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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

September 23, 2015 - 12:22 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
(Presiding as Chairman of SEC)

Public Utilities Commission

Cmsr. Thomas S. Burack
(Vice Chairman of the SEC)

Dept. of Env. Services

Cmsr. Robert R. Scott
Cmsr. Kathryn M. Bailey
Cmsr. Jeffrey Rose

Public Utilities Commission
Public Utilities Commission
Dept. of Resources &
Economic Development

Dir. Elizabeth Muzzey
William Oldenburg
Patricia Weathersby
Roger Hawk

DCR-Div. of Historical Res.
Dept. of Transportation
Public Member
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

1
2 CHAIRMAN HONIGBERG: Good afternoon,
3 everyone. Thank you for your patience while the other
4 matter was heard briefly.

5 We are reconvening the Site Committee on
6 Docket 2014-04, further consideration of the comments,
7 written and oral, that were submitted regarding the Draft
8 Final Proposed Rules. We are going to do our level best
9 to try and get everything done today.

10 As those on the Committee know, I sent
11 out a *doodle.com* poll this morning to get a two-hour block
12 on Monday or Tuesday, in the event that we need to roll
13 over to Monday and Tuesday -- or Tuesday. We got a good
14 solid response. There are a number of time periods that I
15 can go up and check when we break to see when we might be
16 able to reconvene.

17 So, before we continue, I'll note that
18 we have all nine SEC spots occupied today. And, I'll
19 folks to introduce themselves, and we'll go around the
20 room, starting to my left.

21 DIRECTOR MUZZEY: Good afternoon.
22 Elizabeth Muzzey, from the Department of Cultural
23 Resources.

24 COMMISSIONER SCOTT: Bob Scott, with the

1 New Hampshire Public Utilities Commission.

2 CHAIRMAN HONIGBERG: Martin Honigberg,
3 with the Public Utilities Commission.

4 VICE CHRMN. BURACK: Tom Burack,
5 Department of Environmental Services.

6 COMMISSIONER BAILEY: Kate Bailey, New
7 Hampshire Public Utilities Commission.

8 MR. OLDENBURG: William Oldenburg,
9 Department of Transportation.

10 MR. HAWK: Roger Hawk, public member.

11 COMMISSIONER ROSE: Jeff Rose,
12 Department of Resources & Economic Development.

13 MS. WEATHERSBY: Good afternoon.
14 Patricia Weathersby, public member.

15 CHAIRMAN HONIGBERG: Off the record.

16 *[Brief off-the-record discussion*
17 *ensued.]*

18 CHAIRMAN HONIGBERG: Back on the record.

19 As we pick up, in the constant process of going two steps
20 forward and a half step back, we have a couple of things
21 we're going to do that are either holdovers or lingering
22 issues from the last time we were together.

23 The first we're going to deal with is
24 the issue of notice to abutters of the public information

1 sessions. We took a vote last time to add -- the motion
2 was to add that requirement, as suggested by
3 Representative Brown; that vote failed four to four. One
4 of the members who voted with the prevailing side, meaning
5 one of the people who voted "no", has asked that that
6 vote -- that that motion be reconsidered.

7 So, Commissioner Burack moves that we
8 reconsider that motion. Is there a second?

9 COMMISSIONER SCOTT: Second.

10 CHAIRMAN HONIGBERG: All right. Moved
11 and seconded. Commissioner Burack, would you like to
12 speak to your motion?

13 VICE CHAIRMAN BURACK: Thanks very much.
14 Just very briefly, I voted against this because I felt
15 that we just didn't have the time at that moment, and I
16 had not had the chance to think through what language
17 might look like to address concerns relating to projects
18 that were proposed, future projects, particularly those
19 that might involve an eminent domain taking along which
20 the properties were not otherwise purchased.

21 I do not have specific language to
22 propose at this very moment. But what I would ask is
23 that -- what I would say is that I would be supportive of
24 language that would require a mailed notice to abutters,

1 as we would define them in the rules. And, again, I'm
2 going to express a concept here, without specific
3 language --

4 CHAIRMAN HONIGBERG: Before you do that,
5 let's vote on the motion to reconsider, so that the
6 substantive question is before the SEC.

7 VICE CHAIRMAN BURACK: Certainly.

8 CHAIRMAN HONIGBERG: All those in favor
9 of reconsidering, please say "aye"?

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

11 CHAIRMAN HONIGBERG: Are there any
12 opposed?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: All right. Now,
15 Commissioner Burack, you would -- why don't you continue
16 with your statement, so it's clear what we're talking
17 about.

18 VICE CHAIRMAN BURACK: Thank you. So, I
19 could be supportive of the language that was proposed,
20 provided that we add a provision that indicates, and,
21 again, I do not have specific language here, that notice
22 would also be mailed to property owners whose properties
23 may be subject to a -- may be subject to use as part of
24 the proposed project. And, again, I do not have specific

1 language. I simply have not had time to think through it.
2 But I do believe that it is appropriate, for a proceeding
3 of this kind that involves land use matters, to give
4 notice up front to property owners who may be affected,
5 and not to expect that they're only going to get their
6 information through the public media.

7 CHAIRMAN HONIGBERG: Mr. Wiesner, you've
8 looked at Representative Brown's language, I believe. Is
9 the language that he proposed, I'm not sure it was in the
10 form of rules, but the concepts that he proposed, are they
11 close enough to rules and can they be modified to
12 accommodate Commissioner Burack's desire to include those
13 who might be subject -- whose property might be subject to
14 eminent domain proceedings?

15 MR. WIESNER: Well, I believe so. And,
16 I do recall at the last meeting that Commissioner Scott
17 had proposed that we, you know, we have a defined term of
18 "abutting property", and that it might be appropriate to
19 require that notice be mailed to the owners of abutting
20 property, and I believe that could work to meet
21 Representative Brown's primary concern.

22 But the further concern, which is, if
23 there's a portion of a route in particular where the
24 property owner -- the owner of the property underlying the

1 site itself is not under a contractual obligation to
2 accommodate that use of the property, and, in fact, his or
3 her property would be taken by eminent domain, let's say,
4 as a result of a FERC proceeding, that that party -- that
5 property owner should also get notice from the applicant,
6 because they may not otherwise be aware that their
7 property will be used for that purpose or is proposed to
8 be used for that purpose at that time.

9 Obviously, before anyone would take
10 their property through eminent domain, they would get
11 notice. But it's really a timing issue. They may not
12 have notice of the proceeding here.

13 I will also note that Representative
14 Brown's proposal was that those abutters receive notice by
15 Certified Mail, rather than regular First-Class Mail.
16 And, I'll note that that is consistent with requirements
17 for planning and zoning boards in a number of situations,
18 that they provide notice to abutting property owners
19 through Certified Mail, rather than regular mail. So,
20 that's another thing that the Committee may want to
21 consider, what form of mailing is required for that type
22 of notice.

23 CHAIRMAN HONIGBERG: I'm not a land use
24 lawyer, but it would seem that property owned by someone,

1 a portion of which is taken by eminent domain for a
2 project like this, would also, by definition, be an
3 "abutter". They would own property that would abut the
4 right-of-way that was created by eminent domain.

5 MR. WIESNER: If we, unless -- I
6 suppose, if their entire property were going to be taken,
7 then there's maybe a technical argument that they're not
8 an abutter. But, if it's just a strip of the land or a
9 right-of-way, which is most likely, I would think, then,
10 yes, they would be an abutting property owner. And, so,
11 they may be covered by that language.

12 CHAIRMAN HONIGBERG: Any other
13 discussion? Attorney Weathersby.

14 MS. WEATHERSBY: I might suggest then
15 that we just change it to "abutters and owners of property
16 where the site is planned to be located" at the time of
17 the first hearing.

18 CHAIRMAN HONIGBERG: Commissioner Burack
19 I think is going to move that we adopt a version of
20 Representative Brown's language with the change that
21 Attorney Weathersby just suggested, is that correct?

22 VICE CHAIRMAN BURACK: So moved.

23 CHAIRMAN HONIGBERG: Is there any
24 second?

1 COMMISSIONER BAILEY: Second.

2 CHAIRMAN HONIGBERG: Any further
3 discussion of this issue?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: Seeing none, are
6 you ready for the question? All in favor, please say
7 "aye"?

8 *[Multiple members indicating "ayes".]*

9 CHAIRMAN HONIGBERG: Are there any
10 opposed?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: All right. The
13 "ayes" have it. We'll move on.

14 Second, it's not really a circle-back,
15 because it was the last thing we talked about, which is
16 the public interest provisions of -- I've got the number
17 wrong -- I think it's Subsection 16, and how that relates
18 to what the filing requirements are. I'm not going to try
19 and recap the entire discussion, but there were five
20 factors included in the one section near the end of the
21 document. People, including Legislative Services, who are
22 people, too, were concerned about Subsection (e), and I
23 think we also received comments from -- through this
24 process about Subsection (e). There were also concerns

1 expressed about various other provisions of -- it's
2 301.16(a) through (e).

3 Mr. Wiesner I think has some language
4 that will attempt to incorporate or accommodate the
5 comments of Legislative Services, and an attempt to fix
6 the problem with Subsection (e).

7 So, Attorney Wiesner, I will hand this
8 over to you.

9 MR. WIESNER: I actually have a
10 document, which I can hand out and make available to other
11 people in the room. I just recalled that I actually
12 missed one of the changes that should be made, which
13 was -- well, let me hand it out first, and then we can
14 talk about that.

15 (Atty. Wiesner distributing documents.)

16 MR. WIESNER: This is proposed language
17 that's intended to address some of the concerns expressed
18 by the Office of Legislative Services. And, what it also
19 does is it replaces the current Subsection (e), which was
20 intended to be a catch-all, but was criticized by a number
21 of people as perhaps not being fully consistent with due
22 process concerns, because it enabled the Committee to
23 consider criteria that were developed through the
24 litigated proceeding, as opposed to specifying what those

1 criteria would be in advance.

2 And, the approach here is to incorporate
3 as a catch-all, an alternative catch-all, if you will, a
4 reference back to the Purpose section of the siting
5 statute, which is 162-H:1. And, the first sentence of
6 that statutory provision has a laundry list, if you will,
7 of potential impacts that are relevant to the siting
8 decision, and which are the motivation for adopting the
9 statute in its entirety. And, so, this is an effort to
10 capture some considerations that might not otherwise have
11 been covered in (a) through (d), by including a reference
12 to, for example, "the welfare of the population",
13 "aesthetics", "use of natural resources", and "public
14 health and safety". The entire laundry list, if I can
15 call it that, that's considered -- that's contained in
16 that statutory provision is not recounted here, in part,
17 because some of the other specific matters, such as "air
18 and water quality", are incorporated in the environmental
19 effects subsection, which is (a). And, for example,
20 "economic growth of the state", which is also referenced
21 in the statutory provision, would seem to be covered by
22 Subsection (b).

23 CHAIRMAN HONIGBERG: You indicated that
24 there was something that you realized should have been in

1 here that isn't.

2 MR. WIESNER: Yes. I apologize for
3 that. In Subsection (c), we refer to "local policies", it
4 should be "local policies and plans", or perhaps "plans
5 and policies". So, I apologize for that. That is a
6 suggestion that I believe the Committee was supportive of
7 at the session on Monday.

8 So, I would propose that where we're --
9 if we're all looking at Subsection (c), where it says
10 "local policies", I believe we might add "local plans and
11 policies".

12 CHAIRMAN HONIGBERG: Does anyone have
13 any questions or comments? Commissioner Burack.

14 VICE CHAIRMAN BURACK: I thought that
15 there was agreement at the prior session that the clause
16 in (d), at the front, would be deleted, so that it would
17 simply read "The municipal master plans and land use
18 regulations". That there would not be a reference to
19 "consistency", *per se*. I thought we had --

20 CHAIRMAN HONIGBERG: I believe
21 Commissioner Burack is correct. So, that (d) would
22 actually -- we would delete the phrase "The extent to
23 which the facility as proposed is consistent with", and
24 replace that entire phrase with the word "the".

1 Are there other questions or
2 comments?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: How do people feel
5 about replacing Section 301.16, as it appears in the Draft
6 Final Proposal, with the language as modified that's on
7 the single sheet of paper?

8 COMMISSIONER SCOTT: Mr. Chair, I
9 support that change.

10 CHAIRMAN HONIGBERG: Anyone have any
11 other or different thoughts? Is there consensus that we
12 should do that?

13 Commissioner Bailey.

14 COMMISSIONER BAILEY: I just want to
15 make sure I understand what we're doing here. So, are we
16 kind of flipping the decision, from deciding whether there
17 are adverse impacts, to deciding whether the public will
18 actually benefit, and there are no adverse impacts?

19 CHAIRMAN HONIGBERG: I would say the
20 answer to that is "no". I think the overall question that
21 the statute asks us to consider is "whether the project is
22 in the public interest?" That is the bottom-line
23 question. In doing so, we are to determine whether there
24 are benefits; whether there are unreasonable adverse

1 impacts on a number of things, and those things are
2 specified elsewhere in the statute.

3 So, you can look at a project or a
4 proposal, determine whether there are unreasonable adverse
5 impacts. That's one thing you have to do. The other
6 thing you have to do is decide whether the project is in
7 the public interest. And, not all of the factors that are
8 relevant to the "unreasonable adverse impact" inquiry
9 are -- they're not the same as all of the things that
10 might or might not be in the public interest. And, this
11 "public interest" section is an attempt to identify how
12 the Committee is to determine whether a project is in the
13 public interest.

14 COMMISSIONER BAILEY: But isn't --

15 CHAIRMAN HONIGBERG: Yes.

16 COMMISSIONER BAILEY: Isn't the language
17 repeating, in some cases, an analysis of the adverse
18 impacts?

19 CHAIRMAN HONIGBERG: It is considering
20 some of the same issues. But that something does not have
21 an "unreasonable adverse impact", doesn't mean that it
22 doesn't have an "adverse impact". And, the adverse impact
23 that it does have, although not objectively unreasonable
24 by itself, needs to be put into the consideration of

1 whether the project is in the public interest, when
2 considering all of its other pluses and minuses.

3 COMMISSIONER BAILEY: Well, isn't it
4 true that any construction will have an adverse impact on
5 the land that it's going on?

6 CHAIRMAN HONIGBERG: You can make
7 that -- make that assumption for purposes of what you're
8 about to say.

9 COMMISSIONER BAILEY: So, then, how
10 could we ever find that it's in the public interest?

11 CHAIRMAN HONIGBERG: Because it's not
12 unreasonable, on balance.

13 COMMISSIONER BAILEY: Right. But this
14 language says, you know, we have to, in determining the
15 public interest, we have to consider adverse environmental
16 effects of the facility, not unreasonable, but, you know,
17 in the public interest determination, we're also deciding
18 whether there's adverse environmental effects of the
19 facility, and I think that there always will be. It's
20 just by the nature of construction.

21 CHAIRMAN HONIGBERG: Commissioner
22 Burack.

23 VICE CHAIRMAN BURACK: I think what
24 we're getting at is an issue of degree. If the Committee

1 were to find that the construction impacts specifically
2 were so significant that they created an unreasonable
3 adverse effect, then we would not -- the facility, by its
4 terms, would not have met the conditions for issuance of a
5 certificate.

6 COMMISSIONER BAILEY: Uh-huh.

7 VICE CHAIRMAN BURACK: Okay. You would
8 not meet the requirements under 162-H:16, IV -- well,
9 perhaps IV, probably IV(c), which would read that "The
10 site and facility will not have an unreasonable adverse
11 effect on aesthetics, historic sites, air and water
12 quality, the natural environment, and public health and
13 safety." All right?

14 But let's take a circumstance where,
15 acknowledging that any -- any construction activity that
16 involves breaking earth, breaking ground, is going to
17 cause some impact or some effect on natural systems, okay?
18 But that doesn't mean that it's an "unreasonable effect".

19 COMMISSIONER BAILEY: Right.

20 VICE CHAIRMAN BURACK: And, as long as
21 we don't find it's an unreasonable effect, then we would
22 go to look at all these other criteria, or we'd be looking
23 at all these other criteria concurrently, including
24 whether it's in the public interest. And, ultimately,

1 that public interest determination is going to be a
2 balancing determination. That is, we're looking at
3 what's -- what are the overall -- what are the overall
4 ways that the project has negative effects, which may not
5 be unreasonable, but are negative. And, then, what are
6 the -- what are all the benefits, what are the positive
7 attributes of the project, that would cause us to say "on
8 balance, in the totality of circumstances, the pluses
9 outweigh the minuses here."

10 And, so, I think what this is really
11 saying is, we're looking at these at two different levels.
12 First, we have to make sure it's not so significant that
13 we just wouldn't approve the project. But, assuming that
14 it doesn't reach that level, then we can look at those
15 impacts in the context of all of the good and all of the
16 bad related with the project, and say "overall, taking all
17 these things into consideration, is the public interest
18 served by proving the project or not?" Is that helpful?

19 COMMISSIONER BAILEY: Yes, it is. But
20 it sounds like then that's a net benefit analysis.

21 VICE CHAIRMAN BURACK: Well, I think
22 it's a balancing test. And, we can quibble as to what the
23 differences may or may not be. But, ultimately, that's
24 what we're doing. We are balancing things here.

1 COMMISSIONER BAILEY: I understand that
2 we're balancing things. But I also think that we should
3 be following the law as it says. The Legislature has
4 established a policy, and I don't think that they
5 established the net benefit policy. But am I wrong about
6 that?

7 VICE CHAIRMAN BURACK: Well, I guess I
8 take a different view on that. I don't believe that one
9 can infer from the legislative action that has occurred
10 that the Legislature explicitly disapproved the notion of
11 a "net benefit test".

12 And, again, I don't think that that's
13 explicitly what we'd be adopting here in any event. It
14 really is, with this language, I believe, this would be
15 saying "we need to look at all the different factors that
16 appear within the Purpose section of the statute, and we
17 need to ensure that we're considering all of those, and
18 that, in the totality of circumstances, weighing the good
19 and the bad aspects of the project, that, overall, the
20 public interest is served or is not served by issuing a
21 certificate."

22 COMMISSIONER BAILEY: Could we consider
23 changing it a little bit? Rather than saying "the
24 committee shall consider the beneficial and adverse

1 effects" in each one, just, "In determining the public
2 interest, the committee shall consider the beneficial
3 effects", since we've already considered the adverse
4 impacts? Or, does that change the whole tenor of what
5 everybody who wrote this was trying to do?

6 CHAIRMAN HONIGBERG: Well, not all -- I
7 would say, the quick response is that not all of these
8 factors are the adverse impacts that have been -- that
9 will have been considered in determining whether something
10 has an unreasonable adverse effect, or "unreasonable
11 adverse impact", I think is the phrase in the statute.
12 Some of these factors are different. And, so, having
13 determined that there is not an unreasonable adverse
14 impact, you still need to decide whether this is in the
15 public interest. And, how do you determine whether
16 something is "in the public interest"?

17 COMMISSIONER BAILEY: And, I think
18 that's a very important thing to figure out how we're
19 going to determine.

20 CHAIRMAN HONIGBERG: And, if you're not
21 allowed to consider any of the negative effects, how do
22 you determine whether it's in the public interest? It
23 cannot be, it cannot -- the Legislature cannot have meant
24 that, if it doesn't have an unreasonable adverse impact,

1 that the only thing you are then to look at are the
2 positive effects of it. That can't be right. They
3 wouldn't have given us a "public interest" standard. They
4 would have given us a "is there a benefit?" standard. If,
5 after having concluded there's no unreasonable adverse
6 impact, the legislation would say "you shall approve it if
7 there is any benefit." Period.

8 So, the fact that we are to determine
9 "the public interest", means we need to look at "the
10 public interest", which includes positives and negatives.
11 And, there are different factors.

12 And, I would say it is not a "net
13 benefits test", because we're not subtracting -- you're
14 not adding up one against the other. You're determining
15 whether, in the totality of the circumstances, something
16 is "in the public interest".

17 COMMISSIONER BAILEY: On balance,
18 whether the positives outweigh the negatives?

19 CHAIRMAN HONIGBERG: I think people may
20 have different ways of determining what is "in the public
21 interest". Some people may choose to stack things up on
22 this side and stack things up on that side and see which
23 one weighs more. But others would look at the
24 circumstances more holistically and determine whether, on

1 balance, considering all of the positives and negatives,
2 it makes sense to go ahead. It's very difficult to
3 quantify some. So, netting one against the other is going
4 to be extremely challenging, unless you can figure out a
5 way to quantify some things that are not -- not
6 quantifiable.

7 Attorney Weathersby.

8 MS. WEATHERSBY: Thank you. I'm just
9 going to read a quick section from 162-H:1, concerning the
10 purpose of the Site Evaluation Committee. "The
11 Legislature finds it is in the public interest to maintain
12 a balance among those potential significant impacts and
13 benefits in decisions about the siting, construction, and
14 operation of facilities -- energy facilities in New
15 Hampshire", and it goes on.

16 But we're clearly instructed to strike
17 that balance, and weighing both positive and negative
18 impacts. And, I think that's different than a "net
19 benefits test".

20 COMMISSIONER BAILEY: I agree with you.
21 I'm just worried that what we have written here goes
22 beyond what that says.

