEY: So, does that mean
2 that the people, if there were property that was
3 anticipated to be acquired through eminent domain, would
4 they get notice, because they're abutters of part of the
5 route that the applicant has already contracted land for?
6 Or, is it possible that those people might not get the
7 notice?

8 I mean, I guess I'll tell you where I'm
9 coming from. I was persuaded by your argument that we're
10 stepping into the role of the local zoning authorities.
11 And, you know, when something happens in town, abutters
12 get notice. So I think it's not inappropriate to have
13 abutters get notice.

14 But I'm concerned now that maybe the
15 people who are, you know, going to have their property
16 taken by eminent domain possibly, would not be included in
17 this notice. And, I just want to know if anybody knows?

18 CHAIRMAN HONIGBERG: I can't answer your
19 question. I don't know how this would work. I intend to
20 vote against the motion. I intend to fall back on what
21 the Legislature has told us to do for notice. But I want
22 to get this discussed and resolved, so we can move on.

23 But I can't answer your question. Maybe
24 one of the others can, as to how that would work, in the

1 context of someone who needs to exercise some other body's
2 authority to get control over the route?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: All right. No
5 one's stepping up.

6 Are you ready for the question? All
7 those in favor of the motion, please raise your hand?

8 *(Show of hands.)*

9 CHAIRMAN HONIGBERG: Opposed?

10 *(Show of hands.)*

11 CHAIRMAN HONIGBERG: The motion fails
12 four to four.

13 While we have, just for those who don't
14 understand the parliamentary process there. If you don't
15 have a majority for a question, the question fails, if
16 it's tied.

17 With respect to eminent domain, since it
18 was just raised, I know that there's a lot of concern
19 about the use of the phrase "eminent domain" in a
20 subsequent provision. I just want to get that out there
21 right up front. This body does not have the power to
22 grant anybody any eminent domain rights, and no rule we
23 put in place could do so. There are other bodies that can
24 do that, the federal government, FERC is one. In limited

1 circumstances, the Public Utilities Commission might be
2 able to do it, in certain circumstances having to do with
3 reliability-based transmission projects that are done
4 through the ISO process. But, for the most part, that is
5 going to go on elsewhere; not in the SEC, not as part of
6 our rules. So that, to the extent there are references to
7 "eminent domain", is not anything that's going to happen
8 before the SEC.

9 What's the next item, Mr. Wiesner?

10 MR. WIESNER: If we're ready to jump
11 ahead, the next item is in the 300 rules, on Page 3 of the
12 second Draft Final Proposal. And, this is 301.01 -- no,
13 excuse me, 301.03, "Contents of Application". And, it's
14 Subsection (c), and the first comment -- oh, I'm sorry,
15 (c), in the introductory language, the current language
16 reads "Each application shall contain the following
17 information with respect to the site of the proposed
18 energy facilities and alternative locations the applicant
19 considers available for the proposed facility.

20 EDP's comment is that the word
21 "available" should be changed to "feasible". And, I'll
22 just note that "available" is the language that's used
23 with reference to alternative locations in Section 7 of
24 the statute, where it reads that the application shall

1 "identify the applicant's preferred choice and other
2 alternatives it considers available for the site and
3 configuration of each major part of the proposed facility
4 and the reasons for that preferred choice."

5 CHAIRMAN HONIGBERG: Does anyone here
6 want to depart from the statutory language?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: Next.

9 MR. WIESNER: The next comment is in
10 (c)(3). This is where the applicant would include a map
11 showing "residences, industrial buildings, and other
12 structures and improvements within the site". And, then,
13 the language as proposed is "on abutting property with
14 respect to the site or within 100 feet of or adjacent to
15 the site".

16 CHAIRMAN HONIGBERG: I think "or
17 adjacent to" got eliminated in an earlier iteration by us.

18 MR. WIESNER: That's correct. That's
19 correct. The new language, "the abutting property or
20 within 100 feet" is in replacement of the current language
21 or the prior proposed language "adjacent to the site".
22 So, that was an attempt to define what "adjacent" means.

23 Both the Various Energy Companies and
24 EDP propose -- I'm sorry. The Various Energy Companies

1 propose to delete that language. And EDP is proposing a
2 clarifying change, that it would mean it would have to be
3 "and on abutting property and within 100 feet", not "or".
4 So, this is basically the scope of a property adjacent to
5 the site for which a map would have to be prepared showing
6 relevant buildings.

7 Before I move on, there's also a comment
8 from the National Trust for Historic Preservation, which
9 goes in the other direction, which suggests that the map
10 should show "residences and buildings within the area of
11 potential visual impact of the site", a much broader area.

12 CHAIRMAN HONIGBERG: Does anyone want to
13 have any -- want to take a position on either, either
14 direction, moving this in either direction? Much broader,
15 as National Trust for Historic Preservation would suggest
16 or narrowed somewhat, I think, in the proposal by the
17 others?

18 VICE CHAIRMAN BURACK: Mr. Chairman, I'd
19 like to advocate leaving it just as it is. I think that
20 we spent a lot of time earlier talking about this and
21 thinking about this. Wanted to ensure that we had a scope
22 that was clearly defined, broad enough to cover those who
23 might be considered most directly affected, but not so
24 narrow as to limit it just to what would be abutting

1 properties, recognizing that you may have abutting
2 properties that are only a few feet wide, for example, and
3 then have another property beyond that that you'd want to
4 be able to consider and understand. And, I think that's
5 why we added the "or within 100 feet" clause.

6 So, I'd be most comfortable leaving it
7 as it is.

8 CHAIRMAN HONIGBERG: Mr. Wiesner, was
9 there a concern, and I know I read the proposal, and my
10 memory is that there was a concern that there was some
11 ambiguity about the "100 feet"?

12 MR. WIESNER: I think there was a
13 concern that the use of the word "or" suggested that you
14 could do either/or, but you didn't have to do both, or the
15 greater of, if you will. I think it was the intent of the
16 Committee that it be the "greater of". So, if the
17 abutting property were not 100 feet from the property line
18 of the proposed site, you would go to the next property or
19 the next couple of properties until you reached the 100
20 foot mark.

21 CHAIRMAN HONIGBERG: Whereas, if the
22 structure in question was a quarter mile away, but on the
23 abutting property, you'd show that structure, correct?

24 MR. WIESNER: You would show it, because

1 it's on abutting property, yes. So, in other words, it's
2 the "greater of". Although, this doesn't necessarily lend
3 itself to that type of formulation. But that was the
4 concept, as I understood it. We could probably find a way
5 to clarify that through language changes.

6 VICE CHAIRMAN BURACK: Mr. Chairman, I'd
7 certainly be comfortable with that kind of clarification,
8 if that's the concern that's been raised, because I think
9 that's what the intention was.

10 CHAIRMAN HONIGBERG: I think you're
11 right. Is there any other thought?

12 (No verbal response)

13 CHAIRMAN HONIGBERG: And, we'll take a
14 look at that language and see if we can get it clarified.
15 What's the next item?

16 MR. WIESNER: A similar comment in
17 (c)(4). Here, both the Various Energy Companies and EDP
18 are proposing to delete the reference to "on abutting
19 property with respect to the site, or within 100 feet".
20 And, again, the Trust is saying that it should be the
21 entire "area of potential visual impact". Here, we're
22 talking about wetlands and surface waters. And, I think
23 there's a concern of the development community, if you
24 will, that it may not be possible to get on to some of

1 these sites and determine whether there are wetland on the
2 site. It may be easier, for example, to see buildings,
3 through Google Earth or whatever, and maybe not as easily
4 accomplished to determine where there are, you know,
5 jurisdictional wetlands included on those properties.

6 VICE CHAIRMAN BURACK: Attorney Wiesner,
7 can you give us the cite again, where you're looking?

8 MR. WIESNER: I'm sorry.

9 CHAIRMAN HONIGBERG: It's the very next
10 subsection.

11 MR. WIESNER: It's the next subsection,
12 (c)(4), just below the (c)(3) that we were talking about.

13 VICE CHAIRMAN BURACK: Thank you.

14 MR. WIESNER: And, it's the same
15 language, but the context is somewhat different. Because
16 here we're talking about, essentially, environmental
17 conditions of the property, and not human structures.

18 CHAIRMAN HONIGBERG: I would defer to
19 the Department of Environmental Services as to whether
20 that type of information is known or knowable to those who
21 are not on the site.

22 VICE CHAIRMAN BURACK: My understanding,
23 but I'm certainly not an expert in this arena, but my
24 understanding is that there are technologies available,

1 whether it's things as simple as online maps, such as
2 Google, you know, Google Earth type maps or satellite
3 photos, as well as various kinds of satellite imagery that
4 can allow parties, with a fair degree of accuracy, to
5 identify where there may be waters or wetlands on a piece
6 of property.

7 And, so, I, certainly, I don't think
8 it's unreasonable to ask for this. I don't think we need
9 to have an expectation that, if they're unable to get
10 physical access to a piece of property, that they will
11 have done a full delineation or a mapping of that. It may
12 just be that they're going to be able to show us, from an
13 aerial standpoint, what they believe is there. And, the
14 actual details will be subject to -- subject to
15 verification at a later time, when they can get access to
16 a property.

17 CHAIRMAN HONIGBERG: So, if they -- if
18 an applicant identifies wetlands or waters on three or
19 four parcels, and turns out there's a fourth that has it
20 as well, but they didn't identify because they couldn't
21 see it, that wouldn't be grounds for rejecting the
22 application?

23 VICE CHAIRMAN BURACK: I would feel most
24 comfortable answering that question, if I have a chance to

1 go back and confer with staff who look at these things
2 routinely.

3 CHAIRMAN HONIGBERG: All right. Then,
4 we'll ask you to do that --

5 VICE CHAIRMAN BURACK: Okay.

6 CHAIRMAN HONIGBERG: -- for Wednesday.
7 I assume, Mr. Wiesner, that we probably have the next
8 section, Subsection "5", with the same comment?

9 MR. WIESNER: Same comments, context
10 slightly here. The identification would be of "natural,
11 historic, cultural, and other resources". So, that's
12 quite broad. Again, the Various Energy Companies propose
13 to delete it, as does EDP. And, the Trust proposes that
14 it instead be the complete "area of potential visual
15 impact".

16 And, I believe the concerns of the
17 developers are much the same. That it may not be possible
18 to have access to all of these properties that would be
19 included for mapping purposes.

20 CHAIRMAN HONIGBERG: Director Muzzey.

21 DIRECTOR MUZZEY: I believe the concern
22 of the National Trust is that, by limiting this to
23 "100 feet", we're actually in conflict with later
24 requirements of the application, which, you know, asks for

1 identification of resources within a certain area of
2 potential effect.

3 My understanding of this entire
4 Subsection (c) is that this is very site-specific
5 information, and it's not to exclude other information
6 asked elsewhere, asked for elsewhere in the application.
7 And, so, I don't feel that we need to make the change that
8 they suggest, to expand this to the entire "area of
9 potential visual impact". I think we take care of that in
10 other sections of the application.

11 I'm also wondering if we could simply
12 add a phrase to (3), (4), (5), noting "if access is
13 available from the property owners", and that way we could
14 recognize that it might be a problem. But, if not, we
15 would expect the information to be part of the
16 application. Or, even in the negative, "unless access to
17 the site is prohibited by the property owner". We could
18 consider either.

19 CHAIRMAN HONIGBERG: Other thoughts? Do
20 people like Director Muzzey's suggestion? Think it's not
21 a good idea? Any?

22 Commissioner Scott, I see you reaching
23 for your microphone button.

24 COMMISSIONER SCOTT: I think that's a

1 good idea. I support that.

