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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: All right. Good  
3 afternoon. We are here to review the SEC rules changes  
4 off of the drafts that were submitted to JLCAR back in  
5 January, changes that have been made by Staff, at my  
6 request, as a result of all of the discussions that we've  
7 been having, and the comments that we've received,  
8 informed by the technical session on wind, and all of the  
9 discussions that have taken place.

10 So, it's a big task. And, the way we're  
11 going to do it is we're going to ask Mr. Wiesner to walk  
12 through the document -- the documents that were  
13 distributed to the Committee members yesterday afternoon  
14 and posted on the website. There are copies around. I  
15 had them, and now can't find them.

16 (Short pause.)

17 CHAIRMAN HONIGBERG: All right.  
18 Mr. Wiesner, I'm going to give the floor over to you in a  
19 minute. I think the way we're going to do this is we're  
20 going to work on the two documents one at a time. The  
21 document that has the 100s and the 200s first, and then  
22 the document that has -- I'm sorry, the 100s first, then  
23 the document that has the 200s and 300s in it.

24 We received a few comments from Beth

1 Muzzey, I think they were sent directly to Mr. Wiesner and  
2 to me. And, I think you can pick those up as you discuss  
3 them.

4 I think, if there are questions or  
5 comments or other things that you see, as Mr. Wiesner goes  
6 through them, we'll try and deal with them quickly. If  
7 they require some work, we may have to go back and make  
8 some additional changes. But we can pick up and discuss  
9 how to do that as needed. So, Mr. -- Commissioner Burack,  
10 you have --

11 *(Chairman Honigberg and Vice Chairman*  
12 *Burack conferring briefly.)*

13 CHAIRMAN HONIGBERG: Mr. Wiesner, why  
14 don't you go ahead.

15 MR. WIESNER: I think I'll just propose  
16 to march right through the rules and the changes that have  
17 been made. One thing you will notice is that there are  
18 editorial changes that will appear here that are  
19 responsive to comments that we've received from the Office  
20 of Legislative Services. Typically, those are not  
21 substantive. I will at least mention them and point them  
22 out.

23 And, I mean, the first two changes that  
24 appear on Page 1 are responsive to their comments, where

1 "the rules of the Site Evaluation Committee" is specified,  
2 because that's their general preference.

3 Moving down the page, there's a  
4 definition of "acceptance". And, what's picked up here is  
5 a reference to the fact that we are repeating verbatim the  
6 statutory definition. And, so, the way it's stated here  
7 is again the OLS preference for how definitions --  
8 statutory definitions are included in administrative  
9 rules. Same again for "administrator", which is 102.04.

10 Turning to Page 2, "area of potential  
11 visual impact", rather than "effect". That is a change  
12 that was approved by the Committee in one of the prior  
13 meetings, as was the deletion of "subject to the  
14 limitations stated in Site 301.05(b)(4)". Those  
15 limitations are principally the geographic limitations on  
16 the area of potential visual impact that would need to be  
17 studied pre-application, and the studies would be included  
18 with the application. So, that cross-reference has been  
19 deleted per the direction of the Committee.

20 102.08 is the definition of "best  
21 practical measures". And, the Committee approved this,  
22 these revisions to that definition, which are largely  
23 based on, I believe, the AMC proposal, with some  
24 modifications that were approved by the Committee during

1 the meeting where this was considered. I'll just note  
2 that, at the end you see language that refers to  
3 "demonstration of the best practical measure to the  
4 Committee as effectively avoiding, minimizing, or  
5 mitigating relevant impacts". When we get to the  
6 substantive provisions, you will see similar language that  
7 appears when "best practical measures" is used. And, I  
8 would argue that that's not redundant, because here, in  
9 terms of definitions, you might conceive of it as "best  
10 practical measures is demonstrated to the Committee on a  
11 generic sense to be an appropriate means of mitigating  
12 potentially adverse effects". And, then, where it's used  
13 substantively in the rules, the "best practical measures"  
14 are intended to cover specific adverse effects. And, so,  
15 that the test would be specific to the particular facility  
16 and the particular issue, rather than a more general  
17 demonstration that it's, for example, the best available,  
18 at a reasonable or economically feasible cost.

19 VICE CHAIRMAN BURACK: Mr. Chairman?

20 CHAIRMAN HONIGBERG: Commissioner

21 Burack.

22 VICE CHAIRMAN BURACK: Just a question  
23 here for you, Attorney Wiesner. I'm just tracking this  
24 version against the Initial Proposal of December 22, 2014,

1 and I'm noting that there are certain definitions in  
2 there, for example, of "bulk power facilities", that does  
3 not appear at all, it doesn't look to me, in this version.  
4 And, so, can we assume that, in the redline version that  
5 you've given us, that earlier redlines that were deleting  
6 things simply are not going to appear here at all?

7 MR. WIESNER: Yes. I should have  
8 mentioned that. This is redlined against the Initial  
9 Proposal itself. So, if there were terms, such as "bulk  
10 power facility", which no longer is relevant under the  
11 statute, that appeared in the old rules, those have been  
12 completely removed and don't appear here at all.

13 So, the only changes you're seeing are  
14 changes from the Initial Proposal that was adopted in  
15 December and filed in January.

16 VICE CHAIRMAN BURACK: Thank you.

17 MR. WIESNER: Relatively minor editorial  
18 changes in the definition of "certificate", to refer to  
19 "terms and conditions", rather than just "conditions".

20 In the definition of "critical wildlife  
21 habitat", these are editorial changes that are responsive  
22 to OLS comments.

23 If we move onto Page 3, we have a  
24 definition of "exemplary natural community". And, this

1 again is a statutory definition, and, as such, is quoted  
2 with a specific reference to the statute which contains  
3 it. And, a reference to the "Natural Heritage Bureau",  
4 which is now of Department of Resources & Economic  
5 Development, which has now become a defined term, because  
6 it is used in numerous places in the rules.

7 102.17 is the definition of  
8 "fragmentation" that we received from Commissioner Rose,  
9 and was developed by DRED staff, as I understand it. And,  
10 we've included that here. I believe that was a comment of  
11 EDP that a definition should be included. And, that  
12 definition seems straightforward and appropriate, and, so,  
13 it's been included here.

14 Moving onto "historic sites", these  
15 comments, these changes were made, I believe, in  
16 connection with the package of rules amendments proposed  
17 by Director Muzzey and approved by the Committee, and  
18 includes a statutory reference.

19 "Key observation point" --

20 CHAIRMAN HONIGBERG: Can you back up for  
21 just one moment --

22 MR. WIESNER: Sure.

23 CHAIRMAN HONIGBERG: -- to "historic  
24 sites". On the second line, the cite, the C.F.R. cite,

1 800.16, are those different figures in the two  
2 parentheticals?

3 MR. WIESNER: Yes.

4 CHAIRMAN HONIGBERG: Is one an "1" and  
5 one a "1" or is --

6 MR. WIESNER: Yes. A "1" and an "1",  
7 and in this font they look almost identical, which is  
8 unfortunate.

9 CHAIRMAN HONIGBERG: But it is. I think  
10 it's "16(1)(1)" I think is the order.

11 MR. WIESNER: Yes.

12 CHAIRMAN HONIGBERG: But we might want  
13 to check on that, make sure we got that right.

14 MR. WIESNER: I will check that once  
15 again.

16 Moving onto the definition of "key  
17 observation point", here we've said "viewpoint" rather  
18 than just "point", "receives regular public use and from  
19 which the facility would be prominently visible", I  
20 believe that's a comment that was made through submission  
21 of public comments and was approved by the Committee in  
22 one of the prior meetings.

23 The definition of "landscape" now  
24 includes "historic and cultural features".

1                   And, again, with "natural community", as  
2 with some of the other "wildlife" and "natural resource"  
3 definitions, we are quoting directly from the relevant  
4 statute.

5                   VICE CHAIRMAN BURACK: Just a question  
6 on that. Is there an open quotes somewhere? Do you need  
7 open quotation --

8                   *(Court reporter interruption.)*

9                   VICE CHAIRMAN BURACK: Do you need a  
10 quotation marks to open "a recurring"?

11                  MR. WIESNER: I believe we do.

12                  VICE CHAIRMAN BURACK: Thank you.

13                  MR. WIESNER: I will check that. Moving  
14 on to Page 4, there's a new definition for "natural  
15 heritage bureau", because, as I said, the term is used in  
16 several places throughout the rules.

17                  And, then, there's also a definition, a  
18 defined term now of "participating landowner", because the  
19 term is used in multiple places in the rules. And, the  
20 definition as it previously appeared in another section of  
21 the rules has not changed. The notion is that this is  
22 someone who, as a property owner in the adjacent or  
23 relevant area for a particular facility, who has agreed to  
24 waive setbacks and other restrictions that would otherwise

1 be applicable.

2 On Page 5, I will note this. There is a  
3 definition of "public utility". And, it's restricted, for  
4 some reason, to only electric utilities. And, that was  
5 brought to my attention. And, we then went and looked to  
6 see where the term was used, and it turns out it is not  
7 used. So, it seems that it would be appropriate to delete  
8 it from the rules. In the existing rules, that very term  
9 was also defined as such, and was also not used. So, if  
10 it is the pleasure of the Committee, I would suggest that  
11 we remove it and renumber that remaining definitions.

12 CHAIRMAN HONIGBERG: That seems like a  
13 fairly straightforward thing to do. Presumably, at some  
14 point, a version of the rules did use the phrase. But, if  
15 it no longer does, there's no sense in having it as a  
16 defined term.

17 MR. WIESNER: Thank you, Mr. Chairman.  
18 Editorial changes to the definition of "rare natural  
19 community", primarily to reflect the fact that we now have  
20 a definition of "natural heritage bureau".

21 The definition of "renewable energy  
22 facility", picking up -- well, this is, again, responsive  
23 to an OLS comment that we should include the statutory  
24 definition verbatim within quotes in the rules, and that

1 has been done.

2 In the definition of "scenic resources",  
3 and I believe this is largely responsible to comments we  
4 received from the AMC and perhaps other environmental  
5 groups. There's been some cleanup, in the first line we  
6 see all of these resources are "resources to which the  
7 public has a legal right of access". That phrase was  
8 repeated numerous times throughout the laundry list, if  
9 you will, of the locations that might be deemed a scenic  
10 resource, and putting it up front seems like the most  
11 efficient way of structuring the definition.

12 And, then, it's broken out into  
13 subparagraphs. I believe that's an OLS editorial comment,  
14 but it does make for easier reading. Other substantive  
15 changes, other than deletion of the reference to "legal  
16 right of access", because it's covered in the opening, the  
17 inclusion of "scenic drives and rides", in subparagraph  
18 (c), and the inclusion, in subparagraph (e), of "historic  
19 sites that possess a scenic quality". And, again, that is  
20 a comment I believe that we received from the AMC, and  
21 that the Committee approved for a change at a prior  
22 meeting.

23 The next change, I believe, doesn't  
24 appear until Page 8, in Site 103.03, regarding

1 "subcommittees".

2 CHAIRMAN HONIGBERG: What about Page 6,  
3 "sequential observation"? We made some changes there, did  
4 we not?

5 MR. WIESNER: Oh, I'm sorry. We did.  
6 The "viewer is capable of seeing", rather than the "viewer  
7 sees". Also, a deletion of "hiking trail", so it would  
8 only include -- so it would be broadened to read "trail".  
9 And, I think that's responsive to a comment we received  
10 from Wind Watch or Windaction regarding snowmobile trails  
11 and other, you know, ATV trails or other potential uses of  
12 trails.

13 Essentially editorial comments from  
14 there on, until we get to Page 8. And, this 103.03 is the  
15 section that addresses "Subcommittee Formation". And,  
16 this is a change that is made to address a comment from  
17 OLS that administrative agencies should try to avoid the  
18 use of the word "may", and shall adopt a formulation that  
19 reads "shall/if". And, so, here we have "The chairman" --  
20 "The chairperson shall establish a subcommittee...if the  
21 chairperson determines it will be efficient to do so."

22 CHAIRMAN HONIGBERG: So, all of you who  
23 are going to be writing letters to your representatives  
24 and senators about this process, and I'm sure many of you

1 will, you might take the opportunity to point out to the  
2 senators and representatives how that process works at  
3 OLS, so that it is not adequate for an agency to quote a  
4 statute in describing how something is to be done, if the  
5 Legislature says "may", if the agency wants to say "may",  
6 the legislative draftspeople will say "You can't do that.  
7 You need to turn that into a "shall". And, the way to  
8 turn that into a "shall" is by doing language like this."  
9 And, I'm sure all of you can read that paragraph, and say  
10 to yourselves "boy, that's an awkward way to say that."  
11 But that's where we are.

12 MR. WIESNER: And, I think the intent of  
13 that preference for the "shall/if" formulation is to  
14 restrict agency discretion and provide some sort of a  
15 standard stated in the rules. Whether it's always  
16 appropriate to do so and whether this is the best language  
17 is perhaps open to question.

18 Similar change below in subparagraph  
19 (c)(2), with respect to the "selected member of the  
20 subcommittee designating a designee to serve in his or her  
21 stead, if determined efficient to do so." And, again, as  
22 well in subparagraph (d) on Page 8, and again on Page 9.

23 And, in (e), this is an interesting  
24 provision, because this is regarding a party objecting to

1 the formation of a three-person subcommittee. And, the  
2 statute says "may", but I changed it to "shall have the  
3 right to". "Shall" would not be the appropriate  
4 formulation here, because the Committee really doesn't  
5 have the right to determine what a third party "shall do",  
6 unless that third party is perhaps the applicant. But  
7 this is essentially picking up from the statute the right  
8 to object to the three-person subcommittee within 14 days,  
9 and I changed it to say "shall have the right to", rather  
10 than "may".