23 CHAIRMAN HONIGBERG: Director Muzzey.

24 DIRECTOR MUZZEY: I don't know whether

1 this will be helpful. But another way that I feel that
2 this type of consideration differs from the Committee's
3 consideration of unreasonable adverse effects is that, in
4 making a decision of whether something constitutes an
5 "unreasonable adverse effect" to a various variety of
6 resources, the Committee does not consider the benefits of
7 the project. It is only considering the impacts to
8 certain types of resources. And, it's a very high
9 threshold. And, in fact, in my memory, this Committee has
10 only once, since its beginnings in, I believe, the 1980s,
11 reached that threshold of "unreasonable adverse effects"
12 with a project.

13 This section provides the opportunity to
14 not only consider impacts, but also the benefits. And,
15 so, I think this is a more far-ranging section, and also a
16 wider thing for the Committee to think about, which it has
17 not had the opportunity to think about in other areas.

18 CHAIRMAN HONIGBERG: Other comments?
19 Questions? Do we need to take a -- do we need to do this
20 by vote? It seems like maybe we should.

21 MR. WIESNER: Mr. Chairman?

22 CHAIRMAN HONIGBERG: Attorney Wiesner.

23 MR. WIESNER: I'm sorry. But, before
24 you provide to a vote, I should note that Dr. Ward had

1 submitted a comment on this section as well, and the
2 Committee may want to consider that.

3 He is suggesting that a new section, and
4 this would be (f), I believe, be added that covers the
5 "effects of maximum surcharges from wind projects on the
6 ISO bulk transmission system". That's a paraphrase of his
7 proposed language. But that can be found in his comments,
8 with respect to 301.16, which I believe is on Page 4 of
9 his comments.

10 CHAIRMAN HONIGBERG: It is true, is it
11 not, that before any generation project, wind or
12 otherwise, gets connected to the grid, that it needs to
13 be -- it needs to go through a process with the
14 Independent System Operator, that's what "ISO" stands for
15 in this context, isn't that right?

16 MR. WIESNER: Yes. That's my
17 understanding. And, that system reliability is the
18 primary concern of that study process.

19 CHAIRMAN HONIGBERG: That's their
20 essence, right?

21 MR. WIESNER: Yes.

22 CHAIRMAN HONIGBERG: The essence of
23 their being is the reliability of the electrical grid,
24 correct?

1 MR. WIESNER: In general, and,
2 specifically, with respect to the interconnection of new
3 generation sources.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: I concur. Where I
6 think it's perhaps valid to look at, I think it is
7 subsumed in the context, we're talking about federal and
8 regional polices and plans, I think that's subsumed in
9 there. So, at least in my mind, that's a given, that's
10 something that's in that language.

11 MR. WIESNER: I think the ISO
12 interconnection procedures are a part of the ISO tariff,
13 which are filed with and approved by FERC.

14 CHAIRMAN HONIGBERG: Director Muzzey.

15 DIRECTOR MUZZEY: I would also agree
16 with Commissioner Scott, that this language does seem to
17 be far more detailed than the more general language in (a)
18 through (e), as drafted now. And, that it is covered in a
19 general way by (c) and doesn't need to be called out
20 specifically.

21 CHAIRMAN HONIGBERG: Anyone have any
22 different or other comments regarding that specific
23 proposal?

24 (No verbal response)

1 CHAIRMAN HONIGBERG: Seeing none. Now
2 are we ready to consider voting on whether to add -- or
3 rather replace 301.16, as it appears in the Draft Final
4 Proposal, with the language that Attorney Wiesner handed
5 out, and then was modified slightly?

6 I see nodding heads. Commissioner
7 Scott.

8 COMMISSIONER SCOTT: If you need a
9 motion, I'll make it.

10 CHAIRMAN HONIGBERG: I will take one.

11 COMMISSIONER SCOTT: So moved.

12 CHAIRMAN HONIGBERG: Is there a second?

13 VICE CHAIRMAN BURACK: Second.

14 CHAIRMAN HONIGBERG: Commissioner Burack
15 seconds. Is there any further discussion?

16 (No verbal response)

17 CHAIRMAN HONIGBERG: All in favor say
18 "aye"?

19 *[Multiple members indicating "ayes".]*

20 CHAIRMAN HONIGBERG: Any opposed?

21 COMMISSIONER BAILEY: Aye. I am opposed
22 to the language as written. I am not opposed to the
23 concept.

24 CHAIRMAN HONIGBERG: Okay. The "ayes"

1 have it.

2 Mr. Wiesner, where should we go next?

3 MR. WIESNER: Well, we should go back.

4 It was so encouraging that we were that far along, but --
5 and there were a couple comments also submitted by
6 Dr. Ward, which I think we should consider. And, the
7 first one appears in I believe it's 301.03(f)(5). And,
8 you may find that on Page 5.

9 CHAIRMAN HONIGBERG: Okay. What's the
10 site again?

11 MR. WIESNER: I'm sorry. 301.03 [(f)]
12 (5), on Page 5 of the Draft Final Proposal. This is where
13 the applicant for an electric generation facility is
14 required to submit "Copy of its system impact study report
15 for the interconnection of the facility as prepared by the
16 ISO or the interconnected utility". Dr. Ward believes
17 that language should be included here that also covers
18 "the effects on the ISO system of temporal synchronization
19 of wind turbine operations". So, it's similar to the
20 concern that we just addressed in the "public interest"
21 context.

22 CHAIRMAN HONIGBERG: Commissioner
23 Burack.

24 VICE CHAIRMAN BURACK: Just want to make

1 sure I got the term right. "Temporal synchronization", is
2 that the term you used?

3 MR. WIESNER: Yes. And, I believe the
4 issue that Dr. Ward is going to is the fact that there may
5 be a number of wind turbines situated in a general region,
6 and that, if the wind is blowing strongly at a particular
7 point in time, particularly during an off-peak period,
8 that that may have an adverse effect on system reliability
9 or on operation of the ISO system at that time.

10 VICE CHAIRMAN BURACK: I guess I would
11 just have a question for those who know the ISO processes
12 far greater than I do, which is, would that not -- that
13 kind of issue not be part of an interconnection study or
14 analysis in any event?

15 CHAIRMAN HONIGBERG: Commissioner
16 Bailey.

17 COMMISSIONER BAILEY: I don't know the
18 answer to that. Does Attorney Iacopino, by any chance,
19 know the answer to that?

20 MR. IACOPINO: I think that is part of
21 what is generally contained in system reliability studies
22 that we receive regarding ISO. I also know that ISO has a
23 project, an ongoing project regarding intermittent sources
24 of energy, and has been -- or, at least in much of the

1 materials, they talk about how they are working them all
2 into the system in a successful manner.

3 CHAIRMAN HONIGBERG: Off the record.

4 *[Brief off-the-record discussion*
5 *ensued.]*

6 CHAIRMAN HONIGBERG: Commissioner Scott.

7 COMMISSIONER SCOTT: I think I have the
8 same comment I did on the last suggestion. I think it's
9 of value, it is -- I agree it is something to be looked
10 at. But my understanding is ISO does look at these things
11 already. So, I don't feel a need to include it. I
12 believe it's already there.

13 So, with all due respect to the comment,
14 I think it's -- we've already covered it.

15 CHAIRMAN HONIGBERG: Commissioner
16 Bailey.

17 COMMISSIONER BAILEY: I agree. And, I
18 think that it would be better to leave this determination
19 to the ISO experts, rather than to us laypeople, who
20 probably don't even understand the term.

21 CHAIRMAN HONIGBERG: Attorney Wiesner,
22 where should we go next?

23 MR. WIESNER: Okay. So, if the answer
24 is "no" on that, the next comment -- the next comment is

1 in (h)(4), which appears on Page 6. And, this is the
2 documentation that the notification was -- of the
3 application was given to the requisite municipalities.
4 And, Dr. Ward would add language referring to "and any
5 adjacent communities".

6 And, I would just note that, in the last
7 session, we approved language that would include notice of
8 the information sessions being sent to the towns and other
9 communities that I think we're now going to include within
10 a definition to be called "affected communities", which
11 includes those communities which are being studied as part
12 of the application process.

13 CHAIRMAN HONIGBERG: Did we actually do
14 that? Did we close the loop on that definition yet?

15 MR. WIESNER: I'm not sure we closed the
16 loop on the exact language. We had some proposals, as the
17 Chair invited, from folks in the room. And, if we want to
18 take that up, we can do that?

19 CHAIRMAN HONIGBERG: Well, maybe we
20 don't need to do that. Let's talk about the wisdom and
21 desirability of requiring that the application be sent to
22 more than just -- to towns other than the towns where the
23 project is going to be located.

24 MR. WIESNER: Right. Because this is

1 not now notice of an information session, this is a copy
2 of the full-blown application, which will be posted on the
3 website here. And, it's probably available, upon request,
4 from the applicant. So, the question would be, whether a
5 copy of that entire documentation, and they can be
6 voluminous, excuse me, should be provided to each of those
7 other towns?

8 CHAIRMAN HONIGBERG: Commissioner
9 Burack.

10 VICE CHAIRMAN BURACK: Mr. Chairman, I
11 think there's an importance here of transparency, and
12 certainly notification. I could see providing written
13 notification to the -- I'm not sure what the right term
14 is, whether it's "adjacent" or "abutting municipalities",
15 but I don't see the necessity of providing a copy of the
16 complete application to each of those communities. I
17 think notice that the application has been filed, and
18 information as to where a copy of the application can be
19 reviewed, including online, I think that would be
20 sufficient for such purposes.

21 CHAIRMAN HONIGBERG: Other thoughts or
22 comments? Commissioner Bailey.

23 COMMISSIONER BAILEY: Can we just make
24 it "notification to the affected communities", and, as you

1 suggested, that the application can be -- is available
2 online and can be found at wherever? And, does that work,
3 Mr. Wiesner?

4 MR. WIESNER: Only that, at the time
5 when the application is submitted here, the notice must
6 have been given to those communities, and it won't be
7 possible to provide a link, because that website may not
8 have been established yet, because the application
9 wouldn't have been filed. But it will be.

10 VICE CHAIRMAN BURACK: Well, presumably,
11 parties could be told that "there will be a link
12 established through the Site Evaluation Committee
13 website" --

14 MR. WIESNER: Upon filing that --

15 VICE CHRMN. BURACK: -- "upon filing".
16 I would think that would be sufficient for these kinds of
17 purposes.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I know that in my
20 office we have found that, particularly in the northern
21 sections of New Hampshire, online services are not what
22 they are in other parts of the state. And, so, I would
23 favor sort of splitting this down the middle, and perhaps
24 noting that "if requested, paper copies of the application

1 would be available to communities", for, in particular,
2 those situations. And, then, the community could
3 determine where to make that available to the public.

4 CHAIRMAN HONIGBERG: Attorney Iacopino,
5 would it be your expectation that applicants, on request,
6 would provide paper copies to municipalities that
7 requested it?

8 MR. IACOPINO: That's generally been my
9 experience, is the applicants in this state have been very
10 cooperative with municipalities, when requested. I've had
11 numerous opportunities to request counsel for an applicant
12 to provide either a copy of an application or some other
13 document to a municipality, and they have always been
14 compliant and very polite about it.

15 CHAIRMAN HONIGBERG: So, it seems like
16 we found the answer. Whether the language is necessarily
17 right there, I don't know. But the idea is the applicant
18 is going to let the affected communities know that there's
19 a filing. And, then, at some point, it will go up on the
20 Web. But, if a municipality wants a copy, they can ask.

21 Attorney Iacopino.

22 MR. IACOPINO: And, one short-term fix
23 for that might be to, in the notice to the communities
24 that do not actually host the facility, they could put a

1 notice that "a copy of that filing is available at the
2 host community's town offices", or "library", or whatever
3 there is. So, you know, --

4 CHAIRMAN HONIGBERG: It's out there. I
5 don't want to spend a lot of time wordsmithing this. We
6 get that concept in writing. And, is everybody all right
7 with that?

8 *[Multiple members nodding in the*
9 *affirmative.]*

10 CHAIRMAN HONIGBERG: All right. Sounds
11 good. Tell me we're going forward.

12 MR. WIESNER: We are. We are. So, now,
13 I'm looking at Page 7, and -- yes, it is Page 7. And,
14 this is Section 301.04(a)(4). This is the section
15 regarding the "applicant's technical, managerial, and
16 financial capability". And, in this Subsection (a)(4),
17 the Various Energy Companies wanted clarified that "the
18 applicant's explanation of how its financing plan compares
19 with financing plans for other energy facilities" that
20 we've now said "should be similar in size and type", that
21 the comparison that needs to be performed is with the
22 applicant's -- or, I would say "its affiliates' own
23 financing plans". And, the concern here is that there may
24 be a similar project, with its own financing plan. But,

1 if it's owned by a non-affiliated company, that may not be
2 publicly available, and the applicant would not be able to
3 provide information to support the comparison, because
4 that financing plan was proprietary to the developer of
5 that non-affiliated project.

6 CHAIRMAN HONIGBERG: Commissioner Scott,
7 followed by Commissioner Burack.

8 COMMISSIONER SCOTT: I think that's a
9 valid point. Obviously, we can't force anybody to produce
10 something that's not available to them. So, perhaps, as a
11 suggestion, would be, right now the wording is "An
12 explanation of how applicant's financing plan compares
13 with financing plans employed", etcetera, "by other
14 facilities". Maybe change that and add "how the
15 applicant's financing plan compared with publicly
16 available", those would be the new words, "financing plans
17 employed for energy facilities." So, that still may be a
18 little bit of a hurdle, but at least it sets the
19 expectation that we're only looking for things that are in
20 the public domain.

21 CHAIRMAN HONIGBERG: Before I call on
22 you, Commissioner Burack, Commissioner Scott, would you be
23 willing to add "their own or publicly available"? "Their
24 own or their affiliates"?

1 COMMISSIONER SCOTT: I think so. I
2 guess the question would be, are we then compelling -- I
3 guess I'm okay with that. I was going to say -- I am
4 saying now. Is there an issue with forcing an applicant
5 to now disclose financing plans that are not public in
6 another location? Is that a concern?

7 VICE CHAIRMAN BURACK: Mr. Chairman?

8 CHAIRMAN HONIGBERG: Commissioner
9 Burack.

10 VICE CHAIRMAN BURACK: I think, if we
11 were to hear those kinds of concerns from an applicant,
12 they could certainly assert a "confidential business
13 information" with respect that kind of information, or
14 they could assert such a claim, and, if necessary, the
15 Committee could take those issues up in a closed session,
16 consistent with the provisions of RSA 91-A.

17 Here's my sort of "bigger picture"
18 thought on this whole issue, is that this is application
19 material, so that the Committee can get a general
20 understanding and sense of how are they planning to pay
21 for this project? How are they going to finance it? And,
22 how does it compare with the way at least this particular
23 applicant has done similar projects?

24 I believe it's the case, that any one of

1 these types of proceedings, if the Committee significant
2 questions or concerns about the financing aspects of a
3 project, the Committee certainly has it within its
4 authority, and the Counsel for the Public could also
5 request that an expert be hired to do further evaluation
6 on behalf of the Committee, to be able to more fully
7 explore these kinds of issues.

8 So, I'm concerned that we don't get
9 ourselves too tied up in the details of asking for a whole
10 lot of information from the applicant up front on this, in
11 terms of how it compares with other projects. If it looks
12 like there may be issues, the Committee certainly has the
13 ability and the authority to dig more deeply.

14 And, I don't know, Attorney Iacopino,
15 whether you're aware of -- can think of any circumstances
16 where the Committee has done that, actually brought in
17 outside experts?

18 I certainly recall, in the case of the
19 Burgess Power facility in Berlin, the Committee spent
20 significant time looking at the financing package for that
21 project. And, these kinds of issues certainly came up in
22 some depth.

23 MR. IACOPINO: Confidential -- motions
24 for confidentiality were also granted in the original

1 Granite Reliable Project, when it was originally proffered
2 by Noble -- by Noble. And, we heard some extensive *in*
3 *camera* testimony and evidence with respect to the
4 financial, technical, and managerial capability of that
5 particular company at the time.

6 CHAIRMAN HONIGBERG: Off the record.

7 *[Brief off-the-record discussion*
8 *ensued.]*

9 MR. IACOPINO: What I was saying is that
10 we also had a similar circumstance in the original Granite
11 Reliable docket, when the project was first presented by
12 Noble, Noble Energy, I believe it was.

13 VICE CHAIRMAN BURACK: And, if I may,
14 Attorney Iacopino, are you aware of any circumstances in
15 which the Committee has found it necessary to bring in an
16 additional outside technical expert to look at whether
17 it's financial or technical or managerial expertise of an
18 applicant?

19 MR. IACOPINO: The Committee has not
20 done that on its own. It has done that in conjunction
21 with Counsel for the Public. It has authorized Counsel
22 for the Public, in at least two dockets that I can think
23 of, to bring in financing people, to investigate and
24 determine whether or not the particular applicant had

1 enough financial and managerial capability.

2 VICE CHAIRMAN BURACK: Thank you.

3 CHAIRMAN HONIGBERG: So, I think
4 Commissioner Burack would be inclined to agree with the
5 commenters regarding the submissions. I think
6 Commissioner Scott would take us in a different direction.
7 We need to hear from some others about what direction
8 we're going to take this section. Whether it's less, to
9 invite further inquiry, or more, to provide more
10 information up front, about the comparison of this
11 financing versus others?

12 Ah, we've stumped the band.
13 Commissioner Bailey.

14 COMMISSIONER BAILEY: I think that the
15 rule should say "their own". And, maybe we should have
16 another rule that says "if it's", you know, "an applicant
17 who has never financed a project like this before, then
18 they have to hire an expert" or something, or they "agree
19 to hire an expert" or something like that. Or, they
20 understand that, if they can't comply with this rule,
21 we're going to hire an expert, possibly, to evaluate the
22 financial competence.

23 VICE CHAIRMAN BURACK: Mr. Chairman, may
24 I suggest a friendly amendment to that? Might it be that

1 they would provide a comparison based upon their own
2 projects. And, if they don't have any similar projects of
3 their own, that then they would provide information,
4 publicly available information on one or more comparable
5 projects, could that work?

6 COMMISSIONER BAILEY: Well, I think that
7 could work, if there were publicly available information
8 on one or more comparable projects. But I think what
9 we're struggling with is when there isn't information
10 available and this is an applicant's first time. And,
11 so, --

12 CHAIRMAN HONIGBERG: Well, ultimately,
13 there's a component of the evaluation that the company
14 prove that it is able to do this, and financing is part of
15 that.

16 VICE CHAIRMAN BURACK: Right.

17 CHAIRMAN HONIGBERG: They're going to
18 have to come forward with proof of that. So, I don't
19 think we need to -- I don't think we need to remind them
20 that they need to prove it. It's in here already. So,
21 they're going to need to satisfy the SEC that they can, in
22 fact, carry this off, with appropriate financing,
23 appropriate technical, managerial expertise, *etcetera*.

24 I don't -- the purpose of this

1 provision, as I understood it, wasn't to get into whether
2 this one's going to work. It's "how does this compare to
3 others?" And, maybe that will tell us something about how
4 it would work. Maybe it won't. But it's to compare it to
5 "similar".

6 And, it's okay. I mean, I could be okay
7 with Commissioner Burack's suggestion, you know, similar
8 to what the Companies', I think, comments were. That, you
9 know, "let us file ours, or our affiliates", I think
10 Mr. Wiesner added, "similar financing plans, descriptions
11 of those, and how this one compares." It's going to lead
12 to further inquiry, and they're going to have to prove
13 that their capable of carrying it off. That would work
14 for me.

15 Commissioner Bailey.

16 COMMISSIONER BAILEY: And, if they don't
17 have any of their own or affiliates' comparable projects
18 to compare, how do they comply with this rule?

19 CHAIRMAN HONIGBERG: They would say
20 "there are none."

21 COMMISSIONER BAILEY: Okay. And, we
22 would consider -- could we consider that complete,
23 Attorney Iacopino?

24 MR. IACOPINO: Yes. If they're

1 asserting a fact that "there are no comparable plans",
2 they have, assuming that that's the language that you use,
3 are "your own or publicly available", an answer such as
4 "we have no prior projects similar to this, and we are
5 unable to identify any publicly available documents for a
6 similar size project", yes. That would answer the
7 question that is being sought in the application process.

8 CHAIRMAN HONIGBERG: Director Muzzey.

9 MR. IACOPINO: "There is no
10 information", basically.

11 CHAIRMAN HONIGBERG: Oh, sorry.
12 Director Muzzey.

13 DIRECTOR MUZZEY: I would agree that
14 including both "their own and publicly available" is the
15 right way to go with this. We don't want to have a
16 chilling effect on a company, if it's its first time
17 before the Site Evaluation Committee. And, I think that
18 strikes a good balance for that.

19 CHAIRMAN HONIGBERG: Commissioner
20 Burack.

21 VICE CHAIRMAN BURACK: May I just
22 inquire? Would the understanding be that the "publicly
23 available" requirement only applies if they don't have an
24 example of their own to proffer?

1 DIRECTOR MUZZEY: That's fine as well.

2 VICE CHAIRMAN BURACK: Thank you.

3 CHAIRMAN HONIGBERG: Is everyone all
4 right with Commissioner Burack's formulation of this?

5 *[Multiple members nodding in the*
6 *affirmative.]*

7 CHAIRMAN HONIGBERG: I see nodding
8 heads. We have consensus. You? You're all right? Even
9 Commissioner Scott, who wanted to take this in the other
10 direction, is okay with that.