2 CHAIRMAN HONIGBERG: Other thoughts?
3 Suggestions? Do people generally agree with Director
4 Muzzey, that we add a phrase that qualifies the
5 obligation, but otherwise leaves it in there, but
6 qualifies it so that there's a recognition that access to
7 the site might not be allowed? Or, actually, access to
8 abutting properties, I'm sorry, might not be allowed?

9 Yes, Attorney Weathersby.

10 MS. WEATHERSBY: I think that would be
11 helpful, if the information can't be obtained in other
12 reasonable ways. For example, property lines or the
13 locations of buildings would all be available through the
14 town offices. I thought that, like historic resources,
15 there's a database of them. You know, some of -- only
16 certain ones. So, if some of the information is readily
17 known, and they still can't get on the property, I don't
18 know how we would craft that. But it seems like they
19 ought to make some effort to look over the fence and give
20 us what's obvious.

21 CHAIRMAN HONIGBERG: Is there general
22 consensus that we should add something that incorporates
23 Director Muzzey's concern and Attorney Weathersby's
24 qualification?

1 COMMISSIONER SCOTT: Yes.

2 CHAIRMAN HONIGBERG: I got one "yes". I
3 got some other nods. All right. That's, I think,
4 something we're not going to wordsmith this second. We'll
5 see if we can work something out. And, Commissioner
6 Burack will also be conferring with his people about what
7 is and isn't generally available with respect to wetlands.

8 Attorney Wiesner, what's next?

9 MR. WIESNER: Well, before we move
10 ahead, I must once again turn back, I apologize. To
11 301.02, "Format of Application". I skipped over it, I
12 apologize. The AMC proposed language changes to
13 Subsection (a), which are sort of the administrative
14 requirements for filing an application in paper form.
15 And, the language says "Applications shall be prepared on
16 standard eight and a half by eleven inch sheets", and then
17 it refers to "plans". And, immediately before "plans",
18 the AMC and the Audubon and the Forest Society would
19 include "photosimulations and plans shall be folded to
20 that size". And, that seems to be a reasonable change,
21 because the photosimulations are supposed to be printed on
22 larger paper. And, so, like the plans, they should be
23 folded down to that size, so they fit in eight and a half
24 by eleven. That's the first comment.

1 The second comment would add onto what
2 is now the second sentence of that subsection, referring
3 to "electronic copies". And, the proposed language change
4 is "including details on how to appropriately view
5 photosimulations on computer screens", which I take it
6 might involve settings on a computer screen so that the
7 contrast and lighting corresponds to what the photograph
8 itself would show.

9 And, this appears on the first page of
10 their comments, which is the second page of their letter.

11 CHAIRMAN HONIGBERG: Any thoughts or
12 comments on the two suggestions? The first one I agree
13 with, to fold the larger sheets down so that they're eight
14 and a half by eleven, no problem for me.

15 Anybody want to take a different view of
16 that? Yes, Director Muzzey.

17 DIRECTOR MUZZEY: I would just suggest
18 we make it more generic and say "graphics". Because we
19 could have large maps, I'm not sure what else it might be,
20 but anything larger should be folded to that size.

21 CHAIRMAN HONIGBERG: "Photosimulations,
22 plans, and other graphics".

23 DIRECTOR MUZZEY: Sounds great.

24 CHAIRMAN HONIGBERG: All right. What

1 about the other one, "including details on how to
2 appropriately view photosimulations on computer screens"?

3 Attorney Iacopino, you have a thought on
4 this?

5 MR. IACOPINO: No. I was just going to
6 bring you back to the one you just resolved.

7 CHAIRMAN HONIGBERG: Oh, great.

8 MR. IACOPINO: On occasions -- on
9 occasion, we have received, as part of the application,
10 rolled plans and blueprints.

11 CHAIRMAN HONIGBERG: Good point. Good
12 point.

13 MR. IACOPINO: Which certainly could
14 never be folded down to eight and a half by eleven. So,
15 you may want to exclude those from your consideration.

16 CHAIRMAN HONIGBERG: We'll make that
17 right. We'll figure out how to word that. We're not
18 going to wordsmith that right now.

19 What about "appropriate viewing of
20 photosimulations on computer screens"? Director Muzzey.

21 DIRECTOR MUZZEY: There doesn't seem to
22 be any harm in adding that information, if it would be
23 helpful to everyone involved.

24 CHAIRMAN HONIGBERG: Assuming that were

1 known by, I mean, how long different operating systems are
2 there out there? Do they need to know how to make it work
3 on a Kindle, a Nook, --

4 COMMISSIONER BAILEY: A Mac.

5 CHAIRMAN HONIGBERG: -- an iPad?

6 DIRECTOR MUZZEY: Well, do we need to
7 specify what type of software they need to put the
8 electronic version in, so that everyone has access to it?
9 I mean, it opens up -- electronic versions open a lot of
10 questions.

11 CHAIRMAN HONIGBERG: A "file format
12 compatible with the computer system of the commission" is
13 the --

14 DIRECTOR MUZZEY: Oh.

15 CHAIRMAN HONIGBERG: That phrase is in
16 there. They got to figure out what we here at the Public
17 Utilities Commission have, and work with our people to get
18 it in a format that the Commission can deal with it.

19 So, that part I think we got -- we got
20 nailed.

21 DIRECTOR MUZZEY: Okay. Good.

22 CHAIRMAN HONIGBERG: It's that second
23 part. It doesn't seem offensive to me, but I'm just not
24 sure -- I'm not technically savvy enough to know this. I

1 know just enough to be dangerous on this.

2 MR. IACOPINO: I think that you will see
3 differences of opinion, as we have, as to what is the
4 appropriate method for viewing some of these documents on
5 a computer screen. And, that may, and, in fact, in some
6 of our cases, that has been a subject of litigation, over
7 what the appropriate way to view any particular exhibit
8 is.

9 CHAIRMAN HONIGBERG: Mr. Iacopino, in
10 court, there are photographs that are used, in modern
11 courtrooms today there are ways for paper exhibits to be
12 viewed on screens by jurors, by the judge, by others. Is
13 there that level of instruction given to counsel and the
14 parties on how to save and display their photographs?

15 MR. IACOPINO: Not that I am aware of.
16 As long as you have a witness that says "this is a fair
17 and accurate representation" of whatever it is it's
18 proffered to show, that's fine. You can certainly
19 litigate over that, whether a particular piece of evidence
20 is -- should be relied upon, based upon what you're
21 seeing. But, becomes admissible, once a witness has
22 testified that "it's a fair and accurate representation".

23 CHAIRMAN HONIGBERG: And, the rules of
24 evidence don't apply to our proceedings, correct?

1 MR. IACOPINO: That's correct.

2 CHAIRMAN HONIGBERG: I would not be
3 inclined to include this language. I would think that
4 applicants, when asked by intervenors, by others, either
5 lay or professional, "how can they make it look right?",
6 that applicants would be fully cooperative with those who
7 need assistance on how to have their electronic files
8 read.

9 And, if intervenors are submitting
10 photographs and photographic simulations, that they would
11 likewise cooperate with applicants and intervenors and
12 others who want to understand how best to view their
13 photographic submissions.

14 Commissioner Bailey.

15 COMMISSIONER BAILEY: And, we're going
16 to have paper copies, right? So, if the paper copies
17 don't reflect reality, that's another source of litigation
18 that we might have here about. So, I don't think it's
19 necessary to add this.

20 CHAIRMAN HONIGBERG: Anybody want to
21 take a different view?

22 (No verbal response)

23 CHAIRMAN HONIGBERG: Moving on.

24 Attorney Wiesner, what's next? Can we go forward this

1 time?

2 MR. WIESNER: Yes, we can. So, now
3 we're back to Subsection (c), which appears on Page 3.
4 And, we're at the bottom of that page, (c)(6), which is
5 the "site control" requirement. And, we received a number
6 of comments here. Some of them are proposing clarifying
7 languages changes, which may be helpful. And, we received
8 a similar comment from the Office of Legislative Services
9 as to how this section, this subsection might be more --
10 might be structured differently, so that its intent is
11 more clear. But there are also some substantive comments.
12 The AMC and Mr. Wilkas have proposed language, instead of
13 what appears here, which is -- refers to a "current legal
14 right, including contingent or conditional rights", and I
15 take that to be intended to cover an option right, for
16 example, as opposed to a current ownership interest. And,
17 that is intended to be a simplifying change from the
18 language you currently see, which doesn't specifically
19 refer to "option, ownership, ground lease, easements",
20 *etcetera*.

21 But I'll note that that proposal would
22 not include the language that you see in "(6)(b)", which
23 is the "license, permit, easement, or other permission
24 from a federal, state, or local government agency". And,

1 actually, what I was reading from is language that was
2 proposed to be added by the Various Energy Companies. So,
3 many different folks have proposed clarifying language
4 changes to this section.

5 And, I'm inclined to think that it could
6 use some clarification. But I think it's important that
7 the substance of what's intended to be covered here not be
8 lost. And, that is really four different things, if you
9 will: You either own the property; you have a right to
10 acquire it, which is essentially an option agreement in
11 most cases; or, you cannot own it, because you have to get
12 permission from a governmental agency, for example, DOT
13 permission or license to use a highway right-of-way; or,
14 finally, and this is the Nixon Peabody comment, which is
15 intended to cover interstate gas pipelines, you have
16 simultaneously taken action that would -- that would
17 provide you with the rights to construct the facility on
18 the site. And, that is an intent to cover the concept of
19 eminent domain, where it may be obtained through the
20 approval of some other body than the SEC. Because, as
21 Chairman Honigberg noted, this Committee has no right to
22 grant eminent domain authority to any applicant.

23 So, we have a number of things going on
24 here, and we have a number of different comments. And, as

1 I said, we have the AMC language. We have a comment,
2 language changes proposed by the Various Energy Companies.
3 And, then, we also have language changes proposed by Nixon
4 Peabody, in order to clarify this section, which is of
5 greatest interest to them.

6 CHAIRMAN HONIGBERG: And, just to be
7 clear about Nixon Peabody, their reference is to the
8 Federal Energy Regulatory Commission's authority, to give
9 them a route that would then give them the right to go to
10 federal court, here in New Hampshire, to get eminent
11 domain rights over a piece of property. Is that correct?

12 MR. WIESNER: That's correct. That
13 there's no -- there's no suggestion there that the SEC
14 would be in a position to authorize them to take anyone's
15 property. And, I think that may have been misunderstood
16 by some of the commenters. But Nixon Peabody has proposed
17 language that refers to the simultaneous filing of a
18 federal regulatory proceeding or taking other action that
19 would, if successful, provide the applicant with the right
20 of eminent domain to acquire control of the site for the
21 purpose of constructing the facility thereon.

22 And, I think that one of the primary
23 reasons for them to offer this comment is because they are
24 interested in pursuing simultaneous paths, both at the

1 FERC, as well as here in the state, at the SEC, and not
2 having to wait until the FERC process has run its course
3 and eminent domain authority has been -- is available to
4 them. Or, if needed, go to court to get an order
5 authorizing them to take a particular piece of property,
6 before they would also file here.

7 CHAIRMAN HONIGBERG: So, they're -- I've
8 heard that as well. And, so, it's your understanding that
9 they're going to be proposing a route to the SEC that is
10 has not been finally approved by FERC?

11 MR. WIESNER: I believe that is correct.

12 CHAIRMAN HONIGBERG: Not to get too
13 Northeast Direct-specific here, but --

14 MR. WIESNER: Right. And, to the extent
15 that that would apply to other pipeline projects as well,
16 I believe that's seen as a more streamlined timing, which
17 means that there could be simultaneous proceedings going
18 on here, with a full-scale environmental impact review at
19 the federal level on a proposed route, as well as the
20 proceeding here to consider the state impacts of that
21 proposed route.