11 Moving on, the Committee directed that  
12 the specification of quorum requirements, which basically  
13 tracks the statute, be deleted from these rules, and that  
14 has been done, as you see.

15 CHAIRMAN HONIGBERG: Mr. Wiesner, the  
16 prior section, the 103.03, the "Subcommittee Formation and  
17 Authority", and the rights that are granted to those whose  
18 interests may be affected, that's all pulled straight from  
19 the statute, too, isn't it?

20 MR. WIESNER: It is. I mean, there are  
21 sections in here, and we have made some changes based on  
22 the theory that, if something is covered in the statute,  
23 it is not necessary to have it in the rules. Another view  
24 might be, there's a benefit to, as long as there's no

1 inconsistency, there may be some benefit to including in  
2 the rules provisions which track the statutory language,  
3 in the interest of providing a one-stop shopping, if you  
4 will, source for seeing what the Committee process and  
5 procedure is and what restrictions apply to it, and what  
6 the rights of a party may be. Rather than requiring  
7 parties, who may not be represented by counsel, who may be  
8 members of the public, requiring them to read a statute  
9 and a set of rules.

10 CHAIRMAN HONIGBERG: I'm certainly  
11 sympathetic to that. Having worked on a project for the  
12 court system involving consolidating rules, there was  
13 certainly an imperative there, to the greatest extent  
14 possible, to put all the rules that might relevant to  
15 something in one place. So, I'm not suggesting that we  
16 take them all out, unless there's a particular reason to.

17 My second question about some of these  
18 changes to the language, for example, in the designation  
19 provision that "each selected member shall designate a  
20 senior administrative employee or staff attorney, if the  
21 member determines it will be efficient to do so." Is that  
22 OLS's phrase?

23 MR. WIESNER: No, I came up with that.  
24 They want to some sort of standard, and that seemed to be

1 the most harmless way of stating a standard. But --

2 CHAIRMAN HONIGBERG: So, a statute that,  
3 on its face, --

4 MR. WIESNER: Is not so limited.

5 CHAIRMAN HONIGBERG: So -- but what  
6 those of us who are on the Committee who may be named to a  
7 subcommittee that, if we want to designate someone, does  
8 our letter then need to say "because it will be efficient  
9 to do so, I hereby designate so-and-so to serve on a  
10 particular subcommittee in my place"?

11 MR. WIESNER: That would track the  
12 language of this rule, if this language is adopted. It  
13 would be the cleanest way to do it. It might be presumed  
14 that the efficiency determination supported the  
15 designation.

16 CHAIRMAN HONIGBERG: Okay.

17 VICE CHAIRMAN BURACK: Mr. Chairman.

18 CHAIRMAN HONIGBERG: Commissioner  
19 Burack.

20 VICE CHAIRMAN BURACK: I guess I'm  
21 wondering whether efficiency is really as broad a term as  
22 would be appropriate. I mean, there are many different  
23 reasons why a party that could designate somebody to do so  
24 may seek to do so. And, efficiency would be one of those

1 reasons, certainly, but I'm fairly confident not the only  
2 one. I'm wondering whether, if we want to retain the term  
3 "efficiency", whether we want to somehow incorporate the  
4 notion of "a good cause", or something to that effect,  
5 something very broad, that makes clear that this is a  
6 discretionary decision to be made by the party who's  
7 making that appointment?

8 CHAIRMAN HONIGBERG: I think that might  
9 be desirable. Although, I don't think I would go with  
10 "good cause", because "good cause" actually is a term that  
11 has some legal significance, and you then have to give an  
12 explanation that demonstrates "good cause" in order to  
13 satisfy that standard. The statute is not so limited.  
14 And, indeed, I think those of us who were involved in the  
15 drafting of SB 245, or not "in the drafting", but in the  
16 discussions during the drafting of SB 245 will recall that  
17 legislators, and we know from other circumstances, that  
18 the Governor's Office definitely wanted that provision in  
19 there for the state employees to be able to designate  
20 others in their agencies to sit on subcommittees  
21 considering applications. So, the "good cause" standard  
22 wasn't articulated in the statute.

23 Yes, Commissioner Bailey.

24 COMMISSIONER BAILEY: How about if we

1 make it something like "if it won't impair the orderly  
2 conduct of the proceeding", or something like that? So  
3 that, if the designation isn't going to hurt anything, we  
4 have the discretion to do it.

5 CHAIRMAN HONIGBERG: That is a phrase  
6 that exists in other rules, certainly, having to do with  
7 interventions and requests for other types of relief.  
8 Interventions is the one that comes to mind.

9 Commissioner Scott.

10 COMMISSIONER SCOTT: I just want to be a  
11 little bit contrary, I suppose. I like the language as  
12 proposed. I think "efficient" may not be a perfect word,  
13 but I can't think of a better one, frankly. And, what I'd  
14 be very worried about, as the Chair mentioned, of tying  
15 our hands more than the statute requires. You know, it  
16 could just be for efficiency, because the Commissioner is  
17 not available for those timeframes. It could be for  
18 efficiency because the Commissioner needs to go do  
19 something else. I don't know. But I think vague language  
20 like that, to the extent we can get away with that, meets  
21 the statute.

22 MR. WIESNER: Another potential  
23 approach, and I'll just throw this out there, and we'll  
24 see this further on in the rules, is to essentially track

1 the statutory language almost verbatim, and then to  
2 include a prefacing clause that says "pursuant to RSA  
3 162-H", whatever the reference is, and then basically just  
4 state the statute. And, I think that OLS is more inclined  
5 to accept that formulation, because it's clear that you're  
6 just picking up whatever the statute provides, without  
7 having to further limit whatever discretion you may have  
8 been given under the statute. So, we might consider that  
9 here, if we're concerned about losing discretion by  
10 including any sort of a qualifier.

11 CHAIRMAN HONIGBERG: That is sensible to  
12 me, actually. So, I think you used the word "pursuant to"  
13 or "as provided in" or --

14 MR. WIESNER: Yes.

15 CHAIRMAN HONIGBERG: -- "as stated in"?

16 MR. WIESNER: Yes. It makes it more  
17 clear that you are just essentially restating the  
18 statutory language.

19 CHAIRMAN HONIGBERG: I see nodding  
20 heads.

21 VICE CHAIRMAN BURACK: Yes.

22 CHAIRMAN HONIGBERG: All right.

23 MR. WIESNER: So, we'll make that change  
24 to follow that approach.

1                   CHAIRMAN HONIGBERG: Yes. I think we  
2 may see that elsewhere, although I'm not sure.

3                   MR. WIESNER: You will. And, the next  
4 change that I believe we need to address is on Page 11.  
5 And, we're now into the 200 rules. And, Site 201.01,  
6 regarding "Public Information Sessions Prior to the  
7 Application". The first change is "Not less than 30  
8 days", rather than "At least 30 days", and that's for the  
9 sake of consistency, and is again responsive to an OLS  
10 comment, but same meaning, same effect.

11                   At the bottom, we are picking up the  
12 language from House Bill 614, which introduced some  
13 greater specificity on the applicant's obligation to  
14 answer questions from the public as addressed during those  
15 public information sessions. And, that similar language  
16 appears throughout the succeeding sessions -- sections,  
17 excuse me. In (b), and I believe this is a change that  
18 was approved by the Committee, this is "a copy of the  
19 notice would be mailed to the facility host community or  
20 communities, communities and abutting" -- I should say  
21 "abutting communities for the proposed facility". And,  
22 last is a concept that I believe the Committee has  
23 approved, which is to include as well  
24 "municipalities/communities identified in the application

1 or in studies included with or referenced in the  
2 application". So, for example, if a community is covered  
3 by the visual impact assessment for a wind facility, which  
4 would extend 10 miles, at least 10 miles, then that  
5 community would receive a copy of the application -- or,  
6 excuse me, of the notice of the information session. And,  
7 that same language, where we're referring to "communities  
8 identified in the application or in related studies", that  
9 appears further on as well. So, this might be an  
10 opportunity for the Committee to make sure that we're  
11 comfortable with that language and the intent that it's  
12 intended to address.

13 CHAIRMAN HONIGBERG: Commissioner  
14 Burack.

15 VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
16 comfortable with that language. I think it's workable.  
17 The question would be, does that mean that, if there are  
18 references to things being -- having to be delivered to  
19 Concord in some fashion, because this is where the PUC is  
20 located, does that mean they're going to -- the applicant  
21 is going to have to read through every single page and  
22 identify the name of any town that might appear in any  
23 context in the documentation?

24 I just would want to make sure we don't

1 create something where somebody would try to, frankly, try  
2 to nitpick it, and say "well, they didn't send a copy to  
3 Concord, even though the project happens to be down in,  
4 for example, the southwest corner of the state. And, it's  
5 clear from its face that Concord -- Concord is not  
6 implicated, but the name "Concord" appears somewhere in  
7 the papers that have to be filed.

8 CHAIRMAN HONIGBERG: So, your concern is  
9 right at the end, "referenced in"? The "referenced in the  
10 application", because lots of places may be referenced  
11 in, --

12 VICE CHAIRMAN BURACK: Right. Right.

13 CHAIRMAN HONIGBERG: -- and not really  
14 have a substantive role?

15 VICE CHAIRMAN BURACK: Precisely.

16 MR. WIESNER: Right. I think the -- I  
17 think the concern over "referenced in the application", I  
18 believe it's "the study that's referenced in the  
19 application". On the other hand, your concern,  
20 Commissioner Burack, may really go to "identified in the  
21 application", and that is a broad term.

22 VICE CHAIRMAN BURACK: Yes.

23 MR. WIESNER: So, if anything is listed  
24 in the application, and there may be communities listed in

1 the application in passing. So, that seems to be a  
2 concern that's worth thinking through, and perhaps making  
3 sure that this is not overinclusive language.

4 CHAIRMAN HONIGBERG: Commissioner  
5 Bailey.

6 COMMISSIONER BAILEY: I hate to bring  
7 this up, but do we need to define "host communities"? I  
8 mean, if it's a transmission line, is it every  
9 municipality the transmission line goes through?

10 COMMISSIONER SCOTT: Yes.

11 CHAIRMAN HONIGBERG: Uh-huh.

12 COMMISSIONER BAILEY: If it's a wind  
13 tower, is it the land where the --

14 MR. WIESNER: I mean, I believe it would  
15 be commonly understood that it's the community in which  
16 the facility will be sited, or any part of it. So, with a  
17 transmission line, it would be every town along the way.

18 VICE CHAIRMAN BURACK: Mr. Chairman.

19 CHAIRMAN HONIGBERG: Commissioner  
20 Burack.

21 VICE CHAIRMAN BURACK: I believe  
22 Commissioner Bailey has raised a fair point. I think it  
23 would be helpful to include a definition of "host  
24 community", if we're going to use that term probably here,

1 and it probably appears elsewhere, to include a definition  
2 consistent with the discussion we just had.

3 And, if I may raise just one other  
4 question, it's a grammatical question. I'm not sure I  
5 know the answer. But I would just ask that a  
6 determination be made as to whether or not, in 201.01(a),  
7 the phrase should be "not less" or "not fewer" or "no  
8 fewer"?

9 MR. WIESNER: When we're talking about  
10 the number of information sessions?

11 VICE CHAIRMAN BURACK: The number of --  
12 the number of days or the number of information sessions.  
13 We need to confer with a really good grammarian on that.

14 CHAIRMAN HONIGBERG: Or ask OLS.

15 MR. WIESNER: Right.

16 CHAIRMAN HONIGBERG: We are parking for  
17 a moment the issue about "identified in", "referenced in",  
18 and whether that's a problem. So, that's still out there.  
19 Let's not forget that.

20 Commissioner Scott I think has a comment  
21 on something else related to this.

22 COMMISSIONER SCOTT: Do we need to add a  
23 word on (b)? We have "shall mail a copy of notice to the  
24 host communities". I know we don't mean "everybody in the

1 community". I think we mean the "community offices" or  
2 the -- we need some modifier in there, I believe. Am I  
3 being too literal?

4 VICE CHAIRMAN BURACK: I would assume we  
5 would be talking about sending it to the governing body.  
6 We'd probably want to confirm that that would be the  
7 correct term under state statute. But I think it would be  
8 the governing body we would send it to.

9 MR. WIESNER: And, I -- I mean, my  
10 belief is that the use of the word "community" here is  
11 intended to mean the "municipality". But it might be  
12 worth specifying that what we're talking about is a notice  
13 addressed to the governing body of the municipality, which  
14 I would take to be the selectmen of a town or the --

15 VICE CHAIRMAN BURACK: Board or mayor  
16 and aldermen, whatever it might be.

17 Mr. Chairman, I guess that raises the  
18 question as to whether this should be "host communities"  
19 or "host municipality" as the term that we use? And, I  
20 suggest it probably needs to be the latter.

21 CHAIRMAN HONIGBERG: I think I agree  
22 with that. Commissioner Bailey.

23 COMMISSIONER BAILEY: I think that is  
24 more descriptive than "host community", then maybe we

1 don't need to define "host municipality", because it's  
2 clearer in my mind, if you say "municipality" than  
3 "communities".

4 CHAIRMAN HONIGBERG: Commissioner  
5 Burack.

6 VICE CHAIRMAN BURACK: Mr. Chairman,  
7 sorry to raise this, but I'm also realizing that there  
8 have been times in the past where we have had matters in  
9 unincorporated places in the state. And, I don't know  
10 whether, technically, they qualify as a "municipality" or  
11 not. So, I would just, again, ask Attorney Wiesner, as  
12 he's doing the final drafting on this, to confirm that we  
13 are using terminology that's consistent with state statute  
14 from that perspective.

