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**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**September 29, 2015** - 9:36 a.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, and*  
*review and approval of the Final*  
*Proposals as prepared to date)*

**PRESENT:**

**SITE EVALUATION COMMITTEE:**

Chrmn. Martin P. Honigberg <i>(Presiding as Chairman of SEC)</i>	Public Utilities Commission
Cmsr. Robert R. Scott	Public Utilities Commission
Cmsr. Kathryn M. Bailey	Public Utilities Commission
Dir. Elizabeth Muzzey	DCR-Div. of Historical Res.
William Oldenburg	Dept. of Transportation
Patricia Weathersby	Public Member
Roger Hawk	Public Member
Michele Roberge, Designee	DES - Air Resources Division

*Also Present:* David K. Wiesner, Esq. (NHPUC)

**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: All right. We are  
3 going to convene the meeting of the Site Evaluation  
4 Committee. Continuation of a discussion of the rules in  
5 Docket 2014-04. We have two other -- we have one other  
6 item of business, under the agenda, Item 2 of the agenda  
7 said "any other lawful business", and I'm going to do one  
8 other piece of lawful business.

9 As many people know, the Legislature  
10 this past session put in place a new section of RSA 162-H,  
11 Section 10(b), regarding the siting of high pressure gas  
12 pipelines. It has within it a rulemaking provision,  
13 directing the SEC to do a rulemaking regarding high  
14 pressure gas pipelines. What I would like the Committee  
15 to do is authorize Pam Monroe, the Administrator, to  
16 initiate a pre-rulemaking process under 541-A. And, so,  
17 I'll take a motion on that.

18 Commissioner Scott moves. Is there a  
19 second?

20 COMMISSIONER BAILEY: Second.

21 CHAIRMAN HONIGBERG: Commissioner Bailey  
22 seconds. Is there any discussion?

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: Seeing none, all in

1 favor, say "aye"?

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

3 CHAIRMAN HONIGBERG: Any opposed?

4 *[No verbal response]*

5 CHAIRMAN HONIGBERG: All right. The  
6 motion carries unanimously. Thank you.

7 Regarding the rules, as you see, we now  
8 have our quorum. Commissioner Burack is out of town  
9 today. He has designated one of his senior  
10 administrators, Michele Roberge, who is on her way, to sit  
11 today. She will be an eighth person.

12 A question was raised by a member of the  
13 public regarding Mr. Oldenburg's participation in the  
14 rules. I just wanted to go through that for people who  
15 are unclear. Under RSA 162-H:3, XI, the SEC members who  
16 are state officials are authorized to designate people in  
17 their agencies for good reason, if they are -- and  
18 unavailability is one of the reasons specified.

19 It's a little complicated with  
20 Mr. Oldenburg. But, for continuity sake, everyone who has  
21 been of the DOT since December has designated him to serve  
22 in this role. It started with Commissioner Clement, who  
23 left in the middle of December last year. Assistant  
24 Commissioner Brillhart, who served as Acting Commissioner

1 until July, continued that designation. Assistant  
2 Commissioner, then Acting Commissioner Cass continued that  
3 designation, and Acting Commissioner Cass is still the  
4 Acting Commissioner of DOT, until a new commissioner is  
5 sworn in and takes office.

6 So, that's why Mr. Oldenburg has been  
7 participating in this process, and has been of great  
8 assistance. And, we're going to get through with his  
9 continued assistance.

10 Is there anything else I needed to do  
11 before we started, Mr. Wiesner?

12 MR. WIESNER: I believe that's it, Mr.  
13 Chairman.

14 CHAIRMAN HONIGBERG: All right. Where  
15 were we in our review of the Revised Draft Final Proposal?

16 MR. WIESNER: According to my notes, we  
17 left off, I don't think we fully resolved this issue, this  
18 is 301.06(f). And, this is the section that specifies  
19 application requirements for historic resources. And,  
20 this appears at the bottom of Page 9 of the Draft Final  
21 Proposal.

22 And, the specific question was the  
23 reference to "consulting parties", as that term is defined  
24 in federal regulations, and the obligation of the

1 applicants to "describe the status of consultations with  
2 both DHR, the lead federal agency, and consulting  
3 parties." And, the question was whether the applicant  
4 would know what consultations were occurring between the  
5 consulting parties and the state and federal agencies,  
6 which may -- may or may not include the applicant in those  
7 specific consultations?

8 CHAIRMAN HONIGBERG: I think we had some  
9 language. Didn't we have a new sentence regarding  
10 "consulting and participating", or something like that?  
11 And, there was a new sentence that said "report on what  
12 you know", essentially. I may be wrong.

13 MR. WIESNER: I had it still as an open  
14 issue, although that would be one approach. So, the  
15 applicant then would have an obligation to describe, to  
16 the best of its knowledge, the status of those  
17 consultations. And, it might be "We're aware that they  
18 have been occurring. The subject matter is (a), (b), and  
19 (c). But we don't have full details on any consultations  
20 that have been directly with the agencies."

21 CHAIRMAN HONIGBERG: Director Muzzey.

22 DIRECTOR MUZZEY: I would agree with  
23 that approach as well. Given the vast majority of  
24 projects, that information is easily known, particularly

1 since the applicant is a consulting party to the 106  
2 review, they would be aware of a good deal of those  
3 consultations. And, it would only be in the extreme type  
4 of project that information wouldn't be known.

5 So, if we added something such as "if  
6 publicly known", or that type of thing, to the end of this  
7 section, it would provide the applicant an opportunity to  
8 discuss its work with the public on the project, and also  
9 provide the Committee with additional information as to  
10 the 106 review, and the different opinions of the public  
11 of it.

12 CHAIRMAN HONIGBERG: My memory of that  
13 comment as well, Mr. Wiesner, was that there was an issue  
14 with the use of the word "consulting", because "consulting  
15 party" has a meaning in the rules, the federal rules that  
16 are set forth here. And, talking about the "applicant's  
17 consultations with someone who is consulting with an  
18 agency" is two different meanings of the same word,  
19 essentially. And, that there was another word that was  
20 offered up. I don't have the comment in front of me,  
21 unfortunately.

22 MR. WIESNER: I mean, I think there is  
23 some benefit to using "consulting parties" as, and I think  
24 this is what Director Muzzey was suggesting, there is some

1 benefit to using the term as it's defined in the federal  
2 regulations, because those are parties who have the right  
3 and opportunity to participate in the process as defined  
4 in the regulations.

5 So, I think the major thrust of the  
6 comment was that not all of those consultations would be  
7 known to the applicant, because they may be occurring  
8 directly between the agencies and those defined consulting  
9 parties.

10 CHAIRMAN HONIGBERG: Commissioner Scott.

11 COMMISSIONER SCOTT: May I suggest as a  
12 way to resolve this is adding a phrase "to the extent  
13 known by the applicant" in this, and perhaps we can keep  
14 most of the wording as is otherwise?

15 CHAIRMAN HONIGBERG: Other thoughts or  
16 comments?

17 *[No verbal response]*

18 CHAIRMAN HONIGBERG: General agreement  
19 with that?

20 *[Multiple members nodding in the*  
21 *affirmative.]*

22 CHAIRMAN HONIGBERG: All right. Let's  
23 move on.

24 MR. WIESNER: The next comment is in

1 301.07. This is "Effects on the Environment". And, it  
2 appears in (c)(4). And, this is on Page 10, I believe.

3 And, this is, again, a place where the  
4 rules -- the proposed rules refer to "best practical  
5 measures". And, so, the Various Energy Companies again  
6 take the view that that should only apply to wind systems.  
7 At the last meeting, we came up with an approach that  
8 basically deletes the words "best practical". So that, at  
9 the time of application, the applicant would only have to  
10 identify those "measures" which it proposes to use for  
11 mitigation.

12 And, then, add at the end of this  
13 subparagraph a requirement that "the applicant also  
14 identify those alternatives considered but rejected".

15 So, one approach here would be to adopt  
16 the same approach that we -- that the Committee endorsed  
17 for aesthetics.

18 CHAIRMAN HONIGBERG: That is what I  
19 would do, if left to my own devices.

20 COMMISSIONER SCOTT: I agree.

21 CHAIRMAN HONIGBERG: Any other thoughts  
22 or comments?

23 DIRECTOR MUZZEY: I would agree with  
24 that as well. It's also the same approach we took under

1 historical site review.

2 CHAIRMAN HONIGBERG: Sounds good?

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

5 MR. WIESNER: That's correct. Okay.

6 And, in Subparagraph (5), which immediately follows that,  
7 there's a comment from the Various Energy Companies to  
8 replace -- this is where the applicant would "describe the  
9 status of its consultations" with various defined state  
10 and federal agencies. And, the Various Energy Companies  
11 are proposing that "consultations" be replaced with  
12 "discussions, if any". And, rather than including a  
13 specific list of agencies, that it just be revised so that  
14 there's a more general reference to "federal or state  
15 agencies authorized to identify and manage significant  
16 wildlife species, rare plants, rare natural communities,  
17 and other exemplary natural communities".

18 CHAIRMAN HONIGBERG: Thoughts or  
19 comments? Director Muzzey.

20 DIRECTOR MUZZEY: Again, with the idea  
21 of consistency, I would recommend that we leave this  
22 language as it is written right now. It's comparable to  
23 other language in this section. And, I feel the  
24 specificity of using New Hampshire agencies, then saying

1 "any other federal or state having permitting or other  
2 regulatory authority" makes it specific to New Hampshire  
3 and fine as is.

4 CHAIRMAN HONIGBERG: Anyone disagree?  
5 Commissioner Bailey.

6 COMMISSIONER BAILEY: Director Muzzey,  
7 can you just explain if the word "consultation" could be  
8 changed? Because it has a connotation, I think, with the  
9 106 process that I think that's what the main focus of the  
10 comment was about. I'm not sure.

11 But, I mean, Attorney Wiesner, what was  
12 the word that you suggested? "Discussions"?

13 MR. WIESNER: They proposed to, right,  
14 use "discussions", rather than "consultations".

15 COMMISSIONER BAILEY: I mean, wouldn't  
16 that get us to the same place, and just substitute  
17 "discussions" for "consultations"?

18 CHAIRMAN HONIGBERG: I think, in this  
19 context, the words are equivalent. There's no magic --  
20 there's no legal significance to "consultations", like  
21 there is in "consulting parties" in the other set of  
22 rules, I think.

23 Anyone disagree? Change that word and  
24 otherwise leave it as is?

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

3                   CHAIRMAN HONIGBERG: All right.

4                   MR. WIESNER: So, change to  
5 "discussions", but otherwise leave the language?

6                   CHAIRMAN HONIGBERG: Yes.

7                   MR. WIESNER: Also, in this section,  
8 Dr. Ward has a comment, which is similar to one that he  
9 raised in a previous section. And, this would be an  
10 addition of language that reads on -- as an effect on  
11 wildlife and other natural resources: "The effect of the  
12 elevated and isolated nature of the facility, including  
13 its increased prominence, its meteorological visibility,  
14 and the added visual impact of its flashing lights, blade  
15 motion, and noise." Presumably, referring to wind towers.

16                   CHAIRMAN HONIGBERG: Yes. My reaction  
17 to that is that that's about aesthetics, not about  
18 information regarding the natural environment.

19                   *[Short pause.]*

20                   MS. WEATHERSBY: Attorney Wiesner, could  
21 you read that language suggested by Mr. Ward again please.

22                   MR. WIESNER: So, again, this is in  
23 (c)(5) of 301.07. And, Dr. Ward would propose to add that  
24 this would also cover "The effect of the elevated and

1 isolated nature of the facility, including its increased  
2 prominence, its meteorological visibility, and the added  
3 visual impact of its flashing lights, blade motion and  
4 noise."

5 CHAIRMAN HONIGBERG: Director Muzzey.

6 DIRECTOR MUZZEY: I would agree that,  
7 while these are important factors within the context of  
8 the rules as they're currently drafted, we are considering  
9 those aspects as part of aesthetics, rather than natural  
10 environment. And, to insert them at just this point in  
11 the natural environment discussions would be inconsistent  
12 with how we approached these considerations elsewhere in  
13 the rules.

14 CHAIRMAN HONIGBERG: Commissioner  
15 Bailey.

16 COMMISSIONER BAILEY: I agree.

17 CHAIRMAN HONIGBERG: Does anyone want to  
18 take a different view?

19 *[No verbal response]*

20 CHAIRMAN HONIGBERG: All right. Seeing  
21 none.

22 I'll note that Michele Roberge, from the  
23 Department of Environmental Services has joined us. We're  
24 discussing over here, we don't know your current title.

1 What are you now?

2 DIRECTOR ROBERGE: I'm the SIP Planning  
3 Administrator.

4 CHAIRMAN HONIGBERG: What's the first  
5 word?

6 DIRECTOR ROBERGE: State Implementation  
7 Planning.

8 CHAIRMAN HONIGBERG: And, you have been  
9 designated by Commissioner Burack, because he's away  
10 today, is he not?

11 DIRECTOR ROBERGE: Yes.

12 CHAIRMAN HONIGBERG: All right. Well,  
13 thank you for being here. For those who are looking for  
14 the statutory reference, it's RSA 162-H:3, XI.

15 What's next, Mr. Wiesner?

16 MR. WIESNER: The next comment is in  
17 Site 301.08(a)(2). And, these are the requirements for  
18 shadow flicker studies. And, it appears on the bottom of  
19 Page 11 of the Draft Final Proposal.

20 And, according to the proposed rules,  
21 the study should be completed covering locations that fall  
22 within 1 mile of any turbine. New Hampshire Wind Watch  
23 has proposed that it be "at least 1 mile", rather than  
24 just saying "1 mile".

1                   CHAIRMAN HONIGBERG: Consistent with the  
2 change we made earlier, that --

3                   MR. WIESNER: To the aesthetic -- to the  
4 area of potential visual impact for wind farms, yes.

5                   CHAIRMAN HONIGBERG: A change like that  
6 seems okay to me. I see nodding heads.

7                   MR. WIESNER: I'll also note that the  
8 Office of Legislative Services has proposed that the  
9 definition of "astronomical maximum", which appears here,  
10 be instead moved to the Definition section. And, it  
11 seemed to me that that was a reasonable approach. And, as  
12 we'll see later, I have done that.

13                   CHAIRMAN HONIGBERG: Just as a preview  
14 for people, there is a document that we're holding onto  
15 for now, that reflects the changes that the Committee has  
16 made prior to today, and basically goes up through where  
17 we just left off. And, I believe it includes moving that  
18 definition from here, up to the definitions. Is that  
19 right, Mr. Wiesner?

20                   MR. WIESNER: Yes. That's correct.

21                   CHAIRMAN HONIGBERG: All right. So,  
22 we'll be picking that document up later. It will not be  
23 final, because there are changes being made right now that  
24 will have to be incorporated into that. But that's a

1 preview of coming attractions.

2 MR. WIESNER: And, Dr. Ward has comments  
3 here as well. His comment is, after the word "roadway",  
4 which appears in the fourth line, he would replace the  
5 language that then appears before the definition of  
6 "astronomical", with the following language: "based on a  
7 model with no maximum distance and accounting in the  
8 anticipated hours per year for the difference in  
9 cloudiness and solar intensity resulting from the  
10 differences in elevation between the turbine and the  
11 observer. The distance from the turbine over which this  
12 model should extend will be determined by a study which  
13 includes blade width and the effects of the increased  
14 intensity of sunlight due to the elevation differences."

15 CHAIRMAN HONIGBERG: So, ultimately,  
16 that proposal is to create, rather than a "1 mile" or "at  
17 least 1 mile", a sliding scale of sorts, that would look  
18 at elevation size and some of the other factors that are  
19 listed there, but you'd have to create -- you'd create an  
20 assessment that would be unique to each turbine, based on  
21 those factors. Is that --

22 MR. WIESNER: It's greater specificity  
23 regarding the modeling and the factors that the model  
24 should consider. But, yes, on a locational case-by-case

1 basis.

2 CHAIRMAN HONIGBERG: Thoughts or  
3 comments? Commissioner Bailey.

4 COMMISSIONER BAILEY: I think that the  
5 rule as proposed attempted to clarify the shadow flicker  
6 at the worst, you know, when the sun is shining all day,  
7 and the rotor-plane of the turbine is perpendicular. And,  
8 I think that that is a good way to do the study.

9 CHAIRMAN HONIGBERG: So, your thought is  
10 to leave the language as it is?

11 COMMISSIONER BAILEY: Yes.

12 CHAIRMAN HONIGBERG: Are there other  
13 thoughts or comments?

14 *[No verbal response]*

15 CHAIRMAN HONIGBERG: I mean, I'm  
16 sympathetic to this suggestion. Although, I do think that  
17 an appropriate assessment of shadow flicker is going to --  
18 is going to be different for different sites. And, I  
19 think there are people who will -- who will want to  
20 present work like that. I think providing the applicant  
21 with a guideline about how to do it is appropriate, and a  
22 bright line like this, like is in our draft rules, works  
23 for applicants. I'm not certain how well this kind of  
24 sliding scale model would work for everyone.

1 Attorney Weathersby, I think you had  
2 something you wanted to say.

3 MS. WEATHERSBY: Just echoing some of  
4 your thoughts, I think. I think the solar intensity piece  
5 of Dr. Ward's comments are captured in the language of  
6 Section (2) as it's written. It's the distance piece  
7 that, you know, I struggle with a little bit to see if  
8 that's the right distance. But, that said, I think we do  
9 need a defined distance, and not leaving it open as  
10 suggested by Dr. Ward.

11 So, I would defer to those of you who  
12 know more about shadow flicker, as to whether the "one  
13 mile" is the appropriate distance.

14 CHAIRMAN HONIGBERG: Does anyone want to  
15 champion this change?

16 *[No verbal response]*

17 CHAIRMAN HONIGBERG: Seeing none, move  
18 on.

19 MR. WIESNER: The next comment is in  
20 (a)(3). And, this is where the applicant will "describe  
21 the planned setbacks [regarding] the distance between each  
22 wind turbine" and other landowner property.

23 CHAIRMAN HONIGBERG: Wait, Mr. Wiesner.  
24 I'm sorry. I apologize for doing this. Is this the

1 section or is it a section later where we had a number of  
2 comments at the public hearing that essentially said  
3 "scrap the numbers for shadow flicker and setbacks, and  
4 put nothing in, rather than having what you've got  
5 there"?

6 MR. WIESNER: That -- those comments are  
7 really focused on the siting criteria themselves.

8 CHAIRMAN HONIGBERG: All right. We'll  
9 get to them later then. Go ahead. I apologize for  
10 interrupting.

11 MR. WIESNER: Yes. These are the  
12 application standards. And, here's where the applicant  
13 would "describe the planned setbacks". New Hampshire Wind  
14 Watch would make some language changes here, and I'll just  
15 point them out. They would propose to delete the word  
16 "occupied" in the second line. And, so, it would read  
17 "existing buildings and property line, and between each  
18 wind turbine and the nearest public road and overhead and  
19 underground infrastructure and pipelines". And, I may not  
20 have the language exactly correct. But I believe the  
21 notion is that it wouldn't just be "overhead utility  
22 lines" that would be considered, it would also be  
23 "overhead and underground utility infrastructure including  
24 pipelines" that would also be subject to the setback

1 requirement, or the requirement here to designate what the  
2 applicable setbacks would be as planned by the applicant.

3 CHAIRMAN HONIGBERG: Commissioner Scott.

4 COMMISSIONER SCOTT: I'm okay with  
5 taking "occupied" out. I think I -- Attorney Wiesner, can  
6 you try it one more time with the rest of the language,  
7 just so I think I can digest it?

8 MR. WIESNER: Hopefully, I'll get this  
9 right. So, I'll just note that, by taking "occupied" out,  
10 we're now looking at setbacks from "all buildings, as well  
11 as all property lines, and between each wind turbine and  
12 the nearest public road and overhead and underground  
13 utility infrastructure and pipelines".

14 CHAIRMAN HONIGBERG: Commissioner Scott.

15 COMMISSIONER SCOTT: To the extent this  
16 is just the applicant telling us what they plan to do, I  
17 don't object to that language.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: My question with that  
20 language is what is meant by "infrastructure"? Are we  
21 talking about all types of infrastructure that may be  
22 buried, such as sewer lines and that type of thing? Or,  
23 are we just talking about energy infrastructure?

24 MR. WIESNER: I don't believe their

1 comment was restricted to just energy infrastructure.  
2 Although, the thought may have been "underground  
3 transmission lines or distribution lines". But, I think,  
4 if we're talking about "utility infrastructure", it  
5 probably would include water and sewer infrastructure, if  
6 located within proximity of the facility.

7 CHAIRMAN HONIGBERG: Commissioner  
8 Bailey, followed by Attorney Weathersby.

9 COMMISSIONER BAILEY: My question is,  
10 would they -- if we add that, they have to identify the  
11 nearest underground utility infrastructure, whether it's  
12 in the setback or 20 miles away? You know, there's  
13 probably an overhead utility line somewhere in the  
14 vicinity of the site, because you have to get transmission  
15 and interconnection from the site. But there may not be  
16 any underground facilities near the site.

17 MR. WIESNER: And, in each case, you  
18 know, depending on the remoteness of the location, the  
19 nearest building or the nearest public road or the nearest  
20 utility infrastructure could be some distance away.

21 CHAIRMAN HONIGBERG: Attorney  
22 Weathersby, followed by Commissioner Scott and Director  
23 Muzzey.

24 MS. WEATHERSBY: I'm just picking up on

1 this last thread, a new thought is maybe we want to put,  
2 you know, some distance nearest, "if within two miles" or  
3 some distance requirement.

4 But my other thought was, the utility of  
5 the information that's requested, I'm having a hard time  
6 seeing how the distance between a wind turbine and an  
7 underground electric line is helpful. Because this is all  
8 about public safety, and I don't see, say, a turbine  
9 falls, I don't see how that's going to affect an  
10 underground line. And, maybe it's my ignorance of the  
11 subject, but I'm not seeing the utility of the information  
12 that's requested.

13 CHAIRMAN HONIGBERG: Commissioner Scott.

14 COMMISSIONER SCOTT: I do agree that we  
15 ought to put a distance frame for this, so it doesn't  
16 become an exercise in meeting the rule, but for no  
17 benefit. I'm not sure two miles is -- sounds overly -- I  
18 mean, I think what the issue is, if the windmill falls on  
19 something, and I would think that you could get much  
20 closer than that.

21 To the extent that, for instance, a  
22 pipeline nearby is underground, I think that would be  
23 something for the applicant to say. You know, "we don't  
24 feel this is a safety issue, because, worst case, it's not

1 a problem, it's protected" or that type of thing. So, I  
2 think it would help assure the public of safety. So, I  
3 don't have a problem with that, *per se*. I think it's  
4 probably more easily answerable. But what I'm not sure is  
5 what the right distance would be to require people to --  
6 the applicants to look at this. And, I'm thinking maybe,  
7 I don't know, twice, three times the height of the highest  
8 blade tip or something like that.

9 CHAIRMAN HONIGBERG: I suspect that ice  
10 throw is part of this as well. That this is not just "if  
11 the turbine falls". It relates to ice throw as well.

12 Director Muzzey.

13 DIRECTOR MUZZEY: Given the difficulty  
14 of determining an appropriate distance, I would side with  
15 leaving the language as it exists, and not including a  
16 distance determination. But I would be in favor of  
17 limiting this "description of planned setbacks" to  
18 underground utilities, but not all infrastructure, given  
19 the difficulties of locating some of the infrastructure.  
20 And, you know, we have more than 100 years of  
21 infrastructure underground that may have no impact on  
22 this, on this section. And, so, I would limit it to  
23 energy facilities.

24 CHAIRMAN HONIGBERG: Mr. Oldenburg.

1 MR. OLDENBURG: I guess the way I'm  
2 reading this is it's up to them to determine the distance,  
3 right? It says "and explain why the indicated distances  
4 are adequate to protect". So, if we put in a distance,  
5 we're sort of making that determination for the applicant.  
6 Whereas, under this section, it's up to them to determine  
7 what the adequate distance is. So, I don't know if I  
8 would change that. Because, if we don't agree that the  
9 distance is adequate, we could always ask them for a  
10 greater distance, correct?

11 CHAIRMAN HONIGBERG: I think that is  
12 correct. I think the biggest issue here is the  
13 underground, whether to include the underground. And, if  
14 so, whether it includes "all underground utility  
15 facilities" or, as Director Muzzey suggests, that it  
16 should be limited to those that are energy-related.

17 Again, I feel like Attorney Weathersby  
18 here, but I am having a little trouble seeing how the  
19 underground facilities are endangered by either ice throw  
20 or a falling anything. They're going to land on the  
21 ground, and those facilities are, by definition,  
22 "underground". People may have to work on them at times,  
23 but they will set up their sites and dig what they need to  
24 dig, but that's always a risk, and they're probably not

1 going to be doing it during winter, if it's an optional --  
2 if it's a scheduled type of maintenance. So, ice throw is  
3 not going to be an issue there.

4 Anybody want to make the case for  
5 including "underground"? Or, you have something else to  
6 say, Director Muzzey?

7 DIRECTOR MUZZEY: No. I was going to  
8 just add the thought that these are large structures. In  
9 the instance of a blade falling to the ground, certainly,  
10 that would -- that would have an impact beyond the surface  
11 of the ground. It would disturb the ground for probably  
12 several feet, and depending on the depth of the  
13 infrastructure, it could be disturbed, is, I think, the  
14 core of this concern.

15 CHAIRMAN HONIGBERG: I mean, it doesn't  
16 offend me to add it. But I would, I think, limit it to  
17 energy. I think there's a definition of "energy  
18 pipelines" that we have already, and we've discussed in  
19 the past as to what that includes. And, I think it  
20 includes gas transmission and conduits for electricity.

21 Commissioner Bailey.

22 COMMISSIONER BAILEY: I don't object to  
23 adding that, as long as we address "the nearest" issue.  
24 Because I think that the "explanation of why the distances

1 are adequate to protect the public from risks" refers to  
2 their planned setbacks, and not to what they have to  
3 report as "the nearest". So, again, if the nearest gas  
4 pipeline is 20 miles away, I don't think they should have  
5 to tell us that.

6 CHAIRMAN HONIGBERG: I mean, we could  
7 put a big number in there, and be fairly confident that,  
8 particularly, for gas pipelines, because there really  
9 aren't that many, they would have no trouble identifying  
10 whether they're within 20, 30 miles of a gas pipeline.  
11 Large transmission -- electric transmission, everybody's  
12 going to know where the large electric transmission  
13 systems are going in the state. And, if they're within 20  
14 miles, they're going to know. I don't really know what  
15 the right number is. We can pick a number, we can put a  
16 number in there.

17 But, I think you're right, Commissioner  
18 Bailey, that the goal here is to identify the setbacks and  
19 describe why the setbacks are adequate.

20 Commissioner Scott, to bring this to a  
21 resolution, followed by Director Muzzey.

22 COMMISSIONER SCOTT: I propose that a  
23 half mile would be sufficient for these purposes.

24 DIRECTOR MUZZEY: My suggestion was to

1 use "ten miles", given that I believe that's the largest  
2 distance that we use in any of our considerations in the  
3 rules.

4 CHAIRMAN HONIGBERG: Commissioner  
5 Bailey.

6 COMMISSIONER BAILEY: I support the  
7 "half mile". I think "10 miles" is visual. And, nothing  
8 is going to fall on a gas pipeline that's 10 miles away.  
9 I don't -- I can't imagine that.

10 MS. WEATHERSBY: How about a compromise?  
11 Something like maybe "2 miles", to account for flying  
12 blades or ice throw that could go a fair amount farther  
13 than a half mile?

14 CHAIRMAN HONIGBERG: Not being familiar  
15 with the engineering, "2 miles" sounds right to me. But I  
16 have no basis for knowing that, other than just trying to  
17 do -- think about some simple math in my head, about how  
18 far things might travel if they get thrown or break off.  
19 We have some testimony and some information from others  
20 about how far ice can be thrown in certain circumstances,  
21 and it is longer than a half mile, I'm pretty sure, but  
22 it's not much. But "2 miles" I think would cover pretty  
23 much everything.

24 All right. Two miles?

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

3                   CHAIRMAN HONIGBERG: Two miles.

4                   MR. WIESNER: And, are we going to  
5 delete "occupied", where it appears before "buildings"?

6                   CHAIRMAN HONIGBERG: I would not be  
7 inclined to delete "occupied".

8                   Director Muzzey.

9                   DIRECTOR MUZZEY: Could you clarify for  
10 me what you feel "occupied building" means?

11                  CHAIRMAN HONIGBERG: It's as opposed to  
12 things that are sheds, unoccupied structures that have  
13 been around for 50 years and haven't been occupied in  
14 decades. If it's being used, then that's what we should  
15 care about.

16                  DIRECTOR MUZZEY: I would agree. I find  
17 the term can have different meanings to different people.  
18 It may mean, you know, to some folks, it may mean a  
19 "residential building", it may not include a work building  
20 that humans use at different times of the day. And, so,  
21 that's why I had agreed with removing "occupied", because  
22 of its different meanings. And, the case of an abandoned  
23 building is sufficiently rare that it wouldn't impose a  
24 great task to include the occasional abandoned building.

1                   CHAIRMAN HONIGBERG: All right. What's  
2 the sense of the group? "Occupied" in or "occupied" out?

3                   COMMISSIONER SCOTT: Out.

4                   COMMISSIONER BAILEY: Out.

5                   CHAIRMAN HONIGBERG: In or out?

6                   COMMISSIONER BAILEY: In.

7                   MS. WEATHERSBY: In.

8                   COMMISSIONER BAILEY: Leave it in.

9                   CHAIRMAN HONIGBERG: All right,  
10 Commissioner Bailey, which way do you want go here? You  
11 just voted both ways within the last few seconds. So,  
12 tell me which way you want it, and we'll go from there?

13                   COMMISSIONER BAILEY: So, I get to  
14 decide?

15                   CHAIRMAN HONIGBERG: No. I just want to  
16 know what you think right now.

17                   COMMISSIONER BAILEY: No, I want to  
18 leave the word "occupied" in.

19                   CHAIRMAN HONIGBERG: All right.

20                   COMMISSIONER BAILEY: Sorry.

21                   CHAIRMAN HONIGBERG: Director Muzzey,  
22 you want to take it out?

23                   DIRECTOR MUZZEY: Yes.

24                   CHAIRMAN HONIGBERG: Commissioner Scott

1 wants to take it out. Attorney Weathersby?

2 MS. WEATHERSBY: I think leave it in,  
3 with the understanding that it means "a building that is  
4 occupied", you know, --

5 CHAIRMAN HONIGBERG: Sometimes?

6 MS. WEATHERSBY: -- "sometimes". A  
7 building -- maybe we should rephrase it as "a building not  
8 used exclusively for storage" or something like that.  
9 That, instead of using the word "occupied", because we do  
10 struggle, you know, is a commercial warehouse occupied,  
11 where people are there loading and unloading trucks three  
12 hours a day? You know, so, maybe -- now I'm talking  
13 myself into taking it out.

14 CHAIRMAN HONIGBERG: Mr. Hawk, in or  
15 out? We'll come back to Attorney Weathersby.

16 MR. HAWK: I'd leave it in.

17 CHAIRMAN HONIGBERG: Mr. Oldenburg?

18 MR. OLDENBURG: I'd take it out.

19 CHAIRMAN HONIGBERG: Director Roberge?

20 DIRECTOR ROBERGE: I'd take it out as  
21 well.

22 CHAIRMAN HONIGBERG: I've lost track of  
23 what the count is.

24 MS. WEATHERSBY: I think it's out. It's

1 out.

2 CHAIRMAN HONIGBERG: I think it's out.

3 MR. WIESNER: So, delete "occupied"?

4 CHAIRMAN HONIGBERG: Delete "occupied".

5 Applicants will just have to, if there's an unoccupied  
6 structure and they can identify it and say "it's  
7 unoccupied, there's no need to worry about it", then they  
8 will do that. I know there's other comments we have about  
9 setbacks going to property lines, rather than buildings.  
10 And, so, we're going to get another chance -- another  
11 crack at setbacks soon.

12 MR. WIESNER: And, just to clarify,  
13 we're going to include a reference to "underground  
14 infrastructure", but "energy infrastructure".

15 CHAIRMAN HONIGBERG: Uh-huh. Yes. And,  
16 "2 miles".

17 MR. WIESNER: Okay. The next comment is  
18 in (a)(4). This is regarding "ice throw", and the  
19 applicant's requirement to "assess the risks of ice throw,  
20 blade shear, and tower collapse, including a description  
21 of the probability of occurrence of such events under  
22 varying conditions, the distances at which such events may  
23 have an impact, and the best practical measures taken or  
24 planned to avoid or minimize".

1                   We have comments from New Hampshire Wind  
2 Watch and Wagner Forest Products proposing that we delete  
3 the new language regarding the "probability of  
4 occurrence".

5                   And, I'll also note here, and I don't --  
6 I'm not aware that the -- excuse me, the Various Energy  
7 Companies raised this, but we do have a reference here as  
8 well to "best practical measures". And, so, we might  
9 consider adopting the same approach that we have in other  
10 places, to take out "best practical", refer only to  
11 "measures", and then have the applicant "identify those  
12 alternatives that were considered but rejected".