22 CHAIRMAN HONIGBERG: And, I see what
23 they did to try and clarify this section was create an (a)
24 and (b), so that there's Option A of doing this and Option

1 B of demonstrating a right to be here. Is that -- that's
2 effectively what they have done?

3 MR. WIESNER: That's correct.

4 CHAIRMAN HONIGBERG: Looking at the
5 AMC's proposed language, which is, obviously, a lot
6 shorter. Does that cover all of the things that -- that I
7 guess you identify four ways of getting there, would that
8 cover all four? It's not clear to me that it would.

9 MR. WIESNER: It refers to a "current
10 legal right, including contingent or conditional rights".

11 CHAIRMAN HONIGBERG: And, I'm not sure
12 what "contingent or conditional rights" -- would that
13 include eminent domain? Would it -- you know, one of the
14 other items you didn't mention was, in the same vein as
15 getting rights to use a DOT corridor somewhere, if they
16 have to cross a river, they have to come to the PUC to get
17 a river crossing permit.

18 MR. WIESNER: That's correct.

19 CHAIRMAN HONIGBERG: I'm not sure if
20 those are covered, if those situations are covered by
21 "contingent or conditional rights". I'd rather spell it
22 out. Even if it makes the section longer, I'd rather
23 spell it out to make it clear.

24 Do others have thoughts on that? As

1 appealing as it would be, to have, you know, two and a
2 half lines, like the AMC has proposed, I'm just not sure
3 that it gets there.

4 Director Muzzey.

5 DIRECTOR MUZZEY: One additional thought
6 the AMC suggests is also "all land necessary to build,
7 operate, and maintain". And, so, they add the concepts of
8 "operate and maintain" to the equation as well. Whereas,
9 others are just focused on the building or the
10 constructing of the facility.

11 I don't know what legal rights you would
12 need different, that would be different to carry out all
13 aspects of the facility used throughout its life. But
14 they do -- I'm just mentioning that they do reference that
15 addition as well.

16 CHAIRMAN HONIGBERG: Other thoughts? It
17 looks like Commissioner Burack has something.

18 VICE CHAIRMAN BURACK: Yes. Mr.
19 Chairman, I'm inclined to concur, first, with you, that it
20 would be helpful to be more explicit and detailed, rather
21 than less so, in this section. And, secondly, along the
22 lines that Director Muzzey has suggested, some broader
23 language to ensure that it's not just the initial right to
24 be able to construct something, but that, in fact, they're

1 demonstrating that they have ongoing rights sufficient to
2 be able to operate and maintain the facility, have access
3 to the property throughout its life, and through
4 decommissioning. So, I think some language to that effect
5 would be helpful.

6 CHAIRMAN HONIGBERG: Director Muzzey.

7 DIRECTOR MUZZEY: This is a new -- newer
8 idea that we're inserting into the rules. And, so, I
9 would agree with you, in that more information is better
10 here. And, something more along the lines of what the
11 Energy Companies have suggested, with (a), (b), or (a),
12 (b), and (c), would be clarifying.

13 CHAIRMAN HONIGBERG: Are you referring
14 to the Nixon Peabody proposal or is there a different
15 proposal that you're looking at?

16 DIRECTOR MUZZEY: I'm actually looking
17 at the proposal by Various Energy Companies, which has (a)
18 -- (a), (b), and (c). I don't have Nixon Peabody in front
19 of me.

20 CHAIRMAN HONIGBERG: What page is the
21 proposal of the Various Energy proposal? The Various
22 Energy Companies' proposal is many pages long, I think.
23 Which do you know where it is?

24 DIRECTOR MUZZEY: Bottom of Page 3, top

1 of Page 4 of their marked-up copy of the rules.

2 CHAIRMAN HONIGBERG: Mr. Wiesner, do you
3 have it?

4 MR. WIESNER: I do.

5 CHAIRMAN HONIGBERG: What does it say?

6 MR. WIESNER: What does it say? I can
7 just read what it currently says, with the revisions that
8 they have made. That may be the easiest way to do this.
9 It says, "Evidence that the applicant has a current right,
10 an option, or other legal basis to acquire the right to
11 construct the facility on, over, or under the site, in the
12 form of: (a) Ownership, ground lease, easement or other
13 contractual rights or interests; (b) A license, permit,
14 easement, or other permission from a federal, state, or
15 local government agency; or (c) The simultaneous taking of
16 other action that would provide the applicant with a right
17 of eminent domain to acquire control of the site for the
18 purpose of constructing the facility thereon".

19 CHAIRMAN HONIGBERG: So, if we added in,
20 from the Nixon Peabody suggestion, to (c), the specific
21 reference to the "filing of a federal regulatory
22 proceeding or the taking of other action that would, if
23 successful, provide the applicant", that would pick up
24 that change.

1 MR. WIESNER: Yes.

2 CHAIRMAN HONIGBERG: And, then, others,
3 Director Muzzey and Commissioner Burack, were interested
4 in adding language regarding "operation and maintenance of
5 the project". I'm not sure exactly where that would go in
6 here, but to pick that language up.

7 MR. WIESNER: In a couple of places it
8 refers to "construct", and I would propose that we would
9 add "construct, operate, and maintain".

10 CHAIRMAN HONIGBERG: Attorney Iacopino,
11 you have something?

12 MR. IACOPINO: Yes. I would just point
13 out that, with respect to Subsection (b), pertaining to
14 "licenses, permits, easements, or other permissions", at
15 least from a state agency, they're already included in
16 your process as a Site Evaluation Committee. So,
17 requiring that would be very difficult, because it's part
18 of their application before this Committee. For instance,
19 the PUC, as you mentioned, governs water crossings. That
20 those water crossing determinations would be part of the
21 determination of the Site Evaluation Committee.

22 CHAIRMAN HONIGBERG: So, should the
23 language then track Subsection (c), that they have made
24 the appropriate filing to receive that kind of permission

1 or right?

2 MR. IACOPINO: Yes. And, as I recall,
3 from the application sections, in the rules as they exist,
4 there is that already, that they have to file those
5 applications. So, in other words, for instance, we just
6 had a facility file, and contained in there were crossing
7 requirements -- crossing approvals from both the
8 Department of Transportations and from the Public
9 Utilities Commission. Those applications were actually
10 filed with the -- with the Site Evaluation application.

11 CHAIRMAN HONIGBERG: So, it's this (a),
12 (b), (c) structure, but there might be some additional
13 language related to (b) to make it clear what needs to --

14 MR. IACOPINO: At least with respect to
15 the state agencies, yes.

16 CHAIRMAN HONIGBERG: Right. Okay. Are
17 people comfortable going in that direction, to cover all
18 of the possible ways to get -- to prove site control,
19 adequate site control?

20 COMMISSIONER SCOTT: Yes.

21 CHAIRMAN HONIGBERG: I see nodding
22 heads. All right. Good. Thank you. Next.

23 MR. WIESNER: In Subsection (c)(7), this
24 is basically the "right of access". And, a number of

1 comments here as well.

2 The Various Energy Companies would
3 propose to change this, so that it reads as follows:
4 "Evidence that the applicant has a current or conditional
5 right of access to private property within the boundaries
6 of the proposed site sufficient to accommodate a site
7 visit by the Committee", and then delete "and the
8 performance of any required pre-construction monitoring or
9 studies".

10 Nixon Peabody proposes that access for
11 interstate pipelines, where property may be obtained
12 through eminent domain, if a certificate is granted by the
13 federal agency, might be restricted to aboveground
14 facilities, for example, the site of a compressor station.

15 CHAIRMAN HONIGBERG: Thoughts or
16 comments?

17 Commissioner Scott.

18 COMMISSIONER SCOTT: Well, I'll say I'm
19 not compelled by the thought to just limit this to
20 above-ground access. So, I'm not in favor of that kind of
21 limitation.

22 CHAIRMAN HONIGBERG: What's the argument
23 by the Nixon Peabody group and the Energy Companies
24 regarding the cutting back of this? I mean, I have the

1 Nixon Peabody one in front of me, and it talks about "not
2 possible to obtain a right or conditional right of access
3 to all" of the types of properties that we're talking
4 about. And, I don't have the other one in front of me.
5 So, I've forgotten what they have said.

6 Director Muzzey.

7 DIRECTOR MUZZEY: I have that language
8 here. "Similarly, with respect to Site 301.03(c)(7), we
9 suggest that the Committee recognize that there may be
10 private properties outside the boundaries of the site or
11 public properties that are effectively part of the site
12 for which an applicant does not have a right of access for
13 a site visit." Which I'm not certain of that meaning
14 either.

15 CHAIRMAN HONIGBERG: Attorney Iacopino,
16 have issues with respect to site visits and access to land
17 for site visits been an issue in the past?

18 MR. IACOPINO: I don't recall any
19 occasion where there's been a problem in terms of
20 accessing site -- various portions of a site during a site
21 visit, other than weather conditions.

22 But, you know, to be honest with you,
23 those site visits are oftentimes prepared by the
24 applicant. And, we take a tour that has been

1 predetermined by the applicant. And, I assume they would
2 not take us onto property that they did not have legal
3 access to be on.

4 For many of the linear projects and the
5 large projects, one of the concerns that I suppose you
6 would have is, you're never going to be able to access the
7 entire project. I mean, if you have a Northern Pass, or
8 even an NED pipeline, you're never going to walk the whole
9 line. So, there has to be -- somebody has to make the
10 determination where you're going to go.

11 It's never been litigated before the
12 Committee, there's never been a dispute. What we have had
13 happen, I think, on one occasion, was there was
14 competing -- oftentimes, especially with respect to wind
15 turbines, you will go to a particular site. And, at the
16 site, in addition to, obviously, viewing it from, you
17 know, the scenic resource that you're at, you will also
18 have -- they will have their photosimulations there for
19 the Committee to see. And, you might have a dueling
20 photosimulation at the site, if another participant in the
21 project had a differing photograph.

22 But I don't -- we have not ever had a
23 situation where there was litigation over where we're
24 going on the site visit. So, --

1 CHAIRMAN HONIGBERG: Anyone have any
2 thoughts or comments on what to do with this?

3 Director Muzzey.

4 DIRECTOR MUZZEY: In order to inspire a
5 conversation, my suggestion would be to leave the language
6 as is. Particularly given the lack of problems with this
7 issue in the past.

8 CHAIRMAN HONIGBERG: Well, this is new
9 language, I believe. I think that this in the filing
10 requirement of requiring an applicant to provide evidence
11 of a current or conditional right of access.

12 DIRECTOR MUZZEY: Yes. I meant with the
13 "site visit" concept in general. It doesn't appear that
14 the Committee has had any legal difficulties with that.

15 CHAIRMAN HONIGBERG: Other thoughts or
16 comments?

17 Commissioner Burack.

18 VICE CHAIRMAN BURACK: Mr. Chairman, I'm
19 just reflecting on the other issue, one of the other
20 issues we discussed earlier, which is the question of
21 remote access to sites, in order to be able to do, for
22 example, look at aerial photographs or otherwise do aerial
23 imagery of a property, if you can't get access to it
24 directly. And, presumably, we'll have further discussion

1 on that topic on Wednesday. But I'm certainly very
2 comfortable with the clause as it reads now, the first
3 clause here, "Evidence that the applicant has a current or
4 conditional right of access sufficient to accommodate a
5 site visit by the committee." But I don't know if this
6 next clause "and the performance of any required
7 pre-construction monitoring or studies" is necessarily
8 going to be applicable in all instances.

9 I guess, maybe what we just need to be
10 asking them to do is to tell us that we want them to tell
11 us what rights they currently have to be able to do these
12 kinds of things, not show us evidence that you do have
13 that right, but just tell us what rights you have at this
14 time.