15 MR. WIESNER: I thought this section was  
16 easy.

17 VICE CHAIRMAN BURACK: Sorry.

18 MR. WIESNER: And, I think we may still  
19 have the issue of "identified", and whether there's a way  
20 to limit that or qualify that, so that it -- it may be  
21 that, if we take that out and only reference to  
22 "identified in the studies" or "subject to the studies",  
23 that that might serve the purpose. I mean, "host and  
24 abutting communities" is going to -- "municipalities" or

1 whatever term we're going to use, is going to pick up much  
2 of the surrounding area. And, then, if we say "other  
3 municipalities", for example, "included in the visual  
4 impact assessment" or "in other relevant studies", maybe  
5 there's an economic study of the effects on the region,  
6 which looks at certain communities/municipalities that  
7 would not be included in the visual impact assessment, but  
8 are included in that study. But I think what we're trying  
9 to do is stay away from is a passing reference to a  
10 municipality that has not been studied, but is mentioned.  
11 And, it may not be clear that that is a community which  
12 should be considered either for this purpose, or, when we  
13 get further on, we're looking at master plans and zoning  
14 ordinances of those municipalities as well.

15 CHAIRMAN HONIGBERG: I think the  
16 direction you took that is a sensible one. I don't know  
17 that you wrote down anything that you were doing off the  
18 top of your head, but the direction you took that is, I  
19 think, the right one.

20 MR. WIESNER: If I remember what I said.  
21 So, it's not so much "identified", but "the subject of a  
22 study", or "included in the subject area of a study". I'm  
23 getting -- we're getting warmer. I see nodding heads.

24 CHAIRMAN HONIGBERG: It's encouraging

1 when you see nodding heads, isn't it?

2 MR. WIESNER: I like to see nodding  
3 heads. So, I think that's one where we will spend a  
4 little bit more time on the language, before the Draft  
5 Final Proposal is finally circulated.

6 CHAIRMAN HONIGBERG: Well, just as a  
7 reminder, before we leave here today, we are going to be  
8 voting to make the changes that are in here. And, we may  
9 have to allow for corrections or minor additions like that  
10 to be made by Mr. Wiesner and me, before they get  
11 published and put out for public comment.

12 MR. WIESNER: If we're ready to move on,  
13 the same language changes appear in -- essentially, the  
14 same language changes appear in Site 201.02, which is the  
15 public information sessions after the application has been  
16 accepted. Again, we'll figure out whether or not "less  
17 than" or "not fewer than" is the correct phrasing. And,  
18 then, the language, which has been added at the bottom of  
19 subparagraph (a) is again intended to track the House Bill  
20 614 requirement for questions to be answered -- to be  
21 addressed, I should say, by the applicant. And, then, the  
22 mailing in (b) is the same issue that we just discussed.

23 And, again, on Page 12, the same issues  
24 appear in subparagraph (a), with respect to "not less

1 than". And, in (d), with respect to the identification of  
2 the community or the municipalities.

3 In 201.04, this covers "Additional  
4 Information Sessions". This is essentially from the  
5 statute. And, there's an attempt here to basically track  
6 the "shall/if" formulation. But this may be another place  
7 where it's appropriate to consider the "pursuant to"  
8 reference. And, the last sentence again is intended to  
9 pick up the House Bill 614 changes regarding public  
10 information sessions.

11 VICE CHAIRMAN BURACK: Mr. Chairman?

12 CHAIRMAN HONIGBERG: Commissioner  
13 Burack.

14 VICE CHAIRMAN BURACK: If I may just  
15 point out that, in 201.04, in the second line there, it  
16 refers to "municipality or unincorporated place". So,  
17 that may be a formulation that's worth using.

18 I also have a vague recollection of the  
19 terms either "political jurisdiction" or "political  
20 subdivision" appearing in state statute. So, you may want  
21 to look at those phrases of that kind as well, to see if  
22 they would be helpful in coming up with a consistent term  
23 to use here.

24 MR. WIESNER: And, one question there.

1 Would be whether an "unincorporated place" qualifies as a  
2 "political subdivision"? But it's helpful to have this  
3 language appear here, and we can consider how to address  
4 that as we prepare a final draft.

5 VICE CHAIRMAN BURACK: Thank you.

6 MR. WIESNER: The next change I see is  
7 on Page 13, at the bottom. And, this is in Site 202.04,  
8 "Appearances and Representation". There was language  
9 missing from the Initial Proposal, which has been restored  
10 here. I think it was EDP that pointed that out to us, and  
11 the Committee approved that relatively non-substantive  
12 change.

13 In 202.05, Subparagraph (c), "may" has  
14 been changed to "shall". And, there was already an "if"  
15 clause, so that seems to be an appropriate change. That  
16 doesn't affect the fundamental meaning. And, again, this  
17 is language that, to some extent, tracks the statute, and  
18 is also consistent with the existing rules.

19 The next change that I'm seeing is on  
20 Page 16, in 202.11, regarding "Interventions". And, this  
21 once again is the "not less than", or perhaps "not fewer  
22 than".

23 Then, on Page 17, this is the  
24 "Discovery" section, Site 202.12. These are changes that

1 I believe were approved at the Committee's last meeting,  
2 or maybe the one before that. A reference to the  
3 "applicable procedural order" in Subparagraph (a). The  
4 deletion of the reference to "an applicable procedural  
5 order" in (b). And, then, in Subparagraph (d), the  
6 concept is included that there could be a "group of  
7 persons who are either voluntarily or by order  
8 participating in the proceeding together", and they will  
9 be subject to, as a group, to the limitations on data  
10 requests that would apply to any individual party. Took  
11 out the reference to "for good cause shown", and I believe  
12 that's responsive to an OLS comment. And, then, the  
13 language that appears at the end of that subparagraph is  
14 intended to both cover a procedure whereby there would be  
15 a request by a person for -- to be excused from the  
16 limitation, and a finding by the presiding officer that a  
17 greater number of data requests is necessary to address  
18 the complexity of relevant issues, without adversely  
19 affecting the conduct of the proceeding. So, that is both  
20 an attempt to address an OLS comment, as well as to  
21 include a standard for the presiding officer to look to in  
22 determining that more than 50 data requests may be  
23 appropriate in a given proceeding.

24 So, if the Committee is comfortable with

1 that language, I would then move on to Subparagraph (h).  
2 Where, again, an attempt has been made to impose a  
3 standard that the presiding officer would have to consider  
4 in varying from the 10-day response requirement for data  
5 requests. And, the standard is "in order to permit the  
6 timely and efficient conduct of the proceeding".

7 So, I think the sense of this is that  
8 the presiding officer, in a particular case, may say "the  
9 rule says "10 days", but, given the context, and the fact  
10 that we have a hearing two weeks from now, it shouldn't be  
11 10 days, it should be five days." And, based on a  
12 finding, according to this standard, that a lesser period  
13 of time would be permissible.

14 VICE CHAIRMAN BURACK: Mr. Chairman?

15 CHAIRMAN HONIGBERG: Commissioner  
16 Burack.

17 VICE CHAIRMAN BURACK: I guess I would  
18 be more comfortable with (h) if we could restructure it to  
19 be more consistent with the way (d) is worded. That is,  
20 if -- unless it's clear that every one of these is subject  
21 to the standard, and you can ask for a variance based upon  
22 some change, or the presiding officer can make an order  
23 that ensures conformity, it seems to me that we ought to  
24 specify it more clearly that there's a basis for a

1 variance here. Because, otherwise, I think a lot of  
2 presiding officers -- I'm sorry. I withdraw that comment.  
3 I see how it does provide the flexibility.

4 CHAIRMAN HONIGBERG: Then, we are moving  
5 to Page 19 perhaps?

6 MR. WIESNER: Yes. Page 19 is the next  
7 change. This is in the "Waiver of Rules" provision,  
8 202.15. And, a new Subparagraph (f) has been added at the  
9 bottom, I believe this is responsive to a comment from  
10 Wind Watch. That, if there's a request for a waiver,  
11 "other parties shall be provided the opportunity to  
12 comment on the waiver request before the committee." And,  
13 I believe that's a comment that was reviewed and approved  
14 by the Committee at its last meeting.

15 If we're ready to move on, at the bottom  
16 of that page, 202.16, again, we see "not less than 7  
17 days", rather than "at least".

18 On Page 20, 202.17, "Continuances". The  
19 language that appears in Subparagraph (b) is an attempt to  
20 address an OLS comment regarding the use of the word "good  
21 cause", by including a reference to the "moving party's  
22 assertion of a valid basis". Please don't ask me what the  
23 difference is.

24 CHAIRMAN HONIGBERG: It appears to be

1 about five words --

2 MR. WIESNER: Thank you.

3 CHAIRMAN HONIGBERG: -- different.

4 MR. WIESNER: In 202.20, "Order of  
5 Proceeding", there's a standard order of presentation in a  
6 hearing, which I think is typically the norm for  
7 adjudicative proceedings before the Committee, and before  
8 the Public Utilities Commission, as I understand it.  
9 There is a reference that "the presiding officer can vary  
10 that order". And, what's included here is language that  
11 again attempts to impose a standard on the presiding  
12 officer in approving any variance such that it "would have  
13 to assist the proceeding to be conducted fairly and  
14 expeditiously".

15 If we're ready to move on, on Page 21 --

16 CHAIRMAN HONIGBERG: We're not ready to  
17 move on.

18 COMMISSIONER BAILEY: We're hot.

19 CHAIRMAN HONIGBERG: I'm not crazy about  
20 the phrase of "variance in order". Doesn't that just mean  
21 a "different order"? Unless -- "upon a finding that a  
22 different order".

23 MR. WIESNER: A "different order", yes.

24 CHAIRMAN HONIGBERG: I mean, a

1 "variance" sounds very, I don't know, legal. All we're  
2 talking about is a situation where doing things in other  
3 than the regular order would promote the fair and  
4 expeditious conduct of the proceeding, right? Yes, I  
5 would not use "variance" there.

6 And, honestly, it may just be because I  
7 heard Commissioner Burack use it in a different context a  
8 few minutes ago. And, so, I'm thinking to myself  
9 "variance" has a legal meaning in some circles. So, --

10 MR. WIESNER: A "difference in order"?

11 CHAIRMAN HONIGBERG: "Unless a different  
12 order".

13 MR. WIESNER: "A different order". And,  
14 I'm not sure the phrasing "would assist the proceeding to  
15 be conducted" is the best grammar either.

16 CHAIRMAN HONIGBERG: Yes. We can  
17 probably fix that, too.

18 MR. WIESNER: We'll work on that. Maybe  
19 it can be phrased in terms of "will not interfere with the  
20 timely and prompt" --

21 CHAIRMAN HONIGBERG: No. No, it's got  
22 to be better. It's not an "interfere" question. It's  
23 "we're going to proceed in the regular order, unless  
24 proceeding in a different order would be better."

1 MR. WIESNER: Right.

2 CHAIRMAN HONIGBERG: So, we can turn  
3 that into a rule language.

4 MR. WIESNER: Okay. We'll find a better  
5 way to say "better", if we can.

6 CHAIRMAN HONIGBERG: Off the record.  
7 (Brief off-the-record discussion  
8 ensued.)

9 CHAIRMAN HONIGBERG: All right. We're  
10 back on the record.

11 MR. WIESNER: Okay. The next change I  
12 see is on Page 21, Site 202.22, regarding "Prefiled  
13 Testimony". And, these are, I believe, changes that were  
14 made in response to comments received from the Various  
15 Energy Companies. We have deleted the reference to the  
16 number of copies of prefiled testimony, because, as we  
17 noted at, I believe, our last meeting, the prefiled  
18 testimony is submitted with the application package. And,  
19 we are otherwise elsewhere specifying how many copies must  
20 be filed.

21 In Subparagraph (3), there's a reference  
22 to "electronic mail distribution unless other otherwise  
23 specified in a procedural order issued by the presiding  
24 officer." And, this goes to service on other parties,

1 rather than filings with the Committee.

2 If we can move on to Page 22, this is  
3 the Site 202.25, Subparagraph (b), regarding public  
4 statements made at a hearing. We've added a sentence at  
5 the end of Subparagraph (b), in response to a public  
6 comment that permits an individual who does not wish to  
7 speak in public to submit a statement to be read by  
8 someone else, at their choice.

9 The next change appears on Page 23,  
10 202.28. These are changes regarding the record retention  
11 requirements, which are responsive, other than "not less  
12 than", which is actually in itself responsive to an OLS  
13 comment, but we'll check the grammar. The reference to  
14 "the division of records management and archives" is a  
15 suggestion from OLS to have some consistency with what  
16 other agencies do in connection with the requirements of  
17 RSA 5:40. And, it seemed to me to be a reasonable,  
18 relatively non-substantive change. So, it's been included  
19 here.

20 COMMISSIONER BAILEY: Mr. Chairman?

21 CHAIRMAN HONIGBERG: Commissioner  
22 Bailey.

23 COMMISSIONER BAILEY: Does that mean the  
24 records get thrown out after five years or do they go to

1 archives? I mean, I think we still have the Seabrook  
2 records in the cellar here.

3 CHAIRMAN HONIGBERG: As I read the  
4 underlying rule before changes were made to it, it just  
5 says they have to be kept for at least a particular period  
6 of time, and it doesn't say what happens to them after  
7 that.

8 Commissioner Burack.

9 VICE CHAIRMAN BURACK: I believe the  
10 standard practice across state government is that  
11 individual agencies or departments will adopt written  
12 document retention policies that would describe what  
13 length of time different types of documents would be  
14 retained for.

15 And, I'm not sure that such a document  
16 has been created specifically for the SEC. But I think it  
17 is a fair statement to say that many of the records going  
18 back to the very earliest cases the SEC has heard are  
19 still extant. So, the practice historically has been to  
20 retain as much as we could.