11 MR. WIESNER: So, we are including
12 "publicly available", as an alternative, if the applicant
13 does not have a track record?

14 CHAIRMAN HONIGBERG: "Applicant or its
15 affiliates", yes.

16 MR. WIESNER: Okay. Okay. And, I
17 guess, in some cases, the publicly available financing
18 plans may be those of regulated utilities, who have
19 ratepayer support. And, arguably, that's not directly
20 comparable to a private developer's financing plan. But
21 that would be a subject of litigation, I suppose?

22 CHAIRMAN HONIGBERG: Yes. I would hope
23 that would not be the subject of litigation. But it might
24 be a need for an explanation.

1 MR. WIESNER: Well put. So, if we're
2 ready to move on, the next comment is in Subsection
3 (b)(2). And, this is -- Dr. Ward is proposing, when we're
4 speaking of the "description of the experience and
5 qualifications of contractors", that, in addition, that
6 there be added a description of the "technical models used
7 by the applicant".

8 And, he has some very specific language
9 that he would propose to include here. "A complete
10 description, including limitations and tolerances, of any
11 technical models used to justify their application, or
12 used as substitutes for actual measurements of the
13 expected meteorological effects of the facility, on its
14 visual impact, noise generation and broadcast, shadow
15 flicker, and icing and throw-off, and the meteorological
16 and topographical data used in such models."

17 CHAIRMAN HONIGBERG: Attorney Iacopino
18 walked out of the room. I was going to ask him a
19 question.

20 VICE CHAIRMAN BURACK: Yes. Mr.
21 Chairman, my initial reaction to this is that this is a
22 level of technical detail that, historically, our process
23 has dealt with through the -- really, through what we
24 might call the "discovery phase", in which the parties

1 will spend substantial amounts of time, possibly, but
2 certainly some time, with each other, with their experts,
3 guided by counsel for the Committee, in the past, and, in
4 the future, perhaps also by the administrator of the
5 Committee, to look at those kinds of detailed issues, and
6 to give each other's experts the chance to understand and
7 explore those as necessary.

8 I don't think that that's a level of
9 detail that -- well, that we've had in applications in the
10 past. And, I don't think it's necessary to have that
11 level of detail going forward at the actual application
12 phase itself. As I say, I think that's more appropriately
13 reserved for the -- or, taken up in the discovery phase.

14 But it would be helpful to hear Attorney
15 Iacopino's -- just to hear from him, in terms of what the
16 Committee's experience has been with that level of detail
17 and when, typically, it is taken up, and how.

18 CHAIRMAN HONIGBERG: All right. Let's
19 set this one aside for a few moments, until Attorney
20 Iacopino returns.

21 And, Attorney Wiesner, where would we go
22 next?

23 MR. WIESNER: Next, we would move onto
24 the "aesthetics" section, which is 301.05. And, this, I

1 believe, is on Page 8. This is (b)(4). So, this is
2 301.05(b)(4), on Page 8. And, this is where we're
3 describing the requirements for the visibility analysis,
4 the visual impact assessment analysis. The AMC would
5 propose that we add language, it would say "A
6 computer-based visibility analysis", and then the new
7 language would be "based on best publicly-available
8 topographic and land cover data to determine the area and
9 magnitude of potential visual impact".

10 VICE CHAIRMAN BURACK: Attorney Wiesner,
11 is this language in the letter from the AMC?

12 MR. WIESNER: Yes.

13 VICE CHAIRMAN BURACK: Thank you.

14 (Short pause.)

15 VICE CHAIRMAN BURACK: Mr. Chairman?

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: Again, this may
19 be an issue in which it would be helpful to have some
20 input from Attorney Iacopino with respect to his
21 experience across the large number of projects he's seen
22 come through the Committee on this.

23 I think the challenge in this arena is
24 that "the best publicly-available topographic and land

1 cover data" may not actually be the best available data.
2 That is, it's very possible that an applicant will have,
3 for example, flown the area affected by a project quite
4 recently and have better and more up-to-date information
5 than is, in fact, "publicly available".

6 I will also point out that the State of
7 New Hampshire is in the process, and has partly completed,
8 a so-called, and this is referenced, I believe, in the AMC
9 letter, a LIDAR-based mapping of the entire state.

10 That's, if I'm recalling the acronym correctly, "Light
11 Image Detecting and Radar", which allows for a very -- a
12 high resolution, I believe, somewhere between probably in
13 the plus or minus 6-inch range for elevations, it may be
14 even down to as little as 2 inches or so, but please don't
15 hold me to the details on that. Again, those data are
16 going to be developed for more and more parts of the
17 state, but it may be several more years before 100 percent
18 of the state is mapped in that manner.

19 But, again, we do come back to the
20 question of "whether the publicly available data for
21 certain areas may not actually be as good as what the
22 applicant itself may have?" And, I -- can we address --
23 can we turn Attorney Iacopino's attention to this? Are
24 you with us here, at 301.05?

1 MR. IACOPINO: I'm sorry. I had to step
2 out, got a call from the Superior Court.

3 CHAIRMAN HONIGBERG: We noticed you had
4 stepped out.

5 MR. IACOPINO: I'm sorry.

6 VICE CHAIRMAN BURACK: We're in
7 301.05(b)(4). And, the question is whether or not "best
8 available" -- "best publicly-available topographic and
9 land cover data" would, in all instances, actually be the
10 best data? That is, could there be circumstances where a
11 private party actually has -- has more recent and possibly
12 more detailed information than is publicly available?
13 And, have we seen that in our processes?

14 MR. IACOPINO: We -- I can't recall any
15 time that we've actually had a comparison in a case
16 between what is publicly available and what research has
17 been done by an applicant. However, it obviously stands
18 to reason that more recent surveys are likely to be more
19 accurate than something that's been in the public domain
20 for a period of time. But I don't know, Commissioner,
21 that we've actually had any dockets in which we've
22 actually had an occasion to compare which was better up to
23 this point.

24 Up to this point, there's been no rules

1 concerning what is contained in a visual impact
2 assessment. And, therefore, it really hasn't -- the issue
3 that you raise really hasn't presented itself to the
4 Committee, as far as my recollection goes.

5 I do imagine that, with, you know,
6 aerial surveillance, drones, and things like that, the
7 ability to survey land will be more accessible to
8 applicants as we move through the future.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: I would think that
11 this concept would apply to a number of different parts of
12 the application. We would have the expectation that an
13 applicant will be using the most up-to-date mapping to
14 consider not only aesthetic resources, but also natural
15 resources, other aspects of the environment, historical
16 resources as well.

17 So, I think that has been the
18 Committee's expectation that the applicant uses the most
19 up-to-date information available. And, for me, the
20 question is whether or not we need to include a general
21 statement, perhaps earlier in the format of the
22 application, that notes "the applicant will use the most
23 up-to-date mapping for all aspects of analysis".

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: I mean, I could
3 certainly be comfortable with something to that effect.
4 I'm guessing, and I'm only guessing here, that a reason
5 why some might want to see "publicly-available" datasets
6 used is so that people actually have the chance to see and
7 can accept the validity of that underlying dataset, as
8 compared with the most up-to-date dataset that would --
9 may have been developed by the applicant itself and,
10 therefore, would not generally be publicly available.

11 I'm not sure how -- exactly how we best
12 deal with that, with that concern, other than perhaps to
13 indicate that we expect them to "use the most up-to-date
14 information". And, to the extent that that information is
15 different from publicly-available information, to describe
16 the difference between the information that they are --
17 that they're relying upon and the most recent
18 publicly-available information for that area in question.

19 CHAIRMAN HONIGBERG: Commissioner Scott.

20 COMMISSIONER SCOTT: My suggestion is,
21 we change "best publicly-available" to perhaps "best
22 reasonable available". I think another aspect of the
23 suggested language "publicly-available" was that, for
24 instance, in the case of a competitor, doing the latest

1 analysis wants a million dollars for it, I'm exaggerating,
2 I hope, we're not going to compel that the applicant would
3 have to buy that data.

4 And, so, that's my suggestion for
5 perhaps a compromise language.

6 CHAIRMAN HONIGBERG: I'm not sure any
7 change needs to be made to this at all. I think that
8 applicants are incentivized to give -- to provide the best
9 available information that they have. Because, if they do
10 a poor job of it, it's going to be pointed out by people
11 who have an interest in doing so. I think mandating that
12 someone "do the best job they can" in rules is not really
13 necessary in this day and age. I think applicants do
14 themselves a disservice if they choose not to.

15 I think the concern might be that they
16 had used great information for things that made them look
17 good and poor information for things that made them look
18 bad. And, I believe that those who are opposed to
19 whatever projects will apply quite a large amount of
20 resources to identifying the flaws in what applicants do,
21 and I think applicants will get caught, if they try to
22 play around with trying to give the best here and not the
23 best there. I think they are encouraged to do their best
24 regardless of the situation. And, I think putting it in

1 rules is not going to be productive. But, if the will of
2 the Committee is to do so, let's get it -- let's figure
3 out what to say and get it done quickly.

4 VICE CHAIRMAN BURACK: Mr. Chairman, I'm
5 inclined to agree with you on that. That we don't need to
6 have this level of specificity here. I think that it's
7 going to be pretty obvious to the applicants what they
8 need to do, and they are incentivized to do the best job
9 they can with it. And, know that whatever they present,
10 they're going to be subject to a lot of examination and
11 cross-examination on it, and they have a duty to do their
12 best at the outset.

13 CHAIRMAN HONIGBERG: Anyone have any
14 different or other thoughts on this?

15 (No verbal response)

16 CHAIRMAN HONIGBERG: Seeing none, the
17 second aspect of what the AMC and the others proposed in
18 this one phrase is the addition -- adding the words "and
19 magnitude" before "of potential visual impact". And, I've
20 read that, and I've read the explanation. It's not
21 entirely clear to me what this would be directing the
22 applicants to do that they aren't already going to do in
23 their visual impact assessment.

24 Attorney Wiesner, do you have any

1 thoughts on that?

2 MR. WIESNER: Honestly, no. And, the
3 rest of the section, of this subsection, really defines
4 what the area would be. It doesn't necessarily speak to
5 the magnitude of the impacts. But I think that is the
6 general purpose of the study, in the first instance.

7 CHAIRMAN HONIGBERG: I mean, the
8 explanation that the AMC provided says that "The visual
9 impact assessment should include not only the area from
10 which the facility would be visible, but also the
11 magnitude of the impact in different areas (i.e., the
12 number of wind turbines or electric transmission towers
13 that would be visible)." And, that's the end of the
14 quote.

15 Director Muzzey.

16 DIRECTOR MUZZEY: I find the term
17 "magnitude" a little difficult to define in this
18 situation. But I believe that what the letter writer is
19 getting at is also covered under Section (c) below. Where
20 the potential visual impacts are discussed, and
21 particularly (c), under Section (6). So, I would -- my
22 thought is that "magnitude" is not needed here.

23 CHAIRMAN HONIGBERG: Does anyone have
24 any different or further thoughts on this?

1 (No verbal response)

2 CHAIRMAN HONIGBERG: All right. Seeing
3 none.

4 MR. WIESNER: And, the next comment,
5 also in this section, is an AMC comment, which is also
6 supported by Nancy Watson, which is that the area of
7 potential visual impact for "wind energy systems shall
8 extend to a minimum of a 10-mile radius", rather than
9 merely saying "a 10-mile radius".

10 And, I'll just note that there's also a
11 comment from, I believe, from Mr. Miller that proposes
12 that the "10 miles" instead be "20 miles".

13 CHAIRMAN HONIGBERG: Commissioner Scott.

14 COMMISSIONER SCOTT: It's not clear to
15 me why this is necessary. When we put in rules you have
16 to "extend to 10 miles", we're not saying "you can't
17 exceed that." We're saying you have to do "at least to
18 10 miles". So, I think it's a distinction without a
19 difference here, perhaps.

20 CHAIRMAN HONIGBERG: At the same time,
21 if we did add in the "minimum", 10 miles would comply.
22 So, I'm not sure that it would really change anything,
23 although it would alert applicants to at least thinking
24 about whether it might make sense to do more than 10 in a

1 particular circumstance. But I don't feel strongly about
2 it.

3 Anybody want to -- anybody want to add
4 "minimum of"? I don't think -- Commissioner Burack.

5 VICE CHAIRMAN BURACK: I think it would
6 be helpful to say "a minimum". It may be that the project
7 simply do that. But I think it would clearly indicate
8 that, if they have a reason to believe that it's going to
9 be visible from greater distances, that they're at least
10 getting the message that it may be helpful -- that it
11 would be helpful to provide that, that kind of analysis up
12 front, rather than waiting to get the questions later as
13 to what it really looks like, and having to -- having to
14 do that additional work at a later time.

15 CHAIRMAN HONIGBERG: Other thoughts or
16 comments? Is there -- are people okay with adding it?

17 *[Multiple members nodding in the*
18 *affirmative.]*

19 CHAIRMAN HONIGBERG: All right. We're
20 good. We'll add "a minimum of".

21 MR. WIESNER: AMC is also proposing that
22 the radius, to define the area -- excuse me -- area of
23 potential impact for all transmission lines be extended to
24 "10 miles". So, as it currently reads, we have sort of a

1 gradated system that is based on where the line will be
2 located. So, only a half mile if it's in an urbanized
3 area, a mile if it's in an urban cluster, *etcetera*. AMC
4 is proposing that it be "10 miles" for all such projects,
5 regardless of where they're located, and regardless of
6 whether it's a new or existing transmission corridor.

7 CHAIRMAN HONIGBERG: This feels like
8 something we discussed at some length when we settled on
9 the language as it currently reads. Am I remembering that
10 correctly?

11 MR. WIESNER: I believe there was
12 discussion about the scope of the area for transmission
13 projects. I'm not sure whether "10 miles" was
14 specifically addressed at that time.

15 CHAIRMAN HONIGBERG: Director Muzzey.

16 DIRECTOR MUZZEY: My memory is that we
17 were talking about the meaning of things such as "urban
18 area" and that type of definition. And, that has been
19 remedied with using the U.S. Census Bureau definitions. I
20 don't know that we talked about the actual mileage.

21 CHAIRMAN HONIGBERG: Okay. Any
22 thoughts, comments, on changing from what we have right
23 now, which is essentially a sliding scale, depending on
24 where you are, to what I think is essentially a "10-mile

1 zone" period, always got to be 10 miles? Attorney
2 Weathersby.

3 MS. WEATHERSBY: I'm just thinking of
4 perhaps a different approach. Because the AMC and other
5 groups' rationale for this is the increasing height of
6 towers. And, I'm wondering if we wanted to come up with a
7 formula that the distance is somehow relative to the
8 height of the tower? Do the math, but, you know, a
9 1,000 -- a 100 times the height or, you know, some
10 relationship to the height of the tower, because that
11 would determine how far it could be -- could very well
12 determine how far it could be seen.

13 CHAIRMAN HONIGBERG: Director Muzzey.

14 DIRECTOR MUZZEY: I also find that, as
15 written, this is very specific, and perhaps seeing it on
16 the ground, it will be difficult to see the difference in
17 gradations that are laid out here. I would prefer a more
18 simplified way to determine the area of potential visual
19 effect. I'm not certain what that is, but this seems
20 overly detailed.

21 CHAIRMAN HONIGBERG: Mr. Wiesner, it
22 feels like it's been forever, but what -- do you remember
23 the rationale for the differing distances, depending on
24 where -- how concentrated the population was in an area?

1 MR. WIESNER: Well, I believe there was
2 a sense that, if you're in a highly developed area, that
3 it would have less visual impact, because there's a lot of
4 other visual clutter, if you will. So, in a city, it's
5 not likely to have the same impact, regardless of the
6 height. Although, I'm not sure we discussed that in any
7 detail in the prior meetings.

8 Whereas, if you're in a more undeveloped
9 area, and particularly if you're in a new corridor, a
10 greenfield site, if you will, that the visual impacts
11 would be much greater, and should be analyzed out to a
12 further distance. But I'm not sure there's any
13 particular -- whether a half mile is exactly the right
14 amount, or whether that might be expressed in terms of a
15 ratio versus tower height, I know -- I don't think we got
16 into great detail as to that in prior meetings.

17 I would just note that it is possible, I
18 believe, in certain projects, that you may have a variety
19 of tower heights. And, in fact, in a given area, you may
20 have towers of different heights in close proximity. And,
21 I suppose you could say that the tallest of those will
22 serve as the basis for determining the radius that should
23 apply.

24 But, which ones are visible from which

1 vantage points, and they may have differing heights in
2 close proximity, that gets fairly complicated as well.

3 CHAIRMAN HONIGBERG: Commissioner
4 Burack.

5 VICE CHAIRMAN BURACK: Mr. Chairman,
6 just one other factor I think to consider. And, I don't
7 think this is a matter just of heights of towers or size
8 of towers or things like that. There is, those of us who
9 spend time in the mountains and like to hike and look out
10 at vistas, will know that, if you look out and you see a
11 swath that's been cut, that does have a very real impact
12 to the eyes for sure. And, so, it's -- the towers may not
13 be tall, but, if the swath is wide enough and long enough,
14 it is definitely noticeable as an aspect of the landscape.
15 And, so, I'd be hesitant to devise a formula based solely
16 upon a height of towers. I think there are other factors
17 that have to be -- that would have to be considered as
18 well.

19 I think what we're really hearing is, in
20 the case of these larger transmission lines, what people
21 are particularly concerned about is probably that kind
22 of -- that kind of impact on a vista from greater
23 distances, from the mountainsides, looking out into the
24 valleys, or from valleys, looking up at mountainsides,

1 where a swath has been cut. And, I can see an argument
2 that 5 miles, looking across a valley, doesn't really get
3 you very far.

4 I don't -- I don't know whether there's
5 a way to hone this, so that, in the instance where there
6 are longer vistas, that you would do an evaluation out to
7 a greater distance. Maybe that's a way for us to address
8 the concerns here.

9 CHAIRMAN HONIGBERG: Commissioner
10 Bailey.

11 COMMISSIONER BAILEY: Just thinking
12 about what you just said, if we changed (e) from "5 miles"
13 to "10 miles", and left everything else the same, that
14 would probably cover the mountain vistas, I think, because
15 that's all rural areas, where there isn't as much "visual
16 clutter", as Mr. Wiesner coined the phrase.

17 CHAIRMAN HONIGBERG: Director Muzzey.

18 DIRECTOR MUZZEY: Part of my questions
19 with this section is that, for New Hampshire, I'm not sure
20 where our urbanized areas are versus our urban clusters
21 versus our rural areas. And, I know that we did ask that
22 this section be divided in that manner. But it would be,
23 for my way of thinking, it would be helpful to know that,
24 and we would have some sense of how this would unfold in

1 New Hampshire.

2 Lacking that, another possibility is to
3 consider just two categories, one being "urban" and one
4 being "rural".

5 CHAIRMAN HONIGBERG: Attorney Iacopino.

6 MR. IACOPINO: Yes. In order to answer
7 Director Muzzey's question about "how we determine", those
8 determinations have already been made by the Census
9 Bureau. And, you can go to their documentation, it's
10 online, and it will tell you where those urbanized areas
11 are.

12 As for the balance is a policy issue for
13 the Committee.

14 DIRECTOR MUZZEY: I'm on there now.
15 It's a little tough to weed through it.

16 CHAIRMAN HONIGBERG: Mr. Oldenburg.

17 MR. OLDENBURG: I might be a little bit
18 quicker. An "urbanized area" is 50,000 people or more; an
19 "urban cluster" is 2,500 to 50,000 people.

20 CHAIRMAN HONIGBERG: Is there a -- over
21 a particular area? Does it have to be concentrated in any
22 way?

23 MR. OLDENBURG: Yes. That -- there is a
24 list of all the urbanized area by community that you would

1 have to weed through to find New Hampshire communities,
2 but there is a list nationwide.

3 MR. IACOPINO: So, for instance,
4 Manchester is on that list as being an "urbanized area", I
5 believe. I haven't looked at the list, but --

6 CHAIRMAN HONIGBERG: You would think so.
7 If there were going to be one in this state, you would
8 think that would be a place to start.

9 MR. IACOPINO: But the point is that
10 there is a list of what fits within those definitions.

11 DIRECTOR MUZZEY: Thank you.

12 CHAIRMAN HONIGBERG: Director Muzzey.

13 DIRECTOR MUZZEY: Thank you. That's
14 very helpful. Because the vast majority of towns in New
15 Hampshire are less than 25,000 people. So, outside of
16 those areas of 25 or more thousand, we know we're talking
17 about "rural".

18 CHAIRMAN HONIGBERG: All right. We're
19 going to need to take a break, or Mr. Patnaude's machine
20 is going to explode, as will his fingers.

21 We're going to come back at ten minutes
22 of. When we come back, we're going to try and wrap up
23 this aspect of the discussion. And, we are then going to
24 bounce back to what we would have discussed had

1 Mr. Iacopino not gotten his phone call a few minutes ago,
2 having to do with Section which, Mr. Wiesner? Help me out
3 here.