15 MS. WEATHERSBY: Mr. Chairman?

16 CHAIRMAN HONIGBERG: Yes, Attorney
17 Weathersby.

18 MS. WEATHERSBY: This is concerning
19 requirements for the application. And, at that stage,
20 would there be "required pre-construction monitoring or
21 studies" or can that phrase be eliminated?

22 CHAIRMAN HONIGBERG: I think, consistent
23 with what Commissioner Burack said a moment ago, it's a
24 request to the applicant to tell us what you got, so that,

1 during the pre-construction process, you would be able to
2 get on there and see what the situation is. I don't know
3 if that's right, but that's my initial reaction.

4 Director Muzzey.

5 DIRECTOR MUZZEY: I get that this number
6 (7) subsection is complicated by including both these
7 concepts in it. One, that the Site Evaluation Committee
8 needs the ability to visit the site, and, two, that
9 required pre-construction monitoring or studies need to be
10 done as well.

11 My sense is that other sections of
12 application will discuss how or why not the applicant was
13 able to perform pre-construction monitoring or studies.
14 And that, if we limited this number (7) to just the idea
15 of the site visit by the Committee, it may be more to the
16 point and simplified.

17 So, my suggestion would be to leave that
18 second part to elsewhere in the application. And, just if
19 the Committee could have assurances that it would be able
20 to have a site visit, then we would be in good shape.

21 CHAIRMAN HONIGBERG: So, Director
22 Muzzey's new suggestion is that we end this subsection in
23 the second line, after the word "committee"?

24 DIRECTOR MUZZEY: Yes.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: I'm wondering also,
3 since, and Attorney Iacopino's words ring correct with me
4 also, regarding the site visits, we -- at some point, a
5 decision is made, especially for a large or "linear" I
6 guess we're calling the projects, to do a simpling of some
7 sort for a site visit. I concur, we're not going to walk
8 the length of Northern Pass's proposed path, for instance.

9 Having said that, if I'm the applicant,
10 I could read this to mean -- the current language to mean
11 "I have to be able to allow -- have every bit of my
12 property that I'm proposing, I need to be able to have
13 available for a site visit." So, I'm wondering, maybe a
14 modifier like "to accommodate" maybe "a representative
15 site visit", or something to that effect. So, it's an
16 understanding that not every parcel would have to be
17 subject to a site visit. I'm not sure how to do that.
18 But I think some kind of modifier may make this more
19 workable than it currently is.

20 CHAIRMAN HONIGBERG: Well, Nixon Peabody
21 has made a suggestion to add language to account for that,
22 I think, at least at some level. Rather than making this
23 section shorter, it makes it considerably longer.

24 Commissioner Bailey.

1 COMMISSIONER BAILEY: Attorney Iacopino,
2 didn't you say that the applicant just sort of proposes
3 the various locations that the Committee should look at?

4 MR. IACOPINO: Yes.

5 COMMISSIONER BAILEY: So, if that's the
6 case, then "Evidence that the applicant has a current or
7 conditional right of access sufficient to accommodate a
8 site visit by the committee" would imply to me that they
9 only need to get the conditional right for the places that
10 the Committee is going to go to.

11 MR. IACOPINO: That's the way I would
12 read it as well.

13 COMMISSIONER BAILEY: So, I don't know
14 if Commissioner Scott can -- agrees with that or not, but,
15 if you could live with that, and then we could take out
16 "and the performance of any required pre-construction
17 monitoring or studies." I agree with Director Muzzey that
18 that seems to confuse this particular rule, then maybe we
19 could, it would be clear enough.

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 COMMISSIONER SCOTT: I'm generally okay
22 with that. My concern is a new applicant, who's never
23 dealt with the Site Evaluation Committee or a member of
24 the public who has not dealt with the Site Evaluation

1 Committee, we're kind of interposing that it's understood
2 that the applicant will pick the sites we visit, and it's
3 understood that that would be sufficient. And, I don't
4 see that in the rules anywhere. So, I guess I'm looking
5 for a little bit more clarity for those who don't practice
6 this.

7 COMMISSIONER BAILEY: And that clarity
8 would be named "Pam Monroe".

9 CHAIRMAN HONIGBERG: Attorney Iacopino.

10 MR. IACOPINO: At this point, there's
11 nothing in the rules that governs how a site visit should
12 be determined. You know, I think, in order to address
13 Commissioner Scott's concerns, that might be what you
14 need, is a rule that sort of spells out the details of
15 what the site visits will include. Which I think could
16 probably be a complex undertaking in and of itself,
17 especially since you deal with so many different types of
18 energy facilities. And, you know, you have a number of
19 different parties before you in any given instance.

20 CHAIRMAN HONIGBERG: Okay. So, given
21 what has just been said, and over the last few minutes,
22 there does seem to be some consensus around shortening the
23 provision in one way, to eliminate the provision about
24 "performance of any required pre-construction monitoring

1 studies", and leaving that to other provisions of the
2 rules where such studies are provided for. Is that
3 correct?

4 All right. I see some nodding heads
5 there. There's an open question about how to deal with
6 what a "site visit" means, and how you deal with a linear
7 project, where a site visit is really not going to happen
8 in the same way that it would to a project located in one
9 spot.

10 So, don't think we're going to resolve
11 that one quickly. We do have a proposal from Nixon
12 Peabody that would deal with one aspect of that linear
13 project question. So, we can take a look at that
14 language. I think there may be others who made
15 suggestions along those lines, although I don't have - I
16 can't pull them up quickly in my head. I'll tell you what
17 we're going to do with this then. We're going to put this
18 one aside. We're going to have another break in a while.
19 And, during that next break, we're going to give
20 consideration to what we might do to make that provision
21 clearer, if we are able to do so quickly this afternoon.

22 So, moving on, I'm sure we have comments
23 on the next subsection, having to do with "Identification
24 of participating landowners".

1 MR. WIESNER: Yes, we do. The Various
2 Energy Companies propose to delete this section. This is
3 the requirement that the application "Identify all
4 participating landowners with respect to the facility".
5 And, recently added was "the scope of the waivers included
6 in their participating landowner agreements, easements, or
7 other contractual documents".

8 EDP objects to that addition of the
9 scope, if you will, because it may implicate
10 confidentiality concerns.

11 Wagner Forest Products has proposed that
12 this requirement only apply if the applicant wishes to
13 disclose participating landowners -- I should say, if the
14 applicant is going to wish that the Committee consider
15 properties that are subject to those types of agreements,
16 say, in the context of a request for a rules waiver,
17 although it doesn't -- it doesn't say that in the language
18 that Wagner has proposed, I take it that that's the
19 motivation for the comment. If the applicant believes
20 that the participating landowner contract is relevant,
21 then the applicant will disclose it, but there won't be a
22 general requirement to disclose all such agreements.

23 And, then, New Hampshire Wind Watch has
24 proposed that an obligation be added to update the list as

1 new participating landowners are added during the course
2 of the proceeding.

3 CHAIRMAN HONIGBERG: As we changed the
4 rules last time we were making changes, how are these
5 agreements used at this point? I think we flipped -- we
6 flipped the way a provision worked. And, the way we ended
7 up leaving it, it's not entirely clear to me that these
8 agreements themselves are relevant anymore, except to the
9 extent, I think as Wagner Forest Products said, unless an
10 applicant is relying on the existence of one of these
11 agreements to support a waiver request.

12 MR. WIESNER: That's one way to look at
13 it. The original rules proposal, for example, said that
14 you had -- you couldn't violate the setback restriction,
15 except with respect to a participating landowner. So, in
16 effect, if there were -- if the participating landowner's
17 property was within the setback, but they were specified,
18 designated as a participating landowner in the
19 application, then there would not be a setback violation,
20 and the Committee could issue a certificate for that
21 proposed facility.

22 And, in that context, a number of
23 commenters said "Well, there should be disclosure of these
24 agreements. We should know who they are, what they've

1 agreed to." And that, I think, was the motivation for
2 including this disclosure requirement here, where the
3 contracts would have to be identified.

4 Arguably, there's less of a need for
5 this disclosure requirement, if the substantive use of
6 "participating landowners" is not the same. And, in fact,
7 what we agreed to last time was that, "even if you're a
8 participating landowner, there cannot be a violation of
9 the setback or of shadow flicker or sound restrictions,
10 for example, because it wasn't in the public interest that
11 there should be such a violation, even if the parties had
12 agreed to it." I'm paraphrasing, but that's, I think, the
13 gist of what was decided.

14 And, so, the references in the more
15 substantive sections that we'll get to later today, or
16 Wednesday, to "participating landowners" have been
17 removed. And, so, I think that is part of the rationale
18 for the Various Energy Companies to propose that this
19 requirement be entirely deleted.

20 CHAIRMAN HONIGBERG: Other thoughts,
21 comments on this? Commissioner Burack.

22 VICE CHAIRMAN BURACK: Mr. Chairman,
23 just that I think it behooves us then to take a very close
24 look at those revised sections that you just described,

1 Attorney Wiesner, to see if we concur that, in fact, that
2 the role of these kinds of participating landowner
3 agreements is really very different and much more limited
4 than it might have been in the past. I think that's the
5 only basis on which I could potentially get comfortable
6 with the notion of deleting this language.

7 So, can you point us to where those
8 sections are specifically? Do you want to go there now,
9 Mr. Chairman, or do you want to save that?

10 CHAIRMAN HONIGBERG: No. I think it
11 makes sense to go to that language. I do remember a
12 somewhat extended conversation with Attorney Iacopino at
13 the last meeting, where we were flipping that around, and
14 I was getting myself all upside-down, I think.

15 MR. WIESNER: If we go to Page 19, this
16 may not be the only place, but the first place where the
17 issue is addressed. But, in 301.14(f), and this is in the
18 context of the Committee's determination regarding
19 "unreasonable adverse effects on public health and
20 safety", this is the place where we have specific criteria
21 for wind projects in particular, for sound standards, for
22 shadow flicker, and for setbacks, and, in the original
23 rules proposal, in each case, there was a qualifier. So
24 that, for example, in the sound measurement, the sound

1 criteria, if you go about two-thirds of the way down, the
2 sound measurement could not be exceeded "at the exterior
3 wall of any existing permanently occupied building on a
4 non-participating landowner's property". So, in that
5 case, even if -- if you had signed a contract saying "I
6 waive my rights to complain about sound", then you would
7 not be counted. And, there would be no measurement taken
8 from your property, and, in effect, the standard would not
9 apply to that property, even if there would otherwise be
10 an exceedance of the noise limit.

11 And, similarly, in (b), with respect to
12 shadow flicker, there was a similar reference to the
13 "occupied permanent residence of a non-participating
14 landowner", that has been deleted.

15 And, if you look at the setbacks, which
16 is (c), you'll also see that there are deleted provisions
17 where there were previously references to
18 "non-participating landowner". So, now, in this context,
19 it doesn't matter if you're a participating landowner or
20 not, this specified restriction will continue to apply.

21 CHAIRMAN HONIGBERG: And, in (d),
22 continue, Attorney Wiesner, the former Subsection (d),
23 which talked about "Participating Landowners", was
24 deleted.

1 MR. WIESNER: That was deleted,
2 primarily because the term was defined in the definitions.
3 But this also says that, you know, you could exceed those
4 requirements, this makes it very clear you can exceed
5 those requirements with respect to a participating
6 landowner. And, based on the discussion we had at one of
7 the more recent meetings, that was deleted.

8 So, we have a definition of
9 "participating landowner", and it really --

10 (Court reporter interruption.)