21 Now, whether that's the way the  
22 Committee should continue to operate, I don't know. I  
23 respectfully suggest that's probably ultimately a decision  
24 for an administrator to make, in consultation perhaps, you

1 know, with some, you know, could seek from guidance from  
2 the Committee. But, ultimately, I think we should vest  
3 that in our administrator.

4 COMMISSIONER BAILEY: Thank you.

5 CHAIRMAN HONIGBERG: Just to complete  
6 the thought on what happens in state government. I also  
7 believe that, if an agency has not adopted a record  
8 retention policy under RSA 5:40, that I think there's a  
9 default that you're required to follow, that's either  
10 provided in statute or that is in a rule promulgated by  
11 the archives people. I think you either do the default  
12 that is the general state government one or you do one  
13 that's specific to your agency going through the rules  
14 process, I think. But that doesn't -- it's not directly  
15 responsive to what we are doing or should be doing.

16 Mr. Wiesner.

17 MR. WIESNER: The next change appears  
18 under the "Rehearing" section, 202.29. And, we have  
19 deleted Subparagraph (e), which basically, essentially,  
20 just stated the statutory standard under RSA 541 for  
21 granting a motion for rehearing. And, I believe that's  
22 responsive to an OLS comment. I don't think it has any  
23 substantive effect, because, of course, statutory standard  
24 would continue to apply.

1 Moving on to Page 26, Site 204.05, in  
2 Subparagraphs (a) and (b), we have "not less than", rather  
3 than "at least". And, we'll decide whether "not fewer  
4 than" is the correct grammar.

5 And, I believe, with that, we're done  
6 with the 100 and 200 rules, except for Site 205, which  
7 appears in the other document. That's "Explanation of  
8 Proposed Rule", but there is no change to that section.

9 The first section, if we are ready to  
10 move on, appears in Site 301.01, regarding "filing  
11 requirements". And, this is another place where, in  
12 response to an OLS comment, I have added a standard, a  
13 proposed standard for the chairperson or the administrator  
14 to vary the number of copies that would be required to be  
15 filed. And, what appears here is "in order to permit the  
16 timely and efficient review and adjudication of the  
17 application."

18 If I can move back, the number of paper  
19 copies that we now have in here is "15". I'm not sure  
20 that's the right number. It used to be "18". But, one of  
21 the things we've done that we will get to in a few moments  
22 is specify a number of agencies which will have to be --  
23 have to receive a copy of the application. And, some of  
24 them are agencies that used to be represented on the

1 Committee. So, in one sense, the fact that the number of  
2 members of the Committee has decreased does not  
3 necessarily drive a decision to decrease the number of  
4 paper copies that are filed, because we are still  
5 requiring paper copies to be distributed, for example, to  
6 OEP and Health & Human Services and Fish & Game. And, so,  
7 I guess I'm questioning whether "15" is the correct  
8 number?

9 CHAIRMAN HONIGBERG: Is the practice  
10 that an application gets to OEP by going through the SEC  
11 filing or is it delivered directly by the applicant?

12 MR. WIESNER: There's a section, and I  
13 believe this tracks the statute, which says that  
14 applications are filed here with the required number of  
15 copies, and then distributed by the Committee to other  
16 agencies, including the agencies that are noted as having  
17 permitting authority, as well as any other agencies  
18 identified in administrative rules, and that's essentially  
19 what we're doing here, as was directed at a prior meeting  
20 to include those other agencies. Fish & Game had  
21 specifically requested that they be provided a copy. But,  
22 I mean, we'll get to it, but there are six agencies that  
23 are listed now, and most of them are agencies that used to  
24 be represented on the Committee.

1 CHAIRMAN HONIGBERG: Commissioner  
2 Bailey.

3 COMMISSIONER BAILEY: Thank you. The  
4 rule that you're referring to is 301.10(b). And, I think  
5 there's seven agencies. And, it says "The committee also  
6 shall forward a copy" to those seven agencies. So, if  
7 there are potentially nine, I don't know if you want to  
8 count nine Committee members or seven Committee members,  
9 because probably every substantive thing will have a  
10 subcommittee of seven. Then, if you have seven for us,  
11 plus one for the administrator is eight, plus seven  
12 agencies that we have to forward it to, that's 15.

13 So, I'm thinking it should be 15 or 17.

14 CHAIRMAN HONIGBERG: Sadly, you're  
15 probably right.

16 MR. WIESNER: So, I guess I just  
17 highlight that, because we had not previously focused on  
18 the numbers that we need to receive. But we've now  
19 arguably expanded the list of agencies that will receive a  
20 copy, even if they are not otherwise identified as an  
21 agency with permitting authority.

22 CHAIRMAN HONIGBERG: Attorney Iacopino.

23 MR. IACOPINO: Just as a practical  
24 matter, I think what we have actually done, when

1 applications are filed, is we have sent out a letter to  
2 the various agencies and actually asked them if they  
3 wanted the paper copy, or if they were happy to use the  
4 copy that we had just posted on the website. And, I think  
5 that, pretty routinely, we get one or two agencies say "we  
6 would like a paper copy", but the majority of them usually  
7 respond with their report, having, obviously, used the  
8 electronic version.

9 Just as a practical matter of what we've  
10 done.

11 CHAIRMAN HONIGBERG: Commissioner  
12 Burack.

13 VICE CHAIRMAN BURACK: I guess I'm  
14 wondering whether the language as it reads here right now  
15 wouldn't provide for the opportunity for us to potentially  
16 accept a lesser number than 15, if the applicant were to  
17 communicate in advance with the administrator that, in  
18 fact, they were going to be filing this, and the  
19 administrator had an opportunity to confer with the  
20 agencies that would be involved and see whether -- find  
21 out whether they wanted a copy or not, and, in that way,  
22 might be able to agree to accept a smaller number. But,  
23 otherwise, it really, you know, we ought to just specify  
24 15, and leave it to the parties to work it out with the

1 administrator.

2 MR. IACOPINO: Another option would be  
3 to require the applicant to deliver a copy to each agency  
4 that it has identified with regulatory -- permitting or  
5 other regulatory authority, rather than delivering them  
6 all here, and leaving it up to the -- whoever accepting  
7 the incoming application to get it to the agencies. That  
8 might not be quite consistent with the statute, but --

9 CHAIRMAN HONIGBERG: Commissioner  
10 Bailey.

11 COMMISSIONER BAILEY: Attorney Iacopino,  
12 do I understand you to say that most of the agencies who  
13 the Committee has forwarded the applications to in the  
14 past prefer electronic?

15 MR. IACOPINO: I don't know if they  
16 prefer it. They have used the electronic, because we have  
17 sent out a communication to them saying "we'll send you  
18 the hard copy, if you want it, but it's in electronic form  
19 on our website." And, traditionally, we get one or two  
20 requests for the hard copy. For instance, the last  
21 application that we've gotten, just the Wetlands Bureau  
22 asked for a hard copy. And, it was the personal  
23 preference of the administrator of that division. So, I  
24 don't know if it's their preference, but it's what they

1 have done.

2 The other thing you have to remember is  
3 that, for some of these agencies, they have already seen  
4 the application for their particular agency, because  
5 there's been a ongoing dialogue with the applicant, in  
6 pre-filing meetings, as well as some of them file, for  
7 instance, a Wetlands application or an AOT application,  
8 even before they file with the Site Evaluation Committee.

9 COMMISSIONER BAILEY: Mr. Chairman?

10 CHAIRMAN HONIGBERG: Commissioner  
11 Bailey.

12 COMMISSIONER BAILEY: Perhaps we could  
13 change "the Committee shall also forward" -- or, "shall  
14 forward a copy to all the agencies", to say that "the  
15 Committee shall forward an electronic copy, unless  
16 otherwise requested", or something like that. In that  
17 way, the agency copies can be electronic, and we've  
18 complied with the statute.

19 MR. WIESNER: The statutory language,  
20 and this is in 162-H:7, IV, says "Upon the filing of an  
21 application, the Committee shall expeditiously forward a  
22 copy to the state agencies having permitting or other  
23 regulatory authority and to other state agencies  
24 identified in administrative rules." It seems to me that

1 "forwarding a copy" could take electronic form rather than  
2 just paper. And, in that case, it might be appropriate to  
3 have the applicant consult with the administrator or the  
4 chair in advance to determine the specific number of paper  
5 copies that should be delivered, and that might trigger a  
6 conversation with some of the agencies as to what their  
7 preference is.

8 CHAIRMAN HONIGBERG: So, then, we would  
9 put in here a number "or the amount directed by the  
10 administrator after consultation", or something like that?

11 Commissioner Burack.

12 VICE CHAIRMAN BURACK: Mr. Chairman, my  
13 recommendation would be we leave it at 15, unless some  
14 lesser number would be -- would be acceptable, based upon  
15 a consultation with the parties that would be expecting to  
16 receive or required to receive a copy, some formation to  
17 that effect. And, that really puts the onus on the  
18 applicant to make sure that they are having those  
19 communications with the administrator and with the agency,  
20 if they are seeking to try to lessen their burden.

21 CHAIRMAN HONIGBERG: All right. We can  
22 go with something like that.

23 MR. WIESNER: We can come up with some  
24 language that covers that concept.

1                   If we're ready to move on, the next  
2 change is in (b)(3). And, this is basically a  
3 cross-reference to the section that we'll see further on  
4 that Commissioner Bailey referenced, which is the list of,  
5 I counted six, but we'll count when we get there,  
6 additional state agencies that would receive a copy of the  
7 application, which here may be an electronic copy  
8 forwarded to them, if that's their preference.

9                   In 301.02, we've added language that  
10 makes it clear that it is the "paper version that must be  
11 prepared on standard eight and a half by 11 inch sheets,  
12 and plans folded to that size." It then says "Electronic  
13 versions of applications shall be submitted on compact  
14 discs or through electronic mail." Director Muzzey  
15 proposed that we change the word "electronic version" to  
16 "electronic copy". And, I think the concern was that we  
17 make it clear that the electronic version should be  
18 identical to the paper version. And, I think that's a  
19 comment worth considering.

20                   CHAIRMAN HONIGBERG: Commissioner  
21 Bailey.

22                   COMMISSIONER BAILEY: Compact discs?

23                   CHAIRMAN HONIGBERG: Yes. What about  
24 thumbs?

1                   COMMISSIONER BAILEY: Yes. I mean, I'm  
2 not even sure I have a PC that has a compact disc drive in  
3 it anymore. This one doesn't.

4                   VICE CHAIRMAN BURACK: Mr. Chairman, can  
5 I make a suggestion that we may want to just try to adopt  
6 some very broad language here "in an electronic format  
7 deemed acceptable by the administrator". There's a  
8 further issue that we're going to have to be very  
9 sensitive to here relating to cybersecurity on all of  
10 this. And, I suspect that we will have to adopt some very  
11 clear guidelines, in consultation with our Division of  
12 Information -- or, Department of Information Technology,  
13 to ensure that anything that does come to us in an  
14 electronic format has been clearly screened for any kind  
15 of viruses, malware, or anything else of that kind. So,  
16 we're going to -- we're going to need to have those kinds  
17 of assurances before people start taking stuff and  
18 plugging them into, in any format, into our state computer  
19 systems.

20                   And, I don't know how much of that has  
21 to be designated in rules and how much of that can  
22 effectively be the -- sort of the administrative policies  
23 determined appropriate or operating guidelines determined  
24 appropriate by our administrator.

1                   MR. WIESNER: I think my understanding  
2 is, you know, the technology changes very rapidly,  
3 obviously, and there are certainly cybersecurity concerns,  
4 as Commissioner Burack noted. I think it is fairly common  
5 these days to receive electronic versions of applications  
6 on compact disc, as well as perhaps electronically. But  
7 some of them may be of a volume that would not be  
8 efficient to submit through electronic mail means.

9                   So, I think it's a good suggestion to  
10 leave it more open-ended and refer to "other electronic  
11 formats as approved by the administrator", and have to  
12 come up with some standard that will pass muster with OLS.  
13 But I think it's worth doing that, so we're not hard  
14 wiring, if you will, the current technology to the  
15 exclusion of future changes.

16                   CHAIRMAN HONIGBERG: It might be worth  
17 running that by DOIT, in terms of the language. It seems  
18 like a phrase like "appropriate storage media" or  
19 something like that is -- it might capture the current  
20 technology, and whatever the next generation is that we  
21 haven't seen yet.

22                   MR. WIESNER: And, just to backtrack a  
23 little bit to Director Muzzey's proposal, that we change  
24 "electronic versions" to "electronic copies"?

1 CHAIRMAN HONIGBERG: Works for me.

2 MR. WIESNER: I'll make that change as  
3 well.

4 COMMISSIONER BAILEY: Mr. Chairman?

5 CHAIRMAN HONIGBERG: Commissioner  
6 Bailey.

7 COMMISSIONER BAILEY: Should we also  
8 change "paper versions" to "paper copies" for the same  
9 reason?

10 CHAIRMAN HONIGBERG: Why not.

11 COMMISSIONER BAILEY: Thank you.

12 MR. WIESNER: If we're ready to move  
13 ahead, on Page 3, and this is in the general application  
14 requirements, the first change is in subparagraph (b)(7),  
15 and I believe we talked about this on Tuesday. This is  
16 the language that refers to the relationship, the  
17 ownership relationship, if you will, between the applicant  
18 and the proposed facility. And, the Committee approved a  
19 change, I believe proposed by the Various Energy  
20 Companies, where the language would read "Whether the  
21 applicant is or will be the owner or lessee of the  
22 facility or has or will have some other legal or business  
23 relationship to it, and including a description of that  
24 relationship."

1                   Moving down the page, to (c)(3), this is  
2                   the requirement that "the location shown on a map" be  
3                   included in the application "depicting property lines",  
4                   various types of buildings and structures, and it's now  
5                   going to say "within the site, on property abutting the  
6                   site, or within 100 feet of the site", essentially, the  
7                   greater of that distance. Essentially, the same language  
8                   is also picked up in (4) and in (5). And, in (5), we are  
9                   also adding, in addition to "Identification of natural  
10                  resources", also "historic" and "cultural resources".