13                   CHAIRMAN HONIGBERG: That last  
14 suggestion regarding "measures" makes sense to me, given  
15 our decisions regarding other uses of the same phrase. I  
16 see some nodded heads to that. Commissioner Bailey.

17                   COMMISSIONER BAILEY: Even though this  
18 section applies to wind turbines?

19                   CHAIRMAN HONIGBERG: Yes. Because we  
20 will get to the assessment of whether their measures are  
21 "best practical measures", when we figure out whether they  
22 meet the standards. But this is "identify what they think  
23 is appropriate".

24                   COMMISSIONER BAILEY: Right.

1 CHAIRMAN HONIGBERG: Other -- any  
2 disagreement with that change?

3 *[No verbal response]*

4 CHAIRMAN HONIGBERG: I see none. So,  
5 let's talk about the -- Commissioner Scott, yes?

6 COMMISSIONER SCOTT: I don't mind taking  
7 the other language out, as it doesn't -- this is a  
8 minimum. So, obviously, the applicant could include  
9 information about the probability of occurrence, in their  
10 opinion, their estimate -- you know, with their data and  
11 the distances. So, I don't have a problem with taking it  
12 out, I suppose, with the understanding that we'll probably  
13 get that information anyways in an application.

14 CHAIRMAN HONIGBERG: Other thoughts or  
15 comments?

16 *[No verbal response]*

17 CHAIRMAN HONIGBERG: Do people agree  
18 with Commissioner Scott on this? I see one nodding -- two  
19 nodding heads. Commissioner Bailey.

20 COMMISSIONER BAILEY: Just for clarity,  
21 is the proposal to take both the entire new insertion out  
22 or leave "the distances at which such events may have an  
23 impact" in? I just --

24 CHAIRMAN HONIGBERG: Attorney Wiesner.

1 MR. WIESNER: I believe the comment was  
2 to take all of that new language out, with a particular  
3 focus on the "probability of occurrence". I guess I would  
4 just note that what's supposed to be assessed here is the  
5 "risk" of these bad things happening. And, you know,  
6 arguably, risk involves a probability analysis.

7 CHAIRMAN HONIGBERG: I think  
8 Commissioner Scott's point is, if they're assessing the  
9 risk, that's what they're going to assess. They're going  
10 to assess the probability of it happening at any location  
11 near their facility. And, having specific language might  
12 have been helpful, but they're going to have to assess the  
13 risk.

14 Take it out?

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

17 CHAIRMAN HONIGBERG: I see nodding  
18 heads. Let's take it out.

19 MR. WIESNER: Dr. Ward also has a  
20 comment on this section, he would propose to add language  
21 that is "An assessment of the meteorological factors,  
22 particularly the wind direction, which determines both the  
23 icing accumulation and its throw-off."

24 CHAIRMAN HONIGBERG: That sounds like

1 part of their assessment of the risk. And, if the risk  
2 that they should be -- if you're trying to figure out  
3 whether your turbine blades are going to build up ice, and  
4 then throw that ice, you should understand the meteorology  
5 of your area. That's part of their requirement that they  
6 assess the risk, it would seem to me, without anybody  
7 having to say that.

8 Any other thoughts on that?

9 Commissioner Scott.

10 COMMISSIONER SCOTT: And, frankly, I  
11 find the suggested language too limiting. There may be a  
12 prevailing wind direction, understood. But I think we  
13 want the worst case in any risk analysis anyways. So, I'd  
14 be worried that an applicant could look at that proposed  
15 language and say, you know, "I just have to look at only  
16 the prevailing winds, not every situation."

17 CHAIRMAN HONIGBERG: What's next,  
18 Mr. Wiesner?

19 MR. WIESNER: (a)(7) is the requirement  
20 for a "decommissioning plan". And, we have a lot of  
21 different comments on this section.

22 CHAIRMAN HONIGBERG: Is anybody happy  
23 with this section?

24 MR. WIESNER: It's hard to tell. The

1 Various Energy Companies are proposing that it not be  
2 required to be an "independent qualified person" who would  
3 prepare the decommissioning plan. So, it could be the  
4 applicant itself or an affiliate. Also, that salvage  
5 value be permitted to be taken into account. And, that  
6 there not be a specification of the appropriate means of  
7 financial security.

8 EDP would also permit salvage value, and  
9 also believes that there should be more financial  
10 assurance mechanisms that would be permissible.

11 National Grid also believes that the  
12 security provision should not be as limited as appear in  
13 this language.

14 And, Eolian basically has the same  
15 comment.

16 CHAIRMAN HONIGBERG: Is there a  
17 statutory issue with the "salvage value" provision? I  
18 have some memory that there's a limit on our ability to  
19 allow them to include salvage value. I may be  
20 misremembering.

21 MR. WIESNER: I'm not aware of that.

22 CHAIRMAN HONIGBERG: Okay. My mistake.

23 MR. WIESNER: And, I think different --  
24 my understanding is that different states treat it

1 differently. But I understand the concern that, you know,  
2 even at the end of a facility's useful life, there is  
3 likely to be some salvage value. And, wouldn't it make  
4 more sense to take that into account, and, you know,  
5 somehow discount it to present value or whatever in  
6 determining what the decommissioning plan is. And, this  
7 language would prohibit that. And, some of the developers  
8 have taken issue with that. I mean, that is, I believe,  
9 the basis of their comment. I don't believe it's a legal  
10 argument.

11 CHAIRMAN HONIGBERG: I actually thought  
12 the legal argument went the other way. I thought there  
13 was some -- maybe it's a decision, maybe it's something  
14 from the Commission -- from the Committee in prior  
15 decisions, I'm just not sure. If it's a straight policy  
16 call, then the group can make the policy call, if we've  
17 been given that authority.

18 MR. WIESNER: This is when I wish  
19 Attorney Iacopino were sitting next to me. But he's not.

20 I'll also just go on and say that New  
21 Hampshire Wind Watch and Mr. Quinchia have proposed some  
22 more specific language regarding corporate guarantees.  
23 And, it's probably best -- well, I can read it, actually.  
24 They would delete the language that appears at the end,

1 which refers to "unconditional payment guaranty", and the  
2 language that they would delete begins "executed by a  
3 parent company of the facility owner maintaining at all  
4 times an investment grade credit rating". And, they would  
5 propose to include language reading "Which should for the  
6 life of the project have a constant creditworthiness test  
7 and the financial assurance is to be unconditional and  
8 immediately payable and a backstop provision if the bank,  
9 insurance company, or parent company loses its investment  
10 grade credit rating as in standard project finance and  
11 market conventions, i.e., four rating categories by  
12 nationally recognized structured rating organizations."

13 CHAIRMAN HONIGBERG: Director Muzzey.

14 DIRECTOR MUZZEY: In order to begin  
15 discussion of this, I will present the idea that we have  
16 two opposite ends of ideas as to how to change or edit  
17 this section. And, I don't believe there is middle ground  
18 between those two extremes. By suggestion would be to  
19 leave the language as is.

20 CHAIRMAN HONIGBERG: Other thoughts or  
21 comments? Commissioner Scott.

22 COMMISSIONER SCOTT: I support that.  
23 And, I'll point the Committee to 302.05, the waiver  
24 provisions. So, we -- this doesn't preclude an applicant

1 from asking for a waiver of any of the conditions,  
2 frankly. And, you know, if we deem it appropriate, we can  
3 do that under assuming we approve 302.05.

4 CHAIRMAN HONIGBERG: Attorney  
5 Weathersby.

6 MS. WEATHERSBY: I would agree. I think  
7 that the language as written is very good, actually. I  
8 think that it's important that the person who determines  
9 the decommissioning plan is an independent from the  
10 utility itself. And, that the salvage value, to me, is  
11 rather speculative and I think should not be included.  
12 And, I think Mr. Quinchia's comments are mostly captured  
13 by the language that we have in here, where "the facility  
14 owner has to maintain at all times an investment grade  
15 credit rating".

16 So, I think that the language as written  
17 is good and should be left alone.

18 CHAIRMAN HONIGBERG: Anyone want to take  
19 on championing any of the changes that have been  
20 suggested?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: It would seem that  
23 the answer is "no". Attorney Wiesner.

24 MR. WIESNER: So, leave the language as

1 is?

2 CHAIRMAN HONIGBERG: Leave the language  
3 as is.

4 MR. WIESNER: And, in (8), we have some  
5 very specific provisions for wind farm decommissioning.  
6 And, in (8)(b), there's a requirement that "All  
7 transformers shall be transported off-site." And, Eolian  
8 has raised the question "Why should that only apply to  
9 wind facilities? Why shouldn't it apply to other types of  
10 facilities as well?"

11 CHAIRMAN HONIGBERG: But his comment --  
12 he is a wind guy. His comment did not say "remove this  
13 requirement for me"?

14 MR. WIESNER: I don't believe so. I  
15 think he has another similar comment on the section that  
16 requires the removal of underground infrastructure, that  
17 that -- "why shouldn't that also apply to other energy  
18 facilities?" So, the comment is not to delete it from  
19 here, but to impose it on others.

20 CHAIRMAN HONIGBERG: Okay. Well, I'm  
21 not -- then, I don't think we have to worry about deleting  
22 it. The question is "whether it gets added for others?"  
23 And, I believe there's also, with respect to that  
24 "underground" issue, there's a question about "4 feet"

1 versus "2 feet".

2 MR. WIESNER: That's right. I haven't  
3 gotten there yet, because that appears in (8)(d).

4 CHAIRMAN HONIGBERG: All right. Well,  
5 since no commenter that you identified or that I can  
6 remember has suggested that we delete (8)(b), let's move  
7 on.

8 MR. WIESNER: Yes. And, in (8)(d),  
9 there is a requirement that "underground infrastructure at  
10 depths less than four feet below grade be removed from the  
11 site". And, that is based on the Vermont PSB precedent, I  
12 believe. Both Wagner and EDP have pointed out that the  
13 Committee's precedent in the Granite Reliable case is "two  
14 feet", not "four". And, they're belief that that's a  
15 better depth at which to require underground  
16 infrastructure removal, and that that should be the  
17 standard here.

18 CHAIRMAN HONIGBERG: Don't they also  
19 make an argument that four feet, in many circumstances, is  
20 going to cause more disruption than is necessary to  
21 accomplish the goal here?

22 MR. WIESNER: I believe that's correct.  
23 If the primary concern is safety, four feet they believe  
24 is enough to ensure safety, while minimizing disruption to

1 the natural environment, especially if we're now 15, 20  
2 years down the road from when the facility was first  
3 built.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: I'm not  
6 particularly in love with this (d) at all, but I --  
7 because I think it's really going to be site-specific.  
8 And, as you've already alluded to, it very well may be the  
9 best thing is to leave what's underground there, so as not  
10 to disturb the natural environment as it is.

11 Having said that, and, again, with my  
12 earlier suggestion that 302.05, the waiver provisions,  
13 should be incorporated into the rules. If that is done, I  
14 think we could keep with four feet. And, then, to the  
15 extent that an applicant wants to make a case at the time,  
16 I think that's very viable, and they could come in for a  
17 waiver suggesting "2 feet" or "1 feet" or "not to dig up  
18 at all".

19 So, I think that should be  
20 case-specific. So, given that, I think we -- I would just  
21 stay with the "four" as a default, and understand there's  
22 a potential for waivers to do less than that.

23 CHAIRMAN HONIGBERG: Other thoughts or  
24 comments on this section? Anybody want to do something

1 different than what Commissioner Scott just said?

2 *[No verbal response]*

3 CHAIRMAN HONIGBERG: Don't think there  
4 is. Let's move on.

5 MR. WIESNER: Dr. Ward also has a  
6 comment on this Section (a), which would add a Subsection  
7 (10), where the applicant will be required to "Demonstrate  
8 that the facility will not interfere with the weather  
9 radars used for severe storm warnings or any local weather  
10 radars."

11 CHAIRMAN HONIGBERG: Off the record.

12 *[Brief off-the-record discussion*  
13 *ensued.]*

14 CHAIRMAN HONIGBERG: I'm sorry. Could  
15 you read Dr. Ward's language again.

16 MR. WIESNER: Dr. Ward would add a new  
17 Subsection (10) to Subsection (a), which reads "A  
18 demonstration that the facility will not interfere with  
19 the weather radars used for severe storm warnings, and  
20 will not interfere with any local weather radars."

21 CHAIRMAN HONIGBERG: Director Muzzey.

22 DIRECTOR MUZZEY: Could I ask whether  
23 we're expecting Attorney Iacopino today?

24 CHAIRMAN HONIGBERG: We are not.

1                   DIRECTOR MUZZEY: So, it would be  
2 impossible to ask for his history of whether or not this  
3 has been an issue --

4                   *[Court reporter interruption.]*

5                   DIRECTOR MUZZEY: So, it's not possible  
6 to ask for a history of whether this has been an issue in  
7 previous projects?

8                   CHAIRMAN HONIGBERG: You may be  
9 surprised to hear this, but I actually think he's in a  
10 trial on child pornography. That is -- I believe that's  
11 true. He's serving as a lawyer in that trial.

12                   COMMISSIONER BAILEY: A good  
13 clarification.

14                   CHAIRMAN HONIGBERG: Just for  
15 clarification.

16                   DIRECTOR MUZZEY: Thank you for that  
17 clarification.

18                   CHAIRMAN HONIGBERG: Attorney  
19 Weathersby.

20                   MS. WEATHERSBY: Do any of the  
21 Commission members know if, in the siting of a wind  
22 project, does, like, NOAA get involved at all? Because I  
23 would -- if we could have a standard, like we have for the  
24 FAA with the lighting, you know, does the Oceanographic &

1 Atmospheric, whatever "NOAA" stands for --

2 CHAIRMAN HONIGBERG: Administration.

3 MS. WEATHERSBY: -- Administration,  
4 thank you, whether they weigh in at all?

5 CHAIRMAN HONIGBERG: Commissioner  
6 Bailey.

7 COMMISSIONER BAILEY: I don't recall  
8 that they do. I haven't served on a lot of wind  
9 applications, but I don't remember hearing from them  
10 before.

11 CHAIRMAN HONIGBERG: Director Muzzey.

12 DIRECTOR MUZZEY: I think this is  
13 potentially an important issue. It should be -- I would  
14 imagine it would be something that could be demonstrated,  
15 and would suggest adding it in as a new Section (10).

16 CHAIRMAN HONIGBERG: Do people agree  
17 with Director Muzzey on this? Any other thoughts or  
18 comments?

19 Commissioner Scott.

20 COMMISSIONER SCOTT: I'm a little bit  
21 concerned that this is -- you know, you'd have to make a  
22 demonstration that you're not going to interfere. My  
23 biggest concern is, if we have a wind facility that's  
24 clearly not within range of these type of facilities, that

1 they still have to go through an exercise in proving a  
2 negative. I'm just a little bit concerned with what that  
3 looks like.

4 CHAIRMAN HONIGBERG: Do you want to  
5 instead pick of language from (4) and have them "assess  
6 the risk" of interference?

7 COMMISSIONER SCOTT: I'm much more  
8 comfortable with that.

9 DIRECTOR MUZZEY: I would agree.

10 CHAIRMAN HONIGBERG: I see nodding  
11 heads. Can we adapt the proposed language and incorporate  
12 the introduction of (4), from Subsection (4)?

13 MR. WIESNER: So, "assessing the risks  
14 of interference", rather than "demonstrating there will be  
15 no interference"?

16 CHAIRMAN HONIGBERG: Yes.

17 MR. WIESNER: Yes. We can do that.

18 CHAIRMAN HONIGBERG: All right.  
19 Consider it done.

20 MR. WIESNER: And, the next comment is  
21 in (b). This is the applicant's requirements with respect  
22 to electric transmission facilities. And, there's a  
23 requirement that there be "an assessment of electric and  
24 magnetic fields generated by the proposed facility...based

1 on", and the language is "current scientific knowledge".  
2 The Various Energy Companies would propose to delete  
3 "current" and replace it with "established".

4 CHAIRMAN HONIGBERG: Commissioner  
5 Bailey.

6 COMMISSIONER BAILEY: I think that's an  
7 important change. I think maybe we could ask them to  
8 provide "current scientific knowledge", to the extent they  
9 know it. But I think "established" is a more specific and  
10 accepted body of knowledge.

11 CHAIRMAN HONIGBERG: Commissioner Bailey  
12 would propose to adopt that change, and change "current"  
13 to "established" in that subsection.

14 Are there other thoughts or comments?  
15 Do people agree with Commissioner Bailey?

16 DIRECTOR MUZZEY: Yes.

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

19 CHAIRMAN HONIGBERG: I see nodding  
20 heads. Let's move on.

21 MR. WIESNER: In this section as well,  
22 Dr. McLaren has a number of very specific proposals. And,  
23 it would take me some time to read them. And, I'm hoping  
24 that the Committee can locate his comments and review

1       them. He spoke to them on the record at the public  
2       hearing. His written comments were then subsequently  
3       submitted, I believe, by himself, and then later also by  
4       Ms. Pastoriza. So, I think they should be easily  
5       accessible.

6                   CHAIRMAN HONIGBERG: Off the record.

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

9                   CHAIRMAN HONIGBERG: I'm sorry. We're  
10       going back on the record. Commissioner Scott.

11                   COMMISSIONER SCOTT: Can you give me the  
12       cite one more time?

13                   MR. WIESNER: The cite to the rules?

14                   COMMISSIONER SCOTT: Yes. What rule are  
15       we looking at?

16                   MR. WIESNER: This is 301.08(b)(1).  
17       And, all currently -- the proposed language, this is on  
18       the top of Page 13, the proposed language basically  
19       requires only "an assessment of electric and magnetic  
20       fields generated by the proposed facility."

21                   CHAIRMAN HONIGBERG: And, as currently  
22       proposed, there is no subparagraph (1), (2), (3). It's  
23       just (b), I believe.

24                   MR. WIESNER: That's correct.

1 CHAIRMAN HONIGBERG: And, Dr. McLaren is  
2 suggesting that -- more language and that the subsection  
3 be further subdivided.

4 MR. WIESNER: Yes. So, this is a  
5 significant expansion of the detail that would be included  
6 in the EMF assessment.

7 *[Short pause for members to review*  
8 *comments provided.]*

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: At this juncture,  
11 I'm more comfortable with the general language we  
12 currently have. So, I'm not in favor of adopting more  
13 specific language at this time. I think a more robust  
14 discussion of this issue, if we're going to go down that  
15 road, would be warranted.

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

18 MS. WEATHERSBY: I think that the  
19 suggestions have a lot of merit, if we decide to go with  
20 setbacks for electric transmission facilities, based on  
21 the magnetic fields and voltage that they carry, *etcetera*,  
22 because we would want to know a lot of this information in  
23 making those assessments and determining the setbacks.

24 So, I guess I'd be in favor of waiting

1 on this and coming back to it, once we decide what we're  
2 going to do concerning voltage from the lines.

3 CHAIRMAN HONIGBERG: Other thoughts or  
4 comments?

5 *[No verbal response]*

6 CHAIRMAN HONIGBERG: I guess, in light  
7 of what Attorney Weathersby just suggested, Attorney  
8 Wiesner, is there a subsection that we'd be looking at  
9 that would trigger this inquiry?

10 MR. WIESNER: We currently do not have  
11 specific transmission line setbacks. Now, there are  
12 proposals from commenters that such setbacks be  
13 incorporated. And, in fact, Dr. McLaren has referenced a  
14 number of other states, which have not only setback  
15 requirements, but a limit on the milligauss of fields that  
16 would be measured at, say, the edge of the right-of-way,  
17 because some other states have adopted that type of  
18 approach. So, that's not a distance setback, but that is  
19 a -- sort of a "measured setback", if you will, similar  
20 to -- similar to sound criteria. And, we haven't gotten  
21 there yet.

22 But, I mean, certainly, if the Committee  
23 were considering imposing such setback requirements for  
24 transmission lines, or EMF restrictions at the property

1 line, let's say, then it would be all the more important  
2 to have this data provided up front.

3 Even if there is no hard-and-fast siting  
4 criteria, it may be worth considering, and we have a  
5 provision here that requires assessment of the EMF risk,  
6 because the condition -- excuse me -- the Committee, even  
7 if there's no setbacks stated in the rules, might conclude  
8 in a particular case that that should be incorporated as a  
9 condition of the certificate.

10 CHAIRMAN HONIGBERG: Commissioner  
11 Bailey.

12 COMMISSIONER BAILEY: I don't think we  
13 know enough about this subject to add detailed rules like  
14 this at this point in the rulemaking. You know, we don't  
15 have anybody's response to this, because this is at the  
16 very last second. So, I would be reluctant to add such  
17 specifications, and deal with it in a case-by-case  
18 analysis. And, if somebody makes the case, then, we'll  
19 make it a condition of the -- we can make it a condition  
20 of the certificate.

21 CHAIRMAN HONIGBERG: Other thoughts or  
22 comments?

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: Don't see a great

1 movement afoot to make these changes at this time.

2 Director Muzzey.

3 DIRECTOR MUZZEY: The one large idea  
4 that I believe I read in his comments, that is not covered  
5 by this general statement under (b), is the idea of not  
6 only the fields generated by the proposed facility, but  
7 also added to existing facilities, you know, that are  
8 nearby, so, the cumulative effect, possibly. So, I'm  
9 wondering if that needs to be added to Section (b) or not,  
10 or, again, if it's something we'd want to consider on a  
11 case-by-case basis?

12 CHAIRMAN HONIGBERG: So, what you've  
13 just suggested is adding language to (b) that would call  
14 for the Applicant to "assess the electric and magnetic  
15 fields generated, not just by the proposed facility, but  
16 how those fields might interact with, magnify, or  
17 potentially reduce", as Dr. McLaren identified in one of  
18 his comments, "the magnetic fields, when combined with  
19 existing facilities"?

20 DIRECTOR MUZZEY: I raise it as a point  
21 of discussion, not that I feel strongly either way about  
22 that.

23 CHAIRMAN HONIGBERG: Other thoughts or  
24 comments? Mr. Oldenburg.

1 MR. OLDENBURG: I like the idea. I  
2 mean, I think a lot of -- if you expand the use of an  
3 existing corridor, there's already an established line  
4 there that has some sort of magnetic field profile. And,  
5 if you add to it, I think you'd want to know that, what  
6 the cumulative effects are.

7 CHAIRMAN HONIGBERG: Other thoughts or  
8 comments? Do people generally agree with that?

9 I see some nodding heads, and at least  
10 one shrugged shoulder. I don't know. Do people want to  
11 add a concept like that in?

12 Commissioner Bailey.

13 COMMISSIONER BAILEY: It probably  
14 doesn't hurt, because I think the cumulative effects will  
15 be canceling each other out. So, the cumulative effects  
16 may be less than. It's not a serial, you add one to the  
17 other.

18 CHAIRMAN HONIGBERG: Right. And, I  
19 think Dr. McLaren notes that later in his document. But  
20 that -- I think the concern with the language as worded, I  
21 think Director Muzzey identified it, is that there's no  
22 indication in the section, as it's drafted, that they  
23 should be not just looking at what they're doing, but how  
24 that interacts and works with what's already there in this

1 context.

2 Commissioner Scott.

3 COMMISSIONER SCOTT: My only hesitation  
4 is, to the extent that we're asking the applicant to not  
5 only figure out what the impact of their facility is, but  
6 on a facility that's run by another entity. So, it's  
7 probably not an issue, but they would need to know how  
8 that line is operated, have the specifics. So, I'm  
9 just -- I guess it would be an issue of degree. That's my  
10 only hesitation.

11 CHAIRMAN HONIGBERG: Commissioner  
12 Bailey.

13 COMMISSIONER BAILEY: I think the  
14 language covers it. Because it says "an assessment of  
15 electric and magnetic fields generated by the proposed  
16 facility and the potential impacts of such fields on  
17 public health and safety". So, if the impact is limited  
18 by facilities that are already there, they're going to  
19 tell us that. And, if it's not limited by facilities that  
20 are already there, that will come out in the assessment.

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

23 CHAIRMAN HONIGBERG: I see general  
24 agreement with that statement, and the heads that are

1 moving. Anyone want to take a different view?

2 *[No verbal response]*

3 CHAIRMAN HONIGBERG: All right. So,  
4 we'll move on. Are there further comments on this  
5 section?

6 MR. WIESNER: So, no change to the  
7 language, other than removing "current" and replacing it  
8 with "established"?

9 CHAIRMAN HONIGBERG: It would seem so.

10 MR. WIESNER: No other comments on this  
11 section.

12 The next session, if we're ready to  
13 move -- section, if we're ready to move on, is (c)(2).  
14 And, these are the provisions that apply to "all energy  
15 facilities". And, we have a requirement for a "facility  
16 decommissioning plan", which is essentially the same value  
17 that -- excuse me -- same language that we just looked at.  
18 And, the Various Energy Companies are, once again,  
19 proposing that it not be required to be an independent  
20 person preparing the plan, that salvage value be  
21 permitted, and that there be not a specification of the  
22 appropriate financial security. That last point is echoed  
23 by National Grid.

24 And, I think, in the interest of

1 consistency, we might retain the language here, as we did  
2 previously.

3 CHAIRMAN HONIGBERG: Anyone have any  
4 different thought on that?

5 *[No verbal response]*

6 CHAIRMAN HONIGBERG: I didn't think so.

7 MR. WIESNER: And, this might be a place  
8 to take up again Eolian's comment about "transformer  
9 removal and the removal of underground infrastructure to a  
10 depth of 4 feet". Because, remember, their comment was,  
11 you know, "shouldn't that apply to other facilities, not  
12 just wind?"

13 CHAIRMAN HONIGBERG: And, no one else  
14 commented on this, other than the wind facility person?

15 MR. WIESNER: No one proposed any other  
16 change to this language. And, what's missing here is the  
17 specific language regarding what would be removed and how  
18 the decommissioning would be performed, as we see with  
19 respect to wind farms again, based on the Vermont  
20 precedent.

21 CHAIRMAN HONIGBERG: Thoughts or  
22 comments on Eolian's suggestion that what's going to be  
23 imposed on wind be imposed on others?

24 Director Muzzey.

1                   DIRECTOR MUZZEY: I agree that it would  
2 be consistent, in that, if we're specifying what's  
3 required in a decommissioning plan, that it apply to all  
4 facilities. And, would suggest adding in the information  
5 in (a) through (e), with any changes needed to make it  
6 more generalized to all energy facilities.

7                   MR. WIESNER: And, just to clarify,  
8 Eolian's comments were restricted to (b) and (d), and (a)  
9 is very specific to wind projects. (c) is focused on wind  
10 projects. And, (e) basically assumes that it's a  
11 greenfield site, which may not be the case with respect to  
12 other types of energy facilities.

13                   CHAIRMAN HONIGBERG: Other thoughts and  
14 comments on this? Attorney Weathersby.

15                   MS. WEATHERSBY: I think, if we add the  
16 language from (b) and (d) in Section (8), and leave the  
17 rest of it to their decommissioning plan.

18                   CHAIRMAN HONIGBERG: Is there general  
19 agreement with that?

20                   *[Multiple members nodding in the*  
21                   *affirmative.]*

22                   CHAIRMAN HONIGBERG: I see some nodding  
23 heads, and a shrugged shoulder. It seems like that's what  
24 the consensus would be.

1                   Let's go off the record for a moment.

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

4                   CHAIRMAN HONIGBERG: Let's go back on  
5 the record. What's next, Mr. Wiesner?

6                   MR. WIESNER: Next is Dr. McLaren also  
7 has some comments on (c)(5). (c)(5) would apply to "all  
8 energy facilities". And, I might refer you again to his  
9 written comments, if you have them available. And, he  
10 would add specific language regarding mitigations,  
11 including "increasing the distance between the  
12 transmission line and the public's exposure to the  
13 magnetic fields"; "bringing lines closer together  
14 (magnetic fields interfere with one another, producing a  
15 lower overall magnetic field level, too close could cause  
16 arcing between the lines)"; and "(c) bury transmission  
17 lines to reduce magnetic fields (because underground lines  
18 can be installed closer together and insulated with  
19 rubber, plastic or oil)".

20                   So, these seem to be comments again  
21 specifically directed at EMF issues with respect to high  
22 voltage transmission lines. But the proposal is to add  
23 them here, to (c)(5), which is a general requirement that  
24 mitigative measures be identified by the applicant for any

1 type of energy facility.

2 CHAIRMAN HONIGBERG: My inclination  
3 would be to leave the general provision, understanding  
4 that the people who are making the proposals probably know  
5 what possible mitigations are there. I don't think we  
6 need to offer them suggestions.

7 Director Muzzey.

8 DIRECTOR MUZZEY: I would agree with  
9 that. And, again, it would be consistent with how we're  
10 treating other areas of concern as well, where we've asked  
11 for measures, but we haven't specified specific ideas.

12 CHAIRMAN HONIGBERG: Anyone have other  
13 or different thoughts? Attorney Weathersby.

14 MS. WEATHERSBY: I'm just wondering if  
15 we also want to add the concept that we've incorporated  
16 other places with them "listing the alternatives  
17 considered but set aside"?

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I would agree with  
20 that as well. And, it would increase the consistency.

21 CHAIRMAN HONIGBERG: Anyone disagree  
22 with that?

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: It doesn't look

1 like anyone does. So, we'll add the "consideration of  
2 alternatives".

3 DIRECTOR MUZZEY: And, just to specify,  
4 that's "alternative measures", as opposed to alternative  
5 routes or anything like that.

6 CHAIRMAN HONIGBERG: Right. That's a  
7 bigger issue.

8 DIRECTOR MUZZEY: Yes.

9 CHAIRMAN HONIGBERG: That they're very  
10 specific to this section.

11 DIRECTOR MUZZEY: Okay. Thank you.

12 CHAIRMAN HONIGBERG: All right.

13 Attorney Wiesner, what would be next?

14 MR. WIESNER: Site 301.09 is the  
15 "Effects on Orderly Development of the Region". There are  
16 a number of comments here in the opening paragraph. The  
17 Various Energy Companies would propose to delete basically  
18 all the language that refers to the "views of municipal  
19 and regional planning commissions and municipal governing  
20 bodies regarding the proposed facility", including the  
21 "master plans and zoning ordinances of", and then the  
22 current language is -- refers to "the proposed facility  
23 host municipalities and unincorporated places,  
24 municipalities and unincorporated places abutting the host

1 municipalities and unincorporated places, and other  
2 municipalities and unincorporated places that are the  
3 subject of or covered by studies included with or  
4 referenced in the application".

5 We had some discussion previously about  
6 changing the last part of that list of affected  
7 communities, to those that are affected as determined by  
8 studies included in the application. And, we have, and,  
9 again, this is a little foreshadowing, we have created a  
10 definition of "affected communities" that we will look at  
11 later today that incorporates these concepts.

12 But, for the purposes of this  
13 discussion, the Various Energy Companies again are  
14 proposing that this entire section regarding "municipal  
15 views" and "master plans and zoning ordinances" be  
16 deleted. EDP is proposing that what be deleted is the  
17 reference to "master plans and zoning ordinances".

18 And, those types of comments repeat  
19 throughout this section, but perhaps we should just focus  
20 on this introductory paragraph first.

21 CHAIRMAN HONIGBERG: Commissioner Scott.

22 COMMISSIONER SCOTT: I kind of like the  
23 language as is. I, as a Committee member, I do want to  
24 know, to the extent they're -- they have been made, put in

1 writing, the views of municipal and regional planning  
2 commissions and the municipalities. So, I like the  
3 language as is.

4 CHAIRMAN HONIGBERG: Director Muzzey.

5 DIRECTOR MUZZEY: I would agree with  
6 that as well. We touched on this in our discussions, I  
7 believe, of some of the sections on rules that deal with  
8 the "public interest". And, we did fall onto the side of  
9 the Committee considers these things, and it's important  
10 to include them.

11 So, I would agree with Commissioner  
12 Scott.

13 CHAIRMAN HONIGBERG: I'm going to take a  
14 slightly dissenting view of this. I think the first  
15 phrase "including information regarding the effects" is  
16 solid. I'm a little -- I'm concerned about including a  
17 couple of other things though. There's no reason, I don't  
18 think, for specific master plans and zoning ordinances of  
19 places that aren't going to have the facilities located in  
20 them. If they're the next town over, what its zoning  
21 rules say really don't matter, what it's planning, what  
22 its plans are don't really matter to the siting of a  
23 facility in the next town. So, I'm not sure that needs to  
24 be included.

1 I'm also sympathetic to the idea that it  
2 really should be the towns that are presenting their  
3 views, not the applicants. I mean, the applicants can  
4 certainly identify specific documents that exist. If  
5 there's a master plan, they can certainly find the master  
6 plan of a town. That's going to be accessible. They  
7 should be able to find the zoning ordinances. But the  
8 "views of the municipalities" should be expressed by the  
9 municipalities. And, if there are other -- other  
10 considerations that the towns have, they should come in  
11 from the towns. If the regional planning commission wants  
12 to offer its views, it should offer its views.