11 MR. WIESNER: I'm sorry. We currently
12 then, with those changes, have a definition of the term
13 "participating landowner", and then we have a disclosure
14 requirement. But the importance of the use of the term
15 I'll suggest is not as great as it was when this language
16 appeared with respect to the siting criteria here.

17 CHAIRMAN HONIGBERG: Commissioner
18 Burack.

19 VICE CHAIRMAN BURACK: Thank you.
20 Attorney Wiesner, then, is the only place in the rules
21 where this notion of a "non-participating landowner", as
22 the term is used here in these deleted sections that
23 you've just been pointed out to us, is this the only place
24 where this concept appears anywhere in the rules? It

1 doesn't appear with respect to any other type of facility?

2 MR. WIESNER: I made an effort to take
3 it out wherever it appeared, because it seemed to be the
4 consensus of the Committee that, regardless of whether a
5 landowner was participating with the applicant, that
6 whatever lessened standard might apply should not apply.
7 So, that was my intent in making these revisions. There
8 may be a couple of other places where the phrase -- the
9 term is also used. I believe it may have been used in the
10 sound study methodology section, which is 301.19. But I
11 believe I deleted it there as well.

12 VICE CHAIRMAN BURACK: So, if I may,
13 then what you're saying is that the way these rules are
14 written, the Committee simply would not recognize such an
15 agreement in determining what its conditions or
16 requirements are going to be for a particular facility,
17 right?

18 MR. WIESNER: I think the context would
19 be, and this may be what Wagner is getting at, someone
20 comes and says "there would be a setback violation here,
21 but you should give me a rules waiver to permit that
22 violation of what the rule would otherwise require,
23 because it's a participating landowner. And, because
24 that's my rationale for requesting the waiver, I'm going

1 to disclose to you who the property owner is, what the
2 terms of that contract are."

3 So, there wouldn't be a general
4 disclosure of all participating landowners, it would be a
5 disclosure of those that are deemed relevant by the
6 applicant, relevant because the applicant is perhaps
7 requesting some special treatment as a result of that
8 arrangement.

9 CHAIRMAN HONIGBERG: And, otherwise,
10 they would be subject to all of the standards. And,
11 whatever agreements they have, all they're doing is
12 getting people not to complain. But the Committee would
13 still be charged with applying the standards, unless a
14 proper waiver request were filed and that request were
15 approved.

16 MR. WIESNER: That is correct. So, the
17 sound standard might still apply to that property, in
18 terms of the Committee's certificate, but that property
19 owner would have agreed privately not to complain. And,
20 if the Committee believes that, you know, that potential
21 is enough to justify a more general disclosure
22 requirement, then, you know, we should think about whether
23 this section in question should be entirely deleted or
24 even modified the way that Wagner has proposed.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: I apologize, I'm
3 probably the only one struggling with this. So, if you
4 could walk me through it one more time. So, the deleted
5 "participating landowner" language would be, effectively,
6 if I'm a project, and I want to get somebody to sign off,
7 I would sign an agreement with a participating -- now they
8 would be a participating landowner, and then submit for a
9 waiver of the rules? Is that what we're suggesting?

10 MR. WIESNER: Yes. I mean, the
11 applicant would need to have an agreement with the
12 landowner in order to request a waiver. But, presumably,
13 if there were such an agreement, then the landowner would
14 not object to the waiver request.

15 I think, in the absence with -- in the
16 absence of a waiver, even if there were a participation
17 agreement with a landowner, the Committee could say
18 "there's a setback violation here, and we're going to deny
19 the certificate, unless the applicant were to request a
20 rules waiver." And, part of the rationale for requesting
21 a rules waiver might be, "we've reached agreement with
22 this property owner, and the restriction is really for
23 their benefit, and they have agreed to essentially live
24 with the situation", and presumably have been compensated

1 for that, in a way that may or may not be visible to the
2 Committee, depending on the level of disclosure and any
3 confidentiality requests that may be made.

4 But that's different from saying "if
5 you're a participating landowner, you won't be counted."
6 And, the Committee, on its own, without any rules waiver,
7 can ignore the fact that there's a setback violation.

8 CHAIRMAN HONIGBERG: And, the structure
9 you just -- that you just set forth is what it used to
10 say, that's how we used to have it. That we wouldn't
11 count those who had entered into participation agreements?

12 MR. WIESNER: That's right. Now, they
13 will be counted, unless there's a rules waiver.

14 COMMISSIONER SCOTT: And, to follow up
15 for our new administrator, whose one of her jobs is to
16 enforce all this, she would now know, based on the waiver,
17 in the text of the waiver, who was in and who was out for
18 these requirements. Does that sound right?

19 MR. WIESNER: I mean, if there were a
20 waiver of a rule to grant a certificate where it otherwise
21 would not have been granted, I think that would be noted
22 in the certificate and in the certificate order, and the
23 rationale for that might be that it's a participating
24 landowner.

1 MR. IACOPINO: I think part of the
2 difficulty you may be having, Commissioner Scott, is we've
3 never had substantive rules before. It's always been
4 flexible. So that, when an applicant would come in and
5 say, you know, "This property is a participating
6 landowner, they have got a turbine on their property", or
7 whatever. You know, it's never been a matter of having to
8 say "Okay, well, we have to waive a rule for that person."

9 But, now, because we're required by
10 statute to institute substantive rules, the waiver process
11 is the manner in which the applicant can avoid those rules
12 as they pertain to people who want to participate with
13 them.

14 As far as disclosure of those folks, I
15 think that what the suggestion from Wagner Forest
16 Management is, is that, to the extent that there is a
17 request for a waiver, that that request, in those cases,
18 we would identify the participating landowner. But, if
19 it's not a case where we're requesting a waiver, then we
20 would not. Whereas, the rule right now, I think, or at
21 least as it's drafted right now, suggests that they have
22 to disclose all of their participating landowners.

23 COMMISSIONER SCOTT: That makes sense to
24 me. I'm fine with that. I just want to ensure that SEC

1 staff, when they do an inspection, they have the
2 information they need to know, basically, if there's
3 compliance or not.

4 MR. IACOPINO: Under this, they should
5 actually have more specific information, because they will
6 actually have a -- if there's a rules waiver, it's going
7 to be in the certificate, "we're waiving this rule for the
8 following properties."

9 COMMISSIONER SCOTT: Good.

10 CHAIRMAN HONIGBERG: Let's go off the
11 record for a minute.

12 (Brief off-the-record discussion
13 ensued.)

14 CHAIRMAN HONIGBERG: We're going to take
15 a five to seven minute break, and then resume.

16 *(Recess taken at 3:25 p.m. and the*
17 *meeting reconvened at 3:34 p.m.)*

18 CHAIRMAN HONIGBERG: Commissioner Bailey
19 will be here momentarily -- and Commissioner Bailey is
20 here.

21 All right. So, let's pick up where we
22 were with respect to with respect to participating
23 landowners. And, based on what I just heard, they may
24 well be -- the Wagner Forest people may well be right,

1 that these things aren't -- there's no need to file and
2 disclose all this information for these participation
3 agreements.

4 MR. WIESNER: If I could just jump in, I
5 will note that some of the commenters, in connection with
6 this issue, have raised other issues. For example, that
7 there may be relevance to local taxing authorities that
8 someone has filed a participation agreement with an
9 applicant, and that might affect an abatement or the
10 taxability of their property. Another concern would be
11 that, if there's a setback violation with respect to a
12 nearby energy facility, even if the participating
13 landowner has waived the right, it may affect building
14 permits or other use of that property.

15 So, I do just want to throw that out,
16 that those are alternate rationales that have been offered
17 for requiring disclosure of the participating landowner
18 agreements, even if they would not be used to get you out
19 of the specific siting criteria that we have now included
20 in the rules.

21 CHAIRMAN HONIGBERG: But those aren't --
22 those aren't our issues, those are issues with the town or
23 other permitting.

24 MR. WIESNER: Those are not issues that

1 are specific to the SEC siting process. I think that's
2 fair to say.

3 CHAIRMAN HONIGBERG: Commissioner
4 Burack.

5 VICE CHAIRMAN BURACK: Mr. Chairman, I
6 think, overall, given our understanding now of actually
7 how this would apply in practice, I think I could be
8 comfortable with the kind of formulation that Wagner is
9 suggesting. I'm not sure that their exact language is the
10 right language, but I think I could get comfortable with
11 that as a way of addressing this. Particularly, if,
12 again, if a waiver is being -- it's only if a waiver is
13 sought, and a, basically, thereby a waiver -- an existing
14 agreement of this kind is disclosed to the Committee that
15 we'd be in a position, presumably, to be able to grant a
16 waiver, and understand why, you know, on what basis that
17 was occurring.

18 I think the only downside to this
19 approach that is not having a full list, from the
20 standpoint of the Committee's jurisdiction, is just that
21 we would -- we would never know for sure whether we were
22 not hearing complaints just because there was nothing to
23 complain about, or whether we were not hearing complaints
24 because parties had agreed that they would not complain.

1 And, I think about particular circumstances associated
2 with a facility. And, I think, from the standpoint of our
3 authority, that's the biggest downside that I could see to
4 not requiring a list.

5 Having said that, as I said, I could be
6 comfortable with the formulation generally consistent with
7 what Wagner has suggested here.

8 CHAIRMAN HONIGBERG: Other or different
9 thoughts regarding this section? I see some agreement
10 with Commissioner Burack's position there.

11 All right. So -- I had Wagner's
12 document up a minute ago. So, it's their Item --

13 MR. IACOPINO: Four.

14 CHAIRMAN HONIGBERG: -- 4, which is on
15 the third page of their submission. So, their phrasing
16 is, for (8), is "Identification of participating
17 landowners", that's deleting the word "all", "with respect
18 to the proposed facility", and then they have some new
19 language, "that the applicant wishes to be considered in
20 the proceedings", and then it picks up with the language
21 as it appears in our proposal.

22 Commissioner Burack.

23 VICE CHAIRMAN BURACK: Yes. My thought
24 is that this language just needs to be -- it's pretty

1 unclear, and if not ambiguous, the way it's drafted right
2 now, I think. Presumably, and this is going to be in
3 reference to a request for a waiver or for some other
4 consideration by the Committee, I'm just not sure what's
5 meant by "wishes to be considered in the proceedings".

6 And, I don't know, Attorney Wiesner, if
7 you had some thoughts as to ways to make that language
8 more explicit, in terms of what -- how it applies?

9 MR. WIESNER: I mean, the notion is that
10 it would be voluntary with the applicant, but there is a
11 reason why it is relevant. So, it might be possible to,
12 instead of saying "wishes", that "the applicant has deemed
13 relevant to the Committee's consideration of applicable
14 siting criteria" or something like that. I'm just
15 freestyling there. I'm not sure that's the best language,
16 but --

17 CHAIRMAN HONIGBERG: I can tell it is
18 getting late, you just said "freestyling".

19 *[Laughter.]*

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 MR. WIESNER: I think that's hyphenated,
22 but I'm not sure.

23 COMMISSIONER SCOTT: Given, I think,
24 what we discussed is that the concept of "participating

1 landowner" would be, to the extent that the rules wouldn't
2 apply, would be part of a waiver, I'm questioning why we
3 need any language in this section at all about that? So,
4 the default would be "You follow the rules. You submit a
5 waiver." By definition, it would be part of the waiver
6 package, if that's what you're doing.

7 I'm just struggling with what value this
8 adds, I guess?

9 MR. WIESNER: If it's entirely voluntary
10 with the applicant, do we need a rule that even says it?

11 COMMISSIONER SCOTT: Right.

12 CHAIRMAN HONIGBERG: Commissioner
13 Bailey.

14 COMMISSIONER BAILEY: I was thinking the
15 same thing. And, then, we don't have to litigate what the
16 words mean later, too. I don't think it adds anything.