11                  VICE CHAIRMAN BURACK: Mr. Chairman?

12                  CHAIRMAN HONIGBERG: Commissioner  
13                  Burack.

14                  VICE CHAIRMAN BURACK: Thank you. We  
15                  discussed whether or not we want to formally adopt a  
16                  definition of "abut" or "abutter" or "abutting". I don't  
17                  see that we've done that in the definitions here yet. I'm  
18                  wondering whether that's something that we should do,  
19                  whether we should adopt that other statutory definition  
20                  out of I believe it was RSA 672? Do you have any  
21                  recommendation for us on that, Attorney Wiesner?

22                  MR. WIESNER: I think the substance of  
23                  that would be to make it clear that "abutting" can include  
24                  the property across the street, or on the other side of

1 the -- the fact, for example, that there's a stream or a  
2 road would not prevent the property on the other side of  
3 that stream or road from being considered "abutting".  
4 And, that probably is a good suggestion. I did not  
5 include that in this draft, but we certainly can do that.

6 And, I don't -- I'm trying to remember,  
7 did we decide that we needed a definition of "host"?  
8 Because, certainly, if we are going to define "host", we  
9 should probably define "abutting", although we probably  
10 should define "abutting" either way.

11 CHAIRMAN HONIGBERG: Commissioner  
12 Bailey.

13 COMMISSIONER BAILEY: I think we -- I  
14 let go of the definition of "host" when we went to "host  
15 municipality". And, my recollection of the discussion  
16 from the other day, and I might be wrong, is that we  
17 decided that we didn't need to include a definition of  
18 "abutting" because we added the "100 feet". So, if we  
19 have it "within the site, abutting, or within 100 feet",  
20 that we should capture everything that we were looking  
21 for. I'm not wedded to that, but that's my memory of the  
22 conversation, why you didn't add a definition of  
23 "abutting".

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: Mr. Chairman,  
3 thank you. I think I can concur with Commissioner Bailey  
4 on the issue of whether we need it, and then perhaps we  
5 don't need a definition of "host municipality", as long as  
6 we have a term that is clearly a statutory term that's  
7 consistent with whether it's "host municipality or  
8 unincorporated place", whatever formulation we end up with  
9 there.

10 With respect to "abutting", I would  
11 offer a different view. This is a term that I think can  
12 be very confusing and unclear to many people, particularly  
13 non-attorneys, members of the public, folks who would  
14 raise issues or concerns precisely of the type that  
15 Attorney Wiesner has identified. And, I don't think  
16 that -- I think we only help all the parties, and  
17 ourselves included, if we just include a simple reference  
18 in our definitions to the existing statutory definition,  
19 and I think that would provide helpful clarity for the  
20 long term for everybody.

21 CHAIRMAN HONIGBERG: What we're going to  
22 do right now is we're going to take a brief ten-minute  
23 break. During the break, we're going to look for that  
24 definition of "abut" or "abutter" or "abutting" in the

1 state statute. And, we will return in about ten minutes.

2 *(Recess taken at 1:32 p.m. and the*  
3 *meeting reconvened at 1:53 p.m.)*

4 CHAIRMAN HONIGBERG: So, what have we  
5 come up with regarding "abutter"?

6 MR. WIESNER: There's a statutory  
7 definition in RSA 672:3 of the term "abutter". This is in  
8 the context of planning and zoning. But I believe that  
9 this -- that the types of properties that are considered  
10 to be "abutting" is covered by the definition of  
11 "abutter", which, and I'll just read from the statutory  
12 language: "Any person whose property is located in New  
13 Hampshire and adjoins or is directly across the street or  
14 stream from the land under consideration by the local land  
15 use board." And, I think we can come up with a definition  
16 of "abutting property" that captures the concept that it's  
17 not just the property that's immediately contiguous to the  
18 facility site, but also property that's directly across  
19 the street or stream.

20 Now, there's a definition of "street", I  
21 believe, in RSA 672, and we may want to try to capture  
22 some of those concepts as well. I'm not sure that  
23 "stream" is defined in that section, in that section of  
24 the statutes, but we may be able to find another

1 definition or expand that definition. I would not want to  
2 get into a situation where we have to argue about what's a  
3 "stream" or a "brook" or a "river".

4 CHAIRMAN HONIGBERG: Or a "run" or a  
5 "rill" or a "crick" or any number of other things.

6 MR. WIESNER: Yes. And, I suspect that  
7 there may be a statutory definition of the word "stream"  
8 somewhere in the RSAs, that's unfortunately not in this  
9 one, even though use the term.

10 CHAIRMAN HONIGBERG: Commissioner  
11 Burack.

12 VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
13 sorry, things are never as simple as we'd like them to be,  
14 right? It does appear that we will need to craft our own  
15 definition of "abutting property" for purposes of our  
16 statute that probably does pull some provisions out of  
17 672:3. I understand that there may be definitions of  
18 either "abutter" or "abutting property" in various of the  
19 environmental statutes as well. We may want to look at  
20 those to see if there are -- if there's any useful  
21 language in one of those places.

22 I would also just offer the observation  
23 that things like railroad rights-of-way and items of that  
24 kind can also be an issue or a concern, as to whether or

1 not a property on the other side of one of those would  
2 constitute an "abutting property". I would think we would  
3 want to treat them as such.

4 And, so, I'm not sure that we can -- we  
5 can divine a definition at this very moment. I think this  
6 is going to take a little more work, a little more  
7 research, to make sure that we've really covered the --  
8 covered the options. But my preference would be for us to  
9 agree in concept today on a definition that we will ask to  
10 have drafted, put into this draft, and then seek public  
11 comment on it, rather than simply go without any  
12 definition at this point and seek public comment and try  
13 to address this in the final version only.

14 CHAIRMAN HONIGBERG: That's fine. I'm  
15 inclined to try to adapt the 672:3 definition and make  
16 that work. So, that's what we'll try and do and get it  
17 into this draft. Does that make sense to everybody?

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

20 CHAIRMAN HONIGBERG: Okay. Let's move  
21 on.

22 MR. WIESNER: And, we may want to think  
23 about the scope of that. For example, if there's a  
24 two-lane town road between you and your abutter, that's

1 one thing. If it's on the other side of 93, where it's a  
2 six-lane highway, maybe that's a different analysis. But  
3 we can certainly come up with a definition that can serve  
4 as, you know, if you will, a placeholder, for purposes of  
5 the Draft Final Proposal.

6 CHAIRMAN HONIGBERG: Uh-huh.

7 VICE CHAIRMAN BURACK: Thank you.

8 MR. WIESNER: And, I believe we left off  
9 then, this is again on Page 3 of the second document. So,  
10 we're in the 300 rules. And, these are the general  
11 application requirements, Subparagraph (c)(6). And, we  
12 had quite a bit of discussion with this in one of our  
13 earlier meetings about, basically, this is the concept of  
14 "site control", and what the applicant has to show in  
15 terms of its control of the relevant site. And, this is  
16 the language that we came up with: It's "a current right,  
17 or an option or other legal right to acquire the right, to  
18 construct the facility on, over, or under the site", and  
19 that may take "the form of ownership, ground lease,  
20 easement, or other contractual rights or interests,  
21 written license, or permission from a federal, state, or  
22 local government agency, or through the simultaneous  
23 taking of other federal or state action that would provide  
24 the applicant with a right of eminent domain to acquire

1 control of the site for the purpose of constructing the  
2 facility thereon." And, the last -- the last clause is  
3 essentially the Nixon Peabody comment, which I think is  
4 intended to cover a situation where there's a federal  
5 siting process, such as the FERC Interstate Gas Pipeline  
6 Certification process, that would afford the certificate  
7 holder to exercise eminent domain, if it's granted, to  
8 acquire relevant property interests.

9 VICE CHAIRMAN BURACK: Mr. Chairman?

10 CHAIRMAN HONIGBERG: Commissioner  
11 Burack.

12 VICE CHAIRMAN BURACK: Thank you. I  
13 think this redraft is very helpful. I think it's going to  
14 provide a lot more clarity as to what is intended by this  
15 language. And, it will be very helpful, I think, and  
16 instructive to see what comments we might receive on this.

17 One question I have is in the last  
18 clause, that refers to the "simultaneous taking of other  
19 federal or state action", again, that would, effectively,  
20 "would provide applicant with a right of eminent domain".  
21 My question is, is there any authority vested in  
22 municipalities in New Hampshire to be able to exercise a  
23 power of eminent domain? And, if so, should that also be  
24 referenced here, just as we make reference to "federal,

1 state, or local government agency", in the prior clause  
2 relating to a "permission"?

3 CHAIRMAN HONIGBERG: I'm not a municipal  
4 lawyer, but my understanding is that towns and cities do  
5 have eminent domain rights. School districts, which are  
6 also municipalities, do not. But, yes, cities and towns  
7 do have eminent domain powers. That was the first part of  
8 your question.

9 VICE CHAIRMAN BURACK: Right. And, I  
10 guess my suggestion would be that, if, in fact, such  
11 powers do exist under state law in municipalities, that we  
12 revise that last clause to include "federal, state, or  
13 local government action".

14 CHAIRMAN HONIGBERG: So, in the third  
15 line from the bottom, near the end, where it says "taking  
16 of other federal or state action", you would say "taking  
17 of other federal, state, or local government action"?

18 VICE CHAIRMAN BURACK: That's correct.  
19 Again, I'm envisioning, for example, or one could imagine  
20 a situation in which a municipality determines that it  
21 wishes to build, for example, a large district heating  
22 system or something -- something of that kind, that's a  
23 combined heat and power type facility. The way this is  
24 worded, it would not -- it would make that more difficult

1 in those circumstances. So, I'm just trying to  
2 contemplate those kinds of circumstances.

3 MS. WEATHERSBY: Mr. Chairman? I'm not  
4 even sure that that phrase is necessary in there. I think  
5 we could strike it such so that it reads "or through the  
6 simultaneous taking of other actions that provide the  
7 applicant with a right of eminent domain". It doesn't  
8 really matter how they get there, they just have to  
9 acquire that right through a legal process.

10 CHAIRMAN HONIGBERG: That makes sense to  
11 me.

12 VICE CHAIRMAN BURACK: I would agree.

13 MR. WIESNER: If we're ready to move on  
14 to Subparagraph (c)(7), this is on Page 4. And, this is  
15 the concept that the applicant must also demonstrate that  
16 it "has a current or conditional right of access to the  
17 site", in order to permit the Committee to conduct a site  
18 visit, and also to perform the required pre-construction  
19 studies or monitoring on the site that would inform the  
20 studies included with its application.

21 And, unless there is any comment on that  
22 language, I would move onto Subparagraph (c)(8). This is  
23 responsive to comments that were received and a pretty  
24 extensive discussion that we had at one of our earlier

1 meetings about "participating landowners", and how they  
2 would be treated through the application process. And, I  
3 believe the Committee approved a change to the rules that  
4 requires the applicant to identify participating  
5 landowners, and to describe the properties owned by those  
6 landowners in connection with its application.

7 CHAIRMAN HONIGBERG: Commissioner Scott.

8 COMMISSIONER SCOTT: I could read this,  
9 I don't -- obviously, it's not meant, "the description of  
10 the properties owned by such participating landowners", if  
11 they own multiple properties, but the other properties are  
12 not related to this project, I assume we're not requiring  
13 them -- it's not our intent to identify the other  
14 properties, it's just those associated with the project,  
15 correct?

16 MR. WIESNER: That is correct. And, it  
17 probably should be clarified.

18 COMMISSIONER SCOTT: So, maybe "a  
19 description of the related properties owned by", or  
20 something to that effect?

21 VICE CHAIRMAN BURACK: Maybe "affected".

22 CHAIRMAN HONIGBERG: "Relevant".

23 MR. WIESNER: I think one of those  
24 should -- we will include a qualifier along those lines.

1                   CHAIRMAN HONIGBERG: As we move on,  
2 Mr. Wiesner, I know that the next change isn't till the  
3 next page, but there's a question about Subsection (e),  
4 which is lower down on Page 4. And, it uses -- there's a  
5 phrase in there "energy transmission pipeline", which is  
6 an odd phrase and an awkward phrase. And, I know -- we  
7 know it's in the statute, and I even remember some  
8 discussion about this in relationship to SB 245 a year  
9 ago. But -- it's used in a couple of other places in the  
10 rules. But what exactly is an "energy transmission  
11 pipeline"? Because energy generally doesn't travel  
12 through pipelines, it travels along wires and things. Oil  
13 and gas travel through pipelines. There may be conduits  
14 that look like pipelines through which cables travel, but  
15 I'm not sure that's what that's a reference to.

16                   MR. WIESNER: And, this phrase does  
17 appear in the definition of "energy facility", however  
18 there's other broad language that you would probably read  
19 to include gas pipelines or oil pipelines.

20                   CHAIRMAN HONIGBERG: So, I think there's  
21 little question that an energy facility -- the definition  
22 of "energy facility", which is earlier in the document,  
23 clearly applies and covers gas pipelines, oil pipelines,  
24 *etcetera*. But this phrase is an odd one. And, I don't

1 know what significance it has.

2 MR. WIESNER: I mean, it seems that the  
3 intent is to cover those types of pipelines. And, we  
4 probably should use a different phrase here, and perhaps  
5 even define that phrase. And, as long as we're not  
6 departing from the coverage of the statutory definition of  
7 "energy facility" over which the Committee has  
8 jurisdiction, that would seem to be an appropriate change  
9 to consider. Perhaps "fuel transportation pipeline" or  
10 something along those lines.