13 I'm sympathetic here to the applicants  
14 on this. And, there's also part of me that feels like  
15 they're inevitably going to get something wrong. They're  
16 going to miss a document somewhere. And, then, we're  
17 going to have litigation about what they should have  
18 submitted. "They submitted the wrong thing." Rather than  
19 just putting the burden on the towns, who are interested  
20 in one of these projects, to come forward with their views  
21 and prepare and provide the appropriate documents for us  
22 to then consider.

23 So, I want to make some changes to this,  
24 to at least cut back on some of the things that we're

1 calling on the applicants to provide, and maybe have a  
2 slightly broader conversation about whether this is really  
3 an appropriate burden to put on the applicants, or whether  
4 this should be a burden on the towns.

5 Commissioner Scott.

6 COMMISSIONER SCOTT: I concur with  
7 removing the "abutting municipalities and unincorporated  
8 places" requirement. And, perhaps we could add again "to  
9 the extent known by the applicant". But the small concern  
10 I have with your suggestion is that, in the very unlikely  
11 event that we haven't heard from the host community, and  
12 data exists, I would like -- I would assume the applicant  
13 would present it to us anyways, but I would like, to the  
14 extent they have knowledge of that and it's in writing,  
15 I'd like to be able to make sure we gather it, in the  
16 unlikely event that a municipality doesn't give it to us.

17 CHAIRMAN HONIGBERG: Commissioner  
18 Bailey.

19 COMMISSIONER BAILEY: So, is the  
20 proposal to leave the language as it was originally  
21 developed and delete the most recent addition?

22 CHAIRMAN HONIGBERG: I'm not sure whose  
23 proposal we're talking about. I think Commissioner Scott  
24 would leave in the new language, "and master plans and

1 zoning ordinances of the proposed facility host  
2 municipalities and unincorporated places". He would leave  
3 that language, but I think would be prepared to take out  
4 the remainder.

5 Have I got that right, Commissioner  
6 Scott?

7 COMMISSIONER SCOTT: That's correct.

8 CHAIRMAN HONIGBERG: I might be inclined  
9 to take it out, take out all of the new language. But I  
10 understand Commissioner Scott's proposal and see the  
11 wisdom of that approach.

12 Director Muzzey.

13 DIRECTOR MUZZEY: I would find it  
14 helpful to talk about our new definition of "affected  
15 communities" at this point, in order to better understand  
16 how that may impact all of this underlined, newly added  
17 section. Is it possible to discuss that now?

18 CHAIRMAN HONIGBERG: Sure. Why not.

19 MR. WIESNER: I mean, basically, what we  
20 propose to do is to include a definition of "affected  
21 communities" that covers, you know, in shorthand, I'll  
22 say, "the host communities, the abutting communities, and  
23 those communities that will be affected by the facility as  
24 identified in studies submitted with the application".

1                   So, it is more than just the host  
2 community, and it includes other communities. And, we use  
3 the defined term first, I believe, in connection with  
4 notice that must be provided of the information sessions,  
5 and then of the application.

6                   So, the question is, and this is going  
7 to be repeated throughout this section, is that collection  
8 of communities appropriate for considerations regarding  
9 the orderly development of the region? Is that, in  
10 effect, a good proxy for the region, as that term is  
11 relevant to this aspect of the application process?

12                   I mean, and, specifically, we're looking  
13 at the requirement here to provide "master plans and  
14 zoning ordinances" of various communities, and is that the  
15 appropriate scope, or should it be a more limited scope?

16                   CHAIRMAN HONIGBERG: Director Bailey --  
17 I'm sorry, Director Muzzey, followed by Commissioner  
18 Bailey.

19                   DIRECTOR MUZZEY: Thank you. That's  
20 very helpful. My suggestion is that master plans and  
21 zoning ordinances are publicly available documents. That  
22 it would be -- that an applicant would be able to gather  
23 that information, and that we would want them for all of  
24 the affected communities. So, my suggestion is to leave

1 that language in, but edited to reflect our definition of  
2 "affected communities".

3 I agree, there's some difficulty in an  
4 applicant interpreting the views of communities, and then  
5 presenting that to the Commission. It's, in a way,  
6 secondhand information at that point. I have particular  
7 concerns with, if such views have been expressed in  
8 writing, again, that may -- I have difficulty with the  
9 term "writing" there.

10 My suggestion for this section would be  
11 to then remove "including the views of the commissions or  
12 governing bodies", because of the secondhand nature of  
13 that information, but to leave in the "master plans and  
14 zoning ordinances of affected communities".

15 CHAIRMAN HONIGBERG: What do the master  
16 plans and zoning ordinances of communities that are not  
17 going to be hosting a facility, what relevance are those?

18 DIRECTOR MUZZEY: Well, what we're  
19 considering is the orderly development of the region.  
20 And, so, I would like to know what the development goals  
21 of the region are, in order to have information as to the  
22 potential effects. And, those documents would summarize  
23 those for the Committee.

24 CHAIRMAN HONIGBERG: Attorney

1 Weathersby.

2 MS. WEATHERSBY: I'm going to agree with  
3 Director Muzzey, that the -- all of the affected  
4 communities, as we've defined that term, their views, if  
5 they have been expressed in writing, should be provided to  
6 us, so that we can understand the region, which is what  
7 we're being asked to determine, the effects of the orderly  
8 development on.

9 So, one suggestion I have is to simplify  
10 this section as follows: In the second line, after the  
11 word "views", we add "plans and ordinances". So, we have  
12 "including the views, plans and ordinances of municipal  
13 and regional planning commissions and", and then delete  
14 the rest and just say "affected communities", instead of  
15 the red language.

16 CHAIRMAN HONIGBERG: Commissioner  
17 Bailey.

18 COMMISSIONER BAILEY: I have sat on a  
19 Committee where we had to look at municipal ordinances,  
20 and it was very difficult. And, I'm not -- I think I'm  
21 okay with looking at the municipal ordinances for the host  
22 communities. But I think that, if the municipalities of  
23 the "affected communities", those greater than the host  
24 communities, are of great concern, we will hear from those

1 communities. And, to require the applicant and the  
2 Committee to look at all these municipal ordinances I  
3 think is unnecessarily burdensome, primarily to the  
4 Committee.

5 MS. WEATHERSBY: You know, I agree with  
6 you, with regard to the zoning ordinances of the  
7 affected -- the non-host communities, because, to some  
8 extent, they're not particularly relevant. But, with  
9 regard to the master plans and the regional and county  
10 plans, I would want to know those.

11 So, I would -- maybe we can limit it to  
12 only the ordinances that are provided, maybe for the host  
13 community, but the rest is for all affected communities.

14 CHAIRMAN HONIGBERG: All right. We're  
15 going to take a break and give everybody a chance to think  
16 about this. So, we're off the record.

17 *(Recess taken at 11:08 a.m. and the*  
18 *meeting reconvened at 11:24 a.m.)*

19 CHAIRMAN HONIGBERG: All right. We're  
20 back. So, what's the will of the group? Somebody make me  
21 an offer.

22 Director Muzzey.

23 DIRECTOR MUZZEY: I believe where we  
24 left off, we were trying -- the suggestion is to simplify

1 this paragraph. And, "Each application shall include the  
2 information regarding views and plans of affected  
3 communities and regional planning commissions, and the  
4 zoning ordinances, as they pertain to the energy  
5 proposal -- project proposal of the host community." And,  
6 I would agree that would be simplified and create the  
7 information that we are seeking.

8 CHAIRMAN HONIGBERG: Is that the will of  
9 the group, he asks?

10 MS. WEATHERSBY: Could you repeat that.

11 DIRECTOR MUZZEY: I believe it was your  
12 idea. That's what I was going with.

13 MS. WEATHERSBY: I'm just making sure.

14 DIRECTOR MUZZEY: What we are asking the  
15 application to include "the views and plans of the  
16 affected communities and regional planning commissions, as  
17 well as the zoning ordinances that are pertinent to the  
18 proposed energy project of the host community."

19 CHAIRMAN HONIGBERG: Attorney  
20 Weathersby?

21 MS. WEATHERSBY: I'm good with that.

22 CHAIRMAN HONIGBERG: Others all right  
23 with that?

24 COMMISSIONER SCOTT: Let's do it.

1                   CHAIRMAN HONIGBERG: Attorney Wiesner,  
2 is that -- are we creating problems further down with that  
3 or does that seem like it will work?

4                   MR. WIESNER: I don't believe so.

5                   CHAIRMAN HONIGBERG: All right. Let's  
6 move on then.

7                   MR. WIESNER: The next comment is in  
8 (a)(1). And, this is where the applicant is addressing  
9 "land use in the region", including "a description of the  
10 prevailing land uses in the", and then we have the laundry  
11 list of communities, which we have now reduced to a  
12 defined term "affected communities".

13                   We have comments from the Various Energy  
14 Companies proposing that it would only be the host  
15 community whose prevailing land uses would be relevant and  
16 would be addressed by the applicant.

17                   We have a comment from New Hampshire  
18 Wind Watch, which proposes that a definition of "regional"  
19 be used to cover these communities. And, I think what  
20 they're getting at there is the notion that a "regional"  
21 definition would you have included all of the communities  
22 that are -- that we are proposing to define as "affected  
23 communities". So, I think their comment is basically  
24 consistent with the language as it currently appears.

1                   The Various Energy Companies believe it  
2                   should be restricted to the host communities only.

3                   And, EDP and Eolian had a comment  
4                   regarding the scope of the communities which are subject  
5                   to studies. I'm hopeful that we have addressed that  
6                   through the definitional change that we've discussed in  
7                   previous meetings, and that we'll look at when we get to  
8                   the new rules language.

9                   CHAIRMAN HONIGBERG: Director Muzzey.

10                  DIRECTOR MUZZEY: Given that we are  
11                  receiving information elsewhere in the application of  
12                  areas of potential visual impact that may go beyond the  
13                  host facility, I would suggest that we include a  
14                  "description of the prevailing land uses in the affected  
15                  communities", in order to incorporate that.

16                  CHAIRMAN HONIGBERG: I see at least one  
17                  nodding head. Is there general agreement with that?

18                  MS. WEATHERSBY: Yes.

19                  *[Multiple members nodding in the*  
20                  *affirmative.]*

21                  CHAIRMAN HONIGBERG: All right. Next.

22                  MR. WIESNER: So, essentially, that's  
23                  rejecting the proposal of the Various Energy Companies and  
24                  retaining the broader language?

1 CHAIRMAN HONIGBERG: It is.

2 MR. WIESNER: In (b), which refers to  
3 "the economy of the region, including an assessment of:",  
4 and then the Various Energy Companies would propose to  
5 combine (1) and (2). So that the language would read  
6 simply: "The effect of the facility on economic activity  
7 during construction and operation periods", with no  
8 restriction of the communities that would be affected.

9 CHAIRMAN HONIGBERG: Director Muzzey.  
10 Your finger was on the button. I assumed that meant you  
11 wanted to say something.

12 DIRECTOR MUZZEY: Or, I was trying to  
13 form a thought to say. I think it's important for the  
14 Committee to consider both the economic effect of the  
15 facility on the affected communities, as well as this  
16 larger look at instate economic activity. So, I would  
17 suggest that we would leave (1) and (2) as two separate  
18 considerations.

19 And, to be consistent, in Section (1),  
20 to use the term "affected communities", as opposed to the  
21 much longer underlined section that currently exists.

22 CHAIRMAN HONIGBERG: So, your  
23 recommendation is effectively no substantive change, just  
24 the change to the defined -- using the defined term, in

1 place of the longer phrase, is that correct?

2 DIRECTOR MUZZEY: Correct. And, I might  
3 add, it would apply to Section (5) as well.

4 CHAIRMAN HONIGBERG: Other thoughts or  
5 comments? Is their general agreement with Director Muzzey  
6 on this?

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

9 CHAIRMAN HONIGBERG: It seems like there  
10 is. What's next?

11 MR. WIESNER: In (b)(3), New Hampshire  
12 Wind Watch would add language so that this section would  
13 now read: "The effect of the proposed facility on state,  
14 host, and regional communities' local tax revenues."

15 CHAIRMAN HONIGBERG: I think I have  
16 trouble with the syntax, but I get the idea. Ultimately,  
17 they're defining -- they're putting a definition on  
18 "local", I think.

19 MR. WIESNER: Correct. And, I might  
20 construe their reference to "regional communities" to be  
21 the defined term that we would have, "affected  
22 communities".

23 CHAIRMAN HONIGBERG: And, is there  
24 agreement with that?

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

3                   CHAIRMAN HONIGBERG: I see some nodding  
4 heads. Other thoughts or comments?

5                   *[No verbal response]*

6                   CHAIRMAN HONIGBERG: Is that what we  
7 should do? I think we need to clean the language up a  
8 little bit. But, essentially, using the defined term to  
9 identify places -- or, identify how it will affect local  
10 tax revenue in the affected communities.

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

13                   CHAIRMAN HONIGBERG: All right. In  
14 addition to what's already there, the "state revenues".  
15 Next.

16                   MR. WIESNER: In (b)(4), the language  
17 currently refers to "The effect of the proposed facility  
18 on regional real estate values." The Various Energy  
19 Companies would delete the word "regional". Mr. Griffin,  
20 I believe, would use a defined term "region", which I  
21 would interpret to be the defined term again that we would  
22 use of "affected communities". And, New Hampshire Wind  
23 Watch would add language so that this sentence would read  
24 "The effect of the proposed facility on private real

1 property, host, and regional real estate values."

2 CHAIRMAN HONIGBERG: Does that  
3 ultimately do anything different from what Mr. Griffin's  
4 suggestion is?

5 MR. WIESNER: We have not defined the  
6 term "regional". We have the term "affected communities",  
7 which is arguably a smaller area than what might be  
8 included in "region". Although, as I say, "region" is not  
9 specified. I believe Mr. Griffin's comment, the thrust of  
10 his comment is that the area that we looked at in terms of  
11 the real estate values would be the affected communities,  
12 as we've defined the term, as opposed to any broader  
13 region.

14 And, the Various Energy Companies are  
15 moving in the other direction, to say that the word  
16 "regional" should be deleted here. And, I take that to  
17 mean then that real estate values might be assessed --  
18 might be evaluated for a broader region.

19 And, the New Hampshire Wind Watch is  
20 focusing attention of the Committee and the applicants'  
21 discussion here on "private real property".

22 CHAIRMAN HONIGBERG: Thoughts or  
23 comments? Commissioner Scott.

24 COMMISSIONER SCOTT: I don't have a

1 strong feeling, but it strikes me as "private real  
2 property" may be too restrictive. Does that imply that we  
3 don't care about the impacts on commercial real estate?

4 CHAIRMAN HONIGBERG: I think commercial  
5 real estate is private real property. I don't really  
6 understand what the focus on private real property is  
7 supposed to do. If it's not public property, it's private  
8 property. I'm not sure that there's another subset.

9 Our concern is property values. And, it  
10 should be -- and at least this section's concern is real  
11 property values. Real property can be owned by all kinds  
12 of entities. I think, if the effect of a project is to  
13 destroy the value of public property, that's relevant. It  
14 doesn't affect the tax base necessarily in the same way,  
15 but it can certainly have an effect on a community. I'm  
16 not sold on this "private real property" phrase being  
17 included.

18 Director Muzzey.

19 DIRECTOR MUZZEY: I would agree with you  
20 on that. What we're concerned here is any real estate  
21 values. And, my suggestion, and I may sound like a broken  
22 record on this, but, again, we use for consideration the  
23 real estate values of the affected communities.

24 CHAIRMAN HONIGBERG: Any disagreement

1 with that?

2 MS. WEATHERSBY: Nope.

3 CHAIRMAN HONIGBERG: I didn't think so.  
4 Next.

5 MR. WIESNER: So, effectively, that  
6 would be deleting "regional", and instead focusing on  
7 "real estate values in the affected communities"?

8 CHAIRMAN HONIGBERG: I think so, yes.

9 MR. WIESNER: The next comment is in  
10 (b) (5). And, this is "The effect of the proposed facility  
11 on tourism and recreation", and the current language, I'll  
12 just use our shorthand defined term, would be "effect on  
13 tourism and recreation in the affected communities". And,  
14 the Various Energy Communities -- Companies, excuse me,  
15 have proposed to delete that so that it is solely "The  
16 effect of the proposed facility on tourism and recreation"  
17 presumably "in the region", again undefined term, "but not  
18 limited to the affected communities."

19 CHAIRMAN HONIGBERG: Thoughts or  
20 comments? Director Muzzey suggests that it should just be  
21 the "affected communities".

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

24 CHAIRMAN HONIGBERG: And, I see nodding

1 heads. Yes. Oh, I'm sorry, Commissioner Scott. I  
2 thought that was an assent, not an interest in speaking.  
3 But, yes, go ahead.

4 COMMISSIONER SCOTT: I'm trying to tease  
5 out what the harm would be of, for this case, making it  
6 even broader. So, you'd definitely have to include those  
7 affected communities, but could also look at if there's a  
8 negative impact on the -- even beyond that, I'm wondering  
9 what's the harm of that, I guess?

10 CHAIRMAN HONIGBERG: Thoughts? People  
11 agree with Commissioner Scott?

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

14 CHAIRMAN HONIGBERG: Some agree, yes. I  
15 think there is agreement with Commissioner Scott on that  
16 point. Broader than the affected communities for tourism  
17 and recreation.

18 Commissioner Bailey.

19 COMMISSIONER BAILEY: So, "the effect on  
20 tourism and recreation in the region", and "region" being  
21 undefined, is that -- is that what we're teasing out here?

22 CHAIRMAN HONIGBERG: Perhaps. Perhaps.

23 COMMISSIONER BAILEY: I think that's the  
24 drawback. But I take your point. I mean, should we say

1 "the state"?

2 CHAIRMAN HONIGBERG: I think there's  
3 some history generally that the consideration for the SEC  
4 in its work is not the entire state. But I'm not --  
5 that's based on decisions, I think, not on statutes or  
6 rules. That's decisions of the Committee. So, I'm not  
7 sure "tourism of the entire state" would be perhaps beyond  
8 the scope of what we have done before, but maybe something  
9 we should consider doing in this context. Since I think  
10 all of us would agree that tourism and recreation is a  
11 significant economic driver here.

12 Attorney Wiesner, do you have any  
13 thoughts on this?

14 MR. WIESNER: I was just going to say  
15 the lead-in here, in (b), is a reference to "the economy  
16 of the region", again, undefined. My understanding is  
17 that the Committee has built up some precedent that  
18 "region" typically does not include the entire state, but  
19 it's not necessarily a well-defined or specific term as  
20 "affected communities" would be.

21 So, I think the Various Energy Companies  
22 take the view that, because the lead-in refers to  
23 "region", there's no need to refer to the -- unless we're  
24 going to limit it further, there's no need to refer to the

1 geographic reach of the tourism and recreation analysis  
2 under this specific subsection.

3 CHAIRMAN HONIGBERG: That would work  
4 then, I think, if we just referred to "tourism and  
5 recreation", without the limiter of "the affected  
6 communities". It would be whatever the region is for this  
7 project.

8 MR. WIESNER: I believe that's correct.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: And, I would add that  
11 my understanding, from the Department of Resources &  
12 Economic Development, is that their tourism and  
13 recreational efforts do divide the state into regions, and  
14 they are well known particularly within the tourism  
15 industry. And, so, that would provide some guidance for  
16 applicants to discuss the effects of the proposed facility  
17 within the areas of tourism and recreation. So, I believe  
18 it's fine just left there.

19 CHAIRMAN HONIGBERG: Any other or  
20 different thoughts or can we do that and move on?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: We'll move on.

23 MR. WIESNER: The next comment is in  
24 (b) (6). This is "The effect of the proposed facility on

1 community services and regional infrastructure." Various  
2 Energy Companies would delete "regional", again, I believe  
3 for the same reason we just discussed, that it's in the  
4 lead-in. New Hampshire Wind Watch would include a  
5 reference -- well, they would include the language  
6 "including emergency services and highways". And, I  
7 believe that's their attempt to include greater  
8 specificity regarding "community services and regional  
9 infrastructure".

10 CHAIRMAN HONIGBERG: Thoughts or  
11 comments? Director Muzzey.

12 DIRECTOR MUZZEY: I would suggest we  
13 leave the language as is. There may be other types of  
14 community services and infrastructure that are important  
15 throughout the state, and suggesting just those two might  
16 be limiting, when other factors are more important.

17 CHAIRMAN HONIGBERG: Would you leave the  
18 word "regional" or would you rely on "region" in the  
19 introduction to carry the day?

20 DIRECTOR MUZZEY: I would leave it as  
21 written.

22 CHAIRMAN HONIGBERG: Any other thoughts  
23 or comments? Agree with Director Muzzey on this?

24 Commissioner Scott.

1 COMMISSIONER SCOTT: I'm fine with  
2 taking "regional" out, given it's in the introduction at  
3 (b).

4 CHAIRMAN HONIGBERG: So, "regional" out,  
5 but otherwise leave the language as is?

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

8 CHAIRMAN HONIGBERG: All right. We'll  
9 do that and move on.

10 MR. WIESNER: The next change is in Site  
11 301.14. This is where we get into the criteria for  
12 siting. 301.14(a)(1), which appears on Page 17.

13 And, this is a comment from the Various  
14 Energy Companies. Excuse me, in (a)(1), the reference is  
15 to "the existing character of the area of potential visual  
16 effect in the proposed facility host municipalities or  
17 unincorporated places and in municipalities or  
18 unincorporated places abutting or in the vicinity of the  
19 proposed facility." The Various Energy Companies propose  
20 here to replace everything from the word -- their proposal  
21 is basically to rely on the defined term, which is the  
22 "area of potential visual impact", which is as defined for  
23 different types of facilities. And, that's the discussion  
24 we had last time regarding, for example, "10 miles for new

1 transmission lines or widened transmission corridors  
2 through rural areas". So, that would then be the  
3 defining -- that would define the scope of the aesthetic  
4 impact analysis for siting, as well as it did for the  
5 studies that were submitted with the application.

6 CHAIRMAN HONIGBERG: There's a certain  
7 logic to that. Director Muzzey.

8 DIRECTOR MUZZEY: I would agree, given  
9 that we won't have information about a wider scope, we  
10 need to make our decisions based on the information we  
11 have.

12 CHAIRMAN HONIGBERG: Other thoughts or  
13 comments?

14 COMMISSIONER SCOTT: I support the  
15 change.

16 CHAIRMAN HONIGBERG: Anyone else?  
17 Anyone disagree with that?

18 *[No verbal response]*

19 CHAIRMAN HONIGBERG: All right. We'll  
20 do that and move on.

21 MR. WIESNER: The next comment is in  
22 (a)(6). And, this is the standard where the Committee  
23 must consider "whether the proposed facility would be a  
24 dominant feature of a landscape in which existing human

1 development is not already a prominent feature as viewed  
2 from affected scenic resources." EDP's comment is that  
3 this standard would preclude ridgeline wind development,  
4 so it should be deleted.

5 AMC and other environmental groups, by  
6 contrast, propose some alternate language that would read  
7 as follows: "Dominant" -- it would be "The Committee  
8 would be finding whether the proposed facility would be a  
9 dominant and prominent feature within a natural or  
10 cultural landscape of high scenic quality or as viewed  
11 from scenic resources of high value or sensitivity."

12 And, then, before we start the  
13 discussion, I'll just add as well that Dr. Ward would add  
14 the following language: "Prominent feature", because that  
15 term is used in (6), a "prominent feature" is to be  
16 defined to include "the multiple interactions of the  
17 visual and aural effects emanating from an elevated and  
18 isolated site, and the added interactions imposed by the  
19 motion and flashing lights, which interactions reinforce  
20 each of these separate factors."

21 CHAIRMAN HONIGBERG: All right. I'll  
22 offer the first comment on this. Regarding the comment  
23 that leaving this in says that "no wind could ever be  
24 built", that is not where we are going with these

1 criteria. This is not a "you must satisfy all, however  
2 many criteria they are, or you can't build". "Can't  
3 build" is a weighing of these multiple criteria, the  
4 multiple factors that are relevant. And, the answer to  
5 that one may be "yes, but lots of other things are  
6 relevant." So, I would dismiss that comment.

7 The other comments I don't feel quite so  
8 certain of as I sit here. Commissioner Scott.

9 COMMISSIONER SCOTT: I would like to  
10 suggest alternative language. To me, the "whether"s, in  
11 (6) and (7), for some could be read as a binary, "if this  
12 triggers, then it's unreasonable." To me, this is a list  
13 of considerations, as it says at the introduction. And,  
14 instead of "whether", I would suggest perhaps language "to  
15 the extent to which", or some similar language, both for  
16 (6) and (7). And, with that, I'd be happy with leaving it  
17 as is.

18 CHAIRMAN HONIGBERG: "The extent to  
19 which" is a satisfactory substitute to me. Director  
20 Muzzey.

21 DIRECTOR MUZZEY: I would agree with  
22 that as well, for both (6) and (7), to preface it with "to  
23 the extent which". Regarding number (6), in particular, I  
24 do see the problem with the language, given that we do

1 consider some human development to be a scenic resource.  
2 And, so, I would suggest that we adopt the language  
3 suggested by the AMC and others, "to the extent which the  
4 proposed facility would be a dominant and prominent  
5 feature within a natural or cultural landscape of high  
6 scenic quality or viewed from scenic resources of high  
7 value or sensitivity."

8 That also has the value of being more  
9 specific, that we're considering "scenic resources of high  
10 value", instead of "all scenic resources", which would be  
11 a more arduous task.

12 CHAIRMAN HONIGBERG: Would you agree  
13 with me that that's a narrower set of considerations than  
14 the rule as it appears in our revised draft?

15 DIRECTOR MUZZEY: It is more narrow,  
16 because it limits it to "resources of high scenic  
17 quality", but it is broader in that it considers both  
18 "natural" and "cultural landscapes".

19 CHAIRMAN HONIGBERG: Other thoughts or  
20 comments? Commissioner Bailey.

21 COMMISSIONER BAILEY: I agree. I think  
22 both suggestions are good. I think adding "the extent to  
23 which", and the more specific evaluation of the scenic  
24 resources that AMC proposes is a good change.

1                   CHAIRMAN HONIGBERG: Do people agree  
2 with that, those two changes? I would characterize them  
3 as "Commissioner Scott's change and Director Muzzey's  
4 adoption of the AMC and others".

5                   Yes, Mr. Oldenburg.

6                   MR. OLDENBURG: I have no problem with  
7 any of the -- either of those changes. Just my question  
8 is, "high scenic quality", is how do you determine that?

9                   CHAIRMAN HONIGBERG: I think there's an  
10 earlier rule on that, where they're supposed to evaluate  
11 -- identify those resources that are high, medium, and  
12 low --

13                   MR. OLDENBURG: Okay.

14                   CHAIRMAN HONIGBERG: -- effect, I think.  
15 Attorney Wiesner, are we all right with those two  
16 changes?

17                   MR. WIESNER: So, what I have is "the  
18 extent to which", and then basically including the  
19 language proposed by the AMC, Audubon, and Forest Society?

20                   CHAIRMAN HONIGBERG: That is my  
21 understanding.

22                   MR. WIESNER: Okay.

23                   CHAIRMAN HONIGBERG: And, then, also  
24 "the extent to which" in Paragraph (7).

1 MR. WIESNER: Yes. And, in Paragraph  
2 (7), which we haven't discussed yet, but we will now, so,  
3 "the extent to which", EDP proposed that this be deleted  
4 as subjective, because here we're talking about "offending  
5 the sensibilities of a reasonable person during daytime or  
6 nighttime periods".

7 CHAIRMAN HONIGBERG: Did the Office of  
8 Legislative Services identify this one?

9 MR. WIESNER: I believe they may have  
10 questioned it. This is not the type of rules language  
11 that they typically advocate for.

12 CHAIRMAN HONIGBERG: Well, put it in the  
13 other, to the contrary, do they seek to block it, is more  
14 the concern?

15 COMMISSIONER BAILEY: While he's looking  
16 that up?

17 CHAIRMAN HONIGBERG: Commissioner  
18 Bailey.

19 COMMISSIONER BAILEY: I think that the  
20 Committee members are reasonable persons, and that part of  
21 our job is to decide whether these facilities are going to  
22 be offensive. And, so, to have a specific rule that is  
23 something that we would do and is questionable to its  
24 meaning may not be helpful. So, maybe we should think

1 about taking it out. I don't -- I don't feel strongly one  
2 way or the other, except for I think that we are on this  
3 Committee as reasonable persons, so, that's our job.

4 CHAIRMAN HONIGBERG: Commissioner Scott,  
5 who may be taking issue with whether we're reasonable  
6 people.

7 COMMISSIONER SCOTT: No, I'm not going  
8 there. Thank you. I'm suggesting that, given that  
9 we've -- I think we've agreed to take "whether" out, and  
10 add "to the extent which", that we no longer need that  
11 "reasonable" language. It's just "to the extent which it  
12 would offend", I think is sufficient.

13 CHAIRMAN HONIGBERG: I would be okay  
14 with taking this section out, for the reasons articulated  
15 by Commissioner Bailey.

16 And, Attorney Wiesner, have you found an  
17 answer to the question regarding OLS?

18 MR. WIESNER: They have not, in the most  
19 recent comments that I have received from them, they have  
20 not specified this as a potential source of objection.

21 CHAIRMAN HONIGBERG: Director Muzzey.

22 DIRECTOR MUZZEY: I would add that  
23 another concept within (7) is this idea of "daytime or  
24 nighttime periods". So, it does direct the Committee to

1 consider both day and nighttime. And, that's not  
2 elsewhere within these eight considerations. And, so, my  
3 question would be, if we delete (7), do we need to get  
4 that concept in a different one? Or, is it something  
5 inherent to our consideration?

6 CHAIRMAN HONIGBERG: It may well be  
7 inherent. It may well be picked up by Subparagraph (5).

8 DIRECTOR MUZZEY: I think it could be  
9 certainly incorporated into Subsection (5). I think there  
10 would be no harm in adding to (5), if we delete (7), "the  
11 evaluation of the overall visual impacts of the facility  
12 during daytime or nighttime periods as described in the",  
13 *etcetera*.

14 CHAIRMAN HONIGBERG: Isn't the idea that  
15 "daytime and nighttime" are inherent in this? If it's  
16 offensive or if it's an unreasonable aesthetic impact day  
17 or night, that we're not precluded from doing that today,  
18 are we? We don't need a rule to tell us to think about  
19 both day and night.

20 DIRECTOR MUZZEY: No. I believe it's  
21 just a question of emphasis.

22 CHAIRMAN HONIGBERG: Other thoughts or  
23 comments? How do we want to settle on this one, with  
24 regard to (7)? Take it out, add -- take it out and add a

1 little language to (5)? Leave it as it is?

2 Commissioner Bailey.

3 COMMISSIONER BAILEY: I propose we take  
4 it out. And, I don't object to adding "day and night" in  
5 (5). I think it's inherently what we do. But, if that is  
6 a compromise, I could live with it.

7 CHAIRMAN HONIGBERG: Others?

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

10 CHAIRMAN HONIGBERG: I see a couple of  
11 nodding heads. Attorney Wiesner, we good with that?

12 MR. WIESNER: So, add "day and night" --  
13 "daytime and nighttime" to (5), and delete (7) entirely?

14 CHAIRMAN HONIGBERG: I think that's  
15 correct. The fact that OLS didn't flag it this time,  
16 doesn't mean they won't flag it. I see the problem.

17 MR. WIESNER: Yes. And, then, in  
18 Subsection (8), there's a reference to "The effectiveness  
19 of the best practical measures planned by the applicant --

20 (Court reporter interruption.)

21 MR. WIESNER: So, Subsection (8) refers  
22 to "The effectiveness of the best practical measures  
23 planned by the applicant to avoid, minimize, or mitigate  
24 unreasonable adverse effects on aesthetics." And, the

1 Various Energy Companies propose to delete "best  
2 practical", and that's, you know, consistent with their  
3 view that "best practical measures" should apply only to  
4 wind facilities. And, I don't believe that the Committee  
5 has endorsed that view. So, this is where we're picking  
6 up the thread again on "best practical measures". In the  
7 application requirement sections, we said "identify the  
8 measures that you will use, and any alternatives that you  
9 have considered but rejected." But we're not going to  
10 require you to identify them as "best practical measures".  
11 Presumably, if the siting criteria require the use of best  
12 practical measures, they had better make sure that they  
13 are meeting that standard, and that that may be a subject  
14 for litigation during the adjudicative proceeding, but  
15 this is where the Committee is going to decide effectively  
16 whether they are best practical measures and how effective  
17 they would be in mitigating any unreasonable adverse  
18 effects.

19 CHAIRMAN HONIGBERG: So, I think,  
20 regardless of what we decide to do, and how broadly the  
21 "best practical measures" concept applies, we're going to  
22 need to reword this somewhat, to account for the change we  
23 made earlier. That we're going to need to evaluate the  
24 effectiveness of the measures they have proposed, and we

1 need to consider, for at least wind, and perhaps others,  
2 whether the measures are best practical measures or  
3 whether they were alternatives that they should have used  
4 that would have been preferable.

5 Is what I just said correct?

6 MR. WIESNER: I believe so. We also  
7 have a Subsection (g) of 301.14, which we haven't gotten  
8 to yet, which is sort of the general requirement for the  
9 Committee to "consider best practical measures".