4 MR. WIESNER: Oh, the use of "technical
5 models", and Dr. Ward's comment regarding a detailed
6 description of the technical models used by the applicant,
7 and whether or not that is a type of information which is
8 generally explored through discovery in litigated
9 proceedings before the Committee, or whether it's
10 appropriate to include that as an application
11 requirement.

12 CHAIRMAN HONIGBERG: Right. It's
13 Section 301.04(b)(2). All right.

14 So, we will break and be back at five
15 minutes to two.

16 (Recess taken at 1:44 p.m. and the
17 meeting reconvened at 2:01 p.m.)

18 CHAIRMAN HONIGBERG: All right. We're
19 going to learn all about "urbanized areas" and "urban
20 clusters" right now. Mr. Wiesner.

21 MR. WIESNER: Well, over the break I did
22 have a chance to look at the Census Bureau Report, based
23 on the 2010 Census. And, there's a specific report for
24 New Hampshire. And, it does designate which are deemed to

1 be "urbanized areas" and "urban clusters". And, the list
2 is quite extensive, and somewhat surprising, in terms of
3 what's included where. But, for example, Dover/Rochester
4 is an "urbanized area", which also includes part of Maine.
5 But it includes the City of Dover, the Central Village
6 District of Durham, if I'm interpreting this correctly,
7 and similar areas of Milton, Rochester, and Somerworth.
8 And, there are also urbanized areas for Manchester,
9 Nashua, and Portsmouth. "Urban clusters" include Berlin,
10 Charlestown, Claremont, Concord, Epping, Farmington,
11 Franklin. It is quite an extensive list. And, in fact,
12 according to other information in this report, it appears
13 that the urban population of New Hampshire, as they deem
14 it "urbanized areas" and "urbanized clusters", is
15 "793,872", which is more than half of the state.

16 CHAIRMAN HONIGBERG: I know, when I'm in
17 Littleton, I think "urban".

18 (Laughter.)

19 COMMISSIONER BAILEY: Mr. Chairman?

20 CHAIRMAN HONIGBERG: Commissioner
21 Bailey.

22 COMMISSIONER BAILEY: I don't find that
23 surprising, because I think that, you know, most of the
24 population lives south of Concord. And, that part of the

1 state really is kind of "urbanized". So, the fact that
2 more than 50 percent of the population is in an urbanized
3 area, I don't find that surprising.

4 CHAIRMAN HONIGBERG: But, if you were to
5 look at the geographic area that is covered by these, I
6 think as you intimated, Commissioner Bailey, it actually
7 is a fairly small geographic area that we're talking
8 about. Large swaths of this state are not covered in
9 these urbanized areas or urban clusters. It's really --
10 it's because that's where people live.

11 COMMISSIONER BAILEY: Right.
12 Mr. Oldenburg was showing me a map of urbanized -- urban
13 and urbanized clusters. And, there are spots throughout
14 the state that are urbanized clusters. And, the only
15 urban area is the southwest portion of the state, right?

16 MR. OLDENBURG: Concord south and east.

17 CHAIRMAN HONIGBERG: All right. So,
18 what does all that mean, for purposes of how far away the
19 visual impact assessments should go from transmission
20 projects of more than one mile, because I think that's the
21 question before the house?

22 COMMISSIONER BAILEY: I think what it
23 means is, if we want to make the visual impact analysis
24 greater in rural areas, then we only need to change number

1 (4)(e). And, we've defined "urbanized" and "urban" in
2 (f). And, it seems -- it seems that most of the geography
3 of the state is in a rural area.

4 So, the question is, whether we want to
5 extend the "5-mile radius" to a greater number. And, I
6 don't really have a position on that.

7 CHAIRMAN HONIGBERG: Director Muzzey
8 does, I think.

9 DIRECTOR MUZZEY: Well, I would add
10 that, under (d), we're also looking at rural areas, but
11 they are when it "follows an existing transportation
12 [transmission?] corridor".

13 COMMISSIONER BAILEY: Agree.

14 CHAIRMAN HONIGBERG: Commissioner
15 Burack.

16 VICE CHAIRMAN BURACK: Just a query on
17 (d). Whether or not "following an existing transmission
18 corridor" means that you are staying within that corridor
19 or you're using that corridor, but also widening for
20 increasing, for example, the height of a tower? There may
21 be circumstances where it's -- there's no significant
22 change to the existing corridor. And, so, a wider -- a
23 greater distance may not be appropriate. But there could
24 be times where changes -- you're using an existing

1 corridor, but you're also making modifications to it, such
2 that it would be helpful to understand what the impact --
3 visual impact is from a greater distance.

4 DIRECTOR MUZZEY: And, we also know
5 there are some corridors or rights-of-way that are not
6 currently being used. And, so, my question with (d) is,
7 in those cases as well, where you may have no transmission
8 structures in a corridor, because it's not currently being
9 used, but then it could -- the appearance could change
10 dramatically.

11 I would like to suggest that, to begin a
12 discussion, that in -- under (d) and (e), we extend that
13 to "10 miles".

14 CHAIRMAN HONIGBERG: So, all rural areas
15 would be "10 miles". So, (d) and (e) would really be
16 collapsed into one section, is that what you're saying?

17 DIRECTOR MUZZEY: Yes. That's my
18 section.

19 CHAIRMAN HONIGBERG: Mr. Oldenburg.

20 MR. OLDENBURG: I don't know if this
21 complicates it or if it isn't an issue. But what happens
22 if you go from the corridor --

23 *[Court reporter interruption.]*

24 MR. OLDENBURG: What happens if you go

1 from a corridor that's in a rural area, to an urban
2 cluster, to a urban area? Does the criteria change or is
3 there one set criteria? Where you use 10 miles for
4 everything? Or, is it going to be 10 miles, and then 3
5 miles, and a half mile, depending on where you are along
6 that corridor?

7 It seems like that would be very
8 complicated to figure out.

9 CHAIRMAN HONIGBERG: Attorney Iacopino,
10 you have any thoughts on how one would do that?

11 MR. IACOPINO: Generally, these visual
12 impact assessments that we receive begin with a computer
13 model. Sort of has all these concentric circles that go
14 out to a certain amount of mileage from the proposed
15 facility.

16 I am not positive, but I believe that
17 that could be done along the route addressing the
18 different requirement. It may just be simpler for that
19 consultant for an applicant to do the whole thing based on
20 a "rural", if you choose to make the rural the widest
21 radius. It may be that it's just simpler for them to do a
22 10 miles around the entire linear project. But I think
23 that they probably do have the capacity to do a separate
24 set of concentric circles for each area of the thing.

1 And, I mean, I guess Mr. Hawk may have
2 seen this in planning in his field as well, that these
3 visual impact assessments, they can be based on different
4 centers, if you will.

5 CHAIRMAN HONIGBERG: And, any visual
6 impact analysis of a very long project is going to have
7 many, many simulations in it from different places. "This
8 is what it looks like in Plymouth. This is what it looks
9 like in Epping. This is what it looks like in Concord."
10 They're all going to be different. And, it may be that
11 there's different distances simulated, based on whether
12 they are rural areas, urbanized area, or urban clusters.

13 MR. IACOPINO: Yes. But the visual
14 impact assessments generally start with a computerized
15 model that, which I guess we're going to get to in a
16 minute, too, but a computerized model that brings into
17 view what's in there, and then they go to the places where
18 they would do the photosimulations from. And, there will
19 be many of them on any corridor that's lengthy, of course.

20 CHAIRMAN HONIGBERG: Director Muzzey has
21 suggested that all of the rural be "10", that (d) and (e)
22 get collapsed and it be "10 miles". Commissioner Bailey.

23 COMMISSIONER BAILEY: Could we modify
24 (d) to say "Electric transmission lines longer than one

1 mile shall extend to a 3-mile radius if located within a
2 rural area where the line follows an existing transmission
3 corridor which is currently in use and will not be
4 widened", or something like that. So that, you know, if
5 the swath is there, everybody is used to that visual
6 impact. It's not going to change by this new facility.
7 So, I think that's different, and I think we should
8 recognize that that's different than a greenfield project.

9 CHAIRMAN HONIGBERG: Commissioner Rose.

10 COMMISSIONER ROSE: I was just going to
11 state that I think that seems very reasonable to me.

12 CHAIRMAN HONIGBERG: Attorney
13 Weathersby.

14 MS. WEATHERSBY: I think that would be
15 fine, as long as the tower size isn't increasing. If the
16 towers are going up another 100 feet, that would change
17 the visual impact. So, I would add that.

18 CHAIRMAN HONIGBERG: Commissioner
19 Bailey.

20 COMMISSIONER BAILEY: I think that the
21 width of the corridor depends on the height of the tower,
22 I think. So, if the towers were increased -- so, that's
23 why I tied it to "if the width of the corridor doesn't
24 change". I'm not 100 percent -- yes, maybe we could

1 verify that on the next break.

2 Do you know that, Mr. Wiesner?

3 MR. WIESNER: I do believe that there's
4 a relationship between the height of the tower and the
5 width of the corridor. And, if larger -- taller towers
6 were being installed, it may be necessary in some cases to
7 expand the width of the right-of-way. But it would depend
8 on the circumstances.

9 COMMISSIONER BAILEY: Right. Right.
10 But, if they're expanding the width, then that would
11 change the visual impact, I think, in a rural area. We're
12 not talking about in an urban area.

13 DIRECTOR MUZZEY: Probably at this point
14 in our rules deliberations it may be simpler just to
15 specify both, because we don't know what changing
16 technologies will bring in the future either. But, I
17 mean, those are the two factors that seem to bring visual
18 change. So, I don't see any harm in referencing them
19 both.

20 CHAIRMAN HONIGBERG: I'm sorry,
21 "referencing them both", referring to both tower height
22 and corridor width?

23 DIRECTOR MUZZEY: Yes. I would say -- I
24 would say "tower size", in general, because we know

1 sometimes there are the single poles, and then sometimes
2 there are more lattice towers, that type of thing.

3 CHAIRMAN HONIGBERG: Keeping in mind
4 that "simple is good" often, what do we want to do with
5 this? Let's bring this to a resolution.

6 MR. WIESNER: Before we do that, I am
7 remiss. I should have noted that the Various Energy
8 Companies are also proposing changes to this section,
9 which would simplify it. What they have proposed is that,
10 in (c), that "2 miles" would become "1 mile", for a radius
11 within an urban cluster. And, in (d), "3 miles" would
12 become "2 miles" within a rural area. And, in their view,
13 that would be within any rural area, whether or not it's a
14 new or existing transmission corridor, and, therefore,
15 they would delete (e). I apologize for --

16 CHAIRMAN HONIGBERG: Does anyone -- does
17 anyone want to champion that proposal from the Various
18 Energy Companies?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: Didn't think so.
21 What are we going to do with the situation that we have
22 right now, with (d) and (e) having separate, do we want to
23 maintain that, yes or no?

24 COMMISSIONER BAILEY: Yes.

1 MS. WEATHERSBY: Yes.

2 CHAIRMAN HONIGBERG: Is that a
3 consensus?

4 DIRECTOR MUZZEY: With the changes
5 suggested by each member.

6 CHAIRMAN HONIGBERG: All right. And,
7 so, the changes that, in (d), it's if the -- if the height
8 of the towers is changing or the width of the towers or
9 the width of the corridor. So, any of those three, if
10 it's getting bigger, then it's how long? Ten?

11 VICE CHAIRMAN BURACK: Yes.

12 CHAIRMAN HONIGBERG: And, if it's not
13 changing, if none of those things are changing, it's 3,
14 right?

15 COMMISSIONER BAILEY: So, do people
16 really think that, if the width of the corridor doesn't
17 change in a rural area, but the towers get a little
18 taller, from 10 miles away you're going to see that
19 distinction? I mean, it's the cutting of the trees that
20 is what you see. It's not necessarily the height of the
21 tower. And, if the tower has to be so high that it's
22 really going to impact something, they're going to have to
23 cut more trees down.

24 I don't think we should tie it to the

1 height of the tower.

2 CHAIRMAN HONIGBERG: Director Muzzey.

3 DIRECTOR MUZZEY: Again, it's difficult
4 to talk about these concepts in general. You know, a
5 tower being a little higher, what does that mean, versus a
6 tower being a lot higher, and that type of thing. If it's
7 true that a higher tower, a sizeably higher tower is going
8 to increase the corridor width, then I think referencing
9 them both is not a problem, because one will equal the
10 other.

11 CHAIRMAN HONIGBERG: Commissioner Bailey
12 is hypothesizing a very wide corridor, wider than would be
13 necessary today, with transmission towers that are a
14 particular height, but that could accommodate much, much
15 higher towers. And, I think what she's saying is, even if
16 you put higher towers there, from 10 miles away, it's not
17 going to look any different. Am I right, Commissioner
18 Bailey? That's what you're hypothesizing, right?

19 COMMISSIONER BAILEY: Yes. That's
20 correct. And, so, if you put both in, then they always
21 have to do a 10-mile study, even if there really isn't a
22 difference, in a rural area, to the visual impact, because
23 they haven't had to make the corridor any wider.

24 CHAIRMAN HONIGBERG: So, how would it be

1 worded? So, your change in (d) then would be that they
2 could do the shorter distance analysis, if the width of
3 the corridor is not changing, right?

4 COMMISSIONER BAILEY: And, it's
5 currently being used.

6 CHAIRMAN HONIGBERG: That's what I mean.
7 Currently in use, and the corridor width is not changing?

8 COMMISSIONER BAILEY: Correct.

9 CHAIRMAN HONIGBERG: Let's put it to a
10 vote. Let's bring this to a close. Do we need --
11 Director Muzzey's proposal is that "in use, height not
12 changing, width not changing". Commissioner Bailey's is
13 "in use, width not changing". Is there -- are there any
14 other options there?

15 (No verbal response)

16 CHAIRMAN HONIGBERG: Okay. I didn't
17 think so. Who would support Director Muzzey's
18 formulation, raise your hand?

19 *[Show of hands by members.]*

20 CHAIRMAN HONIGBERG: Who would support
21 Commissioner Bailey's formulation?

22 *[Show of hands by members.]*

23 CHAIRMAN HONIGBERG: Oh, excellent. I'm
24 the tie-breaker. I'm going to go with Director Muzzey's

1 formulation of it.

2 And, so, (e) currently has "5 miles".
3 What should (e) say? Ten miles? I see at least one, I
4 see two nodding heads, I see more nodding heads. All
5 right. (e) becomes "10 miles".

6 All right. Attorney Wiesner, how messed
7 up are we right now?

8 MR. WIESNER: I just want to clarify.
9 So, it's 10 miles, if it's in a rural area, and it's
10 either a new corridor or an existing corridor, in which
11 the height of the towers or the width of the right-of-way
12 will be increased?

13 CHAIRMAN HONIGBERG: I think that's
14 right.

15 VICE CHAIRMAN BURACK: That's right.

16 MR. WIESNER: Excuse me. That covers
17 the comments that we have on that section. And, this may
18 now be an appropriate opportunity to once again go
19 backwards and discuss the "technical models" issue with
20 Attorney Iacopino's input.

21 CHAIRMAN HONIGBERG: Attorney Iacopino,
22 has anybody briefed you up about the discussion that took
23 place while you were not in the room?

24 MR. IACOPINO: No. But I assume -- No,

1 but I assume that it involves the request from a commenter
2 to include, essentially, the formulas used when an
3 applicant provides a visual impact assessment or a
4 windrows demonstration showing the wind -- the prevailing
5 winds. And, we've run into this on a number of occasions.

6 CHAIRMAN HONIGBERG: But, just to be
7 clear, I think it is probably broader than that. It's "a
8 description of the experience and qualifications of any
9 contractors or consultants who are providing technical
10 support", and then a request that they provide a lot of
11 information about their modeling and how they have done
12 their work to provide the support that they have been
13 providing.

14 So, assume it is quite a broad proposal.
15 Now proceed.

16 MR. IACOPINO: Okay. We generally
17 receive reports from applicants' and intervenors' experts,
18 Counsel for the Public experts, that rely on the use of
19 technical models. They generally always include an
20 extensive description of their own qualifications to
21 perform the type of analysis being performed. They are
22 generally very detailed in the analysis that they
23 undertake.

24 However, they often rely on technical

1 models, such as windPRO, or other models that are -- or,
2 computer programs, which they are, which they buy, and
3 have algorithms or programming that is the intellectual
4 property of the manufacturer of the program. We have had
5 requests at times to provide details about the algorithms
6 or program that underlies the model. And, the response
7 has been "This is what the windPRO" -- I'm using windPRO,
8 for example, it's the first one that pops into my head,
9 "This is what windPRO provides to us. We can't, for
10 instance, give you the code, because that's protected
11 property. So, I can't tell you exactly what windPRO did
12 in doing the formula."

13 And, I believe that, in fact, those are,
14 indeed, protected intellectual property, which, if it's
15 required that an applicant, or another party who is
16 presenting the opposite side, has to present that type of
17 information, we will run into a roadblock where it cannot
18 be presented, because of that ownership of that property.

19 So, that's informational as to what I've
20 run into in the past with respect to these particular
21 questions. Now, what happens sometimes, though, is that
22 there are competing products out there. And, I'll give
23 you, in one case, a frequent intervenor, Lisa Linowes, was
24 able to point out, during the course of cross-examination

1 of a witness, some of the recognized limitations on a
2 particular program that's used. It was a sound monitoring
3 type of a program, that she got out of the literature.

4 So, it's not as though these "technical
5 models", as they're referred to, are unassailable. It
6 just may take some effort on an expert's part to go into
7 the literature and find out "well, what is this particular
8 product useful for? What's it not useful for? What
9 weaknesses or strengths has it demonstrated in the
10 literature that surrounds that -- whatever the particular
11 expertise is?"

12 So, informationally, that's what I can
13 tell you. I think, to require the guts, if you will, or
14 the code of a program would probably put a stop to the
15 ability of the proponent of that particular program to
16 provide that information.

17 CHAIRMAN HONIGBERG: Does anyone have
18 any questions, comments? Yes, Commissioner Burack.

19 VICE CHAIRMAN BURACK: Thank you,
20 Attorney Iacopino. I think that's very helpful. I think
21 the context in which this question has arisen specifically
22 is a request that we include a requirement as part of the
23 application package itself that all of the technical
24 qualifications of all of the experts be provided, and that

1 various technical details about the basis for their
2 opinions be provided in the application itself.

3 And, I think what would be helpful for
4 us to understand is, historically, what level of detail of
5 that kind have we seen in applications? How much
6 typically has been there? And, how much comes out through
7 the discovery phase of the process? And, ultimately, I
8 think that the question is, of what comes out through the
9 discovery phase, to what extent is that information
10 available to the general public that has an interest in
11 the project? Or, is the only way to make that information
12 available to the general public to be able to have it
13 included in the application?

14 Can you speak to those points?

15 MR. IACOPINO: I think that, generally,
16 those requirements of the application that come with such
17 studies, that they would generally have received a fairly
18 detailed technical analysis of whatever the ultimate issue
19 is. In many cases, that technical analysis relies, in
20 part, or, in some cases, more than others, on the
21 application of a particular piece of software or some kind
22 of a product that's purchased. In those cases, we
23 generally receive a -- essentially, what the manufacturer
24 of that product has described their product as, and has

1 put out to the public as to what their product is based
2 on. I think that applicants and other parties have been
3 pretty good at providing that information.

4 I think that provides a suitable shelf,
5 if you will, to start off from, for discovery to take
6 place. But I do think that, ultimately, you wind up in
7 that position where, depending upon what level of detail
8 you're looking for from the manufacturer, it could stymie
9 the process. So, --

10 VICE CHAIRMAN BURACK: If I may, let me
11 stop you there. I want to take you out of the context of
12 an application in terms of a computer software package.

13 MR. IACOPINO: Sure.

14 VICE CHRMN. BURACK: What I was
15 referring to was the application that gets filed with the
16 Site Evaluation Committee. How much detail, in terms of
17 the experts' opinions, the experts' reports, is actually
18 part of that application itself? And, how much is -- are
19 materials that actually are brought forward during the
20 discovery phase of the proceeding? Why don't we start
21 there.

22 MR. IACOPINO: At the very least, in
23 almost every application, because we require the prefiled
24 testimony of the applicant's -- excuse me -- witnesses to

1 be filed with the application, there is some substantial
2 detail of what they're relying on. And, oftentimes,
3 because we have some very defined areas that we always
4 see, there's a full report. And, that report becomes the
5 subject of criticism or support throughout the proceeding.
6 Those reports are generally very detailed. And, they
7 generally include a visual impact assessment a sound
8 assessment, and -- well, those are the two that jump right
9 out at me. Of course, there are the engineering reports
10 that we often see with stability that go through ISO. But
11 those reports are very detailed, in my experience. And,
12 they get filed with the application, in most cases,
13 because they are the subject of the testimony of the
14 applicant's witnesses.

15 VICE CHAIRMAN BURACK: And, if I may, as
16 the discovery process proceeds, what has been the practice
17 of the SEC, in terms of making available, through the
18 SEC's website, for example, or as part of the public file
19 that can be reviewed by members of the public? What has
20 been our practice, in terms of including copies of other
21 reports as they are developed or modifications of existing
22 reports? Are those available or not to folks who were not
23 actually intervenors in the proceeding?