11 CHAIRMAN HONIGBERG: If we say "oil or  
12 gas pipeline", is that too specific? Commissioner Burack.

13 VICE CHAIRMAN BURACK: Mr. Chairman,  
14 this won't give us a definitive answer at this moment, but  
15 it may be worthwhile looking at the federal statute, such  
16 as the jurisdiction of the -- of PHMSA, the pipeline  
17 safety agency at the federal level and seeing what  
18 definition they use, and perhaps adopting something that  
19 is fairly compatible with that definition.

20 MR. WIESNER: We'll look at that.

21 CHAIRMAN HONIGBERG: So, we'll try to  
22 clean up the definitions and phrasing there, so that it's  
23 clear that, yes, I mean, I don't think there's any  
24 question that oil and gas pipelines are covered under

1 "energy facilities". It's just a matter what this  
2 reference, and another reference I think in -- later in  
3 the document, 301.18, what they're really supposed to be  
4 referring to.

5 MR. WIESNER: And, the next black line  
6 change appears on Page 5. And, this is the list -- this  
7 is a further list of information that needs to be included  
8 with an application regarding electric generation  
9 facilities, and a new Subparagraph (5), (f)(5) appears  
10 here, which is a "Copy of the system impact study report  
11 for interconnection of the facility prepared by or on  
12 behalf of ISO-New England or the interconnecting utility,  
13 if that study is available at the time of the  
14 application." Which it may not be, depending on where the  
15 project is in the status of interconnection studies under  
16 the ISO process, which is separate.

17 And, moving down to Subparagraph (7),  
18 this is a -- this calls for a "Description of the  
19 anticipated mode and frequency of operation of the  
20 facility." And, I believe this is responsible --  
21 responsive, excuse me, to a public comment that was  
22 submitted with respect to more detail about how plants  
23 would operate, how frequently they would operate, what  
24 their capacity factor would be, what hours they may

1 operate. And, I believe that that would be captured by  
2 this somewhat general reference.

3 If we're ready to move on, just below  
4 appears Subparagraph (g)(2), we talked about this the  
5 other day. This is the "map that would be submitted for a  
6 transmission line project, including the height and  
7 location of each pole or our tower and the distance  
8 between each pole or tower".

9 Also, in connection with transmission  
10 projects, down in what is now Subparagraph (g)(11) and  
11 (g)(12), the application would have to include a "Copy of  
12 the Proposed Plan Application" that was submitted to the  
13 ISO, if that is required, as well as, again, the "system  
14 impact study report for the proposed transmission project  
15 as prepared by or on behalf of the ISO or the utility, if  
16 it's available at the time of the application."

17 CHAIRMAN HONIGBERG: Commissioner Scott.

18 COMMISSIONER SCOTT: Thank you.

19 "Proposed Plan Application", and it's capitalized here.

20 Is that understood what that is?

21 MR. WIESNER: That has meaning in the  
22 ISO interconnection process, and it might be appropriate  
23 here to include a cross-reference to that, which is  
24 effectively an incorporation by reference of another set

1 of rules that is adopted by the ISO, but filed as part of  
2 its FERC jurisdictional tariff.

3 CHAIRMAN HONIGBERG: I think that would  
4 be wise. I'm pretty sure that the Legislative Services'  
5 lawyers will want to know what that is.

6 Ms. Weathersby.

7 MS. WEATHERSBY: I seem to recall --  
8 there we go. I seem to recall as well that we were  
9 requesting that they provide on the map substation and  
10 compressor station information, and I don't see that here.  
11 So, you might want to add it to number (2).

12 CHAIRMAN HONIGBERG: Well, at least in  
13 Subsection (g), we're not talking about something that  
14 would have compressors, because that's for transmission  
15 lines. It's in the electricity section.

16 VICE CHAIRMAN BURACK: And, Mr.  
17 Chairman, if I may just inquire, and perhaps Attorney  
18 Iacopino can shed some further light on this. Would we  
19 expect to see substations actually directly on a  
20 transmission line or are those typically done as separate  
21 projects? Or, would you expect, based on this  
22 description, that, if there were some kind of substation  
23 or other equipment associated with this, that we would --  
24 that would be included here?

1                   CHAIRMAN HONIGBERG: Just before you  
2 answer that question, there's a difference between a  
3 "substation" and a "compressor station". So, if the  
4 question is about "compressor stations", we can answer  
5 that. And, if there's a separate question about  
6 "substations", we can answer that as well. So, --

7                   MR. IACOPINO: With respect to  
8 transmission lines, I probably would expect to see if  
9 there are any substations associated with the line to see  
10 them on the map.

11                  CHAIRMAN HONIGBERG: Commissioner Scott.

12                  COMMISSIONER SCOTT: I can give an  
13 example. If you're talking about a line that's going to  
14 bring a DC line into the state, and if it's converted,  
15 there's a converter station there.

16                  MR. IACOPINO: Right. Now, did you want  
17 to talk about "compressor stations", because this is just  
18 about electric transmission lines?

19                  CHAIRMAN HONIGBERG: Let's run this one  
20 to ground regarding electric, --

21                  MR. IACOPINO: Okay.

22                  CHAIRMAN HONIGBERG: -- on this section.  
23 And, then, we'll see which sections would apply to  
24 pipelines that would have compressor stations. So, let's

1 deal with this first.

2           Should this Subsection (g), in the map  
3 showing the entire transmission line project, including  
4 some things, have in that "including" line any other  
5 things that are going to be built as part of the project?  
6 Understanding that I think one would expect them to do it  
7 anyway, but should it be directed in the rules?

8           MR. IACOPINO: I think that any  
9 substations along the route should be included, as well  
10 as -- I mean, now, I'm not saying that they need to  
11 include all of the, you know, various components and the,  
12 you know, the diagrams for the electrical interface and  
13 everything within the components of the substation. But  
14 there should be, if there's going to be a substation, you  
15 know, or a --

16           CHAIRMAN HONIGBERG: We're talking about  
17 a map that would show the project.

18           MR. IACOPINO: Right.

19           CHAIRMAN HONIGBERG: The map should  
20 say --

21           MR. IACOPINO: Just imagine a little  
22 square substation.

23           CHAIRMAN HONIGBERG: Yes. I agree with  
24 that.

1                   MR. IACOPINO: Or a switchyard, a  
2 switchyard is another thing that you might see, that you  
3 would want, I would think, as regulators, you would want  
4 to see on your map; substations, switchyards, any type of  
5 ancillary -- any type of facility that's ancillary to the  
6 transmission line itself.

7                   CHAIRMAN HONIGBERG: Let's put in a  
8 phrase like that in that section.

9                   MR. WIESNER: Again, where -- in  
10 Subparagraph (g)(2), where we're referring to the "map",  
11 that's where we would include it?

12                   CHAIRMAN HONIGBERG: That is what we are  
13 talking about, yes.

14                   MR. WIESNER: And, we actually don't  
15 have a section yet -- have a separate section for  
16 pipelines.

17                   CHAIRMAN HONIGBERG: But they are energy  
18 facilities.

19                   MR. WIESNER: Yes.

20                   CHAIRMAN HONIGBERG: They would be  
21 covered by this statute and covered by this set of rules.  
22 So, understanding that we have a separate statute that  
23 just passed, it just became effective, that direct us to  
24 do gas pipeline regulations, we have these rules that

1 would apply to any gas pipeline that would be within our  
2 jurisdiction. What section would that be? And, where  
3 would we pick that up?

4 MR. WIESNER: I think in the current  
5 rules, and in these amendments, there's not a specific  
6 section that covers -- wait a minute. We were just  
7 talking about "energy transmission pipeline" in (e), I  
8 guess that's where it would go.

9 CHAIRMAN HONIGBERG: No. That actually  
10 applies to if the application is for an energy facility  
11 that is not one of these things. So, there's the --

12 MR. WIESNER: Not one of those, okay.

13 CHAIRMAN HONIGBERG: So, there's the  
14 general requirements of (b), which applies to -- (a) and  
15 (b), which apply to each application, (c), which applies  
16 to each application. I mean, I -- it looks like (c) would  
17 apply, and (d) would apply, (e) would not, (f) would not,  
18 (g) would not, --

19 MR. WIESNER: And (h) is the catch-all.

20 CHAIRMAN HONIGBERG: -- and (h) would.

21 MR. WIESNER: Although, (h) is really  
22 general requirements, and doesn't call for any submission  
23 of a map or plans, as I'm reading it quickly.

24 CHAIRMAN HONIGBERG: So, it seems what

1 we need, in one of the sections that applies to all, is a  
2 map that shows where the facility would be, just like the  
3 map that goes with (g) for transmission lines.

4 MR. WIESNER: And, I would think --

5 (Court reporter interruption.)

6 MR. WIESNER: I was going to say, we may  
7 want to make it clear that, if you submitted a map under  
8 one of the prior specific sections, that that map would  
9 suffice for this requirement?

10 CHAIRMAN HONIGBERG: Yes. I think we  
11 had a discussion about that last time. I think some  
12 applicants would choose to submit a map in each location,  
13 some applicants would say, under -- when you're in Section  
14 (q), you'd say "see the map under Section (m)."

15 MR. WIESNER: So, if you had to  
16 submit -- I guess what I'm getting at is, under (h), would  
17 apply to any energy facility, --

18 CHAIRMAN HONIGBERG: Uh-huh.

19 MR. WIESNER: -- including those that we  
20 have specific provisions for above. If you submitted a  
21 map there, you don't have to resubmit a map under (h).  
22 The map requirement under (h) would be to catch those that  
23 had not previously been required to submit a map.

24 CHAIRMAN HONIGBERG: That would be my

1 assumption. Anybody have any other or further thoughts on  
2 this?

3 COMMISSIONER SCOTT: I do.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: I'm wondering, in  
6 that general provision, just as we just discussed for  
7 electric transmission lines, any -- the maps seem to  
8 include any ancillary structures or facilities, I think we  
9 could make that generic enough that any map submission,  
10 so, whether it's pipelines or, you know, electric  
11 generation facility, we would want to see all the  
12 associated structures and facilities as part of that. So,  
13 I think we could have that as a catchall. Excuse me.

14 CHAIRMAN HONIGBERG: Commissioner  
15 Burack.

16 VICE CHAIRMAN BURACK: Mr. Chairman,  
17 thank you. I think what we need to recognize is that  
18 these facilities could be either underground or, in the  
19 case of pipelines, or perhaps more, in some instances,  
20 with respect to transmission line projects. And, so, I  
21 would just want to be clear that my expectation would be  
22 that the term "ancillary facility" would refer to, in the  
23 case of a transmission line, would include showing us  
24 where the transmission line is, if they haven't already

1 included that on the plan, as well as any aboveground  
2 facilities, equipment, whatever it might be, associated  
3 with those underground lines. I don't know whether there  
4 are periodic access points, for example, or other things  
5 like that, as I believe there would be for gas pipelines.

6 But just I would expect that anything of  
7 that kind would be covered by the term "ancillary  
8 facility".

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: I may have  
11 misunderstood you. I don't think I would want to  
12 differentiate between aboveground and belowground, if  
13 that's what you're suggesting. I was -- to me, we should  
14 be -- basically be submitted regardless of where their  
15 location is, as part of the facility that we get to see on  
16 the map.

17 VICE CHAIRMAN BURACK: I'm concurring.  
18 I think we were just approaching it differently. But I  
19 see it the same way as you do.

20 CHAIRMAN HONIGBERG: Circling back to  
21 question that started this had to do with "compressor  
22 stations". In whatever we would put in the general  
23 catchall provision that would apply to gas pipelines, we  
24 would expect to see wherever they plan on putting their

1 compressor stations, correct?

2 I see you nodding your head. That's a  
3 good thing.

4 MR. WIESNER: So, specifically call that  
5 out or make sure that whatever terminology we use is broad  
6 enough to cover it?

7 CHAIRMAN HONIGBERG: I would say, and to  
8 the extent you're building a pipeline, show us whatever  
9 compressor stations are going to be included.

10 MR. IACOPINO: Wouldn't that already be  
11 included in Section (c)(3)?

12 CHAIRMAN HONIGBERG: Boy, I hope so.  
13 Maybe we already had it covered.

14 MR. IACOPINO: Where it says "The  
15 location" --

16 (Court reporter interruption.)

17 MR. IACOPINO: I'm sorry. Where it says  
18 "The location, shown on a map, of property lines,  
19 residences, industrial buildings, and other structures and  
20 improvements within the site, on property abutting the  
21 site, or within 100 feet of the site." And, that applies  
22 to every application, is my understanding.

23 MR. WIESNER: I had read that to be  
24 what's on the ground now.

1 CHAIRMAN HONIGBERG: Uh-huh.

2 MR. WIESNER: Not what you're planning  
3 to build.

4 CHAIRMAN HONIGBERG: That's how I read  
5 that as well.

6 MR. WIESNER: So, it wouldn't cover the  
7 types of things that we're seeking to cover, which are  
8 part of the proposed project itself.

9 MR. IACOPINO: Okay.

10 MR. WIESNER: At the very least, it's  
11 ambiguous.

12 CHAIRMAN HONIGBERG: And, I think, as we  
13 discussed last time we were here, that Section (c) is, in  
14 large measure, about the property, it's not about the  
15 project. It's about the property and what's around it.  
16 (e), (f) and (g) are really describing your project, and  
17 maybe (h) as well.

18 MR. WIESNER: And, what is missing --

19 CHAIRMAN HONIGBERG: Yes, and (h) as  
20 well.

21 MR. WIESNER: And, I was going to say,  
22 what is missing here, and what will be added through the  
23 next rulemaking, will be a specific section for pipeline  
24 applications. But, for the present purposes, it would

1 seem appropriate to include catch-all language for  
2 ancillary facilities that would apply to pipelines, as  
3 well as other types of energy facilities, that are not  
4 specifically referenced in (e), (f) or (g).