10 Although, again, I think part of what you're -- part of  
11 what you're proposing, Mr. Chairman, is that we need to be  
12 more clear that this is the point at which the Committee  
13 would be determining whether a proposed measure is, in  
14 fact, a best practical measure.

15 CHAIRMAN HONIGBERG: I think we -- I  
16 think this is the place where we would be trying to answer  
17 that question. It's definitely in 301.14. Whether it is  
18 in (a) and in (g), or whether it is (a), which then  
19 informs (g), I'm not quite sure. But we do need to  
20 resolve whether the "best practical measure" standard, as  
21 we sit here today, is it only going to apply to wind,  
22 whether it will apply to all? Understanding that, when we  
23 undertake the next rulemaking that is specific to gas,  
24 that the phrase "best practical measures" appears there as

1 well.

2 Commissioner Bailey.

3 COMMISSIONER BAILEY: I would propose  
4 that we delay the decision by taking out "best practical"  
5 here. And, so, the rule would say that "In determining  
6 whether the proposed facility has an unreasonable adverse  
7 effect on aesthetics, the Committee shall consider the  
8 effectiveness of the measures planned." And, if they're  
9 supposed to be best practical measures, they clearly are  
10 supposed to be best practical measures pursuant to wind,  
11 then there will be -- the applicants will have to prove  
12 that the measures planned are the best practical measures.  
13 And, if the Committee believes at the time that best  
14 practical measures should apply to some other project,  
15 then, when they're considering whether the measures  
16 planned are good enough, if they're not best practical,  
17 that would be a reason for denying the certificate. But  
18 we don't have to say it in the rule. And, that way we  
19 avoid the complication of whether we're overstepping the  
20 boundaries of the law.

21 CHAIRMAN HONIGBERG: Other thoughts or  
22 comments? Attorney Weathersby.

23 MS. WEATHERSBY: So, at this point, the  
24 application would be proceeding through, in 301.14, is

1 just things that we should be considering. So, I would be  
2 in favor of clarifying Section (8) to something like what  
3 you suggested, Mr. Chairman. That "The effectiveness of  
4 the measures planned by the applicant to avoid, minimize,  
5 or mitigate unreasonable adverse effects on aesthetics,  
6 and whether such planned measures are the best practical  
7 measures." I think at this point we should know, for all  
8 types of facilities, whether or not the measures that are  
9 planned are the best practical measures.

10 CHAIRMAN HONIGBERG: We have two pretty  
11 diametrically opposed viewpoints that have just been  
12 expressed with respect to whether the "best practical  
13 measures" phrase and concept should be in this rule.  
14 Commissioner Bailey.

15 COMMISSIONER BAILEY: Actually, I don't  
16 think they're that diametric.

17 MS. WEATHERSBY: I don't either.

18 COMMISSIONER BAILEY: Because --

19 CHAIRMAN HONIGBERG: Reconcile them  
20 please.

21 COMMISSIONER BAILEY: Well, in  
22 determining whether we have the unreasonable adverse  
23 effect, we consider the effectiveness of the measures  
24 planned, and we consider whether those measures are "best

1 practical". And, then, we have to decide whether they  
2 have to be "best practical" or not. But the rule doesn't  
3 say they have to be "best practical".

4 CHAIRMAN HONIGBERG: Attorney  
5 Weathersby, would you agree?

6 MS. WEATHERSBY: I agree. This is just  
7 what we are considering. It's not a requirement at this  
8 point.

9 CHAIRMAN HONIGBERG: But, I think, under  
10 your formulation, for all projects, regardless of  
11 technology, we would be required to consider whether a  
12 measure proposed is a best practical measure. I think  
13 Commissioner Bailey is suggesting that you wouldn't put  
14 that in the rule, because you're going to have to do it  
15 for all wind. And, I think there would then be litigation  
16 over whether it would apply for all others. And, I think  
17 that's the disagreement. It's not so much -- not so much  
18 how we would approach it ultimately, but I think you have  
19 a different view of how this rule should work, which will  
20 then determine how the subcommittees act on applications.  
21 Maybe not "act on", maybe "consider" is the right word.

22 MS. WEATHERSBY: So, if we don't put it  
23 in here, where will we consider whether -- I mean, I think  
24 that we should be able to consider whether they're using

1 the best practical measure, regardless of what type of  
2 facility it is. So, if we don't consider it here, where  
3 else would it come in?

4 CHAIRMAN HONIGBERG: I think  
5 Commissioner Bailey is suggesting that we would consider  
6 it. But, by not putting it in the rule, we leave open the  
7 possibility for a non-wind project to argue that "these  
8 are the measures, they are effective, and it doesn't  
9 matter whether they are the best practical measures under  
10 the rule, because that doesn't apply to us. So, why  
11 should we have a discussion." Others, I'm sure, who are  
12 opposed to whatever project is in, will say "well, you  
13 need to make it a best practical measure, and it's not."  
14 And, there would then be litigation and context.

15 Commissioner Bailey.

16 COMMISSIONER BAILEY: And, you need to  
17 make it the best practical, because, otherwise, it's not  
18 in the public interest. That's the way the argument, I  
19 think, would go. But the rule doesn't have to say that --  
20 the rule doesn't have to determine that. We can determine  
21 that on a case-by-case basis, based on the evidence in the  
22 case.

23 MS. WEATHERSBY: I think this goes back  
24 to our definition of "best practical measures" that we

1 struggled with the other day. And, that "best practical  
2 measures" doesn't mean that they're required to be used.  
3 It's just we want to know what the best technologies, the  
4 best methods of mitigation, *etcetera*, are. So, I don't  
5 know, I still think that we should put that language in  
6 here, so that we can identify the technologies and methods  
7 that have been proven to be more successful.

8 CHAIRMAN HONIGBERG: Director Muzzey.

9 DIRECTOR MUZZEY: I also feel it's  
10 important to somehow define what may make a measure  
11 effective. And, certainly, using the concepts in the  
12 definition of "best practical measures" as it's currently  
13 drafted would do that. I think that would serve to  
14 protect both the applicant, as well as the interested  
15 public in these cases.

16 As it's currently written, "'best  
17 practical measures" means available, effective, and  
18 economically feasible on-site or off-site methods or  
19 technologies used during siting, design, construction, and  
20 operation of an energy facility that have been  
21 demonstrated to the Committee to effectively avoid,  
22 minimize, or mitigate impacts."

23 CHAIRMAN HONIGBERG: The last meeting we  
24 took out the last phrase.

1                   DIRECTOR MUZZEY: "Have been  
2 demonstrated to the Committee".

3                   CHAIRMAN HONIGBERG: Yes.

4                   DIRECTOR MUZZEY: I wasn't sure whether  
5 we had actually taken that out or just discussed that.

6                   CHAIRMAN HONIGBERG: At the last  
7 meeting, I'm fairly certain that the decision was made to  
8 take that phrase out.

9                   DIRECTOR MUZZEY: Right. And, at the  
10 last meeting, we also discussed that this may be sort of a  
11 language issue, and that we know, with the more updated  
12 sections of 162-H, those that deal with wind and also  
13 pipelines, use this concept of "best practical measures",  
14 and that older sections of 162-H, which were written prior  
15 to "best practical measures" being a phrase that we use  
16 for mitigation didn't exist. So, it would not probably --  
17 my interpretation is it wouldn't be in those sections,  
18 because that phrase didn't exist.

19                   I am comfortable with rewording Section  
20 (8) to say, again, with the knowledge that these are just  
21 things the Committee considers, it's not a checklist of  
22 yes/no, to reword Section (8) to read: "The effectiveness  
23 of the measures planned by the applicant to avoid,  
24 minimize, or mitigate unreasonable adverse effects on

1       aesthetics, and whether those measures represent best  
2       practical measures." And, that provides some guidance to  
3       determine the effectiveness of a measure.

4                       CHAIRMAN HONIGBERG: Commissioner Scott.

5                       COMMISSIONER SCOTT: I guess I have the  
6       same comment as I did earlier on (6), and what was then  
7       (7). To me, when you put "whether" in there, now you're  
8       saying "yes" or "no". And, perhaps, for non-wind  
9       projects, in that consideration, we could say "whether  
10      they are best practical measures", maybe again "to the  
11      extent which they are".

12                      DIRECTOR MUZZEY: Uh-huh. I would  
13      agree.

14                      CHAIRMAN HONIGBERG: Are there other  
15      thoughts or comments on this? I sense that Commissioner  
16      Scott, Director Muzzey, and Attorney Weathersby are in  
17      roughly the same place. Are there others who are in that  
18      same place or are they more with Commissioner Bailey's  
19      formulation of this rule?

20                      If asked to choose, Mr. Hawk, where do  
21      you think you would fall on this? On the Weathersby side  
22      or the Bailey side of this equation?

23                      MR. HAWK: I think I'm on the Weathersby  
24      side.

1 CHAIRMAN HONIGBERG: What about you,  
2 Mr. Oldenburg?

3 MR. OLDENBURG: I like the last one that  
4 was presented, whatever one that is.

5 CHAIRMAN HONIGBERG: That would be the  
6 Weathersby side of things. And, Ms. Roberge, you don't  
7 really need to, but -- because we got a majority.

8 Yes, Commissioner Bailey.

9 COMMISSIONER BAILEY: I don't -- I think  
10 that, with the addition of "and the extent to which those  
11 measures represent best practical measures" takes care of  
12 my concern, because it doesn't say that "best practical  
13 measures are required".

14 CHAIRMAN HONIGBERG: Enough said. We're  
15 good with that, we can move on?

16 MR. WIESNER: So, we're deleting "best  
17 practical" where it appears in the first line, and then  
18 we're saying "the Committee will also consider the extent  
19 to which they are best practical measures"?

20 CHAIRMAN HONIGBERG: Yes. I think it's  
21 just, after the word "aesthetics", "and the extent to  
22 which".

23 COMMISSIONER BAILEY: "Those measures  
24 represent BPM".

1 DIRECTOR MUZZEY: "Best practical  
2 measures".

3 CHAIRMAN HONIGBERG: Right.

4 MR. WIESNER: In (b)(1), if we're ready  
5 to move on, we have comments from the Preservation  
6 Alliance and the National Trust for Historic Preservation.  
7 Here it says "Whether the application has identified all  
8 historic sites and archeological resources", the Trust and  
9 the Alliance would replace "Whether the application has  
10 identified all" with "all of the". So, it's not -- and  
11 the focus is not on whether the application has covered  
12 them all, but "whether the Committee will consider all of  
13 the historic sites and archeological resources potentially  
14 affected".

15 CHAIRMAN HONIGBERG: That seems like a  
16 sensible change. It doesn't seem like we should be  
17 focused on the "yes" or "no" question "did they identify  
18 everything?"

19 Other thoughts or comments?

20 *[No verbal response]*

21 CHAIRMAN HONIGBERG: Seeing none.

22 MR. WIESNER: The Various Energy  
23 Companies in this section would delete the reference to  
24 "consultation" with the various agencies.

1                   CHAIRMAN HONIGBERG: Are they proposing  
2 a replacement or just a deletion of the phrase? And, the  
3 reason I ask is, I think that this is an awkward task of  
4 the Committee to consult with particularly federal  
5 agencies, but really any agency, as part of its  
6 decision-making process.

7                   MR. WIESNER: They're proposing to  
8 delete that entire clause, "in consultation with" those  
9 agencies. And, that actually seems like a consistent  
10 change with the change that was just approved. So,  
11 basically, the Committee would be considering all the  
12 relevant historic sites and archeological resources,  
13 without regard to any consultations that may have occurred  
14 or may be required of the Committee.

15                   CHAIRMAN HONIGBERG: Commissioner Scott.

16                   COMMISSIONER SCOTT: I agree with that  
17 change. This is a list of considerations for the  
18 Committee. At that juncture, it's what's before us, not  
19 what's before anybody else.

20                   CHAIRMAN HONIGBERG: Commissioner  
21 Bailey.

22                   COMMISSIONER BAILEY: And, I also think,  
23 if they were still in consultation with Division of  
24 Historical Resources, that person probably would let us

1 know if it was, if they were on the subcommittee, they  
2 would, obviously, we would know, I think. And, if they  
3 weren't on the subcommittee, I think, if it was really  
4 important, they would let us know. So, do you disagree  
5 with that, Director Muzzey?

6 DIRECTOR MUZZEY: I've always read this  
7 part of Subsection (1) to mean that the anticipated  
8 potential adverse effects on resources is as a result of  
9 the Section 106 consultations with the state preservation  
10 office and the lead federal agency. And, so, deleting it  
11 loses the concept of the adverse effects as determined  
12 through that regulatory process. So, for the question --  
13 the question for me is whether we want to maintain that  
14 idea, that we're waiting for the effects as determined by  
15 that regulatory process, or whether we just want to know  
16 perhaps the applicant's interpretation of the effects of  
17 historic resources.

18 CHAIRMAN HONIGBERG: Well, then,  
19 Director Muzzey, isn't the place to make the change in the  
20 phrase "in consultation with", isn't it something like "as  
21 informed by", "including information from", something like  
22 that?

23 DIRECTOR MUZZEY: Something such as "as  
24 informed by the Section 106 review process"?

1                   CHAIRMAN HONIGBERG: If that captures  
2 the necessary information, then, yes. That's what I think  
3 you're concerned about. I think you're probably right,  
4 that's what this was intended to get at.

5                   DIRECTOR MUZZEY: Right. I would be  
6 comfortable with deleting everything "in consultation" on,  
7 if we included some sort of phrase "as informed by the  
8 Section 106".

9                   CHAIRMAN HONIGBERG: Commissioner Scott.

10                  COMMISSIONER SCOTT: Yes. I understand  
11 your concern, Director Muzzey. I don't think we need to  
12 add anything after that. We'd be informed by, that is a  
13 component that's earlier in the rules, --

14                  DIRECTOR MUZZEY: Uh-huh.

15                  COMMISSIONER SCOTT: -- so, we're  
16 already saying that has to be something brought before us.  
17 There could be other things, including community input,  
18 whatever we see in the docket. So, I don't know why we  
19 would just pick out that one piece, and not look at the  
20 totality. So, I think we're fine just deleting it.

21                  CHAIRMAN HONIGBERG: Commissioner  
22 Bailey, then Director Muzzey.

23                  COMMISSIONER BAILEY: I'm confused. I'm  
24 confused now, because I thought we were finished with

1 Section (1), and we were talking about Section (3). But  
2 are we conflating them or are -- which one are we talking  
3 about, I'm sorry?

4 CHAIRMAN HONIGBERG: I thought we were  
5 still on (1).

6 COMMISSIONER BAILEY: Oh. I thought we  
7 were on (3). Sorry.

8 COMMISSIONER SCOTT: I like your  
9 thinking.

10 CHAIRMAN HONIGBERG: Director Muzzey.

11 DIRECTOR MUZZEY: I think, if we think  
12 back to what material is included in the application,  
13 regarding the identification of historic sites and  
14 potential adverse effects to them, you might recall that  
15 we added a phrase considering the concerns of energy  
16 companies, that we were asking for the effect  
17 determination under Section 106, if determined by the time  
18 of application. And, although other constituents  
19 disagreed with that, and wanted the Section 106 process to  
20 advance to a state where the effects determination was  
21 made by the time of application, we did use that phrase,  
22 due to the Energy Companies' concerns that a lead federal  
23 agency might, in effect, be dragging its feet in making  
24 that determination.

1                   So, I hesitate to lose the concept that,  
2 by the time we're considering unreasonable adverse effects  
3 as a Committee, that that effect determination hasn't yet  
4 been made. And, so, that's why I suggested that including  
5 that "as informed by the Section 106 findings" here.

6                   CHAIRMAN HONIGBERG: Commissioner Scott.

7                   COMMISSIONER SCOTT: This will be my  
8 last word on this.

9                   CHAIRMAN HONIGBERG: Promise?

10                  COMMISSIONER SCOTT: No. If, Director  
11 Muzzey, you'd look at (3), so, if we do leap ahead, which  
12 I think Commissioner Bailey was talking about, it  
13 references that I think. So, I don't think you will have  
14 lost that. But I'll let you decide.

15                  DIRECTOR MUZZEY: I think we would need  
16 to potentially reword (3), because, as it stands now, it's  
17 just "the status of the applicant's consultations", it's  
18 not actual findings by either the state preservation  
19 office or the lead federal agency. So, if we could  
20 incorporate language to talk about those findings, I would  
21 be more comfortable with that.

22                  CHAIRMAN HONIGBERG: So, if that were  
23 reworded, if Section (3) were reworded, would we then  
24 delete the language in (1) that currently starts with "in

1 consultation with"? That's a question for Director  
2 Muzzey.

3 DIRECTOR MUZZEY: Yes. I would be -- I  
4 would be comfortable with removing that, if it is -- if  
5 the concept appears in a reworded Section (3).

6 CHAIRMAN HONIGBERG: Commissioner  
7 Bailey, you were right. Can we deal with (3) right now,  
8 even if we have to backtrack, Attorney Wiesner, or is  
9 there something else we need to deal with?

10 MR. WIESNER: Well, there is. But I  
11 think it makes sense to deal with (3). And, so, my  
12 understanding now is we're going to take out the  
13 "consultation" reference in (1), and we're going to add  
14 something to (3), which refers to "findings or  
15 determinations made by DHR or the lead federal agency"?

16 CHAIRMAN HONIGBERG: That is my  
17 understanding as well.

18 MR. WIESNER: And, while we're on (3),  
19 I'll just note that, as they have before, the Various  
20 Energy Companies propose to delete the reference to  
21 "consulting parties". I guess I might suggest that we  
22 address that in the same way that we had previously.

23 CHAIRMAN HONIGBERG: Solid  
24 recommendation. Commissioner Bailey.

1                   COMMISSIONER BAILEY: I don't think we  
2 need the "consultation" phrase in (3), if we're  
3 considering the findings and determinations made by  
4 Department of Historical Resources and applicable federal  
5 lead agency. Because the consulting parties are  
6 consulting with the lead agency, right? And, so, once  
7 they have made their findings and determinations, I mean,  
8 the only risk here is if they don't make their findings  
9 and determinations under the timeframe that we have to  
10 make our determination by.

11                   MR. WIESNER: I guess we have the same  
12 timing issue, which is, you know, if the finding or  
13 determination has not been made at this point, what's the  
14 effect of that on the Committee's consideration of the  
15 issue, and is there a continuing interest in knowing what  
16 the status of that is and how close it is to a  
17 determination?

18                   CHAIRMAN HONIGBERG: Attorney  
19 Weathersby.

20                   MS. WEATHERSBY: I'm going to suggest  
21 just adding a phrase here that might clarify things. So,  
22 in (3), "The status of the application's" -- "applicant's  
23 consultations with", and then here adding new language,  
24 "and the determinations of the New Hampshire Division of

1 Historical Resources", *etcetera*. So that we capture both  
2 the status and any determinations that have been made.

3 CHAIRMAN HONIGBERG: Does that do it for  
4 people?

5 DIRECTOR MUZZEY: I would like to add  
6 that we specify the findings and determinations to be  
7 those of effect, because that's what we were missing in  
8 the earlier application materials. If an applicant has  
9 identified all of the resources within the area of  
10 potential effect, certainly, I would find it very  
11 difficult to believe that a state preservation office and  
12 the lead federal agency couldn't come to a finding of  
13 effect by the time of the SEC hearing a project. So, I  
14 think it's important to carry that concept into the  
15 Committee's considerations. And, I think it would be  
16 consistent with the sections on (c) and (d) below, where  
17 we use the determinations of other state and federal  
18 agencies as well.

19 Would you like me to freestyle some  
20 language?

21 CHAIRMAN HONIGBERG: Yes. Why don't you  
22 freestyle some language.

23 DIRECTOR MUZZEY: Could you tell me when  
24 our lunch break is, and whether I should do that before or

1 after a break?

2 CHAIRMAN HONIGBERG: I think we're going  
3 to be breaking in the next ten minutes.

4 DIRECTOR MUZZEY: If you wouldn't mind,  
5 I would like to look back on the notes of those who have  
6 commented on this section, before I suggest some language.

7 CHAIRMAN HONIGBERG: All right. Does  
8 that work for everyone? I can't imagine that it doesn't.

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

11 CHAIRMAN HONIGBERG: All right. What  
12 else can we accomplish here?

13 MR. WIESNER: Well, the Various Energy  
14 Companies have proposed additional language which would  
15 now, in their comments, appear as new Subsections (2) and  
16 (3). And, they have done this, in part, because they  
17 propose to delete what now appears as Subsection (4).  
18 And, so, again, they're deleting what we now have as (4),  
19 which is the "adverse effect on historic sites...to an  
20 unusual or disproportionate degree, such as:", they would  
21 delete that. They would add in its place, one way to look  
22 at it, in Subsection (2), their language, "The  
23 significance of the affected historic sites and  
24 archaeological resources", and a new Subsection (3), "The

1 extent, nature, and duration of the potential effects on  
2 the historic sites and archeological resources."

3 CHAIRMAN HONIGBERG: Thoughts or  
4 comments on that suggestion? Director Muzzey.

5 DIRECTOR MUZZEY: Regarding Section (2),  
6 I would suggest that we leave that in place, but edit it  
7 to echo the wording used under aesthetics, in Section (8),  
8 again, to provide consistency in the Site Evaluation  
9 Committee's considerations. And, so, that would be  
10 "consider the effective [sic] of the measures, and to the  
11 extent that they represent best practical measures."

12 MR. WIESNER: They're not proposing to  
13 delete that. They would renumber that as "(4)", and they  
14 have language changes there. But what they're really  
15 doing, and they would shuffle the order of these  
16 provisions somewhat, but, as I read it, what they are  
17 really doing is they're taking what currently appears as  
18 Subsection (4), and they're replacing it with what would  
19 be a new (2) and (3). And, then, the "measures analysis",  
20 the "effectiveness of measures" would now be their (4).

21 CHAIRMAN HONIGBERG: So, we're trying to  
22 isolate right now the discussion of a proposed replacement  
23 for (4).

24 MR. WIESNER: That's correct.

1                   DIRECTOR MUZZEY: I would suggest that  
2                   (2) is not a replacement for (4), it's a different type of  
3                   consideration. The idea of (4) is to try to frame what  
4                   may be an unreasonable adverse effect, which is a  
5                   difficult task. And, it's something that I believe we  
6                   addressed under aesthetics, when we talk about "scope and  
7                   scale", the "change in the landscape", the "extent, nature  
8                   and duration of the use", "dominant or prominent feature",  
9                   you know, "amid high scenic value resources". So, I think  
10                  we did set the tone under aesthetics that this type of --  
11                  these types of parameters are included.

12                   I would certainly entertain some  
13                  rewriting of (4), in order to address that and perhaps to  
14                  generalize it. Although, I think it's important not to  
15                  delete it entirely.

16                   CHAIRMAN HONIGBERG: Are people  
17                  interested in having (4), what is now (4), regardless of  
18                  what number it carries going forward, but that section  
19                  rewritten? Or, are people satisfied with its current  
20                  formulation? I think Commissioner Scott would probably  
21                  want to change "whether" to "the extent to which". But,  
22                  assuming that change would be acceptable to everybody,  
23                  because it has been in other sections, do people want to  
24                  rewrite that standard that it currently appears in (4)?

1 Or, are we satisfied with the standard as it -- the  
2 language as it stands right now?

3 *[Short pause.]*

4 CHAIRMAN HONIGBERG: All right. Off the  
5 record.

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

8 CHAIRMAN HONIGBERG: So, we're going to  
9 break for as close to 30 minutes as we can do. And, we  
10 will see everybody right around one o'clock.

11 (Lunch recess taken at 12:28 p.m. and  
12 the meeting reconvened at 1:09 p.m.)

13 CHAIRMAN HONIGBERG: All right. We're  
14 going to get started. So, we're going to pick up not  
15 exactly where we left off, we're going to circle back to  
16 Director Muzzey, on 301.14(b)(3), and some language to  
17 replace the language that's there or to supplement.

18 Director Muzzey.

19 DIRECTOR MUZZEY: Thank you. This  
20 suggestion is based on looking at language in other  
21 sections of 301.14, as well as the requirements that we  
22 placed under the application section as to what an  
23 application should include in regard to historical  
24 resources.

1                   So, as a starting point, the suggestion  
2 is "Findings and determinations by" --

3                   CHAIRMAN HONIGBERG: Slow down.

4                   DIRECTOR MUZZEY: -- "the Division of  
5 Historical Resources and, if applicable, the lead federal  
6 agency of the proposed project's effects to historic sites  
7 as determined under Section 106 of the National Historic  
8 Preservation Act or New Hampshire RSA 227-C:9."

9                   CHAIRMAN HONIGBERG: Any questions or  
10 comments on that? Commissioner Scott.

11                   COMMISSIONER SCOTT: I apologize. Can  
12 you repeat that one more time?

13                   DIRECTOR MUZZEY: I would love to.  
14 "Findings and determinations by the Division of Historical  
15 Resources and, if applicable, the lead federal agency of  
16 the proposed project's effects to historic sites as  
17 determined under Section 106 of the National Historic  
18 Preservation Act or New Hampshire RSA 227-C:9."

19                   And, the idea is this would provide the  
20 Committee with the agencies' determinations, the  
21 applicable state and federal agencies' determinations as  
22 to the project's effects.

23                   CHAIRMAN HONIGBERG: One quick comment.  
24 I think you used the phrase "effects to" something.

1       Shouldn't it be "effects on" something?

2                       DIRECTOR MUZZEY:   Whichever you're more  
3       comfortable with is fine.

4                       CHAIRMAN HONIGBERG:   I would replace  
5       "to" with "on".

6                       Are there other comments, questions,  
7       suggestions on this?   Commissioner Bailey.

8                       COMMISSIONER BAILEY:   Director Muzzey,  
9       do we need to include the references to 106(h) in the RSA,  
10      because we're considering the findings and determinations  
11      made by those two agencies.   And, those two agencies know  
12      which regs they have to follow.   So, I'm not sure that --  
13      I'm wondering what the reference to the cites adds to the  
14      Committee?

15                      DIRECTOR MUZZEY:   It just specifies the  
16      reasons why the state preservation office or a lead  
17      federal agency would review a project.

18                      CHAIRMAN HONIGBERG:   Are people  
19      otherwise good with this proposed language?   Attorney  
20      Weathersby.

21                      MS. WEATHERSBY:   Director Muzzey, does  
22      that -- you referenced "historic sites".   Does that  
23      include "archeological resources" as well, and the  
24      following language?

1                   DIRECTOR MUZZEY: Yes, it does. And, if  
2 you look back in the definitions, it does.

3                   MS. WEATHERSBY: Thank you.

4                   CHAIRMAN HONIGBERG: Anything else?

5                   *[No verbal response]*

6                   CHAIRMAN HONIGBERG: We're good with  
7 that change?

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

10                  CHAIRMAN HONIGBERG: All right.

11 Director Muzzey, I think you said you had some possible  
12 language on what is now (4), that may have a different  
13 number, if things get reorganized.

14                  DIRECTOR MUZZEY: Well, I guess my  
15 question is, as I looked through this at lunch, it seems  
16 like, within this entire "unreasonable adverse effects"  
17 section, there's typically considerations that involve the  
18 significance of the resources, the degree of the effects,  
19 the agencies' determinations, and the effectiveness of the  
20 measures. And, so, (4), as currently written, would seem  
21 to address the significance of the resources and the  
22 degree of the effects.

23                  My question is, is the Committee fine  
24 with that as written or should we consider other language?

1                   CHAIRMAN HONIGBERG: Generally, I ask  
2 those questions, but --

3                   DIRECTOR MUZZEY: Okay. I'm so sorry,  
4 Chairman Honigberg.

5                   CHAIRMAN HONIGBERG: That's all right.  
6 That's all right. That's good. I'm training everybody.

7                   DIRECTOR MUZZEY: Okay. I'm slow to  
8 train, apparently.

9                   So, if this were rewritten in another  
10 way, potentially a broader way, it could ask the Committee  
11 to consider the nature, extent, and prevalence of adverse  
12 effects on historic sites, as well as the level of  
13 significance and the number of historic sites adversely  
14 affected by the project.

15                  CHAIRMAN HONIGBERG: And, Attorney  
16 Wiesner, can you bring us back to the language that was  
17 suggested in the comment to replace this? I know they had  
18 a different number, but it's the same concept.

19                  MR. WIESNER: Right. Well, they put  
20 this concept, and there's some logic to this, they put  
21 this concept ahead of the "effectiveness of the measures"  
22 section. But, if we put that aside, what they're  
23 proposing, in terms of the language change, is to delete  
24 (4), and replace it with two new sections, which could be

1 collapsed into one, I think, reading: "The significance  
2 of the affected historic sites and archaeological  
3 resources", and "The extent, nature, and duration of the  
4 potential effects on the historic sites and archeological  
5 resources".

6 CHAIRMAN HONIGBERG: So, in terms of its  
7 approach, it sounds similar to what Director Muzzey said.  
8 It is -- both of them, I think, are more general  
9 formulations than what is in the current rule. I think we  
10 would agree -- I think we would agree with the structural  
11 comment that the measures, as Director Muzzey identified  
12 as well, is the last consideration. Generally, you go  
13 through the process of identifying the resources, the  
14 effects, and then talk about whether the mitigation  
15 efforts are appropriate. So, structurally, it doesn't  
16 seem in any way controversial.

17 It's really a question how we formulate  
18 the -- identifying the resources and how significant the  
19 effects are? Whether it's the language that's in the  
20 rule, Director Muzzey's alternative, the language  
21 suggested by the commenters. What are people's  
22 preferences?

23 *[No verbal response]*

24 CHAIRMAN HONIGBERG: This is what

1 stumped the band last time and caused me to call a break.

2 Director Muzzey.

3 DIRECTOR MUZZEY: I think it would be  
4 wise to renumber these, given the degree of rewriting that  
5 seems to be suggested, to follow the pathway of the  
6 resources identified, the effects, the agencies'  
7 determination, and then the measures and their  
8 effectiveness.

9 One concept that's mentioned in the  
10 number (4), as currently written, is the idea of the  
11 number of historic sites affected, relative to the sale of  
12 the facility. And, so, we would have to think about  
13 whether that should be included in this reworded  
14 subsection as well.

15 CHAIRMAN HONIGBERG: Other thoughts,  
16 comments? Is the general language suggested by the  
17 commenters a more desirable way to do this, on the theory  
18 that that will give flexibility, in terms of presentation,  
19 and then the full range of considerations? Is there a  
20 benefit instead to having the much more specific directive  
21 to look at the large number, look at specific rare or  
22 unique, as the current rule articulates?

23 Attorney Weathersby.

24 MS. WEATHERSBY: I think the "rare and

1 unique" concept goes to the significance that is captured  
2 in the proposed language. So, I would be in favor of  
3 going with the language proposed I think it was by the  
4 Energy Companies, provided the concept that Attorney  
5 Muzzey indicated, concerning the number of historic sites  
6 also be added in. So, the significance and the number of  
7 the sites that are affected, as well as the extent,  
8 duration, and there's another concept there.

9 DIRECTOR MUZZEY: "The extent, nature,  
10 and duration".

11 CHAIRMAN HONIGBERG: Commissioner Scott.

12 COMMISSIONER SCOTT: I support that. I  
13 think it could be argued that the word "to extent" would  
14 include the number. But, to the extent that Director  
15 Muzzey feels more specificity would be helpful, I don't  
16 have a problem with adding that in either.

17 CHAIRMAN HONIGBERG: All right. I think  
18 we have Attorney Weathersby's slight modification to the  
19 suggestion of the Energy Companies, which I think  
20 incorporates some of Director Muzzey's language.

21 Attorney Wiesner, do we understand -- do  
22 you understand where that lands us?

23 MR. WIESNER: If you could just  
24 reiterate that for me, Mr. Chairman, that would be

1 helpful.

2 CHAIRMAN HONIGBERG: In all honesty, I'm  
3 not 100 percent sure I can. But I think it's largely the  
4 language that came from the commenters, with a  
5 modification from Attorney Weathersby to include, I'm not  
6 sure whether it's language from Director Muzzey or from  
7 the existing rule, regarding the number of sites relative  
8 to the scale of the facility.

9 Director Muzzey may be able to help me  
10 out here.

11 DIRECTOR MUZZEY: Sure. So, if we look  
12 again at the entire Subsection (b), number (1) is as  
13 suggested by the New Hampshire Preservation Alliance and  
14 the Trust, being that, you know, a general statement that  
15 "the Committee considers all historic sites and the  
16 potential effects." And, then, (2) I'm assuming then  
17 would be our new language of "the significance of the  
18 effect" -- "of adversely affected historic sites and the  
19 number of resources affected, given the scale of the  
20 facility." (3) would be "The extent, nature, and duration  
21 of the potential", and I would add "adverse effects on  
22 historic sites". (4) then would become the sentence that  
23 I had opened with after our lunch break, about the  
24 "findings and determinations". And, then, a new (5) would

1 be "The effectiveness of the measures and to the extent  
2 that they represent best practical measures."

3 Does that make sense from a step-by-step  
4 linear process point of view?

5 CHAIRMAN HONIGBERG: I think so.

6 DIRECTOR MUZZEY: And, it incorporates  
7 both -- some of the existing language, some -- and  
8 language suggested by the Alliance and the Trust, and some  
9 language suggested by the power companies.