24 MR. IACOPINO: Anything that is filed

1 with the Committee is available in the public file.
2 Whether it makes it onto the website or not is going to
3 depend upon when it came in and how it came in. For
4 instance, I know of certain instances where something was
5 offered as an exhibit at a hearing, and it didn't make it
6 onto the website, at least prior to a decision coming out
7 in the case.

8 However, most of the material that is
9 filed does get -- does get -- it's all publicly available,
10 because it's in the file. Most of it is, in fact, cited
11 to on the website, either with a copy there or, in some
12 instances, it's been very voluminous and there's been
13 some -- a link to a place that's off of the website where
14 it can be reviewed.

15 VICE CHAIRMAN BURACK: Thank you.
16 That's very helpful.

17 CHAIRMAN HONIGBERG: Other questions or
18 comments regarding this proposal? Does anyone believe
19 that it would be a good idea to increase the requirements
20 in the manner suggested by Dr. Ward?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: I'm not seeing any
23 takers. All right. Let's move on.

24 MR. WIESNER: We're now moving back to

1 "Aesthetics", 301.05 (b)(6). And, this is on -- this is
2 on Page 8. (b)(6), there's a comment from the AMC in the
3 lead-in paragraph, which begins with "Characterization".
4 And, they are proposing that, in the second line, where it
5 says "on identified scenic resources", after "scenic
6 resources" it would say "and a representative sample of
7 private properties". So, this once again is referring to
8 the visual impact assessment, and it's "characterization
9 of potential visual impacts of the facility, and of any
10 plume, on identified scenic resources and a representative
11 sample of private properties", as proposed by AMC,
12 Audubon, and the Forest Society.

13 CHAIRMAN HONIGBERG: My immediate
14 reaction is the Office of Legislative Services might not
15 like "a representative sample". I'm not exactly sure how
16 to interpret that, who would make that decision. That
17 strikes me as a fuzzy concept for Legislative Services in
18 their consideration of rules. But, substantively, I get
19 the idea.

20 What are people's thoughts on that?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: Seems like no one
23 has any thoughts on that. Does anyone want to make an
24 argument that we should include something about including

1 "private properties" in some way, in addition to the
2 "identified scenic resources"? Director Muzzey.

3 DIRECTOR MUZZEY: I will note that, in
4 the following section, number (7), for the photosims, the
5 rules as they currently read do ask for "a sample of
6 private property observation points" as well. And, so,
7 the commenter is noting that it would be consistent to
8 include a "sample of private properties" in both (6) and
9 (7).

10 I do see differences between (6) and
11 (7). And, so, I'm not certain that that consistency is
12 needed. But that is their logic there.

13 CHAIRMAN HONIGBERG: Now, I note that,
14 in (7), it just says "a sample of private property
15 observation points", the "representative" word is not
16 there.

17 VICE CHAIRMAN BURACK: And, there's also
18 a limitation of "to the extent feasible", in (7).

19 CHAIRMAN HONIGBERG: Yes. Right.
20 Uh-huh. And, (7) is a subset, because it only refers to
21 those where there is a "high" impact, after the analysis
22 done in (6).

23 DIRECTOR MUZZEY: Given those
24 differences between (6) and (7), I'm comfortable with

1 leaving the language as is.

2 CHAIRMAN HONIGBERG: Does anybody want
3 to take a different view?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: Seeing none, let's
6 move on.

7 MR. WIESNER: Next, we have a
8 substantial number of comments with respect to (b)(7),
9 which is the "photosimulation" section. And, commenters
10 are covering quite a bit of ground here. For example, the
11 section we were just referring to, the "sample of private
12 property observation points", EDP and Eolian would propose
13 that that be deleted. And, the Various Energy Companies
14 have, further down in that paragraph, proposed that, and
15 other commenters have made this suggestion as well, that
16 the language that refers to "representing the equivalent
17 of what would be taken with a 75 millimeter focal length
18 lens", that that reference also be deleted. And, then,
19 Eolian has also proposed that there not be a requirement
20 that "simulations of winter season conditions be
21 required", primarily on a timing concern, I believe, with
22 the assumption that that would require photos to be taken
23 during the winter season to support the simulations, and
24 then that might delay an applicant in filing its

1 application.

2 There's some specific and fairly
3 extensive language changes proposed by the Blocks and New
4 Hampshire Wind Watch and Windaction. And, if you have
5 those comments handy, it's probably best to just look at
6 what they're proposed language is in particular, because
7 they would add on, that they would revise much of the text
8 of this paragraph. And, in addition, they would add some
9 additional requirements, identifying the conditions and
10 location of the photos that were used to produce the
11 photosimulations.

12 CHAIRMAN HONIGBERG: Can we deal with
13 the "winter season" issue first?

14 MR. WIESNER: It probably makes sense to
15 deal with this issue-by-issue. And, as I said, we have
16 the "winter season", and we have the "sample of private
17 property observation points", it's probably easiest to
18 deal with those as discrete issues, before we get into the
19 meat of the technical requirements.

20 CHAIRMAN HONIGBERG: How far in advance
21 does a project developer have to be planning to make -- to
22 put a project like this together do you think,
23 Mr. Iacopino? How many months do you think? Two? Five?

24 MR. IACOPINO: Years.

1 CHAIRMAN HONIGBERG: Years, right?

2 MR. IACOPINO: Yes.

3 CHAIRMAN HONIGBERG: How many winters
4 pass over years? Roughly the same number of winters as
5 years, right?

6 MR. IACOPINO: Probably.

7 CHAIRMAN HONIGBERG: All right. Does
8 anyone want to make the change suggested by Eolian in this
9 regard?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: I didn't think so.
12 I may be more sympathetic to some of the other proposals
13 that have been made.

14 VICE CHAIRMAN BURACK: Mr. Chairman, may
15 I just ask a question of Attorney Iacopino? Would I be
16 correct in assuming that, if a party felt that a condition
17 of an application were such that it was unreasonable, that
18 they could request a waiver from that particular
19 application requirement?

20 MR. IACOPINO: I believe that, if you
21 pass the rules as they're before you, there is a provision
22 for a waiver of the rules.

23 CHAIRMAN HONIGBERG: Thank you. Thank
24 you for that clarification as well, Commissioner Burack.

1 VICE CHAIRMAN BURACK: Thank you.

2 CHAIRMAN HONIGBERG: Let's talk about
3 private property for a moment. There's a feasibility
4 limitation in the rule as it appears in our Final Draft
5 Proposal. Some of the developers would like the
6 requirement removed entirely. What are people's thoughts?

7 Commissioner Scott.

8 COMMISSIONER SCOTT: I think the
9 language we have now is sufficient. "The extent feasible"
10 I think protects from an unreasonable outcome or not being
11 able to do the impossible. So, my view is to keep the
12 language as currently proposed.

13 CHAIRMAN HONIGBERG: Anyone have a
14 different or other thought on this? Commissioner Bailey.

15 COMMISSIONER BAILEY: I just wanted to
16 hear why that was put in initially? Do Attorney Iacopino
17 or Attorney Wiesner remember what the intent there was?
18 Because, if you do it from one person's private property,
19 and there really isn't a visual impact. If you don't do
20 it from somebody whose there really is a visual impact,
21 what good is it?

22 MR. WIESNER: I mean, in the absence of
23 this, the only scenic resources -- the only
24 photosimulations that would be provided would be those

1 from publicly accessible sites. And, so, the thought, I
2 think, is that, and it's not exactly clear what the sample
3 is or what the standard would be for proposing that
4 sample, but that there may be high visual impacts on
5 particular private property. For example, in the Antrim
6 case, I believe that was an issue. And, that that might
7 not be captured if there were not photosimulations
8 provided for those type of private property locations.

9 CHAIRMAN HONIGBERG: And, this only
10 applies in areas where there has already been determined
11 to be a high impact. But, yes, Commissioner Bailey.

12 COMMISSIONER BAILEY: But there could be
13 a high impact on a public resource, and somebody's private
14 property, they may consider it a high impact, and it may
15 very well be a high impact. But I think that the way this
16 is written it leaves it up to the applicant, and it's
17 somewhat subjective, to decide whether it's a high visual
18 impact on somebody's private property. And, furthermore,
19 if you say "to the extent feasible from a sample of
20 private property observation points", the applicant is
21 going to pick the one that has the least impact, I would
22 think.

23 So, I don't -- I'm not advocating that
24 we should make it more stringent, but I'm not sure that

1 we're going to get any information from this rule that's
2 going to be valuable.

3 CHAIRMAN HONIGBERG: Attorney
4 Weathersby.

5 MS. WEATHERSBY: I think, to address
6 Commissioner Bailey's concern, we might want to add the
7 word "representative". So, it would be a "representative
8 sample".

9 COMMISSIONER BAILEY: But I would -- I
10 would think "representative sample" would mean, if there
11 are five homes within the radius of the visual impact
12 study, you know, "statistically representative" might be
13 two. And, I'd pick the two -- as the applicant, I'd pick
14 the two that had the least impact visually.

15 So, you know, I think that people who
16 have, maybe, you know, people who have, who are absolutely
17 convinced that there's a big visual impact to their
18 property, and they want us to see that, maybe we should
19 make a rule that says, you know, "we can require the
20 applicant to go out and do a visual impact analysis on
21 that property" or something like that. But, to pick any
22 random property or, you know, a sample of
23 "representative", unless you define what "representative"
24 is, I'm not sure we're going to get what we're looking for

1 their either. So, --

2 CHAIRMAN HONIGBERG: Director Muzzey.

3 DIRECTOR MUZZEY: I do think any visual
4 impact analysis will clearly lay out what high, low, and
5 medium, if that's the three that we're looking at, high,
6 medium, and low visual impacts are. And, so, I think
7 there will be a known quantity of what -- a quantity and a
8 quality of what a high impact is. And, that will be
9 determined by the consultant who's preparing the analysis,
10 rather than the applicant, and so we can be assured of
11 some objectivity there. We ask for "representative key
12 observation points" for scenic resources. We're leaving
13 it to the applicant at that point or the applicant's
14 consultant to determine where those representative key
15 observation points are. And, I would think, for
16 consistency sake, we would depend on the applicant or the
17 applicant's consultant at this point to do the same with
18 these private property observation points as well.

19 We heard a great number of comments from
20 the general public to include this type of "sampling" or
21 "representative" points in the visual analysis, and that's
22 why the language exists there today. I think it's
23 important to keep it in.

24 But I can understand your concern

1 completely, that this is left in the hands of the
2 applicant or the consultant to choose those points. But
3 I'm not sure there's a different alternative within the
4 study that's being asked for at this point in the
5 application.

6 CHAIRMAN HONIGBERG: Commissioner
7 Burack.

8 VICE CHAIRMAN BURACK: Just trying to
9 understand how these photosimulations are actually
10 prepared. That is, would the consultant who's preparing
11 the photosimulation actually have to go onto the private
12 property that is the subject that's to be included here in
13 the sampling, in order to be able to prepare the
14 photosimulation or not?

15 What's your understanding, Attorney
16 Iacopino, of how these are done?

17 MR. IACOPINO: Well, the way I read what
18 is before you, yes. The applicant's consultant or expert
19 would have to go on to private property, because it
20 requires a sample from private property observation
21 points. So, they would have to go on to it. So, I think
22 that what you would get is, obviously, the individuals who
23 own private property, who are on friendly terms with the
24 applicant, would be the sample of photographs that you

1 would get. And that, if there are people who are opposed
2 to the project and take a position "we're not letting you
3 on our property", you're not going to get any, any samples
4 from them. I don't know if that would be true in every
5 case, but that's just generally understanding the way
6 these things at least are working out in today's
7 environment, that's what I would expect.

8 So, yes. I think that you have to get
9 on to private property in order to meet this criteria and
10 make it part of your visual impact assessment.

11 VICE CHRMN. BURACK: Attorney Iacopino,
12 in the experience of the Committee, have we had situations
13 where an initial photosimulation was done, and then, in
14 the course of the proceeding, private property owners
15 said, you know, "we are concerned about what the impacts
16 might be", and have -- and invited or requested that the
17 applicant have their consultant go on to their property to
18 do that kind of assessment? Have we had that kind of
19 request in the past?

20 MR. IACOPINO: I believe that we have.
21 I also know that we have had other participants in the
22 proceedings bring in their own photographs of it that they
23 have taken, some of them very well done. You know, now,
24 obviously, they don't -- they have not -- actually, I

1 think one of them has actually put the -- done the actual
2 full simulation with the visual, using Photoshop, whatever
3 they used, to put the windmill in there. But, usually,
4 what we get is a picture of -- similar to what we just
5 received in the Merrimack Valley Project, somebody showing
6 what it looks like right now, and asking you to imagine
7 what another 85 foot -- feet of towers will be. I'm
8 sorry, it's not Merrimack Valley, it's the Northern Pass
9 Project I'm thinking of.

10 So, we do get -- we do get requests for
11 that to be done. I don't -- I don't recall how we've
12 resolved those requests. I can't imagine that, if the
13 landowner -- if, number one, the Committee thought it was
14 a real issue, and, number two, the landowner has requested
15 it, and the applicant has agreed, I can't imagine we
16 wouldn't allow it. And, I can't imagine that, if you
17 think it's a real issue, that you would hesitate to
18 require the applicant to do it.

19 VICE CHAIRMAN BURACK: Which was my
20 other question. That is, if the Committee felt this was
21 necessary, could the Committee not just request it, but
22 could the Committee effectively compel that this analysis
23 be done?

24 MR. IACOPINO: You could request that

1 the applicant do it. You could, if the applicant refused,
2 you could hire your own expert to do it. Whether you
3 could actually compel the applicant's consultant to do it,
4 I'm not quite sure. I mean, obviously, there could be
5 consequences, if they refuse to do it.

6 VICE CHAIRMAN BURACK: But what you're
7 saying is, there would be -- there would be options
8 available to the Committee, if necessary, hiring its own
9 consultant and charging that cost back to the applicant --

10 MR. IACOPINO: Yes.

11 VICE CHAIRMAN BURACK: -- to ensure that
12 the work was done?

13 MR. IACOPINO: Yes.

14 VICE CHAIRMAN BURACK: Thank you.

15 CHAIRMAN HONIGBERG: What do people want
16 to do? Leave it as it is, narrow or broader?
17 Commissioner Bailey.

18 COMMISSIONER BAILEY: I think we should
19 leave it as it is. I think we can fight about it when it
20 comes up. I also think that, if somebody is really
21 concerned about the effect on their property, they're not
22 going to prevent the applicant from coming and doing a
23 photosimulation to show us what it's actually going to do
24 to their property. So, it's a little bit different than

1 somebody who's totally opposed to the project and doesn't
2 want them on their property. I mean, you know, maybe they
3 will be worried that they're going to survey their land
4 and -- for other purposes. But, you know, we've had sound
5 studies done from private properties in certain points.

6 And, so, I think -- I think we should
7 leave it as is.

8 CHAIRMAN HONIGBERG: Does anyone have
9 any other or further thoughts on this?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: All right, seeing
12 none. Now, we need to talk about some of the technical
13 suggestions that have been made, is that right,
14 Mr. Wiesner?

15 MR. WIESNER: I just think it makes the
16 most sense to refer to the language that's been proposed
17 by the Blocks and New Hampshire Wind Watch and Windaction.
18 And, I mean, I could read it, but it probably would be
19 best for the Committee to have it handy.

20 CHAIRMAN HONIGBERG: Am I correct that
21 it is covered by a letter dated September 18th, 2015,
22 signed by the Blocks, Lori Lerner, and Lisa Linowes?

23 MR. WIESNER: That's correct. And, it
24 has photos included with it, which I believe are intended

1 to show the importance of photosimulations, and
2 orientation of wind turbines in those simulations. But
3 there's some very specific language proposed.

4 *[Short pause for the members to review*
5 *the provided comments.]*

6 MR. WIESNER: And, I will note that very
7 similar language is also proposed by AMC, Audubon, and
8 Forest Society, in their comments, again, with a focus on
9 high resolution and contrast of the simulations, and
10 requiring that the photos be taken during clear weather
11 conditions, and at a time of day that provides the best
12 clarity and contrast, avoiding, if possible, any
13 foreground clutter, such as power poles.

14 COMMISSIONER BAILEY: Mr. Chairman?

15 CHAIRMAN HONIGBERG: Commissioner
16 Bailey.

17 COMMISSIONER BAILEY: I really like the
18 addition in the first paragraph, the red, in the middle of
19 the paragraph that we were just discussing, that says "the
20 simulation shall be taken in high resolution under optimal
21 conditions with good, clear visibility using a full frame
22 digital camera with a 50 milliliter fixed" -- "millimeter
23 fixed focal length" and all that. That section I think is
24 a better, clearer description of what we would expect the

1 applicant to do.

2 And, it's sort of consistent with other
3 comments that we heard criticizing, you know, "take it
4 with a 50-millimeter lens and blow it up to 75 millimeter
5 length".

6 CHAIRMAN HONIGBERG: Simulate a zoom on
7 a simulation?

8 COMMISSIONER BAILEY: Yes. Because that
9 doesn't really give you, I guess, a clear -- a visual
10 impact from the cone of view. Is that right,
11 Mr. Oldenburg, I think? Or, Mr. Hawk, do you know about
12 these things?

13 MR. HAWK: Uh-huh.

14 COMMISSIONER BAILEY: So, I like that
15 language that's proposed in that part of the paragraph. I
16 think it's better for the applicant, actually, to know
17 what we want.

18 CHAIRMAN HONIGBERG: Commissioner
19 Burack.

20 VICE CHRMN. BURACK: I concur. And, I
21 would also note that, looking at the comments from the --
22 the collected comments from several of the utilities, they
23 also support removing the language relating to the "75
24 millimeter fixed length lens". So, there is actually some

1 agreement, it appears, amongst some of the parties on that
2 issue. But I certainly support that.

3 And, I would further say that the other
4 items that they're included there in red, again, not being
5 an expert in these matters, but just being one through
6 these rules seeking to ensure as much clarity as possible
7 and try to reduce the areas for dispute, in terms of
8 the -- that the nature of the materials that are put
9 before the Committee and looked at, I would think that
10 that kind of -- that those kinds of details would be
11 helpful, rather than -- rather than hurtful to the
12 process. But, again, I don't have detailed experience in
13 looking at these kind of simulations.

14 And, I don't know whether, Attorney
15 Iacopino, based on Committee experience with prior
16 proceedings, whether you can shed any light on whether
17 that kind of detail has been a subject of dispute or
18 controversy in the past?

19 MR. IACOPINO: You're specifically
20 referencing the (a) and (b)?

21 VICE CHAIRMAN BURACK: That's right.

22 MR. IACOPINO: I don't think that (a) is
23 probably the subject of any controversy at all, (a)(1)
24 through (4). I think there would be some dispute amongst

1 people about whether (b)(1) through (4) is the correct
2 manner in which to show turbines in these, in these
3 simulations. You know, I've heard people argue that all
4 the turbines should be fully faced, with blades showing,
5 with at least one up at, you know, at 12 o'clock. Versus
6 I've heard claims that, actually, if you get the side view
7 of the turbine, where you get the whole nacelle in there,
8 that that is a -- that that's a more obtrusive view. So,
9 you should have that.

10 So, I'm not so sure that (b)(1) through
11 (4) are the right analysis. But, again, I'm not an expert
12 in that. I've just heard the arguments.

13 Certainly, the simulations for (b)(1)
14 and (2) -- I'm sorry, (b)(2), "Turbines shall reasonably
15 represent the shape of the intended turbines for a project
16 including the correct hub height and rotor diameter", is
17 something that is easy for it to be included in the
18 application, and should not be the subject of any
19 controversy.

20 Whether the -- and, whether the turbines
21 are placed full frontal view or whether you get a sample
22 of different angles is something that I think is the
23 subject of disagreement amongst folks.

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: Thank you very
3 much. That's helpful. I guess what I might suggest is
4 that we might find a way of stating these requirements in
5 (b) as a minimum, and give applicants, obviously, they
6 could submit other things as well, but that we would
7 expect to see simulations at least meeting these
8 requirements. And, if they wish to show others, you know,
9 other situations, other angles, that could be done as
10 well.

11 CHAIRMAN HONIGBERG: Mr. Oldenburg.

12 MR. OLDENBURG: If I remember the
13 original discussion on the -- on not (a) and (b), but in
14 the above paragraph, about the "50 millimeter" and the "75
15 millimeter", we wanted the picture to represent what the
16 eye would see. So, we didn't want things that were zoomed
17 in or zoomed out. We wanted what the eye would see. And,
18 I think, not being an expert in this field, that the "50
19 millimeter" represents what a digital camera would see and
20 a "75 millimeter" represents what a 35 millimeter film
21 camera sees from the naked eye. There is a difference
22 between the two. That's what my memory is. That they
23 both, to get a real "what the eye sees" are two different
24 things, depending on the camera you use. I think that was

1 part of the distinction, if I remember right, why there
2 was a "50 millimeter digital" and a "75 millimeter"
3 setting for the 35 millimeter film. So, --

4 CHAIRMAN HONIGBERG: That may well have
5 been how the discussion went. I think it's fairly clear,
6 from the comments that we received, from both the
7 developer community and the community that is generally
8 opposed to wind, that the "75 millimeter" concept is
9 wrong. And, that it doesn't -- all of -- everyone wants
10 it removed.

11 MR. OLDENBURG: All right. So, film is
12 dead.

13 (Laughter.)