5 CHAIRMAN HONIGBERG: I think that's  
6 correct.

7 MR. WIESNER: I am now on Page 6. This  
8 is Subparagraph (h)(2), and this is the reference to "the  
9 applicant's preferred choice and other alternatives it  
10 considers available for the site and configuration of each  
11 major part of the proposed facility and the reasons for  
12 the preferred choice." We discussed this the other day,  
13 and decided that this language is probably closer to what  
14 appears in the statute, and the Committee approved these  
15 specific changes that I believe were proposed by the  
16 Various Energy Companies.

17 CHAIRMAN HONIGBERG: Go ahead.

18 MR. WIESNER: Moving down the page  
19 to (6), this is where we are requiring the applicant to  
20 provide "information regarding the cumulative impacts of  
21 the facility on natural", and I've also added here  
22 "wildlife, habitat", because those did not appear in the  
23 prior version of cumulative impacts that only apply to  
24 wind projects, here the specific application requirements

1 for all projects, that they address cumulative impacts, as  
2 the Committee directed, "on natural, scenic, recreational,  
3 historic, and cultural resources", and now also "wildlife"  
4 and "habitat resources".

5 And, then, below, in Subparagraph (7),  
6 this is the "public interest" standard, and "information  
7 describing how the facility will be consistent with" that  
8 standard. We now have a cross-reference to the specific  
9 criteria for a public interest finding, which are set  
10 forth in the new Section 301.17.

11 VICE CHAIRMAN BURACK: Mr. Chairman?

12 CHAIRMAN HONIGBERG: Commissioner  
13 Burack.

14 VICE CHAIRMAN BURACK: Just looking back  
15 at (6) here, and, again, just trying to make sure I  
16 understand this correctly. What you're saying here is  
17 that the term "resources" in the second line modifies  
18 everything, "natural, wildlife, habitat, scenic,  
19 recreational, historic, and cultural", is that correct?

20 MR. WIESNER: Yes.

21 VICE CHAIRMAN BURACK: Okay. And, then,  
22 there's the phrase "including with respect to aesthetics".  
23 Should there be a comma after "aesthetics"? Because that  
24 is a further modifier on all of those earlier aspects, is

1 it not? Or, is there some word missing here? It just --  
2 it reads awkward to me -- it would read very awkwardly, I  
3 think, without a comma after "aesthetics".

4 CHAIRMAN HONIGBERG: I would put the  
5 comma in.

6 MR. WIESNER: Yes. I think that makes  
7 sense. I mean, scenic resources are also to be a subject  
8 of the cumulative impacts analysis. But this is  
9 essentially saying, with respect to aesthetic impacts, you  
10 need to take into account "combined observation,  
11 successive, and sequential observation by the viewer".  
12 So, there's at least one comma missing there, maybe two,  
13 and we'll make that change.

14 Moving down the page to 301.04 (a)(3),  
15 this is again a change we discussed the other day. This  
16 is the inclusion of information regarding "the applicant's  
17 financing plan for the proposed facility, including the  
18 amount and source of funds required for the construction  
19 and operation of the facility." And, this change was made  
20 in response to a comment submitted by citizens that was  
21 looking for more information about the amount of money  
22 that would be spent on a project and the source of those  
23 funds. And, that ties into Subparagraph (a)(4) below,  
24 which then requires a comparison of the applicant's

1 financing plan with those used by similar energy  
2 facilities. And, the qualifying language makes it clear  
3 that the comparison should be with "facilities that are  
4 similar in size and type".

5 I would now jump ahead to Page 7. This  
6 is Section 301.05, which is the "Effects on Aesthetics".  
7 There seemed to be some redundancy in the preparatory  
8 language, and that which also appeared in Subparagraph  
9 (a). And, in response to an OLS comment, I basically  
10 combined the language, and hopefully didn't lose anything  
11 in the process. Such that Subparagraph (a) is basically  
12 spelling out the requirement that a visual impact  
13 assessment be submitted with the application, and that  
14 that assessment would also identify "plans for avoiding,  
15 minimizing, or mitigating", and we now have "potential  
16 adverse effects", as opposed to "unreasonable adverse  
17 effects", because, again, that's a language change. I  
18 mean, the entire -- the entire sentence is shown here --  
19 this entire clause is shown as black lined. But this also  
20 incorporates the change that we approved the other day, to  
21 go from "unreasonable adverse effects" to "potential  
22 adverse effects", as identified in the application and the  
23 related studies.

24 Moving down to (b)(3), where there was a

1 reference to "cultural features", that now also includes  
2 "historic and cultural features".

3 VICE CHAIRMAN BURACK: Mr. Chairman?

4 CHAIRMAN HONIGBERG: Commissioner  
5 Burack.

6 VICE CHAIRMAN BURACK: Again, I'm not  
7 trying to play grammarian here, but I'm just wondering, if  
8 we're adding "historic", and maybe that needs to be  
9 "historical", should we be deleting the phrase or at least  
10 the word "both", that it should just read "of the  
11 physiographic, historical and cultural features"?

12 CHAIRMAN HONIGBERG: Probably.

13 MR. WIESNER: And, we then reach  
14 Subparagraph (4), which is where the distance -- the  
15 geographic scope of the visual impact analysis area, the  
16 area of potential visual impact is specified for different  
17 types of facilities. And, there's been some editorial  
18 changes here to break out these various subsections. That  
19 was an OLS comment, and I think it does make for easier  
20 reading, and some related language changes, which I think  
21 also help to clarify what we're talking about here. A  
22 radius of a specific distance regarding the proposed  
23 facility.

24 And, then, we have kept the mile

1 limitations for transmission lines, but we have attempted  
2 to incorporate definitions that are used by the Census  
3 Bureau. And, so, in (b), for example, we see "urbanized  
4 area", and in (c) we see "urban cluster", and "rural area"  
5 in (d) and (e). And, then, those three terms, "urban" --  
6 and this is in (f), "urbanized area", "urban cluster", and  
7 "rural area" are based on the Census Bureau definitions.

8 And, I suspect that we may need to  
9 provide a little bit more detail. Although,  
10 unfortunately, these definitions don't appear in Census  
11 Bureau rules. So, I'm going to have to find the  
12 appropriate way to cite them, but --

13 COMMISSIONER BAILEY: Mr. Chairman?

14 CHAIRMAN HONIGBERG: Commissioner  
15 Bailey.

16 COMMISSIONER BAILEY: Is Paragraph (f)  
17 there -- well, hold on. I had a hard time reading that.  
18 So, it says "A computer-based", if you go back to (4), "A  
19 computer-based visibility analysis to determine the area  
20 of potential visual impact, which for proposed: Electric  
21 transmission lines longer than a mile", I guess it makes  
22 sense. Sorry. I thought that was in (f) going the other  
23 way.

24 CHAIRMAN HONIGBERG: So, is that a

1 "never mind" comment?

2 COMMISSIONER BAILEY: Never mind.

3 CHAIRMAN HONIGBERG: All right.

4 Commissioner Burack.

5 VICE CHAIRMAN BURACK: Just a question.

6 And, that is, would we be better off to include this  
7 language actually in the definition section, rather than  
8 trying to put it in here? And, should there be separate  
9 definitions of "urbanized area", "urban cluster", and  
10 "rural area" actually in our definitions in the 100  
11 portion of the rules?

12 MR. WIESNER: I'll take another look at  
13 that. The terms as they're used do not necessarily have  
14 as crisp definitions as we might like for inclusion of the  
15 specific language. I suppose we could do a  
16 cross-reference, but, as I said, these don't appear in  
17 their rules. And, this is the only section in which  
18 they're used. So, I think we can probably just use the  
19 terms here, and not include it in the "Definition"  
20 section. But -- so that, I mean, one issue is "where do  
21 we put the definitions?" And, the second issue would be  
22 "how much detail do we include of those definitions in the  
23 rules at all?"

24 CHAIRMAN HONIGBERG: I guess I want to

1 ask a question about the statement that "the definitions  
2 don't appear in their rules". So, is the way that we know  
3 whether something is an "urbanized area" or an "urban  
4 cluster" is we look at a Census map, and it shows what  
5 they have deemed are "urbanized areas" and "urban  
6 clusters"?

7 MR. WIESNER: I don't recall what it's  
8 called off the top of my head. It's a guideline,  
9 handbook, directive, it's something along those lines.  
10 It's not necessarily rules, but it is a formal  
11 publication.

12 CHAIRMAN HONIGBERG: And, it can take  
13 definitions of these phrases or what?

14 MR. WIESNER: Yes. So, a question would  
15 be, do we want to pick up all that language and  
16 incorporate it here, to the extent it's possible to do so,  
17 or just handle it through a cross-reference, assuming that  
18 we can properly cross-reference the source of those  
19 definitions?

20 CHAIRMAN HONIGBERG: In those  
21 circumstances, my preference generally is to  
22 cross-reference. So that, if we're trying to use someone  
23 else's definition, if that definition changes, we are not  
24 behind. We're not having to amend rules to catch up with

1 definitions that we are trying to follow.

2 MR. WIESNER: I'll take another look at  
3 that and see if we can provide some greater specificity.

4 CHAIRMAN HONIGBERG: Any other thoughts  
5 or comments on this?

6 (No verbal response)

7 CHAIRMAN HONIGBERG: Seeing none.

8 MR. WIESNER: In Subparagraph (6), this  
9 is the first place where we have now included a reference  
10 to the "potential visual impact of a visible plume from  
11 the proposed facility". And, this is intended to address  
12 a comment that we received regarding types of facilities,  
13 such as biomass or gas or other fossil fuel generation  
14 plants, that would have emissions and from which would  
15 emanate some sort of visible plume, and what the scenic  
16 impact of that would be.

17 And, if there are no comments on that  
18 change, I would move down then to Subparagraph (7), at the  
19 bottom. This deals with "photosimulations". And, there  
20 are a number of changes that are made here, including "to  
21 the extent feasible, photosimulations must be provided  
22 from a sample of private property observation points  
23 within the area of potential visual impact". And, then,  
24 further down, photosimulations that might show the impacts

1 of "any visible plume that would emanate from the  
2 facility". And, then, we have the specification of how  
3 the photosimulations -- or, the "photographs to be used in  
4 the simulations", and the specific requirements that would  
5 apply to those, that tracks language that was generally  
6 approved by consensus through the SB 99 Working Group  
7 process, and has now been incorporated here.

8 And, if we're ready to move on, the next  
9 change I would highlight is on Page 9. This is in  
10 Subparagraph (9). And, this is where the applicant would  
11 "describe the best practical measures", that defined term,  
12 that are planned in the specific instance "to avoid,  
13 minimize, or mitigate the potential adverse effects of the  
14 proposed facility, and of any visible plume that would  
15 emanate from the proposed facility". And, it continues to  
16 include the language requiring the applicant to also  
17 identify "alternative measures that were considered but  
18 rejected by the applicant".

19 CHAIRMAN HONIGBERG: Moving on.

20 MR. WIESNER: Moving on to Site 301.06,  
21 "Effects on Historic Sites". Most of these changes, other  
22 than you'll see there's the change from "unreasonable  
23 adverse effects" to "potential adverse effects", most of  
24 the rest of the changes track those that were proposed by

1 Director Muzzey and approved by the Committee in a prior  
2 meeting. I somehow managed to misidentify her division --  
3 or, not her division, but the "department of cultural  
4 affairs" is, since the 1990's, she told me, now the  
5 "department of cultural resources". So, I'm not sure  
6 where that came from, but I'll make that change  
7 throughout.

8                   And, I'll just note, in Subparagraph  
9 (f), per the discussion in our last meeting, we've  
10 included a reference to "consulting parties" that  
11 participate in the Section 106 process, with a  
12 cross-reference to the C.F.R. definition in which those  
13 "consulting" -- I shouldn't say it's a definition. It's a  
14 regulatory -- it's a rules section that specifies who  
15 are -- which parties are entitled to participate in the  
16 process as "consulting parties". And, that's the intent  
17 then of the cross-reference.

18                   On Page 10, we have a number of  
19 editorial changes, responsive to OLS comments, and also to  
20 clean up the grammar.

21                   In 301.08, "Effects on Public Health and  
22 Safety", again, there's a change from "unreasonable  
23 adverse effects" to the "potential adverse effects",  
24 consistent with other changes we have made.

1                   In (a)(1), this is the section in which  
2 we had previously specified what the sound study  
3 methodology would be, by cross-references to various  
4 industry standards. Per the OEP SB 99 Working Group  
5 process, there was, essentially, consensus reached among  
6 acousticians who participated in that process as to a much  
7 more specific and well-defined sound study methodology.  
8 It goes on for three pages. And, as a result, I chose not  
9 to include it here, but to include it in a separate  
10 section all to its own, which appears now as "301.19".  
11 And, so, the changes made here is to delete the study  
12 specifications, which had previously appeared, about one  
13 page worth, and instead cross-reference that other  
14 section. That's not the only way this can be done. But I  
15 thought it would, to some extent, break the flow of this  
16 section to include that level of detail here.

17                   And, that actual Section 301.19 is also  
18 verbatim what was agreed to as the consensus position of  
19 parties in that working group process, with some editorial  
20 changes, just to make it more consistent with the way the  
21 rules read currently.

22                   If we're ready --

23                   CHAIRMAN HONIGBERG: For people who  
24 can't wait and want to read ahead, it starts on Page, I

1 think, 19 of the document. Or, 21, Page 21.