17 CHAIRMAN HONIGBERG: And, you wouldn't
18 have to free-style. Any other thoughts? Is the consensus
19 that this can be deleted? Because any party that wants to
20 rely on participations to support their application, or a
21 waiver that would be associated with that application will
22 be providing the necessary information. Is that the
23 consensus?

24 I see nodding heads. That's a good

1 sign. Commissioner Burack.

2 VICE CHAIRMAN BURACK: Mr. Chairman, I
3 suppose I could get comfortable with that notion, but that
4 then raises another question, as to whether or not the
5 term appears anywhere in the rules and whether we need to
6 define the term anywhere in the rules? And, maybe that's
7 a separate question you want to reach next, but it seems
8 to me we have to go there, too.

9 MR. WIESNER: If this is the place where
10 "participating landowners" is used, and we delete it, then
11 we should confirm that. But it may not be necessary to
12 have that definition included.

13 CHAIRMAN HONIGBERG: And, there is
14 currently a definition, it's back in the other document we
15 were looking at before. But we will certainly look to see
16 if there are other uses of that phrase. I think Attorney
17 Iacopino is doing that even as we speak.

18 But, beyond -- but, if we have to circle
19 back to it, we will, but can we move on to something else
20 at this point? Yes, I see nodding heads there.

21 Yes, Mr. Wiesner, what would be next?

22 MR. WIESNER: I'm jumping ahead to
23 Page 5. This is (e)(7) of 301.03. And, this is a
24 requirement that the applicant submit "a map showing the

1 entire facility".

2 AMC and Audubon and Forest Society have
3 proposed that language be included here to cover "the
4 corridor width for the new or widened route of a
5 transmission line or energy transmission pipeline".

6 CHAIRMAN HONIGBERG: Commissioner Scott.

7 COMMISSIONER SCOTT: Just to clarify,
8 it's on Page 4, correct?

9 MR. WIESNER: Top of Page 5.

10 VICE CHAIRMAN BURACK: Again, what's the
11 section number specifically?

12 MR. WIESNER: I'm sorry. (e)(7).

13 CHAIRMAN HONIGBERG: On my draft, that
14 is at the bottom of 4.

15 MR. WIESNER: I'm sorry.

16 CHAIRMAN HONIGBERG: And, it may just be
17 two different printers at work.

18 MR. WIESNER: That's correct. This is
19 the map requirements on the bottom of Page 4.

20 COMMISSIONER SCOTT: Yes.

21 MR. WIESNER: Show the entire energy
22 facility route and other ancillary facilities. And, AMC
23 is proposing that "the corridor width be specified if it's
24 a new route or a widened route from the existing".

1 CHAIRMAN HONIGBERG: Any thoughts or
2 comments on that proposal?

3 VICE CHAIRMAN BURACK: Mr. Chairman,
4 maybe this is a question for Attorney Iacopino. I'm just
5 trying to understand whether the term "corridor" is a
6 recognized and understood term in this context? Is
7 "corridor" the same as actual "landownership" or
8 "ownership of right-of-way" or is there some other term of
9 art associated with that word?

10 MR. IACOPINO: I was just checking,
11 Commissioner Burack, to see if it was used in the
12 definitions in RSA 162-H at all, and it's not. They talk
13 about transmission lines traveling "over a route". So, I
14 don't -- I am unaware of any term of art regarding the
15 term "corridor". I think its plain meaning is what you
16 would -- is the way it would be interpreted in your rules.

17 VICE CHAIRMAN BURACK: May I ask a
18 follow-up?

19 CHAIRMAN HONIGBERG: Yes. Go ahead.

20 VICE CHAIRMAN BURACK: What's your, if
21 you have a recollection of this, in terms of site plans
22 that we've seen in the past or maps that we've seen of
23 these kinds of projects, what typically has been provided?
24 That is, is there a map that shows the width of the area

1 that is to be occupied by the project and the general
2 location of where the lines would be overhead, in the case
3 of an overhead transmission line and how those -- how far
4 those are from the property line? What do you see?

5 MR. IACOPINO: Yes. In the applications
6 for transmission lines that I've seen, we generally have a
7 schematic that shows the "corridor". I have not been
8 involved with any ones that did not go through an existing
9 right-of-way. So that, oftentimes in what we've seen,
10 there's not only that they show the position of where the
11 new line is going go, but also the position of where the
12 existing lines are within that corridor, within that
13 right-of-way. There's also a detailed, generally, a
14 detailed verbal description or a narrative description of
15 that. And, generally, they have included photographs of
16 the types of transmission structures and wires that will
17 be used in the corridor, as well as some photosimulations.

18 So, it's pretty much a full panoply of
19 information that we've received. Now, I don't know
20 whether that's --

21 VICE CHAIRMAN BURACK: I guess what I'm
22 getting at is, is the information that's being sought by
23 this addition, that is "corridor width for a new route or
24 widening along an existing route", is that the kind of

1 information that we have, based on your experience, seen
2 in the past in any event?

3 MR. IACOPINO: Yes.

4 VICE CHAIRMAN BURACK: Yes, it is?

5 MR. IACOPINO: Yes.

6 VICE CHAIRMAN BURACK: Okay. Thank you.
7 That's what I wanted to understand. I think, given that,
8 it sounds like this is information that's readily
9 available, it's information parties would understand to be
10 useful to have. I could support adding this language.

11 CHAIRMAN HONIGBERG: Commissioner Scott,
12 followed by Director Muzzey.

13 COMMISSIONER SCOTT: I concur. The same
14 type of language is noted in the requirements for the
15 application for a transmission line. I don't know why we
16 would require it there, but not for a pipeline. It seems
17 to me inconsistent if we didn't do that.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I was going to note a
20 similar thing. That, under Section (g), below that, we do
21 ask for information about "corridor width", and whether
22 it's new or widening of an existing route. So, it would
23 seem consistent. The difference with (g) is that we don't
24 ask for that in the form of a map.

1 CHAIRMAN HONIGBERG: I'll bet that's how
2 they provide it, though. That's going to be the easiest
3 way to show it.

4 DIRECTOR MUZZEY: Yes. I agree.

5 CHAIRMAN HONIGBERG: I mean, so, the
6 consensus is to adopt the change suggested by the AMC and
7 the other two entities?

8 *(Multiple members nodding in the*
9 *affirmative.)*

10 CHAIRMAN HONIGBERG: All right. Good.
11 Next.

12 MR. WIESNER: The next proposed change
13 is in that Subsection (g). This is a comment from EDP,
14 where it refers to "a generating facility with an
15 associated electric transmission line", EDP proposes to
16 add "distribution line" as well. So, it might say
17 "associated electric or distribution" -- "associated
18 electric transmission line or distribution line". And, I
19 think that that's intended to capture the concept that
20 some relatively smaller size generation facilities may be
21 interconnected to the grid through what are considered
22 "distribution level" facilities, rather than "high voltage
23 transmission". And, a similar change would be made to
24 (g)(2), where there's a reference to the "electric

1 transmission line project".

2 I mean, typically, distribution lines
3 would not be jurisdictional to the SEC. But, if they
4 effectively are the means of interconnecting a generating
5 facility which is jurisdictional, greater than 30
6 megawatts or within SEC jurisdiction through a petition
7 for jurisdiction, then a distribution line may be used as
8 an interconnecting line for the generator. And, I believe
9 that's what EDP is trying to capture here.

10 CHAIRMAN HONIGBERG: I just want to make
11 sure I understood what you said a second ago. The
12 distribution system is jurisdictional to the PUC, is it
13 not?

14 MR. WIESNER: To the PUC, not to the
15 SEC.

16 CHAIRMAN HONIGBERG: Okay. So -- all
17 right. So, the "we" in that sentence is -- yes, good
18 point. Thank you. I forgot who the "we" was.

19 MR. WIESNER: Right. So, a
20 distribution --

21 CHAIRMAN HONIGBERG: There's two
22 different "we's" here.

23 MR. WIESNER: It's possible that a 30
24 megawatt wind farm might be interconnected to the local

1 grid through what would be considered "distribution level"
2 facilities.

3 CHAIRMAN HONIGBERG: And, so, it makes
4 sense to show those facilities, if that's relevant to what
5 they're doing, right? Then, that's what their proposal
6 is.

7 MR. WIESNER: Right. And, (g) covers
8 both, both, you know, fully jurisdictional electric
9 transmission line project freestanding, as well as the
10 interconnecting transmission lines for an electric
11 generating facility.

12 CHAIRMAN HONIGBERG: Does anyone have
13 any thoughts or comments? I mean, my inclination is to
14 make that change. All right. Everybody agrees with that?

15 *[Multiple members nodding in the*
16 *affirmative.]*

17 CHAIRMAN HONIGBERG: Next.

18 MR. WIESNER: The next change I think we
19 need to address is (h)(6), which is on Page 6. And, this
20 is the new requirement that there be "information
21 regarding cumulative impacts of the facility". And, this
22 applies to all energy facilities, as the Committee has
23 determined.

24 And, we have comments from Various

1 Energy Companies and Eolian proposing that this be
2 deleted, and IBEW as well believes that this is
3 inconsistent with the legislative intent, because the only
4 reference to "cumulative impacts" is in the wind siting
5 section. We touched on this before. But this is the
6 section where the "cumulative impacts analysis"
7 requirement has been applied to all energy facilities, not
8 just wind projects.

9 CHAIRMAN HONIGBERG: And, consistent
10 with the conversation we had earlier, the fact that it is
11 in the wind sections doesn't necessarily preclude the
12 Committee from looking at cumulative impacts with respect
13 to other types of facilities, would you agree with that?

14 MR. WIESNER: Yes.

15 CHAIRMAN HONIGBERG: Does anybody see a
16 need to make this change or to delete these sections?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: I didn't think so.
19 What's next? Commissioner Bailey, I'm sorry.

20 COMMISSIONER BAILEY: I just want to
21 note for the record that I don't agree with the Committee
22 on this point, but I will proceed.

23 CHAIRMAN HONIGBERG: Thank you. Sorry
24 about that. I had forgotten that.

1 Now, what would the next issue be,
2 Attorney Wiesner?

3 MR. WIESNER: Section (h)(6), this is a
4 reference to "information that should be included in the
5 application regarding how the proposed facility will be
6 consistent with the public interest."

7 CHAIRMAN HONIGBERG: I think this is (7)
8 now, isn't it? Subsection (7)?

9 MR. WIESNER: It is (7). That's
10 correct. I'm sorry. Again, on Page 6. And, we have a
11 couple of different comments here. EDP would delete the
12 references to (a) through (d), where there's a reference
13 to "301.16".

14 And, the Various Energy Companies are
15 proposing a more substantial rewrite of this section.
16 And, maybe I'll just read their proposal, it's probably
17 the easiest. They would have it read: "Information
18 describing how the proposed facility will serve the public
19 interest, including benefits the facility will provide to:
20 the economy; the environment; the stability, reliability,
21 or security of energy supply or delivery; or state,
22 regional, or national energy policy".

23 And, I believe that comment is
24 consistent with their view that the public interest

1 standard, and we haven't gotten there yet, in 301.16,
2 should emphasize the potential benefits of the facility.
3 In part, because most of the rest of the focus is on, if
4 you will, sort of a "do not harm" standard, where the
5 finding required of the Committee is that there's no
6 unreasonable adverse effect. Therefore, I think, in the
7 view of the Various Energy Companies, the public interest
8 criteria should focus on the positive benefits of the
9 facility.

10 And, in that vein, it may be more, I
11 mean, at the pleasure of the Committee, it may be more
12 beneficial to review as well the proposed changes to
13 301.16, which are the "public interest" criteria. Because
14 really what this is saying is "whatever you need to meet
15 that criteria, you need to include in your application."