14 MR. WIESNER: I would agree that there
15 seems to be a consensus on that point. I'll also point
16 out that the AMC comments referred to a "focal length of
17 50 millimeters or digital equivalent that creates an angle
18 of view that closely matches human visual perception".
19 So, again, that's consistent with the view that what we're
20 trying to do here is replicate what would be seen by the
21 human eye.

22 CHAIRMAN HONIGBERG: I don't have a
23 problem with what Commissioner Burack floated a moment
24 ago. Even without saying it, it's already the situation

1 that, if you've been told to submit something, you can
2 always submit something more. As long as you submit what
3 you're directed to submit, you can always submit more.
4 So, I think that's -- that concept is fine. And, I do
5 think that that really does allow adoption of virtually
6 this entire proposal pretty much as it was written. Am I
7 missing something?

8 MR. WIESNER: Well, there are words here
9 "optimal conditions with good visibility", and I can
10 anticipate that Legislative Services will not like that
11 language. But we may be able to revise that in some way
12 that's a little bit clearer.

13 MR. IACOPINO: They may also have a
14 problem with "faithful match".

15 MR. WIESNER: Yes. "A reasonably
16 faithful match", yes. Correct.

17 CHAIRMAN HONIGBERG: True.

18 MR. WIESNER: But, again, I think we can
19 work with the concept and hopefully come up with some
20 language which is less objectionable from their point of
21 view.

22 CHAIRMAN HONIGBERG: Director Muzzey.

23 DIRECTOR MUZZEY: I would agree with
24 Commissioner Burack as well, with the change to (b). But

1 would also suggest that we add the AMC language, after "50
2 millimeters", "or digital equivalent that creates an angle
3 view most closely matching human visual perception". Just
4 because, certainly, in my office, we've seen photo
5 technology change incredibly rapidly, and we are
6 constantly updating our photo guidance. And, having that
7 type of explanation would help, if technology continues to
8 change at the pace it does.

9 CHAIRMAN HONIGBERG: Anyone have any --
10 anyone disagree with that?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: Any other further
13 comments or thoughts on this section?

14 (No verbal response)

15 CHAIRMAN HONIGBERG: Seeing none. Let's
16 go off the record for a second.

17 *[Brief off-the-record discussion*
18 *ensued.]*

19 CHAIRMAN HONIGBERG: Back on the record.
20 Attorney Wiesner, where would we go next?

21 MR. WIESNER: Well, before we move on, I
22 should note, and I wanted to focus on the Blocks' proposed
23 language before we consider these other comments, but
24 Nancy Watson believes that the Committee should also

1 require nighttime simulations, as well as daytime
2 simulations. And, Dr. Ward has commented with a proposal
3 that there should also be video simulations with "1,000
4 10-second sections, randomly selected by day and night,
5 sunny and cloudy, different weather conditions, and at
6 sunrise or sunset".

7 CHAIRMAN HONIGBERG: Thoughts or
8 comments on those two suggestions? Attorney Weathersby.

9 MS. WEATHERSBY: If the facility is
10 going to be lighted, I think there is some merit in having
11 the nighttime simulation.

12 CHAIRMAN HONIGBERG: Attorney Iacopino,
13 are towers like this required to be lighted when they are
14 on ridgelines above the normal elevation?

15 MR. IACOPINO: Yes. The Federal
16 Aviation Administration requires lighting. It's not
17 necessarily on every turbine, is my understanding. And,
18 my understanding is that the Federal Aviation
19 Administration is also considering allowing the use of
20 radar-activated lighting on these towers. So that -- so
21 that the lights only go on when there is air traffic in
22 the vicinity. I don't know what the present status of
23 that is. It's been in the works for a while. We have had
24 applicants agree that they would use that, once it's

1 available -- that radar-activated lighting, once it's
2 available. So, yes. Lighting is required.

3 CHAIRMAN HONIGBERG: Commissioner
4 Bailey.

5 COMMISSIONER BAILEY: I would like to
6 incent applicants to use radar-activated lighting. So,
7 maybe what we could do is make the rule that they "have to
8 do nighttime photosimulations, if they're not proposing to
9 use radar-activated lights."

10 CHAIRMAN HONIGBERG: Director Muzzey.

11 DIRECTOR MUZZEY: I would agree that
12 would be helpful. Although, having seen wind turbines
13 with nighttime lighting, particularly in very remote
14 areas, I'm not certain that a typical photograph would
15 capture the effect of that lighting. We would basically
16 have a very dark picture with a red light, and very little
17 else in the photo to place that light.

18 So, my question is, how to really do
19 this in a way that portrays what it will look like?

20 CHAIRMAN HONIGBERG: I see lots of
21 nodding heads on that one. Attorney Weathersby.

22 MS. WEATHERSBY: This section also
23 refers to more than just wind turbines. So, if there was
24 a larger generating station, you know, I think the

1 lighting around a bigger base facility could be important,
2 if it, you know, a nuclear plant is lit up at night or
3 things like that. So, it --

4 CHAIRMAN HONIGBERG: Do you know
5 something?

6 MS. WEATHERSBY: No. No. This is going
7 to last a long time, hopefully, for all this work.

8 CHAIRMAN HONIGBERG: That would be the
9 headline out of this meeting, I'll tell you that right
10 now.

11 Commissioner Scott.

12 COMMISSIONER SCOTT: My belief is that
13 the night lighting, compared to the highest contrast day
14 assessment, to me, the night lighting is a subset of that.
15 So, the worst case would be the high contrast day
16 assessment, I kind of agree with the comment Director
17 Muzzey was making. I'm not sure what a picture would
18 really -- what you would see. It's kind of lights in
19 darkness. I don't know what that really does in a visual
20 assessment that we're used to in the nighttime. So, I'm
21 not sure I see the value in that for the Committee.

22 And, I did have one comment on the
23 Block, if I could regress a little bit?

24 CHAIRMAN HONIGBERG: Regress away.

1 COMMISSIONER SCOTT: To the extent we're
2 going to adopt -- looking at adopting the Block language,
3 on their (b)(3), I suggest we would delete the words
4 "Adjustments may be required to prevent turbines from
5 being hidden behind landforms". I don't know what that
6 means. And, I don't know how you would do that. But, my
7 suggestion is, to the extent we adopt the rest of it, I
8 would delete that sentence.

9 CHAIRMAN HONIGBERG: Taking up that
10 regression, are people -- do people agree with
11 Commissioner Scott on that? Commissioner Burack.

12 VICE CHAIRMAN BURACK: Maybe I pretend
13 to understand more than I do, I'm not sure. But my
14 assumption was that that was a reference to the
15 possibility that there could be trees or other things in
16 the foreground between the point of view, looking out to
17 the tower, that would block a view of a portion of the
18 turbine blade itself, given where the turbine blade was
19 sitting in the 360 degrees that it can sit. And, the idea
20 was that, if you really want to understand what the visual
21 impacts might be, under a broader range of conditions, you
22 would -- you wouldn't want to have the turbine blades
23 always in a position where you couldn't see them at all in
24 the photosimulations. That's what I understood this to be

1 getting at.

2 Maybe there's a -- maybe there's a more
3 artful way to say that. But the notion is, you want to be
4 able to see the tower and all the blades.

5 CHAIRMAN HONIGBERG: I originally
6 thought that was what this was about, that this section
7 was about. But I think that the first sentence of the
8 section talks about "turbine blades being set at random
9 angles with some turbines showing a blade at 12", and then
10 the second sentence says "adjustments may be required to
11 prevent turbines from being hidden". I think, if you were
12 correct in what you were saying, it would say "turbine
13 blades" in the second sentence. But that is what I
14 thought it was originally. And, then, rereading it, I'm
15 not sure that's what's meant.

16 COMMISSIONER SCOTT: And, my literal
17 reading of this sentence would seem to indicate, if it's
18 -- "the turbine is hidden behind a hill, you erase the
19 hill in the photosimulation", which I don't think would be
20 certainly our intent.

21 CHAIRMAN HONIGBERG: Would it make more
22 sense if the word "blades" were inserted, "to prevent
23 turbine blades from being hidden"? Because then it would
24 focus specifically on the blades, just happening to be at

1 a particular part of their 360-degree arc.

2 VICE CHAIRMAN BURACK: Well, I think, in
3 the context here, that that probably would. Now that
4 you've pointed out, Mr. Chairman, the distinction in the
5 language here, my sense is that what this language was
6 probably really trying to say is, "if you have" -- "if
7 you're doing your simulation from an angle that
8 effectively blocks being able to see turbines from one
9 position, you need to pick a different point from which
10 you're making the image so that you're not blocking the
11 turbines." I think that's what it's really intended to
12 say.

13 DIRECTOR MUZZEY: I think it might be
14 helpful to add "angle adjustments may be required to
15 prevent turbines from being hidden behind landforms."
16 Otherwise, it does make it sound like you're photo
17 cropping out the landform, which is not, I guess, what
18 this is meant to do.

19 CHAIRMAN HONIGBERG: Well, if it is
20 meant to do it, I don't think any of us agree that that
21 would be a good idea.

22 DIRECTOR MUZZEY: Correct.

23 CHAIRMAN HONIGBERG: All right.

24 DIRECTOR MUZZEY: So, I suggest adding

1 "angle" before "adjustments".

2 CHAIRMAN HONIGBERG: Commissioner
3 Bailey.

4 COMMISSIONER BAILEY: Are we talking
5 about "angle adjustments" made by the photographer? I
6 mean, I think going from what Commissioner Burack just
7 said, it may be, when you decide where to take the picture
8 from, there could be a hill in the way of some of the
9 turbines. And, so, this sentence was intended to mean
10 "don't stand where you can't see all the turbines in doing
11 the simulations".

12 CHAIRMAN HONIGBERG: And, that may be
13 right. If that's what's intended, these two sentences
14 belong in different sections.

15 COMMISSIONER SCOTT: Right.

16 CHAIRMAN HONIGBERG: Given that the
17 first sentence of this is about the -- is about showing
18 the blades, making sure all three blades are visible, I
19 can't read -- I can't make it make sense as one section,
20 unless I make the second sentence apply only to blades.

21 If I want a new section, having to do
22 with move your point -- move the point from which you're
23 doing your simulation if something is in your way, I mean,
24 I think that's probably covered by some other provision

1 here, although maybe it's not. I mean, if you're doing a
2 simulation, and you -- and, I think, in the general
3 section, it says "viewpoints shall be free from any
4 avoidable foreground objects and other obstructions", and
5 then there's a list of the types of obstructions, "unless
6 they are typical of the view".

7 So, I think that the point is, do your
8 simulations from someplace where you can see the whole
9 thing. If there's -- and, then, this very specific wind
10 simulation provision, (b)(3), having to do with the
11 blades, I mean, the only reasonable way to read this is to
12 add "blades" into the second sentence and make it about
13 that.

14 COMMISSIONER SCOTT: And, again, Mr.
15 Chair, my original suggestion was just delete that
16 sentence.

17 CHAIRMAN HONIGBERG: I think
18 Commissioner Burack was trying to keep it in.

19 VICE CHAIRMAN BURACK: Well, and the
20 more I look at this, and seeing the earlier language, I
21 think it may, in fact, make sense simply to -- simply to
22 delete that. I'm not sure that it adds anything that
23 isn't otherwise there. And, the practical reality here is
24 that, with some projects, it may take more than one

1 simulation viewpoint to be able to depict and properly
2 simulate the entire project. And, from different
3 viewpoints, you may or may not be able to see all of the
4 turbines.

5 So, I would be very comfortable deleting
6 that sentence.

7 CHAIRMAN HONIGBERG: I see nodding
8 heads. Okay. We'll delete the sentence.

9 I think we interrupted a discussion of
10 some other considerations -- or, I'm sorry, we regressed,
11 that's what we did, do some other comments on this
12 section, or another comment on this section, and I've
13 forgotten what it was.

14 COMMISSIONER BAILEY: Night lighting.

15 DIRECTOR MUZZEY: Night lighting.

16 CHAIRMAN HONIGBERG: Right. Attorney
17 Weathersby.

18 MS. WEATHERSBY: I would be comfortable
19 not having nighttime photosimulations, if nighttime
20 lighting was included in Section (8) -- I'm sorry, if all
21 lights were included in Section (8), that such they --

22 *[Court reporter interruption.]*

23 MS. WEATHERSBY: -- if all lights were
24 included in Section (8), instead of just those lights

1 which are required by the FAA. So that that section could
2 read "if the proposed facility includes aircraft warning
3 or other lighting, a description and characterization of
4 the potential visual impacts of this lighting, including
5 the number of lights visible from key observation points."
6 I think that captures the concept, without having a
7 picture of a black sky with red lights.

8 CHAIRMAN HONIGBERG: Do people generally
9 agree with that proposal? I see nodding heads. Are there
10 any other or further thoughts regarding nightlights?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: All right. The
13 other comment had to do with "moving images", correct?

14 MR. WIESNER: Yes. Dr. Ward's comment
15 that there should be video simulations as well.

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: Just interested
19 to inquire of Attorney Iacopino, if we have seen those
20 kinds of video simulations in any of our proceedings in
21 the past, or if you are aware of that being a commonly,
22 sort of accepted or used technology in this arena?

23 MR. IACOPINO: We have never had a video
24 simulation that I am aware of filed with the Committee.

1 From my other life, in representing
2 people charged with child pornography crimes, I am aware
3 that the federal government says "it is extremely
4 difficult to make virtual child pornography which
5 would" -- obviously, it's not the same thing, but a
6 similar process -- "that looks real". Of course, because
7 lawyers -- virtual child pornography is not illegal. So,
8 that's my understanding of the -- of the nature of the art
9 at this point, with respect to simulations.

10 I'm sure it's getting more and more
11 easier and easier to make video simulations. And, my
12 understanding at this point in time it's something that's
13 very expensive, if you do it at all. And, you can think
14 of movies like 300, and some of the video -- video-created
15 movies that are out there, they're very expensive to make.

16 So, that's my understanding. Whether
17 that's going to be current tomorrow, I don't know.

18 CHAIRMAN HONIGBERG: Commissioner
19 Burack. Are you going to inquire as to Attorney Getz's
20 health back there?

21 VICE CHAIRMAN BURACK: No. I'm just
22 going to thank Attorney Iacopino for sharing -- for
23 sharing his understanding of what sort of the state of the
24 technology is at this point.

1 My belief is that we should stick with
2 known and proven technologies in this arena at this time.
3 And, if, at a later time, parties can bring us specific
4 examples of how this has been done elsewhere, and what the
5 technical feasibility is of this kind of approach, we
6 could certainly come back and revisit this idea at a later
7 time. But I think we're best to stick with what we have
8 for now.

9 CHAIRMAN HONIGBERG: Any other or
10 further thoughts on this?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: All right. We'll
13 move on.

14 MR. WIESNER: I'm afraid now it's my
15 turn to regress.

16 CHAIRMAN HONIGBERG: Wait, wait, wait,
17 hang on.

18 *[Brief off-the-record discussion with*
19 *the court reporter.]*

20 CHAIRMAN HONIGBERG: Before you pick up
21 with a new topic, we're going to take a five-minute break.
22 And, off the record.

23 *[Recess taken at 3:17 p.m. and the*
24 *meeting reconvened at 3:28 p.m.]*

1 CHAIRMAN HONIGBERG: We're going to go
2 back on the record. Before we pick up with the substance,
3 I think it's apparent to all of us that we are not going
4 to finish today. From the *doodle.com* poll, we've
5 established that a quorum can be here Tuesday morning,
6 starting at nine o'clock. And, we will plan to go until
7 we're done. I expect that will take much of the morning,
8 but I do expect we'll be able to finish. And, counting
9 heads, we should have a quorum, if everyone who says they
10 can be there is there. And, if there's any change in
11 that, we need to know immediately, or as soon as you get
12 back to your house or office and can confirm your
13 availability for Tuesday morning. So, --

14 MR. WIESNER: There may be a conflict in
15 the use of rooms here at the Commission, but I think we
16 can sort that out.

17 CHAIRMAN HONIGBERG: Off the record.

18 *[Brief off-the-record discussion*
19 *ensued.]*

20 CHAIRMAN HONIGBERG: All right. We're
21 going to go back on the record.

22 Mr. Wiesner, we interrupted you.

23 MR. WIESNER: You interrupted my
24 regression.

1 Back to (b)(6), which is on Page 8.
2 And, this is again the "Characterization of the potential
3 visual impacts of the facility". And, these are comments
4 of Dr. Ward that would add a couple of other
5 considerations that should be included in the
6 characterization. These will be new sections, Subsection
7 (i), which would be "The elevation of the turbines above
8 the elevation of any observer." And, a new (j) that would
9 be "The effect of the elevated and isolated nature of the
10 facility, including its increased prominence, its
11 meteorological visibility, and the added visual impact of
12 its flashing light, blade motion, and noise."

13 VICE CHAIRMAN BURACK: Mr. Wiesner, can
14 you just remind us of the date of that submittal?

15 MR. WIESNER: There was an e-mail dated
16 September 14th. It may not have been posted until Friday,
17 or even Monday. But it was submitted prior to that.

18 VICE CHAIRMAN BURACK: Okay. Thank you.

19 CHAIRMAN HONIGBERG: Some of us, I
20 believe, received it twice. Once the first time around,
21 and then again. It was sent around again, --

22 VICE CHAIRMAN BURACK: Okay. I just --

23 CHAIRMAN HONIGBERG: -- I think on --
24 you found it?

1 VICE CHAIRMAN BURACK: Yes.

2 CHAIRMAN HONIGBERG: All right.

3 VICE CHAIRMAN BURACK: Thank you.

4 CHAIRMAN HONIGBERG: This section is one
5 that calls on the applicant to identify what areas are
6 having a high, medium, or low visual effect, or a visual
7 impact from the proposed facility. And, it has a list of
8 things to consider, many of which are quite general and
9 apply to all types of facilities. And, am I correct that
10 Dr. Ward's proposal would just apply to wind facilities?

11 MR. WIESNER: Specifically, his proposed
12 (j), yes.

13 CHAIRMAN HONIGBERG: Commissioner Scott.

14 COMMISSIONER SCOTT: At least in answer
15 to the suggestion that we add "the effect of elevated and
16 isolated nature of the facility", again, I viewed that, if
17 I look at the existing (f), where it says "The scale of
18 the proposed facility relative to surrounding topography
19 and existing structures." And, again, you know, to me,
20 that encompasses that. And, at least that, in my mind,
21 would have encompassed that type of evaluation.

22 CHAIRMAN HONIGBERG: Commissioner
23 Burack.

24 VICE CHAIRMAN BURACK: I do think there

1 is something to be said for the issue of elevation. And,
2 I wonder if we might address this by modifying (f) to read
3 something like "the scale and elevation", and just insert
4 the words "and elevation" after "scale", in (f). So, it
5 reads "The scale and elevation of the proposed facility
6 relative to surrounding topography and existing
7 structures."

8 CHAIRMAN HONIGBERG: Director Muzzey.

9 DIRECTOR MUZZEY: I would agree that
10 that would be a wise addition. I'm also wondering if we
11 could add "nature" to that as well, given the ideas put
12 forth in the commenter's new Section (j), that, you know,
13 we also have a turbine that may be moving, may have
14 flashing lights at night, and that type of thing. So, if
15 (f) would read "The scale, elevation, and nature of the
16 proposed facility", *etcetera*.

17 CHAIRMAN HONIGBERG: Other thoughts or
18 comments?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: Do people generally
21 agree with the change as proposed by Commissioner Burack,
22 and modified by Director Muzzey? Oh, and actually
23 initially introduced by Commissioner Scott. Yes.

24 COMMISSIONER SCOTT: Maybe for Director

1 Muzzey. "Isolated nature", that, at least to me, is not
2 descriptive enough to give me a good understanding of what
3 that means.

4 DIRECTOR MUZZEY: I was suggesting just
5 using the word "nature".

6 COMMISSIONER SCOTT: Oh. Thank you.

7 DIRECTOR MUZZEY: Yes. I agree,
8 "isolated" is difficult to define.

9 CHAIRMAN HONIGBERG: All right. Do
10 people generally agree with Commissioner Scott's proposal
11 as subsequently modified?

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

14 CHAIRMAN HONIGBERG: I see nodding
15 heads. All right.

16 The other aspect of the proposal,
17 Attorney Wiesner?

18 MR. WIESNER: That is what I read, which
19 is "The effect of the elevated and isolated nature of the
20 facility, including increased prominence, meteorological
21 visibility, and the added visual impact of its flashing
22 lights, blade motion, and noise."

23 CHAIRMAN HONIGBERG: All right.

24 MR. WIESNER: And, that seems to be

1 specifically directed to wind projects.

2 CHAIRMAN HONIGBERG: But, as (f) is
3 modified, does that effectively allow incorporation of all
4 those concepts?

5 MR. WIESNER: With respect to a specific
6 facility, its elevation and the impacts of that, I would
7 say it should be taken into account by the applicant in
8 determining whether there's a high, medium, or low impact
9 on affected scenic resources.

10 CHAIRMAN HONIGBERG: All right. What
11 would be next? Are we regressing further or are we able
12 to move forward at this point?