10 CHAIRMAN HONIGBERG: Attorney Wiesner.

11 MR. WIESNER: And, are we deleting the  
12 reference to the "status of consultations", and instead  
13 we're presuming that there will have been findings and  
14 determinations made? Or, are we adding the "findings and  
15 determinations" language to this language, which currently  
16 refers to "consultation status".

17 CHAIRMAN HONIGBERG: My understanding  
18 was the language that Director Muzzey read replaces (3) in  
19 its entirety.

20 DIRECTOR MUZZEY: That was my  
21 understanding.

22 CHAIRMAN HONIGBERG: Commissioner  
23 Bailey.

24 COMMISSIONER BAILEY: You added a number

1 (5). And, I think it's already covered by number (2),  
2 unless number (2) is no longer number (2).

3 CHAIRMAN HONIGBERG: It is not number  
4 (2). It becomes (5).

5 COMMISSIONER BAILEY: Okay. And, you  
6 added the concept of "best practical measures"?

7 CHAIRMAN HONIGBERG: It's the same  
8 formulation that we're using in the other sections,  
9 "evaluate the measures and" -- I think.

10 DIRECTOR MUZZEY: Uh-huh.

11 COMMISSIONER BAILEY: Okay.

12 CHAIRMAN HONIGBERG: I think the intent  
13 was to use the same formulation that we used in earlier  
14 sections along the same line.

15 COMMISSIONER BAILEY: Okay. All right.

16 MR. WIESNER: So, it would refer to the  
17 "effectiveness of the measures, and the extent to which  
18 those measures represent best practical measures"?

19 CHAIRMAN HONIGBERG: Yes. Please tell  
20 me we can move on from this section.

21 MR. WIESNER: If that's the direction of  
22 the Committee, yes.

23 CHAIRMAN HONIGBERG: I think it is.

24 MR. WIESNER: Although, when we say

1 "move on", I must backtrack. I apologize.

2 CHAIRMAN HONIGBERG: We won't hold it  
3 against you.

4 MR. WIESNER: Returning to 301.14(a)(6).  
5 This is the aesthetic criteria. And, as we now have it,  
6 the Committee has approved a change where this would be  
7 "the extent to which the proposed facility would be", and  
8 then we're adding the AMC language, "the dominant and  
9 prominent feature", *etcetera*. Dr. Ward had a comment as  
10 well, which I believe I did read for the Committee, I'm  
11 not sure there was a determination made whether his  
12 proposed language would be included. And, essentially,  
13 what he's saying is that "prominent feature" should either  
14 be a term defined here or defined in the Definition  
15 section. And, I believe I read that language. His  
16 "'Prominent feature' would include the multiple  
17 interactions of the visual and aural effects emanating  
18 from an elevated and isolated site, and the added  
19 interactions imposed by the motion and flashing lights,  
20 which interactions reinforce each of these separate  
21 factors."

22 And, the question is whether the  
23 Committee believes that that should either be added as a  
24 defined term or whether that notion of what a "prominent

1 feature" means should be included in this specific  
2 section?

3 CHAIRMAN HONIGBERG: Thoughts or  
4 comments on that suggestion? Director Muzzey.

5 DIRECTOR MUZZEY: I think "prominent  
6 features" could have a more -- a much larger definition  
7 than that's presented here. This idea of the visual and  
8 atmospheric effects of, say, a ridgeline, isolated site,  
9 that type of thing, those are the types of considerations  
10 that I feel would be identified in the visual assessment.  
11 And, so, to just, again, pull those ideas out, as opposed  
12 to everything that's covered in a visual assessment may be  
13 misleading. And, I wouldn't suggest being so specific.

14 CHAIRMAN HONIGBERG: Other thoughts or  
15 comments? Anyone want to take a contrary view or  
16 supplement Director Muzzey's statement?

17 *[No verbal response]*

18 CHAIRMAN HONIGBERG: All right. Seeing  
19 none. Attorney Wiesner.

20 MR. WIESNER: So, then, we would move on  
21 to, let's see, 301.14(e). And, this is the -- whether or  
22 not there's an "unreasonable adverse effect on the natural  
23 environment, the Committee shall consider: (1) The  
24 significance of the affected wildlife species". And, here

1 we have language changes proposed by AMC, Audubon, and the  
2 Forest Society. They would add, after -- well, where it  
3 says "affected wildlife species", they would add "affected  
4 resident and migratory fish and wildlife species". And,  
5 then, in the second line, where it says "including the  
6 size, prevalence, dispersal", they would add "migration  
7 and viability of the populations in or using the area".  
8 And, I believe that all of these comments are essentially  
9 intended to cover migratory species, as well as resident  
10 species.

11 CHAIRMAN HONIGBERG: Director Muzzey.

12 DIRECTOR MUZZEY: I believe we also  
13 discussed this idea of including migratory concerns, when  
14 we were reviewing the application requirements. And, at  
15 that time, we did incorporate the language suggested by  
16 this constituent, in order to recognize that some species  
17 do, in fact, migrate, and we need to consider those as  
18 well.

19 CHAIRMAN HONIGBERG: That's my memory as  
20 well. So, I think those changes are consistent with the  
21 decision we made last time.

22 MR. WIESNER: And, in (2), Subsection  
23 (2), there's also, again, a similar change, "affected" --  
24 it would be "affected resident and migratory fish and

1 wildlife species", etcetera. And, at the end of (3), AMC  
2 would propose to add, where it says "significant habitat  
3 resources", "or migration corridors". And, that's a term  
4 which we have actually defined now, based on the language  
5 proposed by DRED.

6 CHAIRMAN HONIGBERG: All good?

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

9 CHAIRMAN HONIGBERG: All right.

10 MR. WIESNER: So, moving on, in  
11 Subsection (4), this is the consideration by the Committee  
12 of the "analyses and recommendations of", and then, as we  
13 had it, there's a list of the agencies. And, again, the  
14 Various Energy Companies are proposing that there not be a  
15 specific list of agencies, but it be more generic and  
16 refer to "participating agencies".

17 And, also here, EDP would propose that  
18 the reference to "analyses and recommendations" be "if  
19 any".

20 CHAIRMAN HONIGBERG: I don't have any  
21 problem with "if any". And, what decision did we make  
22 earlier with respect to the "participating agencies"  
23 versus the specific listing of the agencies that are in  
24 here?

1 MR. WIESNER: I believe we kept the  
2 existing language.

3 CHAIRMAN HONIGBERG: That's my memory as  
4 well. Any other thoughts or comments on this?

5 DIRECTOR MUZZEY: No. I would just  
6 agree with your points as well.

7 CHAIRMAN HONIGBERG: Next.

8 MR. WIESNER: So, no change, other than  
9 "if any"?

10 CHAIRMAN HONIGBERG: Correct.

11 MR. WIESNER: And, in Subsection (7), --

12 CHAIRMAN HONIGBERG: Don't we need to  
13 back up to (5)?

14 DIRECTOR MUZZEY: And (6).

15 CHAIRMAN HONIGBERG: And (6), with  
16 respect to "best practical measures", and make the  
17 language consistent with the formulations in other  
18 sections?

19 MR. WIESNER: Yes. And, so, take out  
20 "best practical", and once again add the -- well, wait a  
21 minute. This is the consideration, yes. The Committee  
22 then would -- yes, whether -- "to the extent to which they  
23 are best practical measures".

24 CHAIRMAN HONIGBERG: "The extent to

1 which the measures were effective, and whether they were  
2 best practical measures." And, then, we can move onto  
3 (7).

4 MR. WIESNER: (7) references "adaptive  
5 management". And, the Various Energy Companies propose to  
6 delete this, consistent with their view that "adaptive  
7 management" is not a concept that should apply to all  
8 energy facilities, if any, and here they would. But,  
9 again, they would apply as a consideration for a condition  
10 that might be included in a certificate issued by the  
11 Committee.

12 CHAIRMAN HONIGBERG: Director Muzzey.

13 DIRECTOR MUZZEY: "Adaptive management"  
14 is a concept or a phrase that we defined in our  
15 definitions, and we have been using it throughout the  
16 rules, I believe. And, given that this is just a  
17 consideration of the Committee, I would recommend  
18 including it as currently written.

19 CHAIRMAN HONIGBERG: Does anyone believe  
20 we should make a change to this section? Commissioner  
21 Bailey.

22 COMMISSIONER BAILEY: I don't -- I think  
23 it's fine to leave it. But I think maybe why wouldn't we  
24 put it under consideration of conditions to impose in

1 301.17?

2 CHAIRMAN HONIGBERG: Attorney Wiesner.

3 MR. WIESNER: I mean, listing it there  
4 wouldn't preclude it from being listed here. And, most  
5 likely, based on my understanding, "adaptive management"  
6 is a concept that would be most applicable to  
7 considerations of the natural environment and effects on  
8 wildlife. So, I mean, this does seem to be a natural  
9 place to include the concept, even if it could also be  
10 included in the certificate condition section, which I  
11 think is 17.

12 COMMISSIONER BAILEY: I'm not --

13 CHAIRMAN HONIGBERG: Go ahead.

14 COMMISSIONER BAILEY: I'm not suggesting  
15 we include it in both. I'm just suggesting we move to  
16 conditions of the certificate as one of the conditions  
17 that we consider when we grant the certificate. Because  
18 it seems like it comes up pretty frequently, as the  
19 positions evolve.

20 CHAIRMAN HONIGBERG: I think it could be  
21 in either place. I mean, I think here it is directly  
22 related to the topic at hand. It would also fit in  
23 conditions to consider, probably want to add a phrase  
24 related to the natural environment. But I think it could

1 go either place.

2 What is the preference of the group?  
3 How many would leave it where it is? Show of hands, to  
4 leave it where it is?

5 *[Show of hands by members.]*

6 CHAIRMAN HONIGBERG: Move it to 17?

7 *[Show of hands by members.]*

8 CHAIRMAN HONIGBERG: The "leave it where  
9 it is" constituency has it, has the votes here. So, leave  
10 it where it is.

11 MR. WIESNER: Now, in (f)(2), we get to  
12 the sound standards that would apply to wind facilities.  
13 And, we have a number of comments here. RENEW believes  
14 that the limit should be "no lower than 45 decibels at any  
15 time". EDP believes it should be "55 daytime and  
16 45 decibels nighttime, or just 45 decibels at all times,  
17 consistent with certificates that have been issued to the  
18 existing wind facilities in the state." EDP also has some  
19 comments regarding where measurements are taken, as does  
20 Wagner, and Eolian.

21 So, in lieu of the language that  
22 currently appears here, EDP would propose that the  
23 measurements be taken "at least 7.5 meters from the  
24 existing wall of any existing permanently occupied

1 building on a non-participating landowner's property, or  
2 at the non-participating landowner's property line if it  
3 is less than 300 feet from an existing occupied building."

4 And, that is generally consistent with the original  
5 language of the Initial Proposal.

6 Eolian's comment is that it's unclear  
7 what we are saying when we say "a building used in whole  
8 or in part for permanent or temporary residential  
9 purposes". And, they would propose to change that to  
10 "permanent residential structures".

11 RENEW has a comment similar to EDP, that  
12 the original language should be -- should be restored  
13 here, rather than the language that currently appears.

14 And, I'll just note that the language  
15 that currently appears is "7.5 meters from any surface  
16 where reflections may influence measured sound pressure  
17 levels". That tracks, I believe, the ANSI standard for  
18 sound measurement. So, replacing the reference to  
19 "exterior wall with reflective surface", in effect.

20 Wagner also has a comment, might as well  
21 get them all out, regarding the place of measurement.

22 And, their comment is that, if you are measuring at the  
23 property line, depending on the size of the property, it  
24 may not be easily accessible. So, for example, on a very

1 large property, it may be that the actual property line is  
2 heavily wooded or is ledge or ridge, and there may not  
3 even be a road to get up there. So, that does seem to be  
4 a concern worth some consideration.

5 Other people have noted that, by saying  
6 it should be "at least 7.5 meters", you're not really  
7 saying where it should be. And, that may leave the door  
8 open, if you will, for measurements to be taken in places  
9 which, you know, would not provide the best approximation  
10 of what the actual sound effect is, at the house, let's  
11 say. So, that could probably benefit from some clarity as  
12 well.

13 So, I think we have -- in this one  
14 section, we have three different sorts of comments: The  
15 limit is too low, that seems to be a comment made by a few  
16 of the developers; there should be greater clarity on  
17 where measurements are taken; and also there should be  
18 greater clarity in the language referring to those  
19 buildings and structures which are relevant for purposes  
20 of measuring sound.

21 CHAIRMAN HONIGBERG: All right. Does  
22 anyone want to take on any of those three issues?

23 Mr. Oldenburg.

24 MR. OLDENBURG: This is the only

1 location where we talk about where the sound measurements  
2 are taken? I thought there was another area where we  
3 discussed the requirements for taking sound measurements,  
4 like where it would be at the property line or so close to  
5 a building or --

6 MR. WIESNER: There are standards in  
7 Section 18, which we'll get to, about how you perform a  
8 sound study, for purposes of the application process, and  
9 also for monitoring purposes. Quite extensive sections,  
10 which were developed largely through the SB 99 Working  
11 Group process and reference the relevant professional  
12 stands, the ANSI stands and the ISO 9613 standard. And,  
13 the "7.5 meters from reflective surfaces" is used there,  
14 and that is to minimize the effect of being too close to a  
15 building and having the reflection of sound affect the  
16 measurements that are taken.

17 However, perhaps, as, you know, arguably  
18 a different concern when you're looking at the spot where  
19 the limit would apply. And, I think that's part of the  
20 motivation for the concern here. We want to make sure  
21 that, if we're going to use a hard-and-fast number as a  
22 limit, that we're perhaps more clear about where that  
23 measurement should be taken, so it can be more certain  
24 whether or not there's a violation.

1 MR. OLDENBURG: Yes. I guess that was  
2 my concern is that, if we're just judging this, as to  
3 whether it's an unreasonable adverse effect, it shouldn't  
4 be how it was measured, it should be a number, or  
5 something like that. Or, you know, that the "how the  
6 measurement was taken" should be under 18, the  
7 methodology. So, it seems like it's muddied in here as to  
8 there's a level and a time of day, and then we talk about  
9 distances and how it was measured, as opposed to "is it a  
10 quantitative number that you're looking for to determine  
11 whether it's unreasonable or not?" Seems like there's a  
12 lot of things going on in that paragraph.

13 CHAIRMAN HONIGBERG: Attorney Wiesner.

14 MR. WIESNER: There are a lot of things  
15 going on in this paragraph. It's a limit, it applies to  
16 certain types of structures, let's say, and there is at  
17 least some reference to the methodology. Now, the full  
18 description of the methodology is contained in the  
19 separate section.

20 CHAIRMAN HONIGBERG: Would it be  
21 sufficient to articulate the standard, the times of day,  
22 the difference of that against background noise, and then  
23 say "measured in accordance with 301.18"?

24 MR. WIESNER: I mean, I think we'd want

1 to take a look at that, just to make sure that nothing is  
2 getting lost in the process. And, in that event, it may  
3 be necessary to be a little more clear about where  
4 measurements must be taken for purposes of those studies,  
5 whether pre-construction or post-construction monitoring.  
6 I guess --

7 CHAIRMAN HONIGBERG: But, conceptually,  
8 in terms of how you would structure these rules, I think  
9 what Mr. Oldenburg is suggesting is that this is where the  
10 standard is set, and 18 is where you explain how and where  
11 you test. I mean, I know the reason why 18 is where it  
12 is, it's because it's a long and detailed section, that,  
13 if you stuck it in here, it would make this section go on  
14 forever.

15 But is that, conceptually, something  
16 that could work, understanding that it's 20 minutes to  
17 two?

18 MR. WIESNER: I think that could work.  
19 It would replace -- it would probably only replace in this  
20 paragraph the reference to "microphone placement".  
21 Because I think it still would be necessary to say "here's  
22 the limit and here's what it applies to." So, does it  
23 apply at the property line? Does it apply within some  
24 distance of the occupied structure? Is that going to be a

1 permanent residence? And, we had issues with the use of  
2 the word "permanent" before. And, that's why we included,  
3 you know, somewhat vague language of "used in whole or in  
4 part for permanent or temporary residential purposes".  
5 And, I think the intention there was to cover B&Bs and  
6 inns and other sorts of structures that might not be  
7 residential in nature, but are used for residential  
8 purposes at least part of the time, and not be exclusively  
9 permanent -- permanently occupied single family  
10 residences, let's say.

11 CHAIRMAN HONIGBERG: Director Muzzey.

12 DIRECTOR MUZZEY: I would agree with  
13 moving what seems appropriate to 301.18. And, although  
14 the language does seem a bit cumbersome, when it talks  
15 about "used in whole or in part for permanent or temporary  
16 residential purposes", I think those are important  
17 concepts to keep, and would not suggest that we change  
18 that in any way.

19 CHAIRMAN HONIGBERG: I agree with that.  
20 Is there a feeling on the sound level? The sound levels  
21 that are in this room, Mr. Wiesner, how do these relate to  
22 certificates that have been issued or the one proceeding  
23 where the certificate was denied?

24 MR. WIESNER: These limits are those

1 that were adopted by the Subcommittee in the Antrim Wind  
2 case. That certificate was not issued, because of -- my  
3 understanding, because of aesthetic considerations, the  
4 visual impact on a residential neighborhood primarily.  
5 But there was a finding within that order that 45 and  
6 40 decibels were the correct limits, based on World Health  
7 Organization guidance.

8 CHAIRMAN HONIGBERG: Commissioner Scott.

9 COMMISSIONER SCOTT: I support those  
10 standards as written. And, again, if an applicant can  
11 come in stating a different case, there's a waiver  
12 provision available.

13 CHAIRMAN HONIGBERG: Other thoughts or  
14 comments?

15 *[No verbal response]*

16 CHAIRMAN HONIGBERG: So, I think the  
17 only -- the only aspect of this that might get changed --  
18 I'm not sure there's any aspect of this that ultimately  
19 gets changed then, is there, Mr. Wiesner?

20 MR. WIESNER: Well, again, when we say  
21 "as measured using microphone placement", it might say "as  
22 measured in accordance with 301.18."

23 CHAIRMAN HONIGBERG: Right.

24 MR. WIESNER: And, we'll take a look at

1 that. But, as long as that works, and I believe that  
2 there are post-construction sound study methodology  
3 provisions included there, and we'll get to it, because  
4 there are comments on that section as well, that could  
5 work.

6 CHAIRMAN HONIGBERG: Commissioner  
7 Bailey.

8 COMMISSIONER BAILEY: I just did a quick  
9 skim through 301.18, and I don't see similar measurement  
10 requirements in that section. So, we may need to add them  
11 or -- and we still have to decide whether we want to, you  
12 know, we want to take up the reflective surfaces, the  
13 7.5 meters, and all of those technical things. And,  
14 wasn't there a subcommittee who drafted these, like an  
15 industry committee or something that drafted the sound  
16 requirements?

17 MR. WIESNER: Yes. I mean, in terms of  
18 how you do a sound study, for purposes of application, you  
19 submit the study, you describe how you did it. You would  
20 have to meet those standards. And, then, if somebody were  
21 to come along and say "well, that doesn't accurately  
22 reflect what the noise will be like on my property at my  
23 house", then that would be the subject of litigation. I  
24 think what's different here is, this is setting an

1 absolute standard not to be exceeded. And, so, it's more  
2 important, arguably, to be specific as to where the  
3 measurement is going to occur.

4 So, I think the concern you're raising,  
5 Commissioner Bailey, is, if we're not going to include  
6 that level of detail here, then we may need to include it  
7 there.

8 COMMISSIONER BAILEY: Right.

9 MR. WIESNER: So, it's not lost. And,  
10 yet, it may not be appropriate to include it there,  
11 because that's a general provision that applies to sound  
12 studies that would be performed before an application is  
13 submitted. So, again, we're kind of -- and, as we sit  
14 here, I would have to take a look at it in more detail.  
15 And, if we have another break, I might be able to do that.  
16 But just to make sure that post-construction monitoring  
17 studies, as specified in 301.18, are described in enough  
18 detail that they would capture those sorts of  
19 considerations. Because what we're really talking about  
20 now is someone complains "the noise is above the limit at  
21 my house." And, what is the standard that's going to  
22 apply? How is that going to be measured? And, we  
23 probably don't have enough detail as it appears right  
24 here. And, that's one of the comments, if we're not going

1 to include measurement methodology here, then we need to  
2 make sure that it is covered with that level of  
3 specificity in a separate section.

4 COMMISSIONER BAILEY: I think I found  
5 some reference in the post-construction. Says "Locations  
6 shall be pre-selected where noise measurements will be  
7 taken; measurements shall be performed at night with winds  
8 above four and a half meters", I was thinking four and a  
9 half meters was the equivalent to seven and a half meters,  
10 but it's not. So, I don't see it.

11 MR. WIESNER: It refers to "15 feet",  
12 and that should probably be changed to "7.5 meters", and  
13 that's a comment that we have when we get there.

14 COMMISSIONER BAILEY: Okay. You know,  
15 I'm reluctant to make a lot of changes at this late hour.  
16 And, maybe we would be better off to leave as it is and  
17 see how it works. And, if it's really unworkable,  
18 somebody can -- we can always, I know it's difficult, but  
19 change the rules.

20 CHAIRMAN HONIGBERG: Commissioner Scott.

21 COMMISSIONER SCOTT: Commissioner Bailey  
22 just got to where I was going to suggest that, given that  
23 it's not explicitly in 301.18, I'm suggesting we just  
24 leave the original language in here as it was, without

1 taking it out. Because what we're saying is "Here are the  
2 levels as measured." So, we're saying that "the levels  
3 are 40 and 45 as measured this way." And, I don't find  
4 that really contradictory to be in this section,  
5 especially given, if we're not seeing that language  
6 duplicated in 18, we have to put it someplace. So, if we  
7 didn't do that, I think we'd have to have like a 19, you  
8 know, compliance measurement or something like, which I'm  
9 not sure is efficient.

10 MR. WIESNER: I'll just point out that  
11 it used to say "exterior wall of an occupied building",  
12 and now we're saying "not less than 7.5 meters". And,  
13 that's consistent with the standard that applies, so that  
14 you don't get reflections affecting the measurement. But  
15 I would just point out that 7.5 meters is something like  
16 22 feet. And, because it's not clear where you would be,  
17 I think no one would think that that should mean that you  
18 can be 22 feet -- that you can be 27 feet on the other  
19 side of the house from the wind turbine. And, so, it may  
20 be necessary to include some greater detail here as to  
21 where that location will be. In other words, if it can't  
22 be less than 7.5 meters, maybe we should say "it can't be  
23 more than 10 meters in the direction from which the sound  
24 is emanating."

1                   CHAIRMAN HONIGBERG: Well, if you add  
2 the last phrase, do you need the "not less than" -- I'm  
3 sorry, the "not greater than"? If you put them on the  
4 right side of the building --

5                   MR. WIESNER: That's correct. If you  
6 put them on the right side, they are not going to go  
7 closer, I suppose, no.

8                   CHAIRMAN HONIGBERG: Yes.

9                   MR. WIESNER: So, that's probably the --  
10 and then we wouldn't be talking about the property line  
11 either.

12                  CHAIRMAN HONIGBERG: And, that property  
13 line, to the extent the property line is relevant, that is  
14 a situation that cries out for a waiver. I mean, if  
15 we're --

16                  MR. WIESNER: That's right.

17                  CHAIRMAN HONIGBERG: If the specific  
18 rule, which generally works in a particular instance,  
19 creates a hardship, that's a classic situation to request  
20 a waiver.

21                  MR. WIESNER: If the property line is  
22 not accessible.

23                  CHAIRMAN HONIGBERG: So, add -- so, we  
24 want to adjust the language to make sure that it's on the

1 proper side of the structure. And, otherwise leave it as  
2 is? That's a question.

3 MR. OLDENBURG: Mr. Chairman?

4 CHAIRMAN HONIGBERG: Yes, Mr. Oldenburg.

5 MR. OLDENBURG: And, I don't know if  
6 this muddies the works or not. But, because we do sound  
7 studies a lot for complaints about noise on roads. It's a  
8 little different. And, usually, the people that ask us  
9 are okay with us going on their property. So, it might be  
10 a little -- two different -- two different standards here.  
11 People that are going to want the noise study done and  
12 people not going to want it done.

13 But, generally, what we do, and what I  
14 was sort of looking for in the methodology, was there's a  
15 measurement that's done for when you're outside. If  
16 you're a residence -- on your residence, what is the noise  
17 when you're outside? So, if you're on your deck or on  
18 your patio, you would take a noise study from there, where  
19 you are, and on an outside condition.

20 If you're inside, say, at night, we  
21 would generally take a reading outside, like a bedroom  
22 window on the second floor. So, if you're on the ground,  
23 the microphone would be placed, you know, maybe 4 feet off  
24 the ground, on a patio. And, for a nighttime reading, it

1 would be at a window, a sleeping window, considering that  
2 the window would be open, and then you would take a  
3 reading there.

4 So, the Federal Highway Administration  
5 has standards of where you place the microphone for sound  
6 readings. We use a much higher standard than 40 and  
7 45 decibels, though, because our roads tend to be much  
8 closer than I believe what these would be measuring.

9 So, that's what I anticipated was, if  
10 someone wants to know what the noise level is going to be  
11 of a wind turbine, where would you take that reading? You  
12 know, if you happen to be on your deck, and it's within 7  
13 and a half meters of a wall, that's where you would be  
14 when you would be listening to the wind turbine.

15 So, I guess I -- that's sort of what I  
16 expected to see was, you know, where would you take these  
17 measurements? And, to me, it would be where people are,  
18 you know, or could be, you know, outside, in a gathering,  
19 or inside, and then the measurement would be, you know,  
20 pre-construction, and then -- and then a post.

21 But that's sort of, when you looked at  
22 methodology, I would have thought there would have been  
23 "where would you take the readings from?" And, I don't  
24 know if it's one of these -- one of the quotes from the

1 standards or what that explains that, I'm not sure. But I  
2 didn't see a location. If it's just the property line,  
3 I'm fine with that. But I don't think that's going to  
4 satisfy people when somebody says "the noise on my  
5 property went up". Because they're not going to be  
6 standing on their property line, they're going to be  
7 standing on their deck or at the pool or something like  
8 that.

9 So, that's, when I raise that question,  
10 that's where I was coming from, because I didn't see a  
11 location on a property.

12 CHAIRMAN HONIGBERG: Mr. Wiesner.

13 MR. WIESNER: I was just going to say,  
14 the -- you know, there was general consensus coming out of  
15 the SB 99 process that the specific ANSI and ISO standards  
16 that apply to sound studies for wind turbine, and they are  
17 that specific, they cover wind turbines, that those would  
18 be applicable. And, the "7.5 meters from a reflective  
19 surface" comes from those standards. And, as a result of  
20 the tech session we had back in June, I think there was  
21 general agreement that 7.5 meters from a reflective  
22 surface was a better measuring point than the exterior  
23 wall. And, if we make it clear that we're talking about a  
24 location that would have to be at least 7.5 meters from

1 the reflective surface, but basically between the building  
2 and the wind turbine, then I think the limit that's  
3 specified is likely to mean that the actual sound  
4 experienced at the building may be that much lower,  
5 because it's that distance away.

6 MR. OLDENBURG: Then, if it's covered in  
7 the ANSI and the ISO numbers and all that, I'm good.

8 CHAIRMAN HONIGBERG: All right. Are  
9 there other comments or questions?

10 *[No verbal response]*

11 CHAIRMAN HONIGBERG: Mr. Wiesner, do you  
12 know where we ended up?

13 MR. WIESNER: So, I guess we -- what I  
14 understand is that we're going to keep the language as is,  
15 except that we're going to specify where the measurement  
16 must be taken, to remove any ambiguity that you could be  
17 measuring at a point which is actually further from the  
18 wind turbine, you know, in terms of noise travel, than the  
19 house itself.

20 CHAIRMAN HONIGBERG: Correct.

21 MR. WIESNER: Okay. So, with that, we  
22 can move onto (2)(b), which is "shadow flicker". And,  
23 here we have a standard stated of "30 hours per year or 30  
24 minutes per day". And, this is one of the ones that you

1 mentioned earlier, Mr. Chairman, where people have said  
2 "if you can't get it right, don't do it at all."

3 New Hampshire Wind Watch proposes that  
4 there be an "8 hours per year" standard, which I believe  
5 is consistent with the German standard, as has been  
6 brought to the Committee's attention. "But reduced  
7 numbers may be imposed by the Committee if supported by  
8 the evidence presented." So, that seems to say that 8  
9 hours will be a maximum, but the Committee could go lower,  
10 in their view. New Hampshire Wind Watch and Windaction  
11 also proposes that there be a requirement that  
12 "curtailment technology or mitigation tools may be  
13 considered, if project layout and setback distances are  
14 not sufficient in order to meet the defined standard."

15 Dr. Ward also says that the shadow  
16 flicker hours should be lower, and that "proper control  
17 systems should be required for all wind turbines to  
18 protect properties and roads from the effects of shadow  
19 flicker."

20 I should note, New Hampshire Wind Watch  
21 and Windaction also proposes to delete the "30 minutes per  
22 day". So, it would just be an "8 hour standard per year".

23 CHAIRMAN HONIGBERG: Didn't we have  
24 someone recommend "zero", no shadow flicker at all? I'm

1 certain we did.

2 MR. WIESNER: That is what Mason County,  
3 Michigan has now adopted in their ordinance, and others  
4 have echoed that as an appropriate standard. And, I  
5 believe that, in that situation, technology is being  
6 deployed to minimize shadow flicker.

7 CHAIRMAN HONIGBERG: What is the -- what  
8 are the numbers that have been in prior Commission -- Site  
9 Evaluation Committee orders on wind projects?

10 MR. WIESNER: I believe the "30 hours"  
11 has appeared. I think that that has often been defined  
12 through an agreement with the local municipality and then  
13 incorporated as a condition in the certificate. So, it's  
14 not clear whether or not the Committee has actually made a  
15 finding that that is the right number.

16 COMMISSIONER SCOTT: Mr. Wiesner, while  
17 they're discussing it, so, just to clarify, your  
18 understanding of rulemaking, if whatever number we select,  
19 if we select a number, we can't make it more stringent,  
20 this would be a -- you know, if the rule says "30", a  
21 waiver could make it less stringent, but we're not able to  
22 make it more stringent, is that not correct?

23 MR. WIESNER: If "30 hours" is specified  
24 as a "maximum", could the Committee waive the rule in

1 order to impose a lower standard?

2 CHAIRMAN HONIGBERG: Or, a more  
3 stringent standard.

4 MR. WIESNER: A more stringent standard.  
5 Fewer number of hours per year.

6 CHAIRMAN HONIGBERG: Right.

7 MR. WIESNER: I think that -- that would  
8 be difficult, I think. It's probably more likely that a  
9 waiver could be granted to permit an exceedance, if you  
10 will, which would be a higher number of hours, at the  
11 request of the applicant, presumably.

12 CHAIRMAN HONIGBERG: I have -- I agree  
13 with that answer. I have some concern about the viability  
14 of the proposal that it be -- that the rule say "X or  
15 less, if determined by the Committee". I think  
16 Legislative Services would take a dim view of that, and I  
17 think the courts would take a dim view of that. I think,  
18 if we're going to have a number, it's going to be the  
19 number. And, the waivers, if they are appropriate, it's  
20 going to be very difficult, if not impossible, to make  
21 those waivers go in the "more stringent" direction.

22 Commissioner Bailey.

23 COMMISSIONER BAILEY: I think shadow  
24 flicker could have a pretty big impact on somebody's

1 ability to live in their house. And, so, and it could  
2 have an impact on public health. So, I'm in favor of  
3 reducing the number of hours to what Wind Watch  
4 recommended. I think that, in prior certificates, when we  
5 imposed the "30 hours", we weren't aware of the technology  
6 that allowed curtailment during certain hours. So, I  
7 think telling the applicants that this is what we expect,  
8 and, you know, I think reducing the number of hours would  
9 reduce the annoyance factor, perhaps, by some people that  
10 are -- that are located near areas where projects might be  
11 sited.

12 So, for those reasons, I think reducing  
13 "30 hours" to "8 hours" is a good idea.

14 CHAIRMAN HONIGBERG: Director Muzzey.

15 DIRECTOR MUZZEY: I would agree with  
16 that as well, to go with the idea of "8 hours", and then  
17 no specified minutes per day. Knowing full well that a  
18 waiver could be requested, and also based on previous  
19 determinations by this Committee.

20 CHAIRMAN HONIGBERG: Other thoughts or  
21 comments? Are people supportive of the suggestion by  
22 Commissioner Bailey?

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

1 CHAIRMAN HONIGBERG: I see nodding  
2 heads. Any dissent on that?

3 *[No verbal response]*

4 CHAIRMAN HONIGBERG: My personal view is  
5 I would leave it at the "30" that we proposed. But it  
6 doesn't look like I have much -- I don't think I have many  
7 friends at that standard.