16 CHAIRMAN HONIGBERG: All right. So, why
17 don't we take a look at 301.16, which is on Page -- it's
18 Pages 20 and 21 of the same document that we're looking
19 at.

20 MR. WIESNER: And, we have several
21 comments that go to this section. IBEW, again, believes
22 it's inconsistent with the legislative intent. And,
23 others have made this comment previously, that the "net
24 benefits test", if you will, that was included in a prior

1 version of Senate Bill 245 was removed in the Senate
2 before the bill was passed.

3 The Various Energy Companies are
4 proposing some significant language changes. And, again,
5 it may be best for me just to read that, and I'll get to
6 that.

7 EDP is proposing that a consideration of
8 the Committee be focused on overall public benefits, such
9 as economic and environmental benefits. And, the Various
10 Energy Companies' proposal is consistent with that view.

11 Let me read how their proposal would
12 read: "In determining whether a proposed energy facility
13 will serve the public interest, the committee shall
14 consider whether the facility will benefit or promote one
15 or more of the following: (a) The economy; (b) The
16 environment; (c) The stability, reliability or security of
17 energy supply or delivery; or, (d) State, regional, or
18 national energy policy." And, their proposal is to delete
19 entirely what now appears as Subsection (e), which is the
20 "Additional public interest criteria as are developed
21 through the record in the proceeding."

22 CHAIRMAN HONIGBERG: Taking that last
23 issue first, they're not the only ones who have a problem
24 with that Subsection (e) in Section 301.16, are they? I

1 know Legislative Services has a problem with that
2 provision, and I suspect -- and I think there are others
3 as well who flagged that as problematic under the rules.

4 MR. WIESNER: Some commenters have said
5 that that violates due process, because you don't know
6 what the criteria are until the SEC tells you what they
7 are as developed through the record. I think it was
8 included, in part, as a catch-all and, in part, to
9 recognize that information will come out through the
10 litigated proceeding that may not have been anticipated at
11 the time of application, and that that may have a bearing
12 on public interest finding as well.

13 However, I think the thrust of the
14 Various Energy Companies' proposed language is both to
15 simplify the language to just cover broad categories of
16 concern, and also to remove what otherwise might be seen
17 as a directive to do a net analysis or a balancing of
18 positives and negatives. So, the focus here is on the
19 benefits, as opposed to weighing the benefits versus the
20 negatives. I think the theory being that the negatives
21 had been considered in connection with determining whether
22 there was an unreasonable adverse effect.

23 CHAIRMAN HONIGBERG: So, one way to
24 rephrase what that -- I'm sorry, Commissioner Bailey, I'll

1 call on you in just a minute. One way to rephrase what
2 that proposal is to say, "if you haven't concluded that
3 there are unreasonable adverse impacts, if there's some
4 benefits, it's an approvable application." So, you don't,
5 really, you don't ever look at whether one outweighs the
6 other. It's just "once you've concluded that the adverse
7 impacts aren't unreasonable, as long as there's some
8 benefit, you approve." Is that what they're saying?

9 MR. WIESNER: I think that's a fair
10 characterization.

11 CHAIRMAN HONIGBERG: Okay. Commissioner
12 Bailey.

13 COMMISSIONER BAILEY: Attorney Wiesner,
14 I have a question about the IBEW comments. They say that
15 the language as proposed was "removed by the Senate
16 Finance Committee" when they were dealing with the laws,
17 and that their position is that this is somebody else's
18 attempt to get that back into the rules, even though it
19 wasn't in the -- even though the Legislature decided not
20 to put it in the law. Can you tell me about that? Is
21 that true?

22 MR. WIESNER: There was language similar
23 that referred to "net benefit" -- essentially, a "net
24 benefits" test, that was included in a version of Senate

1 Bill 245, and was removed. It's always somewhat
2 problematic to read legislative intent into removal of
3 specific language. It may have been that there was an
4 intent that the issue would be addressed through this
5 rulemaking, as opposed to a clear legislative intent that
6 there should never be a "net benefits" test applied. And,
7 I think there's some other commenters who have spoken to
8 that, and have tried to head off the legislative intent
9 question by highlighting that legislative history and the
10 general uncertainty of reading clear intent into
11 legislative deletion of language from a bill.

12 I hope that's helpful.

13 COMMISSIONER BAILEY: So, what does the
14 law exactly tell us to do now? It tells us to consider
15 whether there's adverse impacts and whether -- and whether
16 there's public -- whether the project is in the public
17 interest?

18 MR. WIESNER: Yes, without defining
19 "public interest". And, in the first version of this, we
20 did not include a "public interest" definition.

21 CHAIRMAN HONIGBERG: Other comments?
22 Questions? Commissioner Burack.

23 VICE CHAIRMAN BURACK: Thank you.
24 Attorney Wiesner, in the -- in the Public Utilities

1 Commission context, is there a general formulation of what
2 "public interest" means or what it -- how you evaluate or
3 determine the "public interest" in that context?

4 MR. WIESNER: I mean, there is some
5 precedents under the PUC statutes, I believe, which are
6 not necessarily the same context as we're dealing with
7 here. But EDP has cited to a case, a fairly recent PUC
8 case, the context is not identical. And, I'm not -- there
9 may be others in the room who are better able to speak to
10 that than I off the cuff. But I think my view has been
11 that, you know, "public interest" is not something that's
12 defined or specified by the Legislature in -- through the
13 legislative amendment that added "public interest" to the
14 Section 16 list of criteria that must be met. And, our
15 initial instinct was not to try to define it. But, then,
16 we received comments from a number of people suggesting
17 that there should be a definition. And, of course, there
18 was not general agreement. The Committee essentially
19 adopted a test that was promoted by AMC and other
20 environmental groups, but took out the word "net", in an
21 attempt, I think, to make it clearer that it was not
22 intended to be a quantified net test, but still a
23 recognition that there should be some balancing.

24 And, I think the comments that we have

1 here are focused on emphasizing the benefits of the
2 project, without specifying that there should be a
3 balancing of benefits versus adverse effects, on the
4 theory that the adverse effects have already been
5 considered in determining whether there's an unreasonable
6 adverse effect.

7 VICE CHAIRMAN BURACK: Thank you.

8 CHAIRMAN HONIGBERG: Commissioner
9 Bailey.

10 COMMISSIONER BAILEY: I'll go out on a
11 limb. I think it's a reasonable balance, as proposed by
12 the Various Energy Companies, to have them show us what
13 they think the public interest is going to be, and then
14 the Committee can just decide whether that's good enough
15 or not.

16 CHAIRMAN HONIGBERG: Other thoughts,
17 comments, questions? Attorney Weathersby.

18 MS. WEATHERSBY: I think that the
19 Committee does -- this section states the criteria that
20 we're supposed to consider, "in determining whether a
21 proposed energy facility will serve the public interest,
22 the committee shall consider", and then lists the
23 following. So, I think that we do need to consider both
24 the positive attributes of the -- that the applicant might

1 list, as well as the negatives which have been brought out
2 in other parts of the hearings and the whole procedure.

3 I mean, 162-H requires us to balance the
4 impacts and the benefits. And, so, I think that Section
5 16 does mean to specify that we are to balance the adverse
6 effects, as well as the positive effects. So, I would not
7 be in favor of just limiting that section the way the
8 Energy Companies have suggested.

9 CHAIRMAN HONIGBERG: Other thoughts,
10 comments, questions? Director Muzzey.

11 DIRECTOR MUZZEY: I would also, under
12 this section, favor a more general balancing of positives
13 and negatives or benefits and adverse -- or effects for a
14 facility. I think, just because this Committee may not
15 rule that a facility has an unreasonable adverse effect
16 to, say, the natural environment or historical resources
17 or aesthetics does not mean that there may not be
18 negatives still associated with that project. Those
19 negatives just may not rise to "unreasonable adverse
20 effects". And, so, to dismiss any positive -- to dismiss
21 any negative effects of a project just because they did
22 not rise to that "unreasonable" level, I think does not do
23 justice to this idea of "public interest".

24 So, I would agree that we need to

1 continue to balance both of those. And, I still feel that
2 the language that we have in the annotated Draft Final
3 does do that balancing fairly, in a well-rounded way.

4 CHAIRMAN HONIGBERG: Other thoughts?
5 Comments? Commissioner Burack.

6 VICE CHAIRMAN BURACK: Mr. Chairman, I
7 guess I'm struck by the fact that we may not have sort of
8 a balanced set of considerations in these two different
9 categories. That is, I'm not -- it's not clear to me
10 that, in determining unreasonable adverse effects, whether
11 we would, in fact, be looking at all the criteria that
12 would fall under the "economy", *per se*, or even under the
13 "environment", *per se*, or this third category of
14 "stability, reliability or security of energy supply or
15 delivery". I think those kinds of factors may, in fact,
16 be completely outside that realm.

17 So, just because you didn't have an
18 issue arise that would cause something, under our tests,
19 that are clearly spelled out for "unreasonable adverse
20 effect", just because you didn't have an issue there,
21 doesn't mean there might not be some other types of
22 effects that could be detrimental to a project that would
23 have a bearing on whether the project, as a whole, is in
24 the public interest.

1 So, I think where I come out is similar
2 to where our two -- my two colleagues who have just spoken
3 come out, which is that I'm more comfortable with the
4 earlier version of this than with this slimmed down
5 version that we see here.

6 CHAIRMAN HONIGBERG: Well, what you're
7 more comfortable with is the version that we have --

8 VICE CHAIRMAN BURACK: That's correct.

9 CHAIRMAN HONIGBERG: -- before us in the
10 proposal, and you're not in favor of the change? Okay. I
11 want to make sure I got that.

12 Commissioner Scott.

13 COMMISSIONER SCOTT: Generally, I concur
14 with what I've just heard. I am amenable to adding to the
15 Annotated Draft Final, Subpart (c), where it talks about
16 "consistent with federal, regional, state, and local
17 polices", I'm fine with adding "including stability,
18 reliability", *etcetera*, as was suggested in the Energy
19 Companies'. Even without it, though, I think when you
20 look at "federal, regional, and state policies", that's
21 kind of subsumed in there.

22 Having said that, so, my only concern I
23 guess I wouldn't mind talking more about is whether we can
24 include what we have for (e) now, which is this

1 "Additional public interest criteria". I do like having
2 the flexibility, if things are raised during the hearing,
3 and they're fully vetted, I think we should be able to
4 consider that. But that's the only thing that gives me
5 pause is (e), given the comments we've heard.

6 CHAIRMAN HONIGBERG: Director Muzzey.

7 DIRECTOR MUZZEY: My difficulty with (e)
8 is the concept of including "public interest criteria".
9 Because as others have said, criteria should be developed
10 prior to a proceeding. Unless it was reworded something
11 along the lines of "additional aspects of public interest
12 as developed through the record in the proceeding", I
13 would also recommend that, as written, it be removed.

14 CHAIRMAN HONIGBERG: Commissioner
15 Burack.

16 VICE CHAIRMAN BURACK: Mr. Chairman, the
17 one aspect of the existing language that does give me
18 pause is language that is the reference to "whether the
19 facility is proposed is consistent with municipal master
20 plans and land use regulations". The language is somewhat
21 limited in that it talks about "pertaining to natural,
22 scenic, historic and cultural resources", and, second,
23 "public health and safety, air quality, economic
24 development, and energy resources". And, while I think

1 there may be some value in having a general understanding
2 of that, I think it, although I understand there are many
3 who would like the law to be different, the law is that
4 those municipal master plans and land use regulations are
5 not applicable in the agency's -- or, the Committee's
6 determinations on these matters.