13 MR. WIESNER: I think we're moving
14 forward, but not much.

15 CHAIRMAN HONIGBERG: Okay.

16 MR. WIESNER: So, now, we're at (b)(8),
17 which we already talked about somewhat. This is the
18 nighttime lighting. And, I believe that, per Attorney
19 Weathersby's comment, we are going to include "other
20 lighting, as well as the FAA required lighting" in this
21 section.

22 There's a comment from the AMC that, if
23 you look at the last line of this subsection, where you
24 see "including". So, we're talking about the "potential

1 visual impacts of this lighting, including", and then AMC
2 would add "the distance from which lighting will be
3 visible on a clear night and the", then it continues
4 "number of lights visible from key observation points",
5 and then AMC would add "and representative public and
6 private properties".

7 CHAIRMAN HONIGBERG: Well, this section
8 is not calling for a simulation of any sort. This is
9 calling for a description, is it not?

10 MR. WIESNER: That's right. A
11 "characterization of the potential impacts". And, "key
12 observation points" is a defined term. And, then, AMC
13 would propose, and I believe it's defined as a "subset of
14 scenic resources", and AMC would propose to add here as
15 well "representative public and private properties".

16 CHAIRMAN HONIGBERG: Anyone have
17 thoughts or comments on this proposal? Director Muzzey.

18 DIRECTOR MUZZEY: I agree that it would
19 be useful in this narrative to know not only the number of
20 lights visible, but the distance from those key
21 observation points. It could be 500 feet, it could be
22 three miles, and that would be useful information to have.
23 "Including the number of lights visible and their distance
24 from key observation points".

1 CHAIRMAN HONIGBERG: Other thoughts,
2 comments? Do people agree with Director Muzzey on this?

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

5 CHAIRMAN HONIGBERG: I see some nodding
6 heads. Commissioner Burack.

7 VICE CHAIRMAN BURACK: Just to be clear,
8 the question is "whether or not the lights are actually
9 going to be visible from the key observation point, not
10 just what their distance is?" Because the distance,
11 presumably, is clearly ascertainable, the question -- am I
12 correct, what we're interested in knowing is whether or
13 not you actually, as it reads here, the distance from
14 which lighting would be visible on a clear night? It may
15 be a shorter distance, or it could, theoretically, be a
16 longer distance than from the actual observation points.

17 Is that your understanding?

18 DIRECTOR MUZZEY: That's my
19 understanding, too.

20 CHAIRMAN HONIGBERG: People generally
21 agree with Director Muzzey, it seems?

22 *[Multiple members nodding in the*
23 *affirmative.]*

24 CHAIRMAN HONIGBERG: All right. What

1 about the last part of the -- the second part of the
2 proposal, Director Muzzey, adding a discussion of
3 "representative public and private properties"?

4 DIRECTOR MUZZEY: If we were to be
5 consistent with number (7), which is the description of
6 the photosimulations, in that case, we ask for
7 "representative key observation points", along with "a
8 sample of private property observation points". So, it
9 would be consistent, I believe, under number (8) to
10 include "a sample of private property observation points".

11 CHAIRMAN HONIGBERG: I think I disagree
12 with that. I think, and when we're talking about creating
13 simulations, identifying locations from which you're
14 simulating views is one thing. But, if you said how far
15 away the lighting will be visible, you can know what --
16 you can draw a circle, and essentially know what public
17 and private properties will be able to see the lighting at
18 night. And, what -- I'm not sure what benefit you get by
19 identifying anything beyond the key observation points.
20 If it's closer than a key observation point, then it's
21 going to be able to see it. And, if it's further away
22 than the last key observation point, it may or may not,
23 but it's not a key observation point.

24 I'm not sure I agree with this.

1 DIRECTOR MUZZEY: Well, except in the
2 case that if a property is blocked in some way, we know
3 that there's a lot of topography, trees, that type of
4 thing in New Hampshire. So, you may have a key
5 observation point, a scenic resource that's a key
6 observation point that you can actually -- that you can
7 see the lights from, you could have a private property
8 that's equal distant, but you can't see the lights because
9 of trees being in the way or that type of thing.

10 CHAIRMAN HONIGBERG: What do people
11 think? Commissioner Bailey.

12 COMMISSIONER BAILEY: I think I agree
13 with you, Chairman Honigberg. I think that, if the idea
14 is to say how far away you could possibly see the lights,
15 right, in the description? Then, you would know if you're
16 going to see the lights from your location. And, if you
17 can't see them, because they're blocked by foliage, that's
18 even better, for the person whose property it's on.

19 CHAIRMAN HONIGBERG: Other thoughts or
20 comments?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: One of my law
23 professors, a nice old man, who had semi-retired and
24 gotten an endowed chair at my law school, would get very

1 frustrated at us when no one answered. And, he would go
2 "Anybody? Anybody?" Look around the room and go
3 "Anybody? Anybody?" And, he'd put his hands up like this
4 *[indicating]*, sort of waving people to talk. And,
5 eventually, someone would volunteer, and he would be
6 eternally grateful.

7 *[Laughter.]*

8 CHAIRMAN HONIGBERG: So, I now know how
9 he felt.

10 COMMISSIONER BAILEY: I guess you're
11 eternally grateful to me, then?

12 CHAIRMAN HONIGBERG: I am eternally
13 grateful to you, Commissioner Bailey. So, --

14 DIRECTOR MUZZEY: I don't feel strongly
15 about this. I think it -- I think it's fine the way it's
16 written.

17 CHAIRMAN HONIGBERG: Anyone else? Are
18 we -- no change on that? On that aspect?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: All right. Let's
21 move on.

22 MR. WIESNER: If we're ready to move on,
23 (b) (9) is "A description of the best practical measures
24 planned to avoid, minimize, or mitigate potential adverse

1 effects." The Various Energy Companies have proposed that
2 the obligation to use "best practical measures" be
3 restricted to wind energy systems. And, they propose
4 language that would change the first line of that
5 subsection to read "A description of the measures,
6 including any best practical measures for wind energy
7 systems, planned to avoid, minimize, or mitigate potential
8 adverse effects." So, the defined term "best practical
9 measures" would only be applicable to wind projects.
10 Other projects would have to define -- describe the
11 measures that they would propose to use to mitigate
12 adverse effects, but they wouldn't necessarily have to be
13 "best practical measures".

14 And, if you recall from our discussion
15 of the definition, "best practical measures" has an
16 element of "economic" and "technical feasibility", but
17 there's also an element of it being the "best available"
18 that could be used to meet the purpose, as opposed to some
19 lesser alternative that might be proposed.

20 And, I'll just, before we -- just to
21 finish the thought, at the end of this subsection there's
22 language that says "and any alternative measures
23 considered but rejected by the applicant." And, both the
24 Various Energy Companies and Eolian have proposed to

1 delete that, that last clause. So, it would not be
2 necessary, in their view, for the applicant to identify
3 alternative measures that had been considered but not
4 implemented, not selected by the applicant.

5 CHAIRMAN HONIGBERG: Commissioner
6 Bailey.

7 COMMISSIONER BAILEY: I have a question.
8 I think that the Various Energy Companies left in the part
9 at the end that says "and of any visible plume that would
10 emanate from the proposed facility", and that wouldn't be
11 from a wind project. So, I'm confused.

12 CHAIRMAN HONIGBERG: I think the
13 proposal is that they would limit the "best practical
14 measures" phrase to wind, and that the rest of the section
15 would apply to all types of facilities. Is that right,
16 Attorney Wiesner?

17 MR. WIESNER: Yes. That's correct. So,
18 other non-wind facilities would have to identify the
19 measures that they would propose to use to mitigate those
20 adverse effects, including a plume from an emissions
21 facility, but only wind facilities would have to meet the
22 "best practical measures" standard.

23 CHAIRMAN HONIGBERG: And, the argument,
24 as I recall, is that the only place "best practical

1 measures" appears in the statute is in a section that only
2 applies to wind.

3 MR. WIESNER: That's correct. The
4 Section 10-a, wind siting criteria direction for Committee
5 rulemaking.

6 CHAIRMAN HONIGBERG: Thoughts?
7 Comments? Other questions? Commissioner Bailey.

8 COMMISSIONER BAILEY: It won't surprise
9 you to hear me say, I think we should follow what the law
10 says. And, if the law had intended it to apply to
11 everybody, then it wouldn't have been in 10-a, it would
12 have been somewhere else. So, I'm fine limiting it to
13 wind, the "best practical measures", limiting that to wind
14 facilities.

15 CHAIRMAN HONIGBERG: Director Muzzey.

16 DIRECTOR MUZZEY: I'm wondering if this
17 is also the case where it depends on when which part of
18 the law was written. My understanding is that "best
19 practical measures" is a fairly new phrase, and it
20 probably post dates the other sections of 162-H. And,
21 that's -- I'm assuming that's why it's not in there as
22 well.

23 I did a quick search. It also shows up
24 under another newer section, 162-H-b [162-H:10-b?],

1 "Siting of High Pressure Gas Pipelines". I just think
2 it's the current language. And, so, in the more current
3 sections of law, that's why -- that's when it's used.

4 CHAIRMAN HONIGBERG: Attorney
5 Weathersby.

6 MS. WEATHERSBY: I think the concept of
7 "best practical measures" encompasses more than just the
8 best thing there. The definition, in 102.09, includes the
9 "availability", the "effectiveness", it has to be
10 "economically feasible", it can be "on-site or off-site".
11 So, I think those concepts are concepts that we would want
12 to apply to all types of facilities, and not just have
13 them suggest a measure, which may not even be available.
14 So, I think that applying "best practical measures" to all
15 facilities would be wise.

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: I concur with
19 Attorney Weathersby. I think it's appropriate for us to
20 keep the language as it stands currently. I would not
21 adopt this change.

22 CHAIRMAN HONIGBERG: Attorney Iacopino,
23 perhaps, or maybe Attorney Wiesner, can you talk through
24 the possible litigation risk for a non-wind applicant, in

1 the situation where they have proposed certain measures,
2 and they would say "this is what we think is appropriate",
3 and the litigation is "this was the best practical measure
4 under the definition"? I mean, is that how that -- is
5 that the concern?

6 And, I mean, this is -- I'm not going to
7 ask the second legal question. So, is that really how
8 this games out?

9 MR. WIESNER: I mean, there's the
10 statutory construction argument and legislative history
11 argument that we've considered both, you know, in the
12 context of cumulative impacts as well. I'm looking at the
13 definition of "best practical measures". And, it's now
14 defined as "available, effective, and economically
15 feasible on-site or off-site methods or technologies used
16 during siting, design, construction, and operation" --
17 excuse me -- "operation of an energy facility that have
18 been demonstrated to the committee to effectively avoid,
19 minimize, or mitigate relevant impacts."

20 And, I believe the motivation for the
21 comment -- that the practical motivation for the comment
22 of the Various Energy Companies is that there may be
23 additional litigation risk here by using this term in a
24 context where, in their view, it may not apply. Because

1 it will be possible for an applicant to propose a
2 mitigation measure that would be effective in rendering a
3 potential adverse effect not unreasonable, so that it
4 could be approved by the Committee, but it may not
5 represent the "best practical measure". There may be
6 something else that's both technically and economically
7 feasible that would reduce the impact even further. And,
8 then, you would have, in effect, potential litigation here
9 before the Committee over whether a measure could have
10 been adopted that was the best practical measure, could
11 have reduced the impacts even further, even though the
12 measure as proposed would reduce those impacts to the
13 level where a finding of "no unreasonable adverse effect"
14 is possible.

15 CHAIRMAN HONIGBERG: Commissioner Scott.

16 COMMISSIONER SCOTT: When I look at the
17 current language on (9), the way I was reading that is, is
18 it asked for "a description of those measures", as you
19 just defined, "for best practical measures that are
20 planned". And, the word "planned", to me, is significant.
21 So, I was reading that as "these are the ones that the
22 applicant is suggesting that they will use."

23 Am I missing something there?

24 MR. WIESNER: Well, I suppose that

1 someone could challenge the Committee's acceptance then,
2 and say "you should not have accepted this, because they
3 proposed a measure, but it was not the best practical
4 measure."

5 I mean, there will be additional
6 comments as we go through with the Various Energy
7 Companies. They're also challenging the use of this term
8 where it appears in connection with the siting criteria.
9 So, it is a comment which carries through a number of
10 sections. This is, I believe, the first place where we've
11 faced it. But that is the concern. Both that the statute
12 only specifically refers to "best practical measures" in
13 the wind context. And, now, as Director Muzzey noted, I
14 believe also in the recent legislative change, which
15 directs the Committee to do a rulemaking on high pressure
16 gas pipelines.

17 CHAIRMAN HONIGBERG: Rulemaking - the
18 Sequel.

19 MR. WIESNER: Yes.

20 CHAIRMAN HONIGBERG: Commissioner
21 Burack.

22 VICE CHAIRMAN BURACK: Trying to wrap my
23 head around this one at this seemingly late hour of the
24 afternoon. It sounds like part of the challenge that we

1 have, at least in the definition as we've got it drafted
2 right now, is a best practical measure has to "have been
3 demonstrated to the Committee", and, presumably, that may
4 be -- maybe I'm mistaken about that, that demonstration
5 can only occur after we've actually looked at it, heard
6 about it, tested it through our processes.

7 Perhaps what -- the challenge that we
8 have here is that we're -- we're trying to use one term,
9 where we may have to use different terms at different
10 stages of the proceedings. That is, it may be that, in
11 terms of the submittal itself, what we want is we want to
12 know what measures they're taking to -- that they're
13 proposing.

14 But, ultimately, the test that we have
15 to apply when we approve something is that they are
16 applying the best practical measures. Maybe -- maybe
17 somewhere in that there's a solution to this conundrum.
18 But perhaps not as well.

19 CHAIRMAN HONIGBERG: Well, actually, I
20 was thinking along the same lines. That, in this section,
21 which is what is part of the application, it would ask for
22 what the measures are that "are planned to avoid,
23 minimize, or mitigate", *etcetera*. And, that it would
24 leave open the question or allow potentially different

1 phrases to be used in the criteria section or the part of
2 the show when the Committee determines whether an
3 application should be approved. It would kick the dispute
4 can down the road to a later discussion within these
5 rules, but the general requirement, to "identify the
6 measures planned", I think may make sense in this context.

7 Anyone -- is there -- are we creating a
8 problem with that? Attorney Iacopino, you look like you
9 want to say something.

10 MR. IACOPINO: I would just point out
11 that, if you look at 301, Section 14, "Criteria Relative
12 to the Findings of Unreasonable Adverse Effects",
13 Subsection (a)(8). Subsection (a)(8), one of the things
14 that you have to consider, determining whether the
15 proposed energy facility will have an unreasonable effect
16 is "The effectiveness of the best practical measures
17 planned by the applicant".

18 Further down, the term is used again, in
19 Section (e), I think it's the next, 301.14(e). There you
20 have to consider "The best practical measures undertaken
21 or planned to avoid, minimize, or mitigate potential
22 effects on wildlife".

23 After that, in Subsection (6), you have
24 to consider "The best practical measures undertaken or

1 planned to avoid terrestrial" -- "to avoid potential
2 adverse effects on terrestrial or aquatic habitat
3 resources". And, I think that's the last place that we
4 use that particular term in the criteria that you actually
5 have to apply at the time of making a decision.

6 So, I think that, whatever you choose to
7 do with the term, where it's used in your criteria should
8 be consistent with what you're requiring the applicant to
9 provide. So, if you're going to simply be considering "is
10 this the best practical measure?" Then, you might just
11 want "measure", "what are the measures you're going to
12 propose in your application?" And, then, you determine if
13 it's the "best practical measure". Or, you may want
14 something different than that. But I would just caution
15 you to keep it consistent, so that they work with each
16 other, and you have a logical point -- a logical line from
17 A to Z.

18 CHAIRMAN HONIGBERG: That may not be
19 what I said, but it kind of is what I meant a minute ago.

20 MR. IACOPINO: Just what I wanted to
21 point out, because it was your comment that made me think
22 of that. So, --

23 CHAIRMAN HONIGBERG: Director Muzzey.

24 DIRECTOR MUZZEY: This may or may not be

1 helpful. But, as I read the definition as we've currently
2 defined "best practical measures", to me, it doesn't mean
3 there's one best practical measure for any one given
4 adverse effect that's going to be the obvious top of the
5 pyramid. There could be a whole host of measures that
6 could be mitigating an adverse effect that could be
7 considered "best practical measures". This isn't
8 something we're going to apply a point scale to, and the
9 highest number of points wins as the one measure that may
10 be applicable.

11 Therefore, I think -- I find it hard to
12 imagine that this could be litigated on a regular basis
13 because of that. And, maybe I just lack imagination on
14 that point. But I, because of the variety of measures
15 that might fit this definition, I have less concern with
16 that.

17 CHAIRMAN HONIGBERG: Attorney
18 Weathersby.

19 MS. WEATHERSBY: I would agree with what
20 Director Muzzey said. And, I think just one further
21 clarification, to avoid the "cart and horse" problem,
22 would be to strike a few words from 102.09. If we strike
23 "have been demonstrated to the Committee", so that the
24 best practical measures are those "available, effective",

1 *etcetera*, measures that "effectively avoid, minimize, or
2 mitigate." They don't have to be previously proven to us.

3 VICE CHAIRMAN BURACK: So, Mr. Chairman,
4 if I may? You would delete the words "have been
5 demonstrated to the committee"?

6 MS. WEATHERSBY: Correct.

7 VICE CHAIRMAN BURACK: Thank you.

8 CHAIRMAN HONIGBERG: Taking that item,
9 that aspect of things by itself, is there a problem with
10 that, Attorney Wiesner?

11 MR. WIESNER: Well, I believe that that
12 language was included because Legislative Services said
13 "well, "demonstrated" to who?" Which is a reasonable
14 question. If we're going to solve -- I mean, it sounds
15 like what we're proposing is perhaps to have an
16 application requirement that you identify the measures
17 that you plan to use to mitigate. And, then, it will be
18 determined through the proceeding, perhaps, whether or not
19 that represents the "best practical measures".

20 And, I'll also point out that, in
21 301.14(g), and this is a result of prior Committee
22 meetings considering public comment on the Initial
23 Proposal, that we added basically a catch-all provision.
24 That says that, for all energy facilities, there must be a

1 finding that best practical measures will be implemented
2 to avoid adverse effects.

3 And, with that in mind, there would be a
4 finding by the Committee, I think in each case, that the
5 best practical measures -- the measures that have been
6 proposed are the best practical measures. And, I think
7 that's the genesis of the concern of the Various Energy
8 Companies, that that perhaps higher standard should not
9 apply outside of wind development.

10 CHAIRMAN HONIGBERG: That is definitely
11 their concern. But, focusing just for a moment on
12 Attorney Weathersby's proposal regarding 102.09, she's not
13 just proposing to delete "to the committee", she's
14 actually proposing to delete "have been demonstrated", and
15 that's where Legislative Services had a problem. I think,
16 if it read without the phrase "have been demonstrated to
17 the committee", I think it would read in a way that OLS
18 would not have that problem that it identified. Says
19 ""Best practical measures" means available, effective,"
20 *etcetera*, "used during", all these things, "of an energy
21 facility that effectively avoid, minimize or mitigate".

22 MR. WIESNER: I mean, I guess, for the
23 Committee to find that is their "best practical measure",
24 it will have to have been demonstrated to them. If what

1 we're concerned about is that demonstration may not have
2 occurred prior to the time when the application is
3 submitted, that that's sort of the "chicken and egg"
4 problem.

5 VICE CHRMN. BURACK: Can --

6 MR. WIESNER: However, I was going to
7 say, there may be a situation where the Committee issues a
8 certificate for a facility, finds that a proposed measure
9 is the best practical measure, and then the next applicant
10 coming through doesn't want to use that, wants to use a
11 different measure. And, if you imposed a requirement that
12 they use best practical measures and identify them in the
13 application, and they propose something else, now you have
14 a situation where that might have been determined to be a
15 "best practical measure", but it might be challenged,
16 because it's not consistent with the Committee's precedent
17 on the state of technology available.

18 CHAIRMAN HONIGBERG: But isn't that
19 where Director Muzzey's comment comes in? That "best
20 practical measures" doesn't refer to "the best practical
21 measure" for every circumstance. There may be multiple
22 best practical measures for any particular problem,
23 different, and even within one application there might be
24 many best practical measures, when you balance out

1 effective -- efficacy, economic feasibility, and
2 availability. And, a different applicant might have a
3 different mixture of those things and have a different
4 menu of "best practical measures".

5 Is that what you were saying?

6 MR. WIESNER: I mean, in theory, yes. I
7 mean, if there are three software packages available that
8 would eliminate ice throw, and the Committee finds that
9 the one that's proposed is the "best practical", then I'm
10 not sure that would -- how easy it would be to relitigate
11 that in the next case.

12 DIRECTOR MUZZEY: I think what the
13 Committee would find is that is "a best practical
14 measure", but not that it's the exclusive best practical
15 measure.

16 CHAIRMAN HONIGBERG: Commissioner
17 Burack.

18 VICE CHAIRMAN BURACK: Moreover, our
19 decisions do not carry the weight of precedent. That is,
20 they are instructive for future proceedings, but they are
21 not binding on the body or on future applicants. I think
22 the law has been quite clear about that in this arena for
23 a long time. So, I don't have that -- I don't have that
24 concern. I don't think that's a risk we need to be

1 worried about, and it can be further addressed exactly in
2 the manner that Director Muzzey has expressed.