8 Yes, Commissioner Scott.

9 COMMISSIONER SCOTT: I wouldn't go as a  
10 "friend", but I support the "30".

11 CHAIRMAN HONIGBERG: The consensus of  
12 the group is to make it "8"?

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

15 CHAIRMAN HONIGBERG: All right.

16 MR. WIESNER: Next is (c), which is  
17 "setbacks" for wind projects. And, we have comments here  
18 again from Wind Watch/Windaction that the setbacks are not  
19 large enough, that they should, in fact, be "five times  
20 the tower height to the property line, three times the  
21 tower height to a public road", and that "turbine  
22 elevation should be taken into account". And, "the SEC  
23 can impose a greater setback based on the record."

24 Wind Watch also proposes that there be

1 the concept included here of "safety zones", which is not  
2 quite the same as "setback". And, my understanding is, in  
3 the Granite Reliable case, there's no setback specified,  
4 because of the remoteness of the location, but there was a  
5 safety zone around each turbine adopted, in order to keep  
6 people away from the turbine, so that they're not hit by  
7 ice or other adverse effects from being that close. Some  
8 of the manufacturers, as I understand it, specify a  
9 minimum safety zone that would apply to their turbines,  
10 and that may vary depending on the size of the turbine and  
11 the make.

12 But that's a separate concept from  
13 "setback". Because a "setback", as I understand it, is an  
14 absolute siting requirement, and the "safety zone" is more  
15 of a -- no other property should be located with the  
16 safety zone, and perhaps there should be warnings posted  
17 or fencing, something along those lines.

18 And, I think, typically, the Committee  
19 has addressed safety zones and setbacks through  
20 certificate conditions. And, it may be appropriate to  
21 consider safety zones as something that would be imposed  
22 through condition, rather than having a hard-and-fast  
23 number.

24 And, I'll just also take this

1 opportunity to mention that Dr. Ward would propose to  
2 change the measurement section for what we're talking  
3 about, when we talk about "turbine tower height".

4 Dr. Ward would change it so it reads: "As measured from  
5 the tip of the blade in the vertical position to the  
6 elevation of land at three times the tower height." And,  
7 that would replace the existing language or the proposed  
8 language here, which is "measured from the base of the  
9 turbine foundation to the tip of the blade in the vertical  
10 position".

11 CHAIRMAN HONIGBERG: Is this also a  
12 section where there were comments that said "if you can't  
13 get it exactly right, don't set any standard at all in  
14 your rules"?

15 MR. WIESNER: Yes. That's correct.  
16 And, then it would be done on a case-by-case basis. Of  
17 course, to the extent that waivers are possible, and the  
18 waiver would permit someone to site within what would  
19 otherwise be the setback zone, that would be handled on a  
20 case-by-case basis.

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

23 This is like Jeopardy, Commissioner  
24 Bailey. You reach for the button, if you're the first

1 one, you get called on.

2 COMMISSIONER BAILEY: I'm not sure I  
3 wanted to talk. But I'll articulate what I'm thinking.

4 This may be one that where it's better  
5 to do it on a case-by-case basis. Because, as technology  
6 evolves, maybe, I mean, I assume that the "five times the  
7 height" has to do with ice throw. And, if there's some  
8 kind of technology that warms the blades so that ice  
9 doesn't accumulate on the blades, then maybe having that  
10 kind of a setback is too -- is stricter than it needs to  
11 be.

12 And, so, I'm kind of leaning toward  
13 figuring this out on a case-by-case basis.

14 CHAIRMAN HONIGBERG: I am very  
15 sympathetic to that view in this context, given how  
16 location-specific, how far something might be thrown from  
17 a turbine is going to be. I was thinking the same thing.

18 Are there other thoughts or comments on  
19 this section and the approach we should take to it?

20 Commissioner Scott.

21 COMMISSIONER SCOTT: I don't object to  
22 doing it on a case-by-case basis. And, if that were to be  
23 the case, I'm wondering, just some simple statement here  
24 in this (c) that there's -- "a setback distance shall be

1 established". I don't think anybody's suggesting there  
2 won't be some kind of setback, it's just a matter of what  
3 that should be, I think.

4 CHAIRMAN HONIGBERG: I think the  
5 commenters who offered that suggestion did have language  
6 that said "it will be set on a case-by-case basis".

7 Attorney Weathersby.

8 MS. WEATHERSBY: I was struck by the  
9 presenter during the public session who spoke about having  
10 not full use of his land or having to post his land  
11 because of the potential for ice throw landing on it, ice  
12 from the turbine coming onto his property. And, so, I'd  
13 be in favor of eliminating some of these requirements,  
14 because they are very site-specific, but adding something  
15 that, not only will there be a setback, but the setback  
16 shall ensure that ice throw and -- shall not, you know,  
17 cross a property line, or some kind of standard that  
18 protects buildings and adjacent property owners. I'm not  
19 sure of exact language, but that's my concept.

20 CHAIRMAN HONIGBERG: Director Muzzey. I  
21 thought you wanted to say something. Was I wrong?

22 DIRECTOR MUZZEY: Yes.

23 *[Laughter.]*

24 CHAIRMAN HONIGBERG: I'm sorry.

1                   DIRECTOR MUZZEY: I can think of  
2 something to ask, however. Do you know which commenter  
3 had suggested language, and we can see whether Attorney  
4 Weathersby's language was in there?

5                   CHAIRMAN HONIGBERG: Let's go off the  
6 record.

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

9                   CHAIRMAN HONIGBERG: Mr. Oldenburg.

10                  MR. OLDENBURG: Mr. Chairman, while you  
11 look, I will just make the observation. The more I think  
12 about it, it should be a case-by-case basis to me.  
13 There's going to be cases where you could have a wind farm  
14 that there is no public roads, there are no buildings  
15 within the area. So, these measurements are sort of a  
16 moot point. But then you're going to get to where there  
17 could be a residential area right adjacent to the wind  
18 farm, where you'd want to make it a more stringent look.  
19 And, I would hate to be the person that says "yes, you  
20 know, the daycare is 3.1 times the height, but that's  
21 okay." You know, to me, I think, you know, a case-by-case  
22 basis might give a little bit more latitude to look at a  
23 specific like that.

24                  CHAIRMAN HONIGBERG: I'm inclined to go

1 in that direction. Unfortunately, I cannot find language  
2 right now that is -- that sets that out, any more than  
3 just saying "shall be done on a case-by-case basis".

4 DIRECTOR MUZZEY: If we wanted to  
5 respond to some of the concerns we heard from the public,  
6 we could add "and will consider such factors as the  
7 effects of ice throw, lightning strikes, collapse,  
8 manufacturer suggested safety zones", and name those types  
9 of things. I wouldn't want it to be an all-inclusive  
10 list, "including, but not limited to", and provide some  
11 guidance as to what the Committee is looking for when it  
12 comes to a setback consideration.

13 CHAIRMAN HONIGBERG: Mr. Wiesner, what's  
14 your feeling on the viability of an approach like that?

15 MR. WIESNER: So, I guess, if I  
16 understood what Director Muzzey was proposing, it would be  
17 to convert this setback requirement with a specific  
18 number, and something more along the lines of "consider a  
19 list of factors that are implicated by tower collapse, ice  
20 throw", such considerations that are generally addressed  
21 through a setback requirement. And, then, we might add  
22 something to Section 17, certificate conditions list, that  
23 specifically acknowledges that the Committee can issue a  
24 certificate with a condition for setback and/or a safety

1 zone. That would be one approach.

2 CHAIRMAN HONIGBERG: If that approach  
3 works, I'm satisfied with going in that direction.

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

6 CHAIRMAN HONIGBERG: I see some other  
7 nodding heads.

8 MR. WIESNER: So, in that event, the  
9 Committee might or might not adopt a specific setback or  
10 safety zone in order to avoid an unreasonable adverse  
11 effect, having considered a list of factors, which would  
12 include, say, the results of the ice throw risk assessment  
13 and tower collapse.

14 CHAIRMAN HONIGBERG: I think so. And,  
15 in remote locations, that would be the circumstance at  
16 which there would be no setback, although there might be a  
17 safety zone, a posting of some sort.

18 MR. WIESNER: That's one scenario, yes.

19 DIRECTOR MUZZEY: Should this section  
20 then address both with respect to setbacks and safety  
21 zones or have safety zones just part of the whole setback  
22 consideration?

23 CHAIRMAN HONIGBERG: I think the way  
24 Attorney Wiesner articulated it a moment ago, it would be

1 a possible condition, safety zone.

2 MR. WIESNER: And that, for example, the  
3 manufacturer's recommended safety zone, as Director Muzzey  
4 suggested, might be one of the enumerated factors to be  
5 considered.

6 CHAIRMAN HONIGBERG: Do we feel like we  
7 have enough specificity here? Because, at the end of this  
8 session, we're going to be voting on something. And, I  
9 want to make sure people are comfortable with what the  
10 something is on this section.

11 Director Muzzey.

12 DIRECTOR MUZZEY: I'm comfortable with  
13 the discussion as it's evolved and the ideas put forth.

14 COMMISSIONER SCOTT: So am I.

15 CHAIRMAN HONIGBERG: I'm more interested  
16 in what Attorney Wiesner thinks right now.

17 MR. WIESNER: I think, if the  
18 determination is made that this should be done  
19 case-by-case, that this approach makes sense.

20 CHAIRMAN HONIGBERG: Is it -- do we  
21 have -- are we comfortable that we can read into the  
22 record language that will then be put into a document that  
23 is the final document we submit to Legislative Services,  
24 under my signature?

1                   MR. WIESNER: I mean, we could take the  
2 time to work through, for example, the various factors  
3 that should be included. I think I have a sense of what  
4 we're going to cover, and it may key off of the risk  
5 assessment study that would inform the setback analysis,  
6 which really goes to risk -- the risk of ice throw and  
7 similar adverse effects.

8                   And, what I'm thinking then is that we  
9 have -- there's going to be a section here which is going  
10 to say that, "in determining unreasonable adverse effects  
11 on public health and safety, the Committee will consider",  
12 and then there will be a list of things that would lead  
13 one -- lead the Committee perhaps to impose a specific  
14 setback requirement as a condition. And, then, that would  
15 be what we're talking about when we say "case-by-case".

16                   So, as I say, if we want to take the  
17 time, we can go through the specific factors. Otherwise,  
18 I think I have a general sense of what we want to be  
19 looking at.

20                   CHAIRMAN HONIGBERG: All right. My  
21 recommendation is that at the next break the homework is  
22 going to be thinking about and starting to write down  
23 those factors, so we're not spitballing as we sit here and  
24 do this.

1                   So, let's move on from this section,  
2                   understanding that we're going to work -- people are going  
3                   to have homework over the break, and then, when we come  
4                   back from the break, we'll be putting together that  
5                   discussion, so that this is clear enough on the record so  
6                   that we can adopt something.

7                   MR. WIESNER: Well, with that, if we're  
8                   ready to move on, Subsection (g) we mentioned before, this  
9                   is the general "best practical measures" requirement for  
10                  all proposed energy facilities. And, it says: "In  
11                  determining whether a proposed energy facility will have  
12                  an unreasonable adverse" -- "will have unreasonable  
13                  adverse effects, the committee shall consider the best  
14                  practical measures to avoid, minimize, or mitigate any  
15                  potential adverse effects of the proposed facility."

16                  And, consistent with our discussion  
17                  earlier, this might also be -- sort of serve as a  
18                  catch-all. Where the Committee would determine whether  
19                  all measures proposed by the applicant to mitigate  
20                  potential adverse effects are, in fact, best practical  
21                  measures.

22                  This is also probably a place to have  
23                  the discussion, if we want to revisit it, whether "best  
24                  practical measures" is a requirement for all energy

1 facilities or just for wind.

2 CHAIRMAN HONIGBERG: That sounds like a  
3 good discussion to have now. Commissioner Bailey.

4 COMMISSIONER BAILEY: I don't think this  
5 is necessary anymore, because we took care of it in each  
6 one of the specific areas. You know, in determining  
7 whether the energy facility has an unreasonable effect on  
8 aesthetics, we're going to look at "the effectiveness of  
9 the measures planned, and the extent to which those  
10 represent best practical." And, so, if we're talking  
11 about a wind facility, then the law says "they have to use  
12 best practical". So, if the extent to which doesn't  
13 represent best practical for a wind system, then maybe  
14 that would be a reason to deny the certificate.

15 But I don't think that we need this here  
16 anymore, because we put it in all the other adverse impact  
17 sections.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I was just checking  
20 the same thing, because it seemed rather repetitive.  
21 Although, I do note that it appears for aesthetics,  
22 historic sites. Regarding air quality, it's not included,  
23 but the determinations of DES are. The same goes with  
24 water quality. We do consider it when it comes to natural

1 communities, wildlife, plants, etcetera. However, it's  
2 not embedded within public health and safety.

3 So, it would pick up public health and  
4 safety, air quality, and water quality.

5 CHAIRMAN HONIGBERG: If we were to put  
6 it in those specific sections, a formulation like we have  
7 in the sections where it does exist, would it then obviate  
8 the need to have it here?

9 MR. WIESNER: I mean, on air and water  
10 quality, I think the sense is that there is general  
11 deference to DES determinations.

12 CHAIRMAN HONIGBERG: All right.

13 MR. WIESNER: And, so, it's questionable  
14 then whether, you know, the Committee, I mean, I'm just  
15 throwing this out there, it's questionable whether the  
16 Committee should impose its own analysis of what would be  
17 the appropriate mitigation strategies.

18 CHAIRMAN HONIGBERG: Okay. Excepting  
19 the DES deferral situation, health and safety was one, was  
20 it not?

21 DIRECTOR MUZZEY: Uh-huh. Public health  
22 and safety.

23 COMMISSIONER BAILEY: I think, for  
24 public health and safety, we have created very

1 conservative rules about shadow flicker and sound. And,  
2 we're going to do ice throw and those kinds of things on a  
3 case-by-case basis, maybe -- maybe you can add, you know,  
4 the extent to which they have considered best practical  
5 measures for -- in the section that has to still be  
6 drafted. But I think this gets us out of determining  
7 today whether we should apply "best practical measures" to  
8 all projects, rather than what the law clearly says, that  
9 it's wind. And, so, I really think -- I think we've got  
10 it covered.

11 CHAIRMAN HONIGBERG: Attorney  
12 Weathersby.

13 MS. WEATHERSBY: I'd be okay with taking  
14 it out, as long as it was -- the "best practical measure"  
15 language was added to the public health and safety, with  
16 regard to the wind systems. Particularly, as we've seen  
17 from Mason County and others, that technology is advancing  
18 concerning ice throw and sound. And, I would want  
19 information from the applicant that tells us about their  
20 mitigation efforts and whether they are the best practical  
21 measures.

22 CHAIRMAN HONIGBERG: Other thoughts?  
23 Comments? Do people generally agree with what Attorney  
24 Weathersby just said?

1 COMMISSIONER SCOTT: Yes.

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

4 CHAIRMAN HONIGBERG: I see some nodding  
5 heads. Yes, I hear lots of agreement there.

6 Attorney Wiesner.

7 MR. WIESNER: So that, if I'm  
8 understanding, the mitigation measures then would be a  
9 separate consideration, even though we've set  
10 hard-and-fast standards, for example, for sound or shadow  
11 flicker? So, if we say shadow flicker is "8 hours", and  
12 you can meet that 8 hours without any mitigation, then  
13 that's okay. Or, are we saying "you should propose  
14 mitigation measures to see if you can get it under 8  
15 hours"?

16 See, in other areas, we have a balancing  
17 of factors, and here we have a bright line. And, so, I'm  
18 wondering whether, you know, the same sort of mitigation  
19 measures proposed, and alternatives rejected, and whether  
20 or not they're best practical measures, is appropriate, if  
21 we're setting the limit?

22 CHAIRMAN HONIGBERG: Just not talking  
23 wind for a minute, but talking other types of systems that  
24 don't have the specifics that we just set forward, what is

1 the state of play with respect to health and safety  
2 standards for other types of facilities?

3 MR. WIESNER: I mean, if you look at  
4 (f)(1), --

5 CHAIRMAN HONIGBERG: Which I'm looking  
6 at right now.

7 MR. WIESNER: Right. (f)(1) is,  
8 basically, "the Committee will consider the information  
9 submitted pursuant to the application requirement and  
10 relevant evidence submitted". So, basically, it's a  
11 case-by-case analysis, based on the application as  
12 submitted and the studies included with that application,  
13 as well as the relevant evidence that's developed through  
14 the adjudicative proceeding.

15 Which I believe would include mitigation  
16 measures as proposed, but it may not hurt to spell that  
17 out here.

18 CHAIRMAN HONIGBERG: I'm thinking the  
19 same thing. That, if we pick up the review and  
20 consideration of that material, as we do for the other  
21 types of adverse effects, I think, basically, we did it  
22 for wind with such specificity, but then didn't do  
23 anything for health and safety with respect to the other  
24 types of facilities that are in play here. That that

1 might -- adding parallel language, and that's not --  
2 happily not going to be complicated, that language already  
3 exists, would pick up a provision, and it would include  
4 the mitigation efforts section, which would then sweep it  
5 up for all, but potentially the wind. And, then, there  
6 would still be an open question, I think, of course, you  
7 just asked, Attorney Wiesner, which is, having done all  
8 that specificity for wind, do you need a consideration of  
9 mitigation when you've set specific -- specific levels?

10 MR. WIESNER: And, it could be a factor  
11 that would apply to the setback analysis, where there is  
12 not a bright line rule, but, arguably, is not applicable  
13 to the sound and shadow flicker, we have set a specific  
14 limit.

15 CHAIRMAN HONIGBERG: Right. I agree  
16 with that.

17 MR. WIESNER: Although, if somebody  
18 asked for a waiver, then it would be appropriate to "are  
19 you mitigating the best you can when you ask for your  
20 waiver?"

21 CHAIRMAN HONIGBERG: Right.

22 MR. WIESNER: So, add to (f)(1),  
23 basically, "the effectiveness of the mitigation and the  
24 extent to which best practical measures"?

1                   CHAIRMAN HONIGBERG: Yes. I think, does  
2 (f)(1) also need "assessment of the health risks and  
3 consideration of how likely those are going to be" --  
4 "going to be to take place"? I mean, the example is --  
5 I'm not sure what the example is. But there are health  
6 and safety considerations lurking in all of these types of  
7 facilities, not just wind.

8                   And, for others, for example, for  
9 aesthetics, we have them do their visual impact  
10 assessment, and then we talk about how the facility will  
11 affect the view from various places. With health and  
12 safety, we really don't have the second part of that at  
13 this point, except for wind.

14                  MR. WIESNER: It basically incorporates  
15 by reference the studies that were submitted with the  
16 application under 301.08.

17                  CHAIRMAN HONIGBERG: But does it tell us  
18 what we're supposed to do with those studies?

19                  MR. WIESNER: Just to consider them, in  
20 determining whether there's an unreasonable adverse  
21 effect. It doesn't otherwise state a standard. Although,  
22 in other cases, it is, you know, it's a more specific  
23 standard, but it essentially boils down to a balancing  
24 test, including the effectiveness of the mitigation

1 measures.

2 CHAIRMAN HONIGBERG: Uh-huh.

3 DIRECTOR MUZZEY: As well as the  
4 significance of the effect.

5 CHAIRMAN HONIGBERG: Uh-huh.

6 MR. WIESNER: So, we could include  
7 language that essentially tracks the structure of those  
8 prior sections, the significance of the effect, the  
9 potential adverse effects, and the effectiveness of the  
10 proposed mitigation.

11 CHAIRMAN HONIGBERG: I think that's  
12 correct.

13 MR. WIESNER: And, I think, with that,  
14 and if we add "effectiveness of mitigation measures" to  
15 the factors that will be considered in the case-by-case  
16 analysis of setbacks and safety zones, that seems to cover  
17 what needs to be covered, arguably, and then (g) might be  
18 removed, as Commissioner Bailey has proposed.

19 CHAIRMAN HONIGBERG: I think I agree  
20 with that. I think that's essentially where Attorney  
21 Weathersby and Commissioner Bailey were.

22 That's going to be additional homework  
23 at the break, I think.

24 MR. WIESNER: Can we move on?

1                   CHAIRMAN HONIGBERG: I think we can move  
2 on.

3                   MR. WIESNER: To (h), which is  
4 "cumulative impacts". And, again, the Various Energy  
5 Companies are proposing that this be deleted, and,  
6 essentially, that is -- their comment is motivated by the  
7 same argument, that "cumulative impacts" only clearly  
8 applies to wind, and does not clearly apply under the  
9 statute to other types of facilities. And, therefore,  
10 this type of general catch-all provision should not be  
11 applied, and "cumulative impacts" should only apply to  
12 wind facilities.

13                   Here, this is the place, really, where  
14 "cumulative impacts" is covered. So, we don't have the  
15 same, you know, arguable redundancy issue that we had with  
16 "best practical measures".

17                   CHAIRMAN HONIGBERG: Director Muzzey.

18                   DIRECTOR MUZZEY: My memory is that, in  
19 previous discussions and deliberations, we have considered  
20 this idea of "cumulative impacts", and sided on -- sided  
21 with the approach that is here under (h). And, so, while  
22 I'm sympathetic to the Energy Companies' concerns, I feel  
23 we should maintain the existing language.

24                   CHAIRMAN HONIGBERG: Commissioner Scott.

1                   COMMISSIONER SCOTT: Ultimately, I  
2                   concur, that I think (h) is fine as is. My view, it's an  
3                   issue of how much weight do we give. Right now, it says  
4                   "shall consider cumulative impacts", clearly, for wind.  
5                   That's a higher consideration given in the statute. So,  
6                   that was my thinking. It was something I wanted to  
7                   consider for all projects, but how I weighed it, it was an  
8                   issue the way the statute's written.

9                   CHAIRMAN HONIGBERG: Attorney  
10                  Weathersby.

11                  MS. WEATHERSBY: When we considered  
12                  similar language earlier for a different section, we went  
13                  along with this concept, but also added in "public health  
14                  and safety" to the list of factors that we should consider  
15                  the cumulative impacts on. And, I would be in favor of  
16                  adding that.

17                  CHAIRMAN HONIGBERG: Do people agree  
18                  with Attorney Weathersby that we should add that here?

19                                 *[Multiple members nodding in the*  
20                                 *affirmative.]*

21                  CHAIRMAN HONIGBERG: I see nodding  
22                  heads. Commissioner Bailey.

23                  COMMISSIONER BAILEY: Can you give me an  
24                  example of what you mean by that? I mean, I am in favor

1 of taking public health and safety very seriously. But  
2 are you talking about the cumulative impacts of shadow  
3 flicker and sound? And, how would we evaluate that? I  
4 mean, we know that there are effects from both.

5 MS. WEATHERSBY: I think it's the same  
6 as how measure any cumulative impact, on a habitat or a  
7 recreational facility. You know, you have to look at the  
8 cumulative impacts, and you would, in your example, yes,  
9 you would consider shadow flicker, sound, how close it is  
10 to other facilities, you know.

11 COMMISSIONER BAILEY: So, it's just a  
12 catch-all?

13 MS. WEATHERSBY: It's a catch-all.

14 CHAIRMAN HONIGBERG: Anybody have any  
15 differing or other views on this?

16 *[No verbal response]*

17 CHAIRMAN HONIGBERG: Seeing none. Are  
18 we ready to move on?

19 MR. WIESNER: So, keep (h), but include  
20 "public health and safety"?

21 CHAIRMAN HONIGBERG: Yes.

22 MR. WIESNER: Now, we have -- we have  
23 comments from a number of people regarding "transmission  
24 line setbacks". We have not addressed that at all in the

1 rules to date. We have comments from I believe it's Ms.  
2 Martin, proposing that transmission setbacks be imposed  
3 consistent with the Housing & Urban Development standards,  
4 which are "three times the tower height to an occupied  
5 building; two and a half times tower height to property  
6 lines; and one and a half times tower height to public  
7 roads."

8 And, then, as I mentioned earlier,  
9 Dr. McLaren has also brought to the Committee's attention  
10 the approaches of certain other states, and, in most  
11 cases, those other states are not imposing a distance  
12 setback, but, given that the concern is primarily  
13 electromagnetic fields, it's based on the measurement of  
14 the EMF at the edge of the right-of-way. And, that may  
15 depend on the size of the facility. I think Florida has  
16 requirements that would permit higher EMF readings based  
17 on the voltage level of the proposed transmission  
18 facilities. So, there are alternative approaches.

19 HUD, I think, is primarily concerned  
20 with tower collapse, and not with EMF. And, Dr. McLaren's  
21 proposal or his suggestion that there should be  
22 transmission line setbacks or EMF readings serving as a  
23 constraint on transmission line siting are more concerned  
24 with the measurement of the magnetic fields typically at

1 the edge of the applicable right-of-way.

2 CHAIRMAN HONIGBERG: Thoughts or  
3 comments on adding transmission setbacks, either or both,  
4 for tower collapse and/or EMF?

5 Commissioner Scott.

6 COMMISSIONER SCOTT: I'm not sure we  
7 have enough data right now to have as a robust discussion  
8 as I would like on this. I'm suggesting that we take the  
9 same approach we did for the wind turbine setbacks, and  
10 perhaps state that we will incorporate that in a  
11 certificate. And, again, obviously, they're different  
12 standards. We're not going to worry about ice throw and  
13 that type of thing, but we could consider tower collapse  
14 and electromagnetic issues.

15 So, I think that would suffice. And,  
16 that way we could, again, have a little bit more robust  
17 discussion as we move forward. I'm offering to do that,  
18 because, obviously, the purpose of -- one of the purposes  
19 of these rules is to provide some certainty for  
20 developers. But we are where we are.

21 CHAIRMAN HONIGBERG: Other thoughts or  
22 comments? Director Muzzey.

23 DIRECTOR MUZZEY: I would agree with  
24 that approach as well. It's not the perfect solution, it

1 may be the best solution we have at this point.

2 I would note that, in the testimony of  
3 Pamela Martin and others, some of the examples they give,  
4 there have been actually public laws passed which specify  
5 these types of considerations. And, there were -- there  
6 was a lot more for folks to go on than what we have here  
7 in New Hampshire.

8 So, I think Commissioner -- given that,  
9 Commissioner Scott's approach is a sound one.

10 CHAIRMAN HONIGBERG: Other thoughts or  
11 comments? Do people agree with the notion that we will --  
12 that we should add a provision for transmission line  
13 setbacks, but that they would be considered and  
14 established, if at all, on a case-by-case basis? Do we  
15 need a list of factors that would be relevant to such a  
16 decision on setbacks?

17 Director Muzzey.

18 DIRECTOR MUZZEY: One idea might be  
19 considering collapse, as well as other public health and  
20 safety factors, and leaving it broad at this point.

21 MS. WEATHERSBY: I think it would also  
22 be important to specifically add the "electromagnetic  
23 field" concept to that list.

24 CHAIRMAN HONIGBERG: Attorney Wiesner.

1 MR. WIESNER: I was just going to  
2 suggest that, you know, that it sounds like what we're  
3 talking about is an approach similar to what we were --  
4 what we're going to come up with over the break for  
5 setbacks for wind turbines. Some of the issues that may  
6 inform the list of factors for transmission line setbacks  
7 are going to be those that were studied in the  
8 pre-application process, and then submitted with the  
9 application, which includes, I think, some of the risk  
10 factors that we've, you know, discussed, as well as the  
11 potential effects of electromagnetic fields.

12 So, we can pick up some of that language  
13 and try to come up with a list of factors that would be  
14 considered here. And, if the Committee decides that, in  
15 order to avoid an unreasonable adverse effect, there  
16 should be a condition imposed which would specify a  
17 setback for a particular project, that that would be  
18 included in a condition with a certificate.

19 CHAIRMAN HONIGBERG: Is that sensible to  
20 people?

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

23 CHAIRMAN HONIGBERG: All right. More  
24 homework. This is going to be a longer break than I

1 anticipated.

2 MR. WIESNER: Well, if we're ready to  
3 move on, Site 301.15 is the "Criteria Relative to a  
4 Finding of Undue Interference". And, there's a comment  
5 from New Hampshire Wind Watch in 301.15(a), which is in  
6 the second line, where there's a reference to "the  
7 economy", and it currently says "the economy of the county  
8 or counties", Wind Watch would include "the economy of the  
9 host town, region, county or counties in which the  
10 facility is proposed to be located."

11 And, presumably, the host town is  
12 included in the "county", but we're now -- we would now be  
13 including the concept of "region", our favorite undefined  
14 term.

15 CHAIRMAN HONIGBERG: Well, it's in the  
16 introductory portion of this section, "whether a proposed  
17 energy facility will unduly interfere with the orderly  
18 development of the region". So, it's already there.

19 I think (a) is actually an attempt to  
20 put a definition on "region". And, in this, at least in  
21 the language as it was proposed, it said "county or  
22 counties", that's essentially the region that we're  
23 talking about or we would be talking about if this rule  
24 were to take effect.

1 MR. WIESNER: And, arguably, that is  
2 overly limiting. And, you might have a facility which is  
3 located in a town on the very edge of one county, and then  
4 the adjacent county, which would be impacted, would not be  
5 included. So, --

6 DIRECTOR MUZZEY: Is this a case where  
7 our concept of "affected communities" would apply then,  
8 and we could substitute "affected communities" for "county  
9 or counties"?

10 MR. WIESNER: But, as we discussed  
11 before, that may be in itself overly limiting, depending  
12 on what the appropriate scope of the region might be.  
13 And, that might depend on the type of study that's being  
14 performed.

15 CHAIRMAN HONIGBERG: Attorney  
16 Weathersby.

17 MS. WEATHERSBY: Might I suggest that we  
18 just change "county or counties" to "region"? Because  
19 this is what we're considering, and we can, in our  
20 considerations, to figure out what we want is the region,  
21 it doesn't put any additional burden on the applicant to  
22 provide more studies or more --

23 CHAIRMAN HONIGBERG: Commissioner Scott.

24 *[Court reporter interruption.]*

1 MS. WEATHERSBY: -- or reports.

2 CHAIRMAN HONIGBERG: Sorry about that.  
3 Commissioner Scott.

4 COMMISSIONER SCOTT: Well, given that  
5 the introduction, before we hit (a), (b), or (c), is  
6 regarding "the region", I would just suggest we stop at  
7 "economy", and just delete "of the county or counties",  
8 and just leave it more vague. I think it has the same  
9 impact. We already have "region" earlier.

10 CHAIRMAN HONIGBERG: So, understand that  
11 proposal, (a) would end after the word "economy" in the  
12 second line. I think that gets to the same place.

13 DIRECTOR MUZZEY: Sure.

14 CHAIRMAN HONIGBERG: Sounds like that's  
15 a go.

16 MR. WIESNER: So, delete "of the county  
17 or counties in which the facility is proposed to be  
18 located"?

19 CHAIRMAN HONIGBERG: Yes.

20 MR. WIESNER: I think we've covered  
21 "public interest" fairly well, and we'll get to the  
22 specific language changes that I believe have been agreed  
23 to when we look at the rules language.

24 In 301.17, this is the section that

1 covers potential "conditions of a certificate", not  
2 intended to be exhaustive, but, essentially, a menu of the  
3 types of conditions which have frequently been included in  
4 certificates in the past. And, also picking up some of  
5 the new provisions of the statute as amended by SB 245.

6 The Various Energy Companies would  
7 propose to add a provision here, which is "A requirement  
8 in the certificate for a wind energy system for  
9 post-construction monitoring and reporting to address  
10 potential adverse effects identified by avian mortality  
11 studies". And, I would say that I believe that their  
12 interest in including that here is in substitution for the  
13 concept of "adaptive management", which they proposed be  
14 deleted where it previously appeared in the rules. And,  
15 the decision of the Committee was to retain that. And,  
16 so, arguably, this is a very specific type of condition  
17 that could be imposed by the Committee in appropriate  
18 circumstances, but perhaps is not -- does not rise to the  
19 same level of a more generic certificate condition that  
20 should be listed here.

21 CHAIRMAN HONIGBERG: Well, consistent  
22 with what you said at the beginning, however, is it now  
23 unnecessary, as a result of the retention of the "adaptive  
24 management" or is it still a desirable thing to include,

1 in one place or the other?

2 MR. WIESNER: I think, whether it's  
3 included or not, it could be covered through an "adaptive  
4 management" condition, as specifically called out in the  
5 prior section, or it could be addressed as a certificate  
6 condition, in order to avoid an unreasonable adverse  
7 effect on wildlife species.

8 But the question is, you know, whether  
9 we want to get to that level of specificity in this list?  
10 Because, although we may be adding, depending on, you  
11 know, where we go after the break, we may be adding  
12 specific conditions here regarding setbacks for wind  
13 turbines and transmission lines.

14 CHAIRMAN HONIGBERG: My inclination is  
15 not to include a specific provision like this. I love the  
16 birds, but not sure that this is -- I mean, it's covered  
17 elsewhere. If there is an issue related to avian  
18 mortality or a potential issue with respect to avian  
19 mortality, I'm expecting that to get aired pretty well  
20 during the -- during whatever proceedings are taking  
21 place. And, if it's appropriate to include a condition,  
22 it can be included as a condition, without it -- without  
23 the need to specify it as something to consider in every  
24 case.