7 And, so, if there were language here
8 that I would want us to take a closer look at, and I don't
9 have any specific proposal at this moment, it would be
10 that language. Because, again, those plans and those
11 regulations are not binding on the Committee. And, it
12 may -- perhaps Attorney Iacopino can help us understand
13 how, historically, we have, as a Committee, looked at and
14 considered information about municipal-level regulation in
15 these kinds of proceedings. Can you help us, Attorney
16 Iacopino, with that at all?

17 MR. IACOPINO: Sure. In virtually every
18 case where an energy facility has come before the
19 Committee, the applicant or other participants in the
20 proceedings have submitted the various master plan for the
21 town, zoning ordinance, planning ordinance, and for
22 consideration by the Committee. The Committee has, as I
23 recall, has, in fact, referenced portions of those
24 ordinances and documents in their consideration of a

1 application. The Committee has always been certain to say
2 "we're not bound by it."

3 But they have, indeed, considered it.
4 And, I think you see it more often in the -- in the
5 transcripts of the deliberations, as opposed to in the
6 orders themselves. But, you know, finding something
7 within a local ordinance is generally favorable and
8 governing a condition that may be imposed as part of a
9 certificate has been one way in which that has happened in
10 the past.

11 And, I can't think of any specific time
12 where the Committee or even an individual Committee member
13 said "Well, this ordinance would prohibit this. So, I'm
14 not going to vote for this." Or, vice versa. I don't
15 recall any specific instance like that. It doesn't mean
16 that there isn't, I just don't recall any.

17 So, to date, because to date it's been a
18 matter of a process, as opposed to a -- as opposed to a
19 regulation or a rule, and the process has always been "we
20 consider these things", and you generally have. You know,
21 I can't think of any particular ruling, however, that was
22 either granted or denied specifically because of the
23 existence of a local regulation.

24 VICE CHAIRMAN BURACK: Thank you.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: Commissioner

3 Burack, maybe would you be more comfortable with, on
4 Section (d) as it's written, instead of saying "whether
5 the facility as proposed", again, in the broader context
6 of "the Committee shall consider", maybe "the level of
7 consistency with"? Again, so, it's not implied in any way
8 that it has to meet that plan, but it does say that we're
9 looking at it to see how close they do match.

10 VICE CHAIRMAN BURACK: That might help.

11 Again, the fundamental sort of difference here is that
12 "public interest" can be defined at different levels.
13 And, that is, a local community may define its "public
14 interest" as "not having any energy facilities". But,
15 from the standard point of the state as a whole, which I
16 believe is our charge as a committee, the finding may be
17 that, in fact, it is in the public interest to site a
18 particular facility in that particular location, even
19 though the local zoning ordinance would prohibit such a
20 siting. And, that's where I think we have to be very
21 clear, that we're looking at the public interest from the
22 overall, you know, from a broader perspective, not from a
23 local perspective, as least with respect to that issue, I
24 believe.

1 CHAIRMAN HONIGBERG: Commissioner
2 Bailey.

3 COMMISSIONER BAILEY: I agree on that
4 point. I think, if you say "the level of consistency with
5 local plans", it implies that "we're looking for them to
6 be consistent with local plans."

7 CHAIRMAN HONIGBERG: Yes. I think that
8 would make them more relevant than they are right now, if
9 we were to change that language. I'm actually comfortable
10 with the way it is, largely for the reasons that Attorney
11 Iacopino has said they had been used in the past. I mean,
12 it's a relevant thing to look at or a relevant set of
13 things to look at, depending on the project. Not bound by
14 it, but of interest.

15 And, it is -- it's worthy of the respect
16 of the Committee, but, if other aspects of the Committee
17 override a local desire, that's what the Committee's here
18 to do. But, if there are aspects of a plan that are
19 consistent with the proposal, that's a relevant factor
20 that would push the dial in the other direction, in a
21 positive direction.

22 So, I'm comfortable leaving it in
23 largely as it is. I am with what I believe now is a
24 majority, that the current -- the current structure of (a)

1 through (d) or the current basic inclusion of (a) through
2 (d) as they are is the right way for us to go.

3 I am concerned about (e). I don't think
4 (e) can stand as it's written. And, I'm not sure that
5 there's a way to save it. I don't think Director Muzzey's
6 proposal changes much. I think changing "criteria" to
7 "aspect" I don't think does anything. And, I'm not sure
8 if there's -- I'm not sure it's worth trying to save.
9 Because, ultimately, the people are going to make their
10 case as to why this is a good project, and others are
11 going to make a case as to why it's not a good project.
12 And, the nots have lots of ammunition, lots of ways they
13 can go, beyond these criteria. I think it was
14 Commissioner Burack who said that there is, and I agree,
15 that there's a mismatch between the public interest
16 criteria here, and the ways in which something could have
17 an unreasonable adverse impact on aesthetics or cultural
18 and historic resources. But that's not what these are
19 about. These are about other reasons to build a project,
20 or maybe not build a project, depending on what it's --
21 what it's going to do for us, for the local communities,
22 for the region, however that's defined.

23 And, so, I think leaving (a) through (d)
24 largely as they are, and considering deleting (e), unless

1 it can be rewritten in some way that is fundamentally
2 different, is the way for us to go.

3 Commissioner Scott.

4 COMMISSIONER SCOTT: A counterproposal
5 on (d), if we remove "whether the facility as proposed is
6 consistent with", so, it would just be "the committee
7 shall consider municipal master plans and land use". It
8 doesn't tie our hands in any way. It just says we will
9 take notice of those. It doesn't imply that we're going
10 to require they be consistent with it. I would argue
11 that, perhaps, Commissioner Burack, that may meet your
12 goal.

13 And, I concur, I think (e), we'd just
14 perhaps have to delete that, unless we come up with better
15 language.

16 CHAIRMAN HONIGBERG: So, to be specific,
17 you're proposing to place the word "the", in front of the
18 word "municipal", in the first line of (d), and delete
19 everything before that?

20 COMMISSIONER SCOTT: Correct.

21 CHAIRMAN HONIGBERG: So, it would be
22 "the committee shall consider the municipal master plans
23 and land use regulations", *etcetera*?

24 COMMISSIONER SCOTT: Yes.

1 CHAIRMAN HONIGBERG: Okay. Other
2 thoughts? Yes, Director Muzzey.

3 DIRECTOR MUZZEY: In order to address
4 the idea that sometimes, while we're often called upon to
5 look at these projects broadly, not just as they effect
6 the local community, I would also suggest that we include
7 "municipal and regional". I don't know if there --
8 there's been a whole series of regional plans that have
9 just come out throughout the state that do address the
10 importance of renewable energy and energy efficiency. I
11 don't know whether they're called "regional master plans"
12 or if it's just "regional planning", in general. But I
13 would suggest that we include that "regional" concept as
14 well, because a lot of effort has gone into that.

15 CHAIRMAN HONIGBERG: That may be picked
16 up in (c), in the reference to RSA 362-F.

17 DIRECTOR MUZZEY: I think there's often
18 a difference between "regional policies" and "regional
19 planning". I don't know if you would see a difference in
20 that?

21 Policies usually fall out of planning,
22 or are a result of planning activities.

23 CHAIRMAN HONIGBERG: Commissioner
24 Burack.

1 VICE CHAIRMAN BURACK: Could we address
2 that point in 301.16(c), by adding, after the phrase "and
3 local policies", inserting "and plans" or the phrase "or
4 plans", that might be better, "or plans"?

5 DIRECTOR MUZZEY: That would be fine
6 with me.

7 CHAIRMAN HONIGBERG: Circling back to
8 Commissioner Scott's suggestion regarding (c) -- or (d),
9 I'm sorry, (d). Are people all right with that change?

10 VICE CHAIRMAN BURACK: Yes.

11 CHAIRMAN HONIGBERG: Others?

12 *[Multiple members nodding in the*
13 *affirmative.]*

14 CHAIRMAN HONIGBERG: Okay. I see enough
15 nodding heads to see that we have a consensus there.

16 And, then, with (c), I guess I just want
17 to make sure that that language works. So, it would be
18 "with federal, regional, state, and local policies and
19 plans, including those specified in RSA", is that what
20 you're saying, Commissioner Burack?

21 VICE CHAIRMAN BURACK: It might be
22 better "policies or plans".

23 CHAIRMAN HONIGBERG: All right. We'll
24 take a look at that language. I think the concept

1 everybody gets. Are people all right with that?

2 *[Multiple members nodding in the*
3 *affirmative.]*

4 CHAIRMAN HONIGBERG: This is going to be
5 the last thing we do this afternoon substantively. So,
6 we're going to be --

7 MR. WIESNER: And, Mr. Chairman, delete
8 (e)?

9 CHAIRMAN HONIGBERG: I was going to get
10 there. Are we deleting (e)?

11 MS. WEATHERSBY: Yes.

12 CHAIRMAN HONIGBERG: If someone can come
13 up with a better way to do (e), that doesn't turn us into
14 *ad hoc* rulemakers, which the Legislature would frown on,
15 bring that proposal forward on Wednesday.

16 All right. Yes, Commissioner Burack.

17 VICE CHAIRMAN BURACK: Just coming back
18 to, I think it was Commissioner Scott's notion, of whether
19 any of what's in the Energy Companies' proposals here
20 relating to "stability, reliability, or security of energy
21 supply or delivery", whether any of those concepts should
22 be explicitly mentioned here in (c)?

23 CHAIRMAN HONIGBERG: Commissioner Scott,
24 do you think that those are sufficiently outside of what's

1 already in (c), in "federal, regional, state, and local
2 policies" that would need to be spelled out?

3 COMMISSIONER SCOTT: I don't think it
4 hurts to spell them out. Again, I think, when you look at
5 the language as it is, I would consider those part of the
6 existing language.

7 VICE CHAIRMAN BURACK: I'm not
8 advocating to include them or not include them. I just
9 want to make sure there was comfort that those concepts
10 are all encompassed within these kinds of "federal,
11 regional, state, and local policies or plans". And, I
12 would tend to agree with you that they would be, but --

13 CHAIRMAN HONIGBERG: All right. So,
14 with that, with those changes made to 301.16, Mr. Wiesner,
15 when we cycle back to the earlier section that we were
16 looking at that sent us there, which I am not able to
17 recall after that discussion, where does that leave us?

18 MR. WIESNER: I mean, the Various Energy
19 Companies had proposed specific language which ties into
20 their revision of 301.16. And, if -- since we have not
21 agreed to make those changes, it may be appropriate to
22 retain the language as it currently appears, which is just
23 a "description of how the proposed facility will meet the
24 public interest criteria that are specified in 301.16".

1 CHAIRMAN HONIGBERG: All right. I think
2 we're nodding our heads at that.

3 So, that is where we will break. We
4 will be back here again on Wednesday. It will be -- the
5 overall meeting, starting at noon, is going to be on the
6 other docket first, on the Merrimack Valley Reliability
7 Project first. That should not be a very long meeting.
8 And, then, the full Committee, which is this body that
9 you're watching right now, will pick up as soon as that
10 group is done. And, we'll pick up where we left off and
11 try and get us to a close.

12 Is there anything else we need to do
13 before we break?

14 (No verbal response)

15 CHAIRMAN HONIGBERG: Seeing none,
16 Commissioner Scott moves we adjourn. Commissioner Burack
17 seconds. All in favor say "aye"?

18 *[Multiple members indicating "aye".]*

19 CHAIRMAN HONIGBERG: Any opposed?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: We are adjourned.

22 ***(Whereupon the meeting was adjourned at***
23 ***4:28 p.m., and the meeting to reconvene***
24 ***on Wednesday, September 23, 2015.)***