3 The more I look at this, the more I
4 wonder whether we can't solve this problem by just asking
5 that the parties provide us with a description of their
6 proposed measures -- or of, well, a description of their
7 proposed measures, including any measures that they would
8 propose be adopted as a best practical measure. Why can't
9 they propose that we make that finding? That's really
10 what they're asking us to do. I mean, we do have the word
11 "planned" there, and I think "planned" is just another way
12 of saying "proposed", and maybe it's just a matter of
13 bringing that notion of "planned" or "proposed" up front.

14 CHAIRMAN HONIGBERG: Director Muzzey.

15 DIRECTOR MUZZEY: My concern remains
16 that, through precedent, whether intended or not, a list
17 will be developed of the best practical measures that
18 apply to all energy projects for all situations. When, in
19 reality, it's a far more nuanced determination of what's
20 best for a given situation, a given resource, and a given
21 effect.

22 I'm not sure that the Committee should
23 be adopting a list of best practical measures, but making
24 that determination on a case-by-case basis.

1 VICE CHAIRMAN BURACK: I don't think we
2 disagree in any fashion, in any way on this. I think
3 we're both saying the same thing.

4 CHAIRMAN HONIGBERG: I have to confess,
5 Commissioner Burack, I did not understand your last
6 proposal. I think that the structure we have is we want
7 the applicants to tell us what their proposed measures
8 are. What measures do they plan to avoid, minimize, or
9 mitigate, *etcetera*? That's what the application asks -- I
10 believe should ask them to do. Rather than ask them "what
11 the best practical measures they plan to implement are?"
12 Rather, "what measures do they plan to implement?" Later
13 on, we will determine whether those are satisfactory. Are
14 those the best planned -- best practical measures? Are
15 they something less? Are they adequate, depending on the
16 circumstances, and depending on perhaps litigation over
17 whether "best practical" applies to any particular
18 applicant?

19 But I did not understand what you were
20 proposing.

21 VICE CHAIRMAN BURACK: I apologize. I
22 was trying to come up with another formulation that would
23 allow us to leave the definition of "best practical
24 measures" in 102.09 exactly as it is, and to work with

1 that definition in the context of this other section here.

2 CHAIRMAN HONIGBERG: No, I was
3 already -- I was prepared to jettison the language as
4 Attorney Weathersby proposed, because I think it
5 simplifies the consideration of best practical measures
6 down the road, because it eliminates that "chicken/egg" or
7 "cart/horse" problem, which we've identified
8 metaphorically two different ways now.

9 VICE CHAIRMAN BURACK: The solution that
10 you have proposed certainly is workable, and I could
11 support that.

12 CHAIRMAN HONIGBERG: All right. To
13 reiterate, I think what that is is two things, for now,
14 and there's more things that need to happen. But the
15 first change is to 102.09, to delete the words "have been
16 demonstrated to the committee to". And, the second
17 element, for now, is in 301.06 --

18 COMMISSIONER BAILEY: Five.

19 CHAIRMAN HONIGBERG: I'm sorry, 301.05.
20 What's the subsection?

21 DIRECTOR MUZZEY: (9).

22 CHAIRMAN HONIGBERG: What's the letter
23 first?

24 COMMISSIONER BAILEY: (b).

1 CHAIRMAN HONIGBERG: -- (b) (9), to
2 delete the words "best practical" at the beginning of the
3 section. So, to "a description of the measures planned".
4 They will be -- "best practical" is a concept later in the
5 document. So, it's not like we're getting rid of "best
6 practical measures" for evaluation. We're deleting it
7 from the section about what the applicant is supposed to
8 describe in the application.

9 MR. WIESNER: But do we want the
10 applicant to make it's case for why the proposed measures
11 are, in fact, the best practical measures at the time of
12 application? For example, have their consultants address
13 it in prefiled testimony?

14 CHAIRMAN HONIGBERG: Perhaps, we can
15 then add to this section a provision, along the lines of
16 what I think Commissioner Burack may have been driving at,
17 which is "and identify which of these measures it believes
18 are best practical measures for purposes of this
19 proposal", something like that.

20 Commissioner Bailey.

21 COMMISSIONER BAILEY: Isn't that kind of
22 what's intended by the last phrase in (9), "and any
23 alternative measures considered but rejected"?

24 CHAIRMAN HONIGBERG: Probably.

1 COMMISSIONER BAILEY: So, isn't that
2 already covered?

3 CHAIRMAN HONIGBERG: But I think that
4 that's -- I think that it's a much clearer direction, and
5 it doesn't obviate the potential need to ask what
6 alternatives were considered.

7 COMMISSIONER BAILEY: So, we take that
8 part out?

9 CHAIRMAN HONIGBERG: Oh, I don't know.
10 No, I think it may stay in. I think both have a purpose.

11 Attorney Weathersby.

12 MS. WEATHERSBY: I'm just having trouble
13 understanding why someone would include a measure for our
14 consideration, if they didn't think it was the best
15 practical measure?

16 CHAIRMAN HONIGBERG: I think Attorney
17 Wiesner articulated it a moment ago. You may see
18 something that would be available, effective, and
19 economically feasible, and that it wouldn't make your
20 project uneconomic, but it's ten times more expensive than
21 something that would be, in your view, perfectly adequate
22 to mitigate the harms back to a level where the harm would
23 no longer be unreasonable. You could save yourself a lot
24 of money with doing something less than was a best

1 practical measure. It's a perfectly adequate measure, but
2 it's not the best you could do, and make your project
3 uneconomic. I think that's the calculus that a company
4 would be engaged in.

5 Commissioner Scott.

6 COMMISSIONER SCOTT: And, we've kind of
7 talked around this. But I just want to point out at
8 least, again, my understanding, if we look at the
9 definition as we have it proposed now for "best practical
10 measures", the only place we're using the word "best" is
11 in the title. And, what it says it means is if it's
12 "available, effective, economically feasible", and
13 "effectively avoids, minimizes, or mitigates".

14 So, it doesn't say, at least my reading
15 of this definition, it doesn't say it has to be "the best
16 possible measure" at doing that, it just has to meet those
17 criteria of "avoiding, minimizing, or mitigating". So,
18 that's pretty broad. And, I think, perhaps, at least in
19 my mind, what we may get hung up with is the word "best"
20 in that, you know, in the title of that. So, I just want
21 to throw that out there. In our current definition, we
22 don't say "you're picking the one that is the best", I
23 believe.

24 CHAIRMAN HONIGBERG: We are stuck with

1 the word "best", because it's in the statute, and we need
2 to deal with it in terms that make sense. So, you weren't
3 proposing that it be deleted, were you?

4 COMMISSIONER SCOTT: No. I was
5 suggesting that the definition that we have -- the
6 definition as we've currently proposed it is very broad,
7 and it could be the second best, I guess, and still meet
8 this definition.

9 CHAIRMAN HONIGBERG: We have talked
10 around this one a few times. Where do we want to settle?
11 For now, I think we've got the removing "best practical"
12 from the first line of Subsection (9), adding a directive
13 that the applicant identify which it considers -- which of
14 these measures -- which measures it has proposed that it
15 considers best practical measures for purposes of 102.09.
16 And, asking them what else they considered but rejected?

17 Director Muzzey.

18 DIRECTOR MUZZEY: I can't help but look
19 ahead to the Committee's deliberations on an application,
20 and it's hard to imagine that an applicant would describe
21 the measures that they planned to use, but then went onto
22 a different section and said "But these actually aren't
23 the best practical measures, these are the best practical
24 measures", because they would be, in effect, shooting

1 themselves in the foot, given the Committee's later
2 deliberations.

3 This is bouncing off your idea that
4 number (9) would be "a description of the measures planned
5 to avoid, minimize, or mitigate", and then (10), a new
6 subsection would say "but identify which of those are best
7 practical measures".

8 CHAIRMAN HONIGBERG: I would be happy to
9 jettison that language for now. So, "identify the
10 measures", leaving out the words "best practical", and
11 leave that last phrase that someone wanted to take out,
12 but I disagree with. I'm not proposing that we delete it.
13 I think it was Eolian suggested that that be deleted.

14 You two can fight over the microphone.
15 Commissioner Scott, followed by Director Muzzey.

16 COMMISSIONER SCOTT: On the last part of
17 this, where it says "any alternative measures considered",
18 I'm a little bit uncomfortable with that. It seems that
19 it could be argued that you need a totally exhaustive look
20 at even things that didn't make a lot of sense. So, I'd
21 either want a qualifier in there, or drop "any", I think.

22 CHAIRMAN HONIGBERG: Director Muzzey.

23 DIRECTOR MUZZEY: I agree that dropping
24 "any" would make it seem like a less onerous task. And,

1 that would leave it with just the measures that the
2 applicant had considered, not that everyone possible had
3 considered.

4 I would be comfortable with, on a
5 different note, I would be comfortable with dropping "best
6 practical measures" -- "best practical" out of "best
7 practical measures" under number (9), with the
8 understanding that I do feel it's very important to
9 incorporate that later on in the Committee's
10 deliberations, partly because we are directed by law to,
11 given two different types of energy projects now, but also
12 because I feel that, if we're going to suggest mitigation,
13 it should be as we've defined "best practical measures" in
14 102.09.

15 CHAIRMAN HONIGBERG: Other thoughts or
16 comments?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Should we make the
19 changes that Attorney Weathersby and I floated to 102.09
20 and Subsection (9) of 301.06 --

21 DIRECTOR MUZZEY: 05.

22 CHAIRMAN HONIGBERG: -- 05, sorry,
23 301.05(b)(9)?

24 COMMISSIONER BAILEY: Yes. And, delete

1 "any" in front of "alternative measures", in the last
2 phrase. Or no? I thought that was what the proposal was?

3 CHAIRMAN HONIGBERG: That is what
4 Commissioner Scott and Director Muzzey proposed.

5 COMMISSIONER BAILEY: I mean, I don't --
6 I think it means "any alternatives that they considered".
7 So, if they weren't feasible, then they didn't consider
8 them, but --

9 CHAIRMAN HONIGBERG: I agree with you.
10 I think the word "the" would accomplish exactly the same
11 thing, "the alternative measures considered but rejected
12 by the applicant". I think, if you have no word there,
13 "and alternative measures considered but rejected", they
14 could identify two of the five that they considered, if
15 you don't have any word there. That's my opinion. But --
16 so, "any" or "the"? Which one?

17 COMMISSIONER SCOTT: "The".

18 CHAIRMAN HONIGBERG: "The"? So, we're
19 going to replace "any" with "the", before "alternative
20 measures".

21 And, other than that, it's the changes
22 that Attorney Weathersby and I just floated on those two
23 sections. All good?

24 COMMISSIONER SCOTT: Good.

1 CHAIRMAN HONIGBERG: Off the record.

2 *[Brief off-the-record discussion*
3 *ensued.]*

4 CHAIRMAN HONIGBERG: All right.

5 Attorney Wiesner. Where can we go next?

6 MR. WIESNER: If we're ready to move on,
7 we would move on to 301.06, which is the "Effects on
8 Historic Sites". And, in Subsection (c), there's
9 currently a requirement that the applicant describe any
10 "finding by the Division of Historical Resources, and, if
11 applicable, the lead federal agency, of no historic
12 properties affected, no adverse effect, or adverse effect
13 to historic properties." And, we have a comment from the
14 Various Energy Companies that it should be
15 "determination", not "finding". And, then, we also have a
16 comment from the Trust for Historic Preservation and New
17 Hampshire Preservation Alliance proposing to delete the
18 last qualifier, which is "if determined at the time of
19 application". And, this, I think, implicates both the 106
20 process, as well as the timing of that process and how it
21 plays out vis-a-vis the SEC review process.

22 CHAIRMAN HONIGBERG: We're all looking
23 at you, Director Muzzey.

24 DIRECTOR MUZZEY: I'd also like to make

1 a joke right now, but I can't think of what to say.

2 Under (c), I think the use of "finding"
3 is an attempt to be efficient. I can tell you that, under
4 106, the lead federal agency makes a finding, and the
5 Division of Historical Resources concurs with that. Under
6 227-C:9, the Division of Historical Resources is first
7 asked to make a determination, and then make a
8 recommendation. So, we have lots of words floating
9 around.

10 I would be comfortable with saying a
11 "determination or finding", and that would encompass both
12 the division and the lead federal agency. I'm not sure
13 it's incredibly important which of those words is used.

14 CHAIRMAN HONIGBERG: But "determination
15 or finding" you believe would cover all the relevant
16 scenarios?

17 DIRECTOR MUZZEY: Yes.

18 CHAIRMAN HONIGBERG: That seems simple
19 enough.

20 DIRECTOR MUZZEY: Okay.

21 CHAIRMAN HONIGBERG: All right.

22 DIRECTOR MUZZEY: In regard to that last
23 phrase, "if determined at the time of application", that
24 was added in recognition of some of the Energies' concerns

1 that some aspects of the Section 106 review process is not
2 entirely under their own control. Largely, because we do
3 have the lead federal agency that is leading that review,
4 although it would be ideal and it would give the Committee
5 the most information -- more information, I mean.

6 I certainly am sympathetic to that
7 concern, that they're not entirely in charge of that
8 review, and that the fact-finding may not be available to
9 them at the time of application.

10 CHAIRMAN HONIGBERG: Commissioner Scott.

11 COMMISSIONER SCOTT: Regarding the last,
12 they ask to delete the "if determined at the time of
13 application", is there an implication there that, if that
14 was deleted, that the application would need to be revised
15 as that determination happens, do you think?

16 DIRECTOR MUZZEY: Well, given that this
17 is the list of what needs to be included in an
18 application, my thought was that the Energy Companies were
19 concerned that they would have to have that 106 finding
20 prior to their applying to the Site Evaluation Committee,
21 and that may not be available to them yet, due to the
22 inactivity of the lead federal agency.

23 COMMISSIONER SCOTT: And, I ask that
24 question, because I'm not -- my read of this, I'm not in

1 favor of deleting that language.

2 CHAIRMAN HONIGBERG: In order to pick up
3 the change made at the beginning, and I am now interested
4 in the fact that the word "determined" was used at the
5 end, should that last clause say "if such finding or
6 determination has been made at the time of the
7 application", or something like that? Because that's
8 really, I think, what it's referring back to, isn't it?

9 DIRECTOR MUZZEY: Yes, it is.

10 CHAIRMAN HONIGBERG: But your -- and
11 your feeling is that that last clause is helpful and an
12 appropriate thing to include? I think the answer to that
13 question is "yes", based on what you said.

14 DIRECTOR MUZZEY: The answer is "yes",
15 but I make that answer knowing that, when we flip back
16 again to later action by the Committee, under "Criteria
17 for Unreasonable Adverse Effects to Historic Sites", at
18 that point the expectation of the Committee is that
19 determination has been made.

20 COMMISSIONER BAILEY: Right.

21 CHAIRMAN HONIGBERG: Right.

22 DIRECTOR MUZZEY: Right.

23 CHAIRMAN HONIGBERG: But, okay. So, but
24 the change to this section, in terms of what the applicant

1 has to provide, is the language at the beginning, "finding
2 or determination", and then, at the end, pick up both
3 concepts "if such finding or determination has been made
4 at the time of the application".

5 DIRECTOR MUZZEY: Correct.

6 CHAIRMAN HONIGBERG: And, we good with
7 this section. All right. Everybody agree with that?

8 COMMISSIONER BAILEY: Yes.

9 CHAIRMAN HONIGBERG: All right. Let's
10 see how much more we can get done.

11 MR. WIESNER: So, in Subsection (d),
12 we're now again looking at "best practical measures".
13 And, I might suggest that we adopt a similar approach as
14 the Committee recently approved, which is to say that this
15 would be just "the measures" that would be identified, and
16 perhaps, again, an identification of those measures which
17 are considered by the applicant to be best practical
18 measures.

19 CHAIRMAN HONIGBERG: Wait. The second
20 part of what you just said?

21 MR. WIESNER: I guess I'm proposing or
22 that the Committee consider an approach here as we just
23 discussed with respect to aesthetics, which is that the
24 applicant be required to "describe the measures that it

1 proposes to avoid, minimize, or mitigate potential adverse
2 effects on historic sites, and then identify those which
3 it believes are best practical measures."

4 CHAIRMAN HONIGBERG: I thought we
5 dropped that second -- the second part of that, the
6 "identify which you think are best practical", we dropped
7 it from the aesthetics. It's going to get picked up in
8 evaluation of the proposal ultimately, but it's not going
9 to be part of the applicant's responsibility in the
10 application.

11 MR. WIESNER: I must have missed that.
12 So, we're --

13 CHAIRMAN HONIGBERG: Off the record.

14 *[Brief off-the-record discussion*
15 *ensued.]*

16 CHAIRMAN HONIGBERG: All right. Let's
17 go back on the record. Yes. The decision was made, with
18 respect to aesthetics, that the application would not ask
19 the applicant to say which of the measures it has
20 identified it considers to be "best practical measures".
21 Director Muzzey articulated the logic conflict that would
22 be present there.

23 MR. WIESNER: So, I guess a similar
24 approach would be appropriate here, which would just be to

1 remove "best practical", and only have the measures
2 identified at the time of application?

3 CHAIRMAN HONIGBERG: I believe that's
4 correct. Attorney Iacopino.

5 MR. IACOPINO: I was just going to say,
6 Mr. Wiesner may have been thinking about the other second
7 part that we had in Subsection (9), in the previous
8 discussion, where you listed "the alternative measures
9 considered but rejected", that was what you left as the
10 second part of that. And, I don't know if that makes any
11 sense in an "historic resources" context.

12 DIRECTOR MUZZEY: I think it would make
13 perfect sense and perhaps in natural environment as well.

14 MR. IACOPINO: And that way they would
15 be consistent with each other.

16 CHAIRMAN HONIGBERG: So, you pick up the
17 phrase that we have at the end of Subsection (9), "and the
18 alternative measures considered but rejected by the
19 applicant."

20 Let's see if we can get one more done
21 before the clock metaphorically strikes midnight.

22 MR. WIESNER: On (e), the Various Energy
23 Companies have proposed to delete this requirement, which
24 is the "applicant's plans to implement any measures

1 identified" as a redundant requirement.

2 CHAIRMAN HONIGBERG: It does seem
3 redundant.

4 COMMISSIONER BAILEY: It does. I mean,
5 if there are plans, then --

6 CHAIRMAN HONIGBERG: Everybody there?
7 *[Multiple members nodding in the*
8 *affirmative.]*

9 CHAIRMAN HONIGBERG: All right. Next.
10 We're going to do another.

11 MR. WIESNER: And, the Various Energy
12 Companies -- I believe this is right -- have proposed to
13 delete the reference to "consulting parties" at the end of
14 this section. So, this is where the applicant is to
15 "describe the status of its consultations with DHR, and
16 the applicable lead federal agency, if any, and with
17 consulting parties".

18 CHAIRMAN HONIGBERG: Oh. Right. And,
19 their reasoning is that the applicants aren't the ones who
20 are actually consulting with those parties, it's the
21 agencies. That was the reasoning, is it not?

22 MR. WIESNER: That is the basis of their
23 argument, that the consulting parties may be consulting
24 only with the agencies, and not directly with the

1 applicant.

2 CHAIRMAN HONIGBERG: Direct Muzzey,
3 thoughts on this?

4 DIRECTOR MUZZEY: The idea of adding
5 "consulting parties" was suggested by a couple of
6 different commenters, because consulting parties do play
7 an important role in the 106 process. And, it would give
8 the Committee a fuller understanding of the public's views
9 of the project's possible effects to historical resources.

10 These are generally conversations and
11 discussions that are held in the presence of the
12 applicant. Although, I can imagine a project of such
13 magnitude that that would not be possible. And, given
14 that, I understand their logic in deleting the "consulting
15 parties".

16 CHAIRMAN HONIGBERG: Is there some other
17 way to incorporate an inquiry into what the consulting
18 parties, which I think is a defined term, what their views
19 are, the status of their consultations with the agencies
20 in this context? Maybe that will be our homework.

21 DIRECTOR MUZZEY: Yes. Yes, outside of
22 asking the lead federal agency to report on that, again,
23 given an extreme case, you would need to depend on them to
24 comment directly to the SEC.

1 CHAIRMAN HONIGBERG: All right. We will
2 be thinking about that nonstop over the weekend.

3 We're going to break now. We're going
4 to be resuming at 9:00 on Tuesday morning. And, we're
5 going to go until we're done. Attorney Wiesner and I are
6 going to try to incorporate all of the changes that have
7 been made thus far. So that, on Tuesday, at the end of
8 the day, at the end of the process, we'll have a document
9 that won't be fully typed up, but will incorporate the
10 changes that have been made and that will be made on
11 Tuesday morning. Everyone understand that?

12 (Multiple members nodding in the
13 affirmative.)

14 CHAIRMAN HONIGBERG: Good. Commissioner
15 Scott moves we adjourn, and Commissioner Burack seconds
16 that motion. Is there any discussion?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Seeing none, all in
19 favor say "aye"?

20 (Multiple members indicating "aye".)

21 CHAIRMAN HONIGBERG: We are adjourned.

22 **(Whereupon the meeting was adjourned at**
23 **4:32 p.m., and the meeting to reconvene**
24 **on September 29, 2015, at 9:00 a.m.)**