1 DIRECTOR MUZZEY: I agree.

2 CHAIRMAN HONIGBERG: I'm getting some  
3 agreement here. Is there general agreement with that?

4 MS. WEATHERSBY: Yes.

5 CHAIRMAN HONIGBERG: All right. What  
6 else do we have?

7 MR. WIESNER: There are a number of  
8 comments on 301.18, which is the "Sound Study  
9 Methodology". And, again, this is essentially, with some  
10 word -- language changes, this is essentially the result  
11 of the consensus that emerged from the SB 99 process,  
12 which involved the in-depth involvement of four  
13 acousticians. And, there's a great amount of detail here.  
14 Some of the comments are very specific. Some of them are  
15 quite general.

16 EDP has commented that the specific  
17 standards are "too specific and inflexible". And, I think  
18 the primary concern there is that technology and standards  
19 may evolve over time. And, even if this represents the  
20 current state-of-the-art, it may not be such a few years  
21 from now.

22 RENEW has said that these are "novel,  
23 complex, untested, and potentially burdensome standards",  
24 that that comment is not perhaps fully consistent with the

1 view that this is a consensus.

2 And, then, there are more specific  
3 comments as we move through. The first of which is in  
4 (a)(2). Where Eolian would delete the requirement that  
5 there be "audio recordings taken in order to clearly  
6 identify and remove transient noises from the data". And,  
7 I think their view is that it's not required and it  
8 doesn't represent the professional standard.

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: As a general rule,  
11 given that this section, at least to the best of our  
12 ability, seems to represent a consensus, understanding not  
13 everybody, it wasn't a unanimous view. And, given that we  
14 have waiver provisions we intend to adopt also, I suggest  
15 we use the language as is, with the understanding, if  
16 somebody can make a good case why they need to deviate  
17 from this, they shall do so.

18 CHAIRMAN HONIGBERG: Anyone have any  
19 other or different thoughts on this?

20 MR. WIESNER: And, I would just note  
21 that that approach might apply to both specific  
22 requirements, such as the one we just discussed, as well  
23 as EDP's concern that the state-of-the-art may move beyond  
24 these specific standards. So, for example, let's say that

1 ANSI comes out with a new revised version of its standard,  
2 and the rules don't reflect that, but the professional  
3 standard has evolved to the point where sound studies just  
4 aren't done the way that this describes. That might be a  
5 very well -- that might very well be a situation where a  
6 rules waiver would be requested by an applicant and  
7 approved by the Committee, based on the finding that the  
8 professional standards had changed from the time when the  
9 rules were adopted.

10 CHAIRMAN HONIGBERG: I think, in a  
11 circumstance like that, there would also be, in all  
12 likelihood, a request for a rulemaking to incorporate the  
13 new standards. And, then, whatever proceedings were  
14 pending, it would certainly be an appropriate request for  
15 someone to make to have -- to get a waiver from then  
16 existing language to apply the more up-to-date standards,  
17 and it would be dealt with on, as appropriate, on a  
18 case-by-case basis.

19 MR. WIESNER: That's correct. Because  
20 the timeline of the rulemaking may not jibe with the  
21 statutory requirements to complete review of an  
22 application within a year.

23 CHAIRMAN HONIGBERG: It is a challenge  
24 to do rulemaking quickly.

1 MR. WIESNER: It is, as we see here.

2 So, moving down, if we -- if the  
3 determination on (a)(2) then is that we'll keep the  
4 existing language, and permit waiver requests?

5 *[No verbal response]*

6 MR. WIESNER: Then, we can move down to  
7 (a)(4), where there's a -- it says "Sound measurements  
8 shall be omitted when the wind velocity is greater than 4  
9 meters per second". Eolian's comment is that that should  
10 be "5 meters per second". And, again, the "4 meters per  
11 second" is the result of the consensus that emerged and  
12 was endorsed by a number of parties earlier in this  
13 process through public comments that they filed.

14 CHAIRMAN HONIGBERG: And, so, what's  
15 their basis for "5"? I'm sure their comments are in front  
16 of me somewhere, but I can't come up with them quickly.

17 MR. WIESNER: Their comment is under the  
18 relevant section of the ANSI standard that "up to 5 meters  
19 per second is acceptable". And, that these rules should  
20 be consistent with that.

21 CHAIRMAN HONIGBERG: But the consensus  
22 was 4?

23 MR. WIESNER: The consensus was 4.

24 CHAIRMAN HONIGBERG: Anybody want to

1 make the change to "5"?

2 *[No verbal response]*

3 CHAIRMAN HONIGBERG: No. All right.  
4 Next.

5 MR. WIESNER: Next, in the same  
6 paragraph, about halfway down, there's a reference to "at  
7 least 15 feet", and I believe that should be changed to  
8 "7.5 meters", which is consistent with the ANSI standards.  
9 And, for some reason, "15 feet" was the product of the  
10 consensus. But I think that, through the tech session, it  
11 was determined that "7.5 meters" is the correct distance,  
12 and that that should be incorporated here as well. So, I  
13 think that's a change that probably should be made.

14 CHAIRMAN HONIGBERG: I see no dissent  
15 there. Make it so.

16 MR. WIESNER: And, then, at the end of  
17 that (a)(4), there's a requirements that "a anemometer  
18 shall be located within close proximity to each  
19 microphone" when the measurements are taken. Eolian says  
20 "don't require that".

21 CHAIRMAN HONIGBERG: Because it would be  
22 inconvenient? What's the -- how do you know what you're  
23 measuring, other than the sound, if you don't know how  
24 fast the wind was blowing there? Commissioner Bailey.

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN HONIGBERG: I'm sorry. I  
3 thought you were reaching for your microphone. I  
4 apologize. Does anybody want to make that change?

5 *[No verbal response]*

6 CHAIRMAN HONIGBERG: No. Seeing none,  
7 seeing no takers on that.

8 MR. WIESNER: Similarly, in (a)(8),  
9 there's a requirement that a "Final report shall provide  
10 A-weighted and C-weighted sound levels". And, Eolian  
11 argues that that should be deleted.

12 CHAIRMAN HONIGBERG: That's (b)(8),  
13 correct?

14 MR. WIESNER: Oh, I'm sorry. That is  
15 (b)(8), yes. I'm sorry, I misspoke. So, (b)(8) is the  
16 "final report" of the sound study. And, Eolian proposes  
17 that the "C-weighted sound levels" not be required to be  
18 included in the report.

19 CHAIRMAN HONIGBERG: Any takers on this  
20 side of the room?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: I don't see any.

23 MR. WIESNER: And, their basis for that  
24 is, basically, that the sound limit that applies is an

1 A-weighted level, not a C-weighted level, therefore, it's  
2 not necessary.

3 CHAIRMAN HONIGBERG: But the consensus  
4 was to get the C-weighted level?

5 MR. WIESNER: That's correct. Now,  
6 Dr. Ward also has a comment that -- regarding (c), which  
7 is "The predictive sound modeling study". And, Dr. Ward  
8 proposes that all of (c) should be deleted, because ISO  
9 9613-2 makes it clear, in his view, that these standards  
10 should not apply effectively to projects which are located  
11 at elevation, ridgeline projects, essentially. Or, as an  
12 alternative, that the "ISO 9613 standard could be used  
13 with a 10 decibel uncertainty factor" applied to the  
14 results of the studies.

15 CHAIRMAN HONIGBERG: His concern is  
16 that, at elevation, the test understates the actual  
17 effects?

18 MR. WIESNER: Yes, I believe that's  
19 correct. And, there is some -- there is some qualifying  
20 language that appears in the standard, to the extent I  
21 understand it. But, again, I'll just note, as we have  
22 before, that, you know, the specific language that appears  
23 here was the product of what seemed to be a general  
24 consensus among many participants in the SB 99 process,

1 with the input of four professional acousticians, who, you  
2 know, have experience representing different segments of  
3 the interested communities, developers and others.

4 CHAIRMAN HONIGBERG: That seems like  
5 grist for the litigation mill for Dr. Ward, in an  
6 appropriate case.

7 So, I take it then that we're not -- no  
8 one wants to make that change?

9 *[No verbal response]*

10 CHAIRMAN HONIGBERG: All right. We'll  
11 move on.

12 MR. WIESNER: Eolian also questions, in  
13 (c)(2), the anticipation -- it says "this standard  
14 anticipates that the analysis of wind turbine acoustical  
15 emissions shall also consider sound power level and  
16 tonality for a batch of wind turbines, as opposed to a  
17 single machine, pursuant to the IEC standard." And,  
18 Eolian questions the intent of this. OLS has also  
19 questioned the language of it.

20 CHAIRMAN HONIGBERG: It is a little  
21 squishy.

22 MR. WIESNER: It's a little squishy.  
23 And, it's not exactly clear what is intended, to be  
24 perfectly honest with you. Again, this is language that

1 emerged by consensus from the SB 99 process, and was  
2 advocated for incorporation in these rules by a number of  
3 parties earlier in the public comment.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: This is a case  
6 where, despite my desire to go with the consensus view, I  
7 don't believe this type of language is appropriate for a  
8 rulemaking. So, I would agree to take that out.

9 CHAIRMAN HONIGBERG: Well, is there  
10 some -- is there some way to clarify it or make it more  
11 focused? Commissioner Bailey.

12 COMMISSIONER BAILEY: Is the intent here  
13 to measure the sound of multiple wind turbines? Is that  
14 what they mean by "a batch of"? I mean, it seems like  
15 that would be a relevant measurement. And, so, maybe we  
16 just change it from "a batch of" to "for multiple wind  
17 turbines", you know? And, it's whatever wind turbines you  
18 can hear from the place that you're measuring, when  
19 they're all on.

20 CHAIRMAN HONIGBERG: Director Muzzey.

21 DIRECTOR MUZZEY: Could you be specific  
22 as to which part of this OLS felt was squishy? Was it the  
23 "anticipation" part or was it the "batch" part?

24 MR. WIESNER: It is the "anticipation"

1 part.

2 DIRECTOR MUZZEY: Okay.

3 MR. WIESNER: This is essentially a  
4 "characterization" of what the standard requires. And,  
5 particularly, the word "anticipates" is not clear as to  
6 what's covered. I mean, one way to approach this is to  
7 say "the IEC 61400 standard is what it is", and it's  
8 cross-referenced here. Of course, there's also a  
9 reference to "61400 Part 14". And, I believe that the  
10 manufacturers may study wind turbines generically, and  
11 that may be the -- that may be the basis for the reference  
12 to "a batch of wind turbines", as opposed to a single  
13 machine. So, in fact, we're using the specifications for  
14 a make of turbine, rather than the tests of a specific  
15 turbine as may be proposed to be used or installed.

16 CHAIRMAN HONIGBERG: I think that this  
17 group doesn't know what this phrase means. I think that's  
18 a fair statement. When we break, while Mr. Wiesner has  
19 some homework, I'm going to make a request that the "wind  
20 people" in the room, and there are "wind people" in the  
21 room who represent many different constituencies, get  
22 together and see if they can reach some accord on this  
23 phrase. It either means something or it doesn't.

24 Just linguistically, I think that what

1 this is doing is characterizing or describing what is in  
2 the first part. That the last three plus lines actually  
3 are describing what's going on in the first three lines.  
4 And, if that's all it is, it probably should come out,  
5 because the first three lines speak for themselves. If  
6 it's intended to do something else, it is not clear.

7 So, if the people who are in the room  
8 who work in this area can get their -- can get together on  
9 this, that may be the best way to proceed.

10 MR. WIESNER: The next comment is in  
11 (c)(3), where "predictions" are to be included. "The  
12 predictive sound modeling study must: include predictions  
13 to be made at all properties within 2 miles from the  
14 project wind turbines". And, Eolian's comment is that  
15 "the distance should not be specified, it should be tied  
16 to the noise level." So, in effect, it wouldn't be a  
17 number of miles, it would be a decibel line as generated  
18 by the study that would define which properties would be  
19 included in the predictive study. And, that the levels  
20 that will be used for that would be those as specified in  
21 the siting criteria, the 45 and 40 decibels, between  
22 daytime and nighttime hours.

23 CHAIRMAN HONIGBERG: So, the sound study  
24 would then generate a map that shows where it's loudest at

1 the same level, and the line would be a squiggly line  
2 around the turbines; whereas, (3), as written,  
3 contemplates a circle and identification of what it sounds  
4 like within that circle?

5 MR. WIESNER: That's correct. So, if  
6 the 39-decibel line was closer than 2 miles, you wouldn't  
7 include properties that were on the other side of that  
8 line from the wind turbine.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: I would suggest,  
11 again, given consensus, leaving the language as written.  
12 It becomes sort of a cat-and-mouse game or tail-chasing or  
13 something like that. You have to measure in order to know  
14 then where the affected properties are. But, if you don't  
15 know where the affected properties are, you don't measure.  
16 So, I suggest using this "area of study" concept as is.

17 CHAIRMAN HONIGBERG: Anyone have any  
18 different thoughts on that?

19 *[No verbal response]*

20 CHAIRMAN HONIGBERG: All right. Moving  
21 on.

22 MR. WIESNER: In (e)(3), we again have a  
23 reference to "15 feet", and I would again propose that  
24 that be changed to "7.5 meters", which is consistent with

1 the ANSI standard. And, then, at the end of that section,  
2 there's another reference to the "anemometer" location,  
3 "in close proximity to each microphone". And, I think  
4 we -- the Committee rejected that change when it was  
5 proposed for a previous rule section.

6 And, if we're ready to move on then,  
7 (e)(4), "post-construction monitoring will involve  
8 measurements being made with the turbines in both  
9 operating and non-operating modes". Eolian's comment is  
10 "do not require for the non-operating mode or only for the  
11 operating mode".

12 CHAIRMAN HONIGBERG: Commissioner  
13 Bailey.

14 COMMISSIONER BAILEY: Again, I think I  
15 would go with the consensus. It's possible that, in the  
16 non-operating mode, there's other background noise that is  
17 in the area. And, I think that that's what that's  
18 intended to get at. So, I would leave it as is.

19 CHAIRMAN HONIGBERG: Anyone have any  
20 different or other thoughts on that?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: Seems like there's  
23 none. Let's move on.

24 MR. WIESNER: And, then, in (e)(7),

1 again, on "post-construction monitoring", there's a  
2 requirement that a survey -- a "post-construction  
3 monitoring survey be conducted once within three months of  
4 commissioning, and once during each season thereafter for  
5 the first year". Eolian's comment is that that's a  
6 "burdensome requirement". And, it should be revised such  
7 that only -- a survey would be performed within one  
8 year -- one complete year, and a winter and summer day and  
9 night. So, effectively, two within the first year, rather  
10 than the higher number that would otherwise be required  
11 under (e)(7).

12 CHAIRMAN HONIGBERG: Director Muzzey.

13 DIRECTOR MUZZEY: Given the last part of  
14 Subsection 7, "adjustments to this schedule shall be  
15 permitted", I'm comfortable with leaving the language as  
16 is.

17 CHAIRMAN HONIGBERG: This wouldn't even  
18 require a rules waiver, in my reading of this section. It  
19 could be done with the administrator or if the Committee  
20 allowed.

21 What's next?

22 MR. WIESNER: In (f)(5), and this is the  
23 "Post-construction sound monitoring reports", there's a  
24 reference to "noise omissions free of audible tones, and

1 the presence of a pure tone frequency". Eolian proposes  
2 there be a definition of "tone" included, pursuant to Part  
3 3 of Appendix C of the ANSI standard. And, there is a  
4 definition which appears there, which refers to "a  
5 prominent discrete frequency spectral component" as a  
6 definition of "tone".

7 I might suggest that this is another  
8 issue that we assign as homework to the "wind people" in  
9 the room, and see if there's some consensus that might be  
10 reached on whether a definition should be included or  
11 whether the fact that we've referred to the specific  
12 professional standards, and that they themselves include a  
13 definition, obviates the need to include a definition in  
14 the rules?

15 CHAIRMAN HONIGBERG: I don't have a  
16 problem with that. So, more homework for the audience.

17 MR. WIESNER: And, last in this section,  
18 (f)(6), there's a provision that says a "validation of  
19 noise complaints submitted to the committee shall require  
20 field sound surveys to be conducted under the same  
21 meteorological conditions as occurred at the time of the  
22 alleged exceedance that is the subject of the complaint."  
23 And, Eolian has proposed that this be restricted, because  
24 it would be "subject to abuse without bounds or

1 limitations on expenses that could be imposed on the  
2 applicant." So, the recommendation is to "revise this to  
3 place some limit on the number of complaints for which an  
4 applicant will be required to perform field sound  
5 surveys."

6 Of course, I would just note that  
7 imposing, for example, a numerical limit might exclude  
8 very valid complaints that would come in above the limit.  
9 And, if the Committee were willing to consider such a  
10 limitation, it might be better to consider something along  
11 the lines of a delegation of authority to the  
12 administrator to consider whether a sound study should be  
13 performed in the case of each complaint.

14 CHAIRMAN HONIGBERG: I was actually  
15 thinking the same thing.

16 MR. WIESNER: I'm freestyling again.  
17 But, hey, it's that time of day.

18 CHAIRMAN HONIGBERG: Are people okay  
19 with that? Understanding that, in every other  
20 circumstance in this section we've said "Hey, it was a  
21 consensus, let's go with it." Is this one where the  
22 reaction of a number of people is "give this to the  
23 administrator, have the administrator determine whether a  
24 complaint requires a field sound survey"?

1 COMMISSIONER SCOTT: Yes.

2 COMMISSIONER BAILEY: Yes.

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

5 CHAIRMAN HONIGBERG: Okay. I see a lot  
6 of nodding heads.

7 MR. OLDENBURG: Mr. Chairman?

8 CHAIRMAN HONIGBERG: Mr. Oldenburg.

9 MR. OLDENBURG: I have a question.

10 *[Court reporter interruption.]*

11 MR. OLDENBURG: Oh, I'm sorry. When you  
12 get to (e), Section (e), and it's post-construction, and  
13 Section (f), post-construction sound monitoring, is it  
14 understood that you would monitor the same points that you  
15 did pre-construction? It never really says. It says that  
16 you're going to -- "locations will be pre-selected with  
17 noise", but it never really says that, at least as a  
18 control sample, you would monitor the pre-construction  
19 locations, at least some of them. But it never really  
20 says that anywhere. Or, is that understood?

21 CHAIRMAN HONIGBERG: I would defer to  
22 the people in the room who know this process and know the  
23 industry.

24 Mr. Wiesner, do you have any insight

1       there?

2                       MR. WIESNER:  Honestly, no.  And, I do  
3 understand that, you know, for comparison purposes, it may  
4 make the most sense to use the same locations, if they are  
5 available.  This language doesn't seem to require that,  
6 unless the underlying standards would require it.  And, I  
7 can't speak to that off the top of my head.

8                       CHAIRMAN HONIGBERG:  A third piece of  
9 homework for the "wind people" in the room is to look at  
10 that section and see if -- look at this section generally,  
11 and see if there's -- if there's any language that is  
12 needed in this area.

13                      COMMISSIONER BAILEY:  Mr. Chairman?

14                      CHAIRMAN HONIGBERG:  Commissioner  
15 Bailey.

16                      COMMISSIONER BAILEY:  I agreed with the  
17 idea of delegating the site -- our new administrator to  
18 determine whether a complaint should have a sound study.  
19 But, in that provision that we were just discussing, if  
20 you flip back to the page before that, the requirement is  
21 "Post-construction sound monitoring reports shall include  
22 a map or diagram clearly showing validated", I think,  
23 "validated noise complaints."  So, --

24                      CHAIRMAN HONIGBERG:  Yes.  This is a

1 structural problem, isn't it?

2 COMMISSIONER BAILEY: Yes.

3 CHAIRMAN HONIGBERG: Yes. That, what is  
4 listed as Section (6), (f)(6), is probably a "(g)".

5 COMMISSIONER BAILEY: Or, maybe the  
6 intention was just to map out where they're getting noise  
7 complaints from.

8 CHAIRMAN HONIGBERG: Make me an offer.  
9 Director Muzzey.

10 DIRECTOR MUZZEY: (4) and (5) may also  
11 need to be stand-alone "(g)", "(h)", and then (6) becomes  
12 "(i)". Because it's not a mapping -- those items are not  
13 a mapping requirement.

14 MR. WIESNER: Yes. I mean, that's a  
15 good point. OLS pointed that out as well. (1), (2), and  
16 (3) seem to refer to the map that would be provided. The  
17 remainder of these seem to be more substantive provisions.

18 CHAIRMAN HONIGBERG: I think I agree  
19 with that.

20 MR. WIESNER: And, Eolian's comment is  
21 to the substance of what appears as (f)(6), but it  
22 probably should be a separate section.

23 CHAIRMAN HONIGBERG: So, what are listed  
24 here as "(f)(4)", "(f)(5)", and "(f)(6)" are going to

1       become "(g)", "(h)", and "(i)"?

2                       MR. WIESNER:   That would be one  
3       approach, yes.

4                       COMMISSIONER BAILEY:   And, then, with  
5       "delegation to the administrator".

6                       CHAIRMAN HONIGBERG:   In what is going to  
7       be "(i)".   Off the record.

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

10                      CHAIRMAN HONIGBERG:   All right.   Back on  
11       the record.   What's next?

12                      MR. WIESNER:   The next comment is in  
13       302.03, which is the "Revocation of a Certificate".   So,  
14       we're now in the Enforcement section.   We had deleted  
15       Subsection (d), which was "Except for emergencies, the  
16       committee shall conduct an adjudicative hearing prior to  
17       revocation of a certificate."   And, EDP believes that this  
18       requirement should be restored as a "due process"  
19       consideration.   And, we also have a comment from the OLS,  
20       pointing out that there's a statutory requirement that a  
21       license, a professional license, and similar license or  
22       approval cannot be revoked without an adjudicative  
23       hearing.

24                      Now, I'll just note that in (b), in (b),

1 at the very end of that section, we have language that  
2 says "the committee shall initiate an adjudicative  
3 proceeding to revoke the suspended certificate." So, a  
4 certificate is suspended, then the Committee decides that  
5 revocation is the appropriate remedy, and an adjudicative  
6 proceeding is initiated. Adjudicative proceeding is  
7 typically one that includes a hearing under 541-A. And,  
8 (d) had previously said that "there will be a hearing,  
9 except in the event of an emergency."

10 One approach might be to make it clear  
11 in (b) that "the adjudicative proceeding will include an  
12 adjudicative hearing".

13 And, the concern over "emergency  
14 situations" is perhaps addressed through the suspension  
15 remedy. So, a certificate could be suspended in order to  
16 address an emergency situation, but then revocation will  
17 require an actual hearing before the Committee, or the  
18 appropriate subcommittee.

19 CHAIRMAN HONIGBERG: Commissioner Scott.

20 COMMISSIONER SCOTT: Just for clarity,  
21 because I do think all the comments are pretty much in  
22 line with what we were thinking anyways is, a suggestion  
23 is if we were to take the very end of 302.03(b), where it  
24 says "the committee shall initiate", so, if we replaced

1 "initiate an adjudicative proceeding to revoke the  
2 suspended certificate", if we replaced that with "the  
3 committee shall conduct an adjudicative hearing prior to  
4 revocation of the certificate", would that suffice?

5 MR. WIESNER: I mean, an "adjudicative  
6 proceeding" is more than just a hearing, but it includes a  
7 hearing. I mean, I think there is a way to address this  
8 and make it clear that, in this context, "adjudicative  
9 proceeding" will include an adjudicative hearing.

10 I think the concern of the comment is  
11 that this might leave the door open for there not to be a  
12 hearing, and that that is not consistent with due process  
13 concerns, as well as what the -- the statute that requires  
14 a hearing before a license can be revoked.

15 CHAIRMAN HONIGBERG: Yes. As long as  
16 it's clear that "they get a hearing before revocation", I  
17 don't have a problem. And, I did find the section that  
18 allows suspension in an emergency situation. So, we have  
19 the ability to suspend on an emergency basis, and then  
20 initiate a revocation proceeding, if appropriate, and,  
21 before any revocation could take place, there would have  
22 to be a hearing. I think, structurally, we're fine.

23 MR. WIESNER: So, it seems then you  
24 don't need the "emergency" exception for the hearing

1 requirement in the event of a revocation?

2 CHAIRMAN HONIGBERG: I don't think so.  
3 Because we've already -- we're able to suspend.

4 MR. WIESNER: And, that is the last  
5 comment.

6 CHAIRMAN HONIGBERG: Is there anything  
7 else we need to deal with in the next couple minutes?  
8 We're going to be taking a 20-minute break, for the  
9 homework to get done, and for Mr. Patnaude's system to get  
10 cooled off.

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

13 MR. WIESNER: I don't believe so.

14 CHAIRMAN HONIGBERG: All right. We will  
15 be back then in 20 minutes.

16 [Recess taken 3:22 p.m. and the meeting  
17 reconvened at 3:55 p.m.]

18 CHAIRMAN HONIGBERG: All right.  
19 Attorney Wiesner, was everyone's homework assignment  
20 completed and turned in on time?

21 MR. WIESNER: I won't vouch for the  
22 quality, but, yes.

23 CHAIRMAN HONIGBERG: But, happily, as we  
24 now know from the local high school, homework itself is

1 not graded. But having done the homework is a factor.

2 MR. WIESNER: I'm not sure that works  
3 with JLCAR, but we'll see.

4 So, I mean, depending on where we want  
5 to start, maybe we should start with the sound study  
6 methodology. And, there was some discussion during the  
7 break between representatives of New Hampshire Wind Watch  
8 and EDP. And, I think there was, I believe, agreement  
9 that the post-construction sound testing should be done in  
10 the same locations as the predictive sound modeling study.  
11 And, we can include language, where appropriate, that  
12 covers that concept. If the Committee believes that's an  
13 appropriate requirement to include?

14 CHAIRMAN HONIGBERG: Consensus is good.

15 MR. WIESNER: I mean, I will -- this is  
16 on-the-fly consensus of the people in this room, who may  
17 not have had a full opportunity to confer with the parties  
18 they represent.

19 CHAIRMAN HONIGBERG: Put more -- less  
20 facetiously, I mean, as Mr. Oldenburg said, there's an  
21 inherent logic to testing in the same locations.

22 MR. WIESNER: Yes. And, there was no  
23 strong objection to including that requirement in the  
24 rules, if the Committee so directs.

1                   CHAIRMAN HONIGBERG: Does the Committee  
2 so direct?

3                   DIRECTOR MUZZEY: Yes.

4                   COMMISSIONER SCOTT: Yes.

5                   COMMISSIONER BAILEY: Yes.

6                   CHAIRMAN HONIGBERG: It does.

7                   MR. WIESNER: And, secondly, we  
8 struggled with the language that refers to "a standard  
9 anticipating a requirement". And, that language may be  
10 rewritten again. This is the consensus that was reached  
11 by wind representatives during the break. Language along  
12 the lines of "This standard shall include the analysis of  
13 wind turbines for a string" or "array" or "multiple wind  
14 turbines as opposed to a single machine", with the  
15 reference to the "IEC 61400 Part 14".

16                   And, I am told that use of either the  
17 word "string" or "array" or "multiple" would be  
18 appropriate in this context. And, I tend to think that  
19 using the word "array" is best.

20                   So, this would be a fix for the language  
21 which I think we all believed was "a little squishy".  
22 And, which had been questioned by OLS, and was the subject  
23 of a comment by Eolian. And, this is a way to retain that  
24 language, but changing it so that it refers not to "a

1 batch of wind turbines", not to "anticipation of what the  
2 standard requires", but to make it clear that the standard  
3 will include an analysis for "an array", if we choose that  
4 word, "of wind turbines as opposed to a single machine".

5 CHAIRMAN HONIGBERG: Was there consensus  
6 as to what the phrase, the first two words, "this  
7 standard"? Is that a reference to "the standard" that  
8 was, actually, just two English words prior to that on  
9 Line 3, after "Part 11 standard"?

10 MR. WIESNER: Yes. And, I think it's --  
11 my understanding is, it's basically a shorthand reference  
12 that, in the 61400.11 standard, there is effectively a  
13 reference to this other standard, the 61400.14 standard,  
14 and, in particular, with respect to this issue of the  
15 effect of multiple wind turbines.

16 CHAIRMAN HONIGBERG: All right. Why  
17 don't you read the language again.

18 MR. WIESNER: So, this would replace the  
19 language that refers to "anticipate", "anticipating", and  
20 it would replace it with "this standard shall include the  
21 analysis of wind turbines for an array" -- excuse me --  
22 "this standard shall include the analysis of wind turbines  
23 for an array of wind turbines as opposed to a single  
24 machine."

1 (Short pause.)

2 MR. WIESNER: I apologize. I'll try to  
3 do it right this time. The language would read "this  
4 standard shall include the analysis of wind turbines" --  
5 "wind turbine acoustical emissions shall also include  
6 sound power level and tonality for an array of wind  
7 turbines as opposed to a single machine, pursuant to IEC  
8 61400 Part 14 (First edition 2005-03)."

9 CHAIRMAN HONIGBERG: All right. Two  
10 suggestions. After the word "emissions" and before the  
11 word "shall", ", and". And, then, before that, rather  
12 than say "this standard", I would say "IEC 61400 Part 11",  
13 rather than "this standard". If that's what it's  
14 referring to, we should say what it is.

15 Commissioner Bailey.

16 COMMISSIONER BAILEY: At the end of the  
17 sentence, it says "pursuant to 61400 Part 14", not "Part  
18 11". Do we need this? I mean, if we're just talking  
19 about what the standard that's referred to prior to this  
20 section is intended to cover.

21 CHAIRMAN HONIGBERG: We asked the wind  
22 representatives, the wind interests here, to see if they  
23 could come up with a consensus. And, if they did, then  
24 that's what we have. And, if they didn't, there's a lot

1 of logic to taking that out, because if all it is doing,  
2 as I said before, if all it is doing is explaining what  
3 the 61400 Part 11 standard does, applies to, anticipates,  
4 which is the word that's in here now, then it's not  
5 necessary. That rule speaks -- or, that standard speaks  
6 for itself. And, whatever it is it is.

7 COMMISSIONER BAILEY: And, I thought  
8 that was the first question. So, did that question get  
9 answered?

10 CHAIRMAN HONIGBERG: That wasn't -- I  
11 don't believe that was the first question.

12 COMMISSIONER BAILEY: Oh.

13 CHAIRMAN HONIGBERG: Although, it is a  
14 relevant question. Attorney Weathersby.

15 MS. WEATHERSBY: As I understood  
16 Attorney Wiesner's explanation, the 61400 Part 11 standard  
17 may or may not include the 61400 Part 14 standard. So, we  
18 may just want to clarify that that's included, by saying  
19 "determined in accordance with the most recent release of  
20 the Part 11 standard and" -- or "which shall include the  
21 61400 Part 14 standard". Does that get us there?

22 CHAIRMAN HONIGBERG: I don't know.  
23 Commissioner Scott.

24 COMMISSIONER SCOTT: I suspect one of

1 the confusions are, where we say "this standard", correct  
2 me if I'm wrong please, I think we're talking about "this  
3 adjustment shall include", not "this standard shall  
4 include". Because earlier we were talking about  
5 "adjustments", "adjustments shall be made in accordance  
6 with Part 11", and then I think the intent is for the  
7 adjustments further to accommodate "if there are multiple  
8 turbines, Part 14". That's the way I read this.

9 CHAIRMAN HONIGBERG: Can you lead us out  
10 of this morass?

11 MR. WIESNER: I'm not sure I can, but  
12 here's another nuance.

13 Instead of saying "this standard shall  
14 include", if it says "under this standard, the analysis of  
15 wind turbine acoustical emissions shall also consider  
16 sound power level and tonality". I don't think that  
17 addresses Commissioner Scott's issue. And, the prior --  
18 the prior language in this (c)(2) does refer to  
19 "adjustments".

20 CHAIRMAN HONIGBERG: I disagree with  
21 Commissioner Scott's interpretation. This, I think,  
22 linguistically, it's fairly cleared to me that the phrase  
23 "this standard" was referring back to 61400 Part 11, and  
24 saying "this standard anticipates that you're going to do

1 certain things when you apply it." And, one of the things  
2 it anticipates you doing is including or considering sound  
3 power levels and tonality for multiple turbines. That's  
4 linguistically what this seemed to say.

5 MR. WIESNER: So, the second clause  
6 refers to the standard, not the adjustment. And, "this  
7 standard" being the "Part 11 standard"?

8 CHAIRMAN HONIGBERG: Yes.

9 MR. WIESNER: All right.

10 CHAIRMAN HONIGBERG: That's what I'm  
11 fairly certain it -- at least that's the most obvious  
12 reading of it. Then, I echo Commissioner Bailey. If  
13 that's all it is doing, is it needed?

14 Here's what we're going to do. We're  
15 going to take it out. We're going to take that phrase  
16 out. If, over the next couple of weeks, offline  
17 discussions take place, and there's some magic that will  
18 include it in a way that's relevant, desirable, clear,  
19 we'll talk through the JLCAR process of doing whatever we  
20 need to do through that, through their mechanisms and  
21 conditional approvals or whatever, to get this change  
22 made.

23 Commissioner Scott.

24 COMMISSIONER SCOTT: I support that.

1 I'd also suggest that we could take out "the most recent  
2 release of", when we talk about "Part 11". As you know,  
3 for a rulemaking, we're incorporating by reference this  
4 particular edition that's being referenced. So, the "most  
5 recent release of" really is not germane, and it may  
6 change over time anyway. So, I'm not sure if that helps  
7 anybody.

8 MR. WIESNER: I think that's an  
9 appropriate change.

10 CHAIRMAN HONIGBERG: I think OLS  
11 probably would want that change, if it thought about it.  
12 We're referring to the standard as of a particular date,  
13 that's what they want.

14 MR. WIESNER: Right. And, there's no  
15 need to say whether it's the "most recent release".

16 CHAIRMAN HONIGBERG: Right.

17 MR. WIESNER: And, then, finally, there  
18 was some level of consensus as to a definition of the term  
19 "tone", which is not identical with what I read to you,  
20 but I believe was discussed among participants in the tech  
21 session back in June. And, that definition would be  
22 ""Tone" means acoustical energy concentrated in a narrow  
23 frequency range that may vary in frequency and amplitude  
24 modulation."

1 COMMISSIONER BAILEY: Can you remind me  
2 where that goes?

3 MR. WIESNER: This is in (f)(5).

4 CHAIRMAN HONIGBERG: Which is going to  
5 become "(h)"?

6 MR. WIESNER: Will be (h), right,  
7 because it doesn't have anything to do with mapping. So,  
8 the substitute provision is "Noise emissions shall be free  
9 of audible tones, and if the presence of a pure tone  
10 frequency is detected, a penalty will be added."

11 CHAIRMAN HONIGBERG: And, so, --

12 MR. WIESNER: And, what I read to you  
13 before is essentially a definition of "pure tone  
14 frequency", but it may not be broad enough to cover  
15 audible tones.

16 Now, arguably, it's not necessary to  
17 define it at all, but we --

18 CHAIRMAN HONIGBERG: This is what  
19 acousticians do.

20 MR. WIESNER: Now, the consensus  
21 document did not define the term, and it is used in the  
22 standards with or without a definition. And, I cannot  
23 tell you that the definition I just read to you is that  
24 which is used identically in the standards. But it seems

1 to have some weight of consensus behind it as a definition  
2 that might be appropriate for these rules.

3 CHAIRMAN HONIGBERG: Doesn't sound like  
4 the kind of thing we need to put in or should put in at  
5 this time. Does anyone disagree?

6 COMMISSIONER SCOTT: No, I don't.

7 CHAIRMAN HONIGBERG: All right. Let's  
8 move on.

9 MR. WIESNER: And, then, I was asked to  
10 come up with some language that might cover the factors  
11 that would be considered in determining the issues that  
12 would lead to a case-by-case analysis of the need for  
13 setback requirements or safety zones. And, I did that.

14 So, this is what I came up with for wind  
15 setback factors. And, this is probably -- this would  
16 probably appear in the section where we now have the  
17 specific setback requirements. Instead, there would be a  
18 section that would read along the lines of "the Committee,  
19 in considering the need for a proposed" -- "the need for  
20 setbacks or safety zones with respect to wind energy  
21 systems, the Committee shall consider the proximity and  
22 use of buildings, property lines, and public roads, and  
23 overhead and underground energy infrastructure," and that  
24 essentially tracks what would have been provided to the

1 Committee through the application process. So, that will  
2 be (a), let's say, or the first factor. Second factor:  
3 "Risks of ice throw, blade shear, tower collapse, and  
4 other potential adverse effects of facility operation."  
5 And, the third factor would be "The effectiveness of  
6 planned mitigation measures and the extent to which such  
7 measures are best practical measures." Those are the  
8 concepts, probably not the exact language.

9 MR. WIESNER: And that, I think, would  
10 be coupled with an addition to Section 17, with respect to  
11 certificate conditions that would address potential  
12 setback or safety zone conditions included in a  
13 certificate.

14 And, I don't know whether we want to  
15 discuss that before we move onto transmission setbacks and  
16 a similar approach there.

17 CHAIRMAN HONIGBERG: Well, let's talk  
18 about this first. Because, if the approach is a sound  
19 one, it will help streamline the transmission setback  
20 discussion.

21 MR. WIESNER: This basically follows  
22 Director Muzzey's concept, which is we identify the  
23 parties that would be affected, the potential adverse  
24 effects on those parties or interests, and then the

1 effectiveness of any proposed mitigation measures, and the  
2 extent to which they are "best practical measures" as  
3 defined.

4 CHAIRMAN HONIGBERG: Are people -- are  
5 people satisfied with that structure, understanding that  
6 the specific words are still going to need to be filled  
7 in, but will be consistent with the words that are used in  
8 other analogous sections and subsections?

9 COMMISSIONER SCOTT: Yes.

10 COMMISSIONER BAILEY: Yes.

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

13 CHAIRMAN HONIGBERG: All right.

14 MR. WIESNER: And, if we're ready to  
15 move on, then, for transmission setbacks, similar  
16 approach, "In determining the need for transmission line  
17 setback requirements, the Committee shall consider the  
18 proximity and use of buildings, property lines, and public  
19 roads" that will be the first consideration. Second, "The  
20 risk of tower collapse and potential adverse effects of  
21 such collapse." Third, "Potential impacts of electric and  
22 magnetic fields generated by the proposed facility on  
23 public health and safety." And, probably a reference  
24 there to "established science", as we had in the study

1 requirement. And, lastly, again, "The effectiveness of  
2 mitigation measures planned and the extent to which those  
3 measures are best practical measures."

4 CHAIRMAN HONIGBERG: Commissioner  
5 Bailey.

6 COMMISSIONER BAILEY: Can I just have  
7 one word change? "The extent to which those measures", I  
8 thought we talked about earlier, "represent best  
9 practical", rather than "are best practical"?

10 MR. WIESNER: I mean, I would agree it  
11 should be consistent in all relevant sections. I'll just  
12 point out that I don't believe we currently are requiring  
13 the applicant, for a transmission line project, to do a  
14 study or assessment of the risk of tower collapse. And,  
15 if we're going to include that as a factor here, as it  
16 might inform a decision regarding setbacks, we probably  
17 should add that to the studies or risk assessment that  
18 will be done through the pre-application process and  
19 submitted with the application.

20 CHAIRMAN HONIGBERG: That makes eminent  
21 sense to me. Others?

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

24 CHAIRMAN HONIGBERG: All right. So,

1 we'll add that subsection.

2 MR. WIESNER: So, then, just to clarify,  
3 in the criteria section for public health and safety,  
4 we're going to have these specific sections that are going  
5 to address factors that might lead the Committee to decide  
6 that there should be a setback requirement or some other  
7 type of mitigation adopted by the applicant. And, then,  
8 that would be imposed through a certificate condition.  
9 And, I guess I would propose to add to Section 17 a  
10 specific reference to a condition regarding setbacks or  
11 perhaps even electric and magnetic field monitoring,  
12 without prejudging whether or not there would actually be  
13 a condition in any particular case.

14 CHAIRMAN HONIGBERG: Response anyone?  
15 *[Multiple members nodding in the*  
16 *affirmative.]*

17 CHAIRMAN HONIGBERG: I see some nodding  
18 heads. All right.

19 MR. WIESNER: And, I believe that  
20 completes our homework review.

21 CHAIRMAN HONIGBERG: Some students got  
22 an incomplete.

23 MR. WIESNER: If we're ready to move on,  
24 I do have, and I'm ready to hand out now, copies of the

1 rules language changes that Commissioner Honigberg and I  
2 worked up based on the prior two meetings. So, this does  
3 not include the language changes that we've approved here  
4 today, but it includes everything up through today, and  
5 includes the "public interest" section. And, I have  
6 copies of that for the Committee members, and there are  
7 additional copies here that can be made available to the  
8 stakeholders in the room.

9 CHAIRMAN HONIGBERG: Just to be clear,  
10 when Attorney Wiesner said that "he and I did this", it  
11 would be roughly 98 percent Attorney Wiesner and 2 percent  
12 me.

13 (Atty. Wiesner distributing documents.)

14 CHAIRMAN HONIGBERG: Okay. My  
15 recommendation for people here is that they consider this  
16 the lightning round. That, while we're going to speak in  
17 nice, even, measured tones, so the transcript is nice and  
18 clear, we are going to work through these expeditiously,  
19 because these are intended to reflect things that are  
20 decided. There should not be any more open questions.  
21 Although, as you go through these changes, you see  
22 something that raises a new question, certainly raise it.  
23 But we're going to try and work through this  
24 expeditiously.

1                   Mr. Wiesner, am I correct that what we  
2                   are looking at here only shows the changes that were made  
3                   in the course of the meetings. That all changes up to  
4                   that point have been accepted, and so will not show?

5                   MR. WIESNER: That is correct. So, all  
6                   the changes that appeared in the Draft Final Proposal,  
7                   which tracks changes from the Initial Proposal, have now  
8                   been accepted. So, the only changes that we see here, and  
9                   this is for the convenience of this review, are those that  
10                  have been made as a result of the most recent public  
11                  hearing and public comments.

12                  CHAIRMAN HONIGBERG: And, when you say  
13                  "for the convenience of this review", this is not the type  
14                  of document that would be submitted to OLS for the JLCAR  
15                  process?

16                  MR. WIESNER: That is correct. They  
17                  will want to see a version which shows all the changes  
18                  from the Initial Proposal, if that can be done and still  
19                  be legible, and they will want to see a clean version of  
20                  the Final Proposal that is filed.

21                  CHAIRMAN HONIGBERG: All right.

22                  MR. WIESNER: So, this is purely for  
23                  purposes of this review.

24                  CHAIRMAN HONIGBERG: All right. With

1 that introduction, and all of those warnings, let's go.

2 MR. WIESNER: So, there are a number of  
3 changes to the Definition section. And, the first is to  
4 change "adjudicatory hearing" to "adjudicative hearing",  
5 because that's the term that's actually used in the rules.  
6 And, I now have a definition of "adjudicative hearing",  
7 which means "a public hearing held by the Committee in an  
8 adjudicative proceeding." And, as we discussed earlier,  
9 they're virtually the same thing, but not entirely  
10 identical. And, both terms are used throughout the rules.  
11 So, I now have a definition of the two. And,  
12 "adjudicative hearing" is the public hearing; the  
13 "adjudicative proceeding" is the 541-A definition, which  
14 is the procedure to be followed in contested cases.  
15 Contested cases being those that require a hearing.

16 CHAIRMAN HONIGBERG: Mr. Wiesner, that's  
17 too much explanation for those. Hit the highlights.

18 MR. WIESNER: I'm sorry.

19 CHAIRMAN HONIGBERG: So, the second page  
20 has --

21 MR. WIESNER: Second page. This is the  
22 definition of "affected communities". This is basically  
23 the language that we had incorporated in multiple places  
24 throughout the Draft Final Proposal, except at the very

1 end, we are now talking about "municipalities and  
2 unincorporated places that are expected to be affected by  
3 the proposed facility, as indicated in studies included  
4 with the application submitted with respect to the  
5 proposed facility." It is previously -- the language that  
6 this definition replaces had previously referred to  
7 "communities that are referenced in those studies", and  
8 now the stress is on "places/municipalities that are  
9 expected to be affected by the facility, as indicated in  
10 the studies that are included."

11 And, if we're ready to move on,  
12 "astronomical maximum", that is the phrase that previously  
13 appeared in the "shadow flicker" section. And, as I noted  
14 then, we've moved that to the Definitional section,  
15 because it's just cleaner that way, and OLS prefers that.

16 "Migration corridors" is a definition on  
17 Page 4, which has been included. This is essentially the  
18 language that was provided to us by AMC.

19 I took out the word "flourishing", and  
20 included "sustainable" in its place. And, I'm not sure  
21 those are quite synonyms, but I'm pretty confident that  
22 "flourishing" would have attracted the attention of OLS,  
23 and "sustainable" may be more acceptable to them.

24 CHAIRMAN HONIGBERG: You had

1 conversations with Fish & Game on this, as I recall.

2 MR. WIESNER: Yes. They don't have a  
3 definition. They are working up something like a  
4 definition in connection with their current Wildlife  
5 Action Plan and --

6 CHAIRMAN HONIGBERG: But they didn't  
7 know what "flourishing" was either.

8 MR. WIESNER: I'm not sure I asked them  
9 that question in such terms, but, no. I thought it was a  
10 reasonable change to refer to "sustainable", rather than  
11 "flourishing".

12 CHAIRMAN HONIGBERG: All right.

13 MR. WIESNER: That was my editorial  
14 choice.

15 CHAIRMAN HONIGBERG: All right. So, we  
16 deleted "participating landowner"?

17 MR. WIESNER: Yes. That term is no  
18 longer used in these rules.

19 Then, if you want to jump ahead to  
20 Page 6, I have also taken the definitions of "rural area,  
21 "urban cluster", and "urbanized area" out of the section  
22 that defined the area of potential visual impact, and  
23 included them here, again, to bring almost all definitions  
24 under the umbrella of the Definitional section. But the

1 substance of the definitions is not changed. And, we're  
2 still referring to the Census Bureau designations.

3 The next change is on Page 11. These  
4 are the notices for the public information sessions  
5 conducted by the applicant, and later by the Committee.  
6 And, here, we're using the defined term "affected  
7 communities", in place of the wordy language that had  
8 previously approved, which is now incorporated in the  
9 definition. And, in this section, in particular, this is  
10 201.01(b), "notice is required to be given to each of the  
11 affected communities by first place mail and to each owner  
12 of abutting property by certified mail". And, that's  
13 responsive to Representative Brown's comment, that there  
14 should also be notice provided to abutting property  
15 owners.

16 Now, I will note that we have a  
17 definition of "abutting property", which was really  
18 defined -- really developed in the context of deciding  
19 which properties should be included in the mapping, that  
20 would show buildings and other infrastructure located  
21 adjacent to linear projects. And, it may not -- it may  
22 not be the best means of addressing the concept here,  
23 where notice is being given to abutting property owners,  
24 and abutting property owners may be those whose property

1 or at least a portion of whose property would be taken by  
2 eminent domain, let's say, for a gas pipeline. Although,  
3 to the extent that it would be a right-of-way taken, they  
4 would still be abutters, I guess, to the right-of-way,  
5 because only a strip of their land will be taken. So,  
6 unless the entire property is being taken, the chances are  
7 that they would be covered by that.

8 CHAIRMAN HONIGBERG: And, if there is  
9 some chance that their property is going to be taken,  
10 they're going to be getting other notices in other  
11 contexts.

12 MR. WIESNER: Right. Now, I will just  
13 note, if we want to take the time to do it, I received a  
14 late-filed comment from Nixon Peabody, drawing my  
15 attention to a FERC regulation, which includes a  
16 definition of "abutting property".

17 CHAIRMAN HONIGBERG: How late-filed was  
18 this? I don't believe I've seen this.

19 MR. WIESNER: Oh, it should have been  
20 distributed. I'm not sure it got out there. And, if not,  
21 I apologize for that. If we want to take the time to  
22 consider this, these are based on regulations of the FERC,  
23 that apply to gas pipeline siting, as well as electric --  
24 interstate electric transmission siting, to the extent

1 that FERC has any jurisdiction over that, which they  
2 typically don't, but -- and, that definition, I'll just  
3 read it, is "abutting property" means any property that  
4 abuts either side of an existing right-of-way or facility  
5 site opened in fee by any utility company or abuts the  
6 edge of a proposed facility site or right-of-way, which  
7 runs along a property line in the area in which the  
8 facilities would be constructed, or contains a residence  
9 within 50 feet of the proposed construction work area."  
10 So, it's actually a broader definition.

11 The definition that we currently have  
12 is, I think, consistent with the definition that you would  
13 see in DES regulations and in some other contexts, for  
14 example, planning and zoning board notices.

15 CHAIRMAN HONIGBERG: I'm not inclined to  
16 take that up right now. Do others want to take that on?

17 COMMISSIONER SCOTT: No.

18 CHAIRMAN HONIGBERG: All right.

19 MR. WIESNER: Okay.

20 CHAIRMAN HONIGBERG: Let's move on.

21 MR. WIESNER: Thank you. And, in  
22 201.02, a similar change, "notice to each of the affected  
23 communities by first class mail." There is no obligation  
24 here for abutting property owners to receive notice, but

1 they would have received notice of the initial public  
2 information session.

3 Turning to Page 12, Site 201.03. These  
4 are the public hearings in the host counties conducted by  
5 the Committee itself. And, here, there would be "a copy  
6 of the notice mailed to each of the affected communities  
7 by first class mail." Again, replacing the four lines of  
8 text with the defined term "affected communities".

9 On Page 14, we have deleted Subparagraph  
10 (a), which is the designation of "administrator and  
11 committee staff to participate in adjudicative proceedings  
12 on an advisory basis", as determined by the Committee, and  
13 then renumbering of the remainder of this section.

14 CHAIRMAN HONIGBERG: I believe that's it  
15 for the first document.

16 MR. WIESNER: That's it for the first  
17 document.

18 And, the second document, the first  
19 change appears in Site 301.02, which is the "Format of the  
20 Application".

21 CHAIRMAN HONIGBERG: Isn't there a  
22 change in 301.01, regarding consultation?

23 MR. WIESNER: There is. Forgive me.  
24 Yes. This is an OLS comment. It was not clear who would

1 be doing the consultation with the state agencies. And,  
2 so, we have made it clear that its "consultation by the  
3 chairperson of the committee or its administrator".

4 In 301.02, "Format of Application", this  
5 is where there's a reference to, basically, "maps  
6 photosimulations, and other oversized documents shall  
7 either be folded to the 8 and a half by 11 size or rolled  
8 and provided in protective tubes", which is often the case  
9 with the larger plans, according to Attorney Iacopino.  
10 And, that seems like a reasonable change to make.

11 The change that appears in (c) is  
12 responsive to an OLS comment, that we not refer to "the  
13 numbering system", but "appearance in the same order as  
14 the requirements to provide that information" in the  
15 rules.

16 On Page 3, in 301.03(c)(3), this new  
17 language is my attempt to make the extent of the  
18 requirement the greater of. So, you have to "show on a  
19 map residences, buildings, property lines, other  
20 structures and improvements within the site, on abutting  
21 property with respect to the site, and within 100 feet of  
22 the site if such distance extends beyond the boundary of  
23 any abutting property." So, if the abutting property is  
24 only 50 feet from the -- from the boundary of the facility

1 site, you go an additional 50 feet onto the next abutting  
2 property. If the abutting property is 200 feet, you would  
3 include all 200 feet of the abutting property, but you  
4 wouldn't go any further than that. So, that's the concept  
5 of "greater of". Hopefully, that works.

6 In (c)(4) and (c)(5), same language  
7 intended to cover the "greater of" concept. And, then, it  
8 says "except if and to the extent such identification of  
9 wetlands and surface waters", in (c)(4), "is not possible  
10 due to a lack of access to the relevant property and lack  
11 of other sources of the information to be identified."  
12 So, basically, if you can't tell the Committee where there  
13 may be wetlands or surface waters, because you can't get  
14 access, and there's not other publicly available  
15 information, let's say, then you're excused from having  
16 not shown those wetlands and surface waters on the map.  
17 And, a similar change in (c)(5), with respect to natural,  
18 historic, cultural, and other resources.

19 If I'm going too fast, just say the  
20 word.

21 CHAIRMAN HONIGBERG: No. You could  
22 probably shorten some of this stuff.

23 MR. WIESNER: Okay.

24 CHAIRMAN HONIGBERG: And, in reality,

1 everybody has seen -- or, everybody went through these  
2 concepts. We're really just saying "this change is to  
3 effectuate something we voted on last time", and move  
4 through it.

5 MR. WIESNER: Okay. And, in (c)(6),  
6 this is site control. And, the reference is to -- some of  
7 the language that's picked up here is from the Various  
8 Energy Companies, and there's a reference to "construct,  
9 operate, and maintain the facility", not just "construct".  
10 We've retained the concept of "A license, permit,  
11 easement, or other permission from a federal, state, or  
12 local government agency, or an application for such a  
13 license, permit, easement, or other permission". And,  
14 that's there because, as Attorney Iacopino pointed out to  
15 us, sometimes the application for the governmental  
16 authority to use land is included in the SEC application.

17 CHAIRMAN HONIGBERG: Example being a PUC  
18 application for a water crossing.

19 MR. WIESNER: Right. And, that's the  
20 essence of "one-stop shopping", that they may come here  
21 all at once. "Or", and this is the Nixon Peabody  
22 language, with some modifications, "the simultaneous  
23 filing of a federal regulatory proceeding" --

24 *[Court reporter interruption.]*

1 CHAIRMAN HONIGBERG: Slow down.

2 MR. WIESNER: I'm sorry.

3 CHAIRMAN HONIGBERG: You don't need to  
4 read it out loud.

5 MR. WIESNER: Okay.

6 CHAIRMAN HONIGBERG: You can just say  
7 that this section is --

8 MR. WIESNER: Okay.

9 CHAIRMAN HONIGBERG: -- to deal with the  
10 other proceedings that would give the applicant eminent  
11 domain rights, if it were successfully completed.

12 MR. WIESNER: Right. From some agency  
13 other than this one. And, (c)(7) is the right of access  
14 for a site visit. And, there's some additional language  
15 here that is proposed by Nixon Peabody, to deal with the  
16 situation where, again, they may not have access to all  
17 portions of the route, but they will commit to have access  
18 to "aboveground portions and a representative sample of  
19 underground locations".

20 Deleted the requirement to disclose  
21 participating landowners, because that's no longer  
22 relevant.

23 On Page 5, in (e)(7), included the  
24 proposed AMC language regarding "corridor width".

1 In (g), at the bottom of that page,  
2 include the reference to "distribution line", as proposed  
3 by EDP. Similar change at the top of Page 6.

4 (h)(4) is intended to capture the  
5 concept that "written notification of the application  
6 filing, including information regarding [how to get a  
7 copy], has been sent by first class mail to the governing  
8 body in each of the other affected communities." So, the  
9 host community gets a full copy of the application, other  
10 communities, among the affected communities, get notice  
11 that it's been filed, and are told how to get their own  
12 copy, if they want it.

13 301.04(a)(4), on Page 7, deals with the  
14 financing plans of the applicant or its affiliates.

15 CHAIRMAN HONIGBERG: I'm sorry to  
16 interject. The phrase -- I think we need to move a phrase  
17 here, in this addition in 301.04(a)(4). The phrase "if no  
18 such plans have been employed by the applicant or its  
19 affiliates", should that phrase not be moved up to the  
20 previous line, after the word "or"?

21 MR. WIESNER: Yes. That would be  
22 clearer.

23 CHAIRMAN HONIGBERG: All right.

24 MR. WIESNER: In 301.05(b)(4), and this

1 is the visual impact analysis. For wind energy systems,  
2 the area of potential visual impact is "a minimum of a  
3 10-mile radius from each wind turbine". In (4)(d), we've  
4 collapsed the language to cover two concepts. This is in  
5 regard to "Electric transmission lines longer than one  
6 mile located within a rural area", and "the radius will be  
7 3 miles" for a visual impact assessment, only if there's  
8 "no widening of the corridor and no increase in the height  
9 of towers, poles, or other supporting structures". If  
10 it's a "new corridor or if there is any change in the  
11 width of the corridor" -- I should say "increase in the  
12 width of the corridor or in the height of the towers, then  
13 a radius of 10 miles will apply."

14 And, deleted the references here to our  
15 defined terms of "urbanized area", "urban cluster", and  
16 "rural area", because they have been included in the  
17 Definitional section.

18 (b)(7) addresses "photosimulations".  
19 And, this is essentially a combination of the language,  
20 "the best of", if you will, the language proposed by the  
21 Blocks and endorsed by New Hampshire Wind Watch, and some  
22 language also proposed by the AMC, Audubon, and Forest  
23 Society. We may want to break this out into subsections,  
24 to make OLS happy, because there's a lot packed into this.

1 But, in substance, I believe this captures what the  
2 Committee approved.

3 And, the additional requirements that  
4 are noted there, (a) and (b), (1), (2), (3), and (4) in  
5 each case, are based on the language that was proposed by  
6 the Blocks and Wind Watch, with some minor language  
7 changes as we discussed.

8 CHAIRMAN HONIGBERG: What's next?

9 MR. WIESNER: (b)(8) is the section  
10 which had exclusively dealt with FAA lighting. We have  
11 now added "or if the proposed facility would include other  
12 nighttime lighting". And, then, also, the applicant must  
13 address "the number of lights visible and their distance  
14 from key observation points".

15 (b)(9) is the first of many places where  
16 we will see a change such that "best practical measures"  
17 becomes "the measures planned", and, at the end of that  
18 subsection, "the alternative measures considered but  
19 rejected by the applicant". And, that's language which  
20 had appeared here, except "any" has become "the", but that  
21 reference to "alternative measures" will also be repeated  
22 in other places where it had referred to "best practical  
23 measures".

24 301.06, of the "Historical Sites", and,

1 in (c), we have "finding or determination by DHR, lead  
2 federal agency". And, then, there's some language changes  
3 as suggested by OLS. So, "finding or determination...that  
4 no historic properties would be affected, that there would  
5 be no adverse effects, or that there would be adverse  
6 effects to historic properties, if such a finding or  
7 determination has been made prior to the time of  
8 application."

9 And, in Subsection (d), "Description of  
10 the measures planned to avoid, minimize, or mitigate".  
11 And, then, at the end, we've added "and the alternative  
12 measures considered but rejected by the applicant".

13 Deleted "Description of the applicant's  
14 plans to implement" as redundant. So, (f) becomes "(e).  
15 "As such term is defined", deleted "such term is", because  
16 we don't need to say that, according to OLS.

17 On Page 12, the definition of  
18 "astronomical maximum" has been moved to the Definitional  
19 section. So, it's been removed here.

20 And, we're now getting into sections  
21 that we addressed today. So, the only changes that will  
22 appear are those that we addressed at prior meetings.

23 And, so, I think that the next place  
24 where we'll see language changes is in the "public

1 interest" section, 16, because we didn't get into any of  
2 the details of the criteria until today. And, so, that  
3 appears on Page 20. 301.16, "Criteria Relative to a  
4 Finding of Public Interest". And, this is where we  
5 deleted the prior (e), which was the "criteria as  
6 developed through the record in the proceeding", included  
7 instead a reference to some of the relevant factors under  
8 162-H:1, except for those factors which were covered in  
9 the previous subsections.

10 So, (a) now says "The beneficial and  
11 adverse environmental effects of the facility, including  
12 effects on air and water quality, wildlife, and natural  
13 resources." And, the formulation here has been changed,  
14 and this is partly responsive to OLS comments. So, we're  
15 not saying "whether these effects serve the public  
16 interest", but we're saying "the committee shall consider  
17 these effects, beneficial and adverse". (b) is "economic  
18 effects"; (c) is "the extent to which construction and  
19 operation of the facility" --

20 CHAIRMAN HONIGBERG: Slow down.

21 MR. WIESNER: Sorry. "-- will be  
22 consistent with federal, regional, state, and local plans  
23 and policies, including those specified" in the two RSAs.

24 In (d), we've deleted "Whether the

1 facility as proposed is consistent with". And, again,  
2 it's just a factor to be considered by the Committee, a  
3 review of "municipal master plans and land use  
4 regulations", pertaining to those factors that are  
5 specified.

6 And, then, (e), again, is the  
7 replacement "catch-all", if you will, that now essentially  
8 picks up those considerations that are specifically called  
9 out in 162-H:1, which is the Purpose section of the SEC  
10 statute.

11 CHAIRMAN HONIGBERG: So, other than  
12 those, other than the changes we've just gone through,  
13 everything else happened today?

14 MR. WIESNER: Everything else happened  
15 today. Because we had more to get through, in terms of  
16 the application requirements, and then we got into the  
17 actual siting criteria, and a few other changes.

18 CHAIRMAN HONIGBERG: So, if people are  
19 comfortable at this point, we would -- we'd need to vote  
20 to adopt the changes that we've made over the last few  
21 sessions, including the changes we made today. And, the  
22 language, I'm hopeful, was specific enough, in each  
23 instance, for Mr. Wiesner and I to make those changes,  
24 essentially, as he did, and I helped a little, with the

1 changes from the last few meetings, and then file that as  
2 the Final Proposal to OLS.

3 Does everybody understand or have any  
4 questions or further discussion?

5 *[No verbal response]*

6 CHAIRMAN HONIGBERG: All right.  
7 Commissioner Scott.

8 COMMISSIONER SCOTT: I move that we  
9 adopt the language that we have discussed today as our  
10 final proposal.

11 CHAIRMAN HONIGBERG: Is there a second?  
12 *(Indication given by Mr. Hawk.)*

13 CHAIRMAN HONIGBERG: Yes. Mr. Hawk  
14 seconds. Discussion of the motion?

15 Mr. Wiesner, is there something we need  
16 to know?

17 MR. WIESNER: Well, there was a comment  
18 that there are a number of places where we will refer to  
19 "energy facility", and then further on there will be a  
20 reference to "the facility". And, that is -- I mean, my  
21 view is that that's a reference back to the "proposed  
22 energy facility". The comment was, in every place where  
23 "facility" appears, it should be made clear that that is  
24 "energy facility", because that is the defined term.

1                   Now, we can do that. I don't believe  
2                   that's necessary.

3                   CHAIRMAN HONIGBERG: Is the situation  
4                   where the second reference -- I'm sorry, let me try this  
5                   again. Are the places where the word "facility" appears,  
6                   without the word "energy" before it, in the same section  
7                   as a section where it already has been referred to as an  
8                   "energy facility"?

9                   MR. WIESNER: Yes. So, for example, if  
10                  it says "in considering whether the proposed energy  
11                  facility has an unreasonable adverse effect on aesthetics,  
12                  the committee shall consider", and then the things that  
13                  will be considered may refer just to "the facility", but  
14                  not "the energy facility".

15                  CHAIRMAN HONIGBERG: All right. If  
16                  that -- if that is, in fact, the case, then I don't think  
17                  we have anything to worry about. If there are sections  
18                  where that's not true, I'll tell you what we're going to  
19                  do. We're going to search for the word "facility", which  
20                  is going to appear dozens and dozens of times in here, but  
21                  we're going to see where it appears. And, if there is one  
22                  that is hanging out there, Mr. Wiesner and I will fix it.  
23                  That's not a -- I don't consider that a substantive change  
24                  in any way, shape, or form.

1 MR. WIESNER: And, I also believe that,  
2 where the word "facility" is used without the qualifier  
3 "energy", that it is not used to mean anything other than  
4 the "energy facility" previously referenced.

5 CHAIRMAN HONIGBERG: I would be  
6 surprised if it had any other context, but we'll take a  
7 look and make sure. And, off the record.

8 *(Brief off-the-record discussion*  
9 *ensued.)*

10 CHAIRMAN HONIGBERG: All right. Back on  
11 the record. Thank you for clarifying that, and we'll work  
12 on that.

13 Is there any other discussion of the  
14 motion that Commissioner Scott made and Mr. Hawk seconded?

15 *[No verbal response]*

16 CHAIRMAN HONIGBERG: Seeing none, all  
17 those in favor, please say "aye"?

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

19 CHAIRMAN HONIGBERG: Are there any  
20 opposed?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: The "ayes" have it.  
23 We will proceed and get this on file with OLS as soon as  
24 we can.

1                   This has been a long slog. It started  
2 before I really became involved in any of it, months  
3 before. A lot of people have worked very hard on these.  
4 I think some of them are not happy with the final result,  
5 but I hope everyone who was involved at any stage of the  
6 process acknowledges all the hard work that went into it  
7 by so many people.

8                   I want to especially thank Attorney  
9 Wiesner for an unbelievable amount of effort that he put  
10 into this, and showed tremendous patience, tremendous  
11 thoughtfulness and care throughout the entire process, to  
12 make sure that he was fair with everyone who came in  
13 contact with him. The people who disagree with these,  
14 with the result of this process, the people who are happy  
15 with the result of this process, all of them should be  
16 assured that Mr. Wiesner was giving every single person in  
17 this process his utmost effort. I appreciate it. And, I  
18 can't thank him enough for all the work he did.

19                   I also want to thank the members of the  
20 Committee for all the work that they did. And, remind  
21 them that we're going to get to do this again.

22                   In all likelihood, this, and I will say  
23 not jokingly, that this may well circle back to us through  
24 the JLCAR process, if there's a conditional approval of

1 something, that there are procedures that we may need to  
2 reconvene to deal with going forward, before we can  
3 finally put this rulemaking to bed. But we're close to  
4 getting this done.

5 Is there any other business we need to  
6 transact?

7 *[No verbal response]*

8 CHAIRMAN HONIGBERG: Commissioner Scott  
9 moves we adjourn, and Commissioner Bailey seconds. Is  
10 there any discussion?

11 *[No verbal response]*

12 CHAIRMAN HONIGBERG: Seeing none. All  
13 in favor say "aye"?

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

15 CHAIRMAN HONIGBERG: Any opposed?

16 *[No verbal response]*

17 CHAIRMAN HONIGBERG: We are adjourned.

18 ***(Whereupon the meeting was adjourned at***  
19 ***4:53 p.m.)***

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