2 So, let's continue on then.

3 MR. WIESNER: At the bottom of Page 11,  
4 these are the shadow flicker study requirements. And,  
5 these are probably the single greatest changes that are  
6 made to any specific section. The assessment would now  
7 require "identification of the astronomical maximum", and  
8 we define that term at the bottom of the paragraph, "as  
9 well as the anticipated hours per year of shadow flicker  
10 expected to be perceived at each residence, learning  
11 space, workplace, health care setting, public gathering  
12 area (outdoor and indoor), other occupied building, and  
13 roadway". And, that laundry list, if you will, of  
14 locations is again based on the SB 99 Working Group  
15 process and the language that was approved by consensus  
16 through that process. It goes on to say "that falls  
17 within 1 mile of any turbine". I cannot tell you that the  
18 "1 mile" that appears here is the result of stakeholder  
19 consensus, and I'm not going to tell you that it's the  
20 right distance. And, that is a subject that is -- I'm  
21 sure we will receive quite a bit of comment on. I  
22 included it here more or less as a placeholder.

23 I mean, an alternative approach would be  
24 to not specify any distance, and to let the study speak

1 for itself and tell us what distance was studied and why,  
2 and then that issue could be litigated. But, for purposes  
3 of this draft, I did include a distance, and I chose to  
4 include the "1 mile" distance.

5 CHAIRMAN HONIGBERG: Anybody have any  
6 questions or thoughts on what Attorney Wiesner just talked  
7 about? Commissioner Burack.

8 VICE CHAIRMAN BURACK: Attorney Wiesner,  
9 could you please just remind us of what the range is of  
10 distances that we received as comments on this?

11 MR. WIESNER: You will often see a  
12 distance of "ten rotor lengths", I believe it is, for wind  
13 turbine project's shadow flicker studies. But there some  
14 question about whether, I mean, first of all, that's  
15 somewhat of a moving target, given the increasing size of  
16 turbines, and whether that properly reflects the potential  
17 impact of shadow flicker where it occurs. There are  
18 other -- there's other evidence that's been submitted  
19 through the public comment process to suggest that that's  
20 not long enough, that it should be longer, and, in some  
21 cases, longer than 1 mile.

22 So, I do -- I would characterize the "1  
23 mile" that appears here not as necessarily a finding by  
24 the Committee at this point, but as a placeholder for

1 further comment and final decision.

2 CHAIRMAN HONIGBERG: Other thoughts or  
3 comments? Commissioner Burack.

4 VICE CHAIRMAN BURACK: Just to follow  
5 up. I guess I'm wondering whether there -- I don't know  
6 if this would make any difference at all, whether, rather  
7 than specify it as a fixed mile, whether we should specify  
8 "1 mile as a minimum". And, effectively, leave it to the  
9 party that's making the application to identify, really,  
10 how far out they think the impacts might extend, if it's  
11 beyond a mile, and as a way of encouraging them not to  
12 just arbitrarily draw a line, but, really, to be  
13 thoughtful about where they think those impacts might be  
14 worthy of study.

15 So, just a different way of formulating  
16 this, that may more quickly get us to studies that answer  
17 the questions that people really need to have answered up  
18 front.

19 MR. WIESNER: If that is the will of the  
20 Committee, we can try to work on some language that  
21 incorporates that concept. That "you should study what  
22 should be studied, but not less than a mile", I mean,  
23 again, for purposes of this draft.

24 VICE CHAIRMAN BURACK: And, I'm open to

1 other suggestions. I'm just trying to offer something  
2 that might be helpful.

3 CHAIRMAN HONIGBERG: That seems like a  
4 reasonable, you know, certainly eminently reasonable  
5 approach to take in this draft.

6 Moving on.

7 MR. WIESNER: Moving on to Page 12,  
8 other than editorial changes in Subparagraph (4), these  
9 are -- this is "An assessment of the risks of ice throw,  
10 blade shear, and tower collapse on public safety,  
11 including a description of the", and we now are including  
12 "probability of the occurrence of such events under  
13 varying conditions, the distances at which such events may  
14 have an impact, and the best practical measure taken or  
15 planned to avoid or minimize the occurrence of such  
16 events, if necessary." So, this is an attempt to include  
17 some more detail in what should be covered in an  
18 assessment of these serious safety concerns with respect  
19 to wind turbines.

20 Editorial -- I'm sorry, editorial  
21 changes again in (5) and (6). In (7), this is the  
22 description of the decommissioning plan that would be  
23 required for wind facilities. And, it must be "prepared  
24 by an independent, qualified person with demonstrated

1 knowledge and experience", and the plan must "provide for  
2 removal of all structures and restoration of the facility  
3 site". We have added at the bottom, as appropriate,  
4 financial security, a "parent company guarantee issued by  
5 the parent of the facility owner maintaining at all times  
6 an investment grade credit rating", which we have not  
7 defined. And, that's a difficult term to identify,  
8 although there are -- the various rating agencies do have  
9 levels at which they will deem an investment or a security  
10 to be investment grade, and we may be able to key off of  
11 that.

12 CHAIRMAN HONIGBERG: Where do we get  
13 that language?

14 MR. WIESNER: I mean, there was -- I  
15 believe it was National Grid that made that comment. I'm  
16 not sure they included the "investment grade credit  
17 rating" language. But the sense was, if it's a  
18 creditworthy entity, they should be permitted to guarantee  
19 the obligation and not be required to submit third party  
20 financial security, such as a bond or a letter of credit.  
21 And, I understand that. But this is an attempt to make --  
22 to put some boundaries around what "creditworthy" means.

23 CHAIRMAN HONIGBERG: Commissioner  
24 Burack.

1                   VICE CHAIRMAN BURACK: Thank you. I  
2 believe, if you look either in regulations of the  
3 Department of Environmental Services, relating to  
4 financial assurances for the closure of landfills or maybe  
5 other hazardous waste management facilities, treatment,  
6 storage or disposal facilities, you may find some further  
7 guidance there. You may also find a reference to federal  
8 regulations, a C.F.R. cite, under the Resource  
9 Conservation and Recovery Act, that could be instructive  
10 in this realm.

11                   MR. WIESNER: It is certainly worth  
12 looking in those areas. I'm not sure whether -- I mean,  
13 I'm not sure whether DES accepts parent guarantees, but --

14                   VICE CHAIRMAN BURACK: I don't recall if  
15 we do specifically. I'm quite sure that, under various  
16 provisions of either, again, the Resource Conservation and  
17 Recovery Act, or what's known in the vernacular as the  
18 federal Superfund law, that there are provisions for  
19 parent guarantees of certain kinds of liabilities.

20                   MR. WIESNER: And, it would certainly  
21 make sense to incorporate a definition of "investment  
22 grade credit rating" or other creditworthiness standards  
23 from a similar federal or state agency.

24                   Subparagraph (8) then is a very specific

1 set of requirements that must be included in the  
2 decommissioning plan for a wind farm. These were  
3 proposed, I believe, by New Hampshire Wind Watch and Wind  
4 Action. And, they generally track what I understand to be  
5 the standards that have been applied by the Vermont Public  
6 Service Board in issuing certificates for wind farms in  
7 that state. And, we discussed this at one of our meetings  
8 back in April, I believe, and the Committee endorsed the  
9 view that those requirements would be appropriate here as  
10 well.

11           If we're ready to move on, on Page 13,  
12 under (b)(1), there's a reference to "electric and  
13 magnetic fields generated by proposed transmission  
14 facilities and the potential impacts of those fields on  
15 public health and safety", and new language added "based  
16 on current scientific knowledge", current at the time that  
17 the application is submitted and the study performed, I  
18 would take that to mean.

19           In (b)(2), the language changes that  
20 appear here are essentially those that were the result of  
21 consensus that we achieved during the technical session in  
22 June. And, track more closely the ANSI standards for  
23 sound studies, including the use of the word "background",  
24 rather than "ambient", and a reference to the "L-90 sound

1 level".

2 VICE CHAIRMAN BURACK: Mr. Chairman?

3 CHAIRMAN HONIGBERG: Commissioner

4 Burack.

5 VICE CHAIRMAN BURACK: Just trying to  
6 understand for clarity purposes, how the provisions here  
7 would differ from the provisions that are now -- that now  
8 appear at length in 301.19, I believe it is? How does  
9 this provision apply versus what's in 301.19?

10 MR. WIESNER: Those are specific to wind  
11 projects. And, this, what we're looking at now, is for  
12 transmission projects. So, this would be the sound impact  
13 of a transmission line or substations, whatever that might  
14 be.

15 VICE CHAIRMAN BURACK: Thank you.

16 MR. WIESNER: And, then, Subparagraph  
17 (c) applies to "all energy facilities". And, other than  
18 editorial changes, the most significant changes appear in  
19 (c)(2), which is again the decommissioning plan, and this  
20 tracks the language that we addressed earlier for wind  
21 projects, without the specific Vermont-based requirements.  
22 But the obligation that the plan be "prepared by an  
23 independent, qualified person", and also the inclusion of  
24 a "parent company guarantee", as an appropriate form of

1 security to backstop the decommissioning plan obligations.

2 CHAIRMAN HONIGBERG: Commissioner Scott.

3 MR. WIESNER: Sorry.

4 COMMISSIONER SCOTT: Looking at (b)(2),  
5 (9)(b)(2), which only applies to "electric transmission  
6 facilities", the sound requirements again. I'm inclined  
7 to lift that whole section and put it under (c). It would  
8 still apply to electric transmission lines in that case,  
9 but it would also apply to pipeline compressor stations,  
10 it would also apply to generating facilities. And, I'm  
11 not sure why we would have a separate standard for  
12 electric transmission facilities, but we wouldn't apply  
13 more globally. And, I think that would help with the  
14 concern about compressor stations also.

15 CHAIRMAN HONIGBERG: Any one disagree  
16 with that?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: I didn't think so.

19 MR. WIESNER: So, we will move that to  
20 Subsection (c).

21 CHAIRMAN HONIGBERG: So, (b) will just  
22 have one provision.

23 MR. WIESNER: (b) will just be EMF.

24 CHAIRMAN HONIGBERG: Right.

1 VICE CHAIRMAN BURACK: Mr. Chairman?

2 CHAIRMAN HONIGBERG: Commissioner

3 Burack.

4 VICE CHAIRMAN BURACK: I do note that,  
5 under (c)(1) right now, it does read "An assessment of  
6 operational sound, except as provided elsewhere herein".  
7 So, the notion here would be to take what's in currently  
8 (b)(2), and essentially make that (c)(1)?

9 CHAIRMAN HONIGBERG: I think so. Yes.

10 VICE CHAIRMAN BURACK: Thank you.

11 MR. WIESNER: And, we would have to make  
12 it clear then that that does not supersede the more  
13 specific requirements for wind facilities.

14 CHAIRMAN HONIGBERG: Correct. Wind has  
15 its own. Right. You'd need a carve-out for wind, which  
16 is in 19.

17 MR. WIESNER: Uh-huh.

18 CHAIRMAN HONIGBERG: Moving on.

19 MR. WIESNER: At the bottom of the page,  
20 301.09, "Effects on Orderly Development of the Region".  
21 And, this, again, is where we -- the new language you see  
22 regarding "master plans and zoning ordinances", and the  
23 reference is to "host and abutting", oh, here we have  
24 "municipalities", we got it right, "and other

1 communities", and we're going to say "municipalities", "as  
2 identified as within the scope of the studies performed",  
3 or whatever language we come up with. So, the same  
4 discussion we had earlier about which municipalities  
5 should be included for notice of the public information  
6 sessions, it should carry over here and be relevant to the  
7 applicant's requirement to provide us with information  
8 about any relevant master plans or zoning ordinances that  
9 should be brought to the attention of the Committee.

10 Similar language again appears in  
11 (a)(1). And, in (b)(1), on Page 14, and in (b)(5). So,  
12 consistent changes should be made to all of those  
13 sections.

14 301.10 is the "Completeness Review", and  
15 this section is based largely on the statutory  
16 requirements. What we have done here is, rather than have  
17 a general reference to "other state agencies identified in  
18 administrative rules", we have identified those agencies  
19 that should get an additional copy, as we discussed  
20 earlier. And, I count six, but maybe I'm missing one.

21 COMMISSIONER BAILEY: No. I think  
22 you're right. I counted the "division of historical  
23 resources" and the "department of cultural affairs" as  
24 two.

1 MR. WIESNER: Okay.

2 COMMISSIONER BAILEY: But that's all  
3 one.

4 MR. WIESNER: So, it's Fish and Game,  
5 Health and Human Services, Historical Resources Division,  
6 Natural Heritage Bureau, OEP, and the Fire Marshal, here  
7 referenced as the "division of fire safety of the  
8 department of safety". And, that separate obligation  
9 would only apply if that agency has not already gotten a  
10 copy, for example, based on its permitting authority,  
11 which is covered by Subparagraph (a).

12 And, in Subparagraph (d), these are  
13 changes that were proposed by the Various Energy Companies  
14 and approved by the Committee I think at our last meeting.  
15 Rather than just say "each state agency", it's "Each state  
16 agency have permitting or other regulatory authority", has  
17 a specified period of time to "notify the committee  
18 whether it contains sufficient information for its  
19 purposes." And, "its purposes" is language that's picked  
20 up from the statute.

21 COMMISSIONER BAILEY: Mr. Chairman?

22 CHAIRMAN HONIGBERG: Commissioner  
23 Bailey.

24 COMMISSIONER BAILEY: Going back to the

1 Paragraph (b), did we agree earlier to add "the committee  
2 shall forward an electronic copy of the application unless  
3 otherwise requested" or did we fix that another way?

4 VICE CHAIRMAN BURACK: Mr. Chairman?

5 CHAIRMAN HONIGBERG: Commissioner  
6 Burack.

7 VICE CHAIRMAN BURACK: If I may, if I  
8 recall correctly, I thought the way we resolved that is  
9 that we established an expectation that the applicant  
10 would provide paper copies for all of these parties,  
11 unless they made other arrangements in advance that were  
12 approved by the administrator or the presiding officer.  
13 So, I think, by simply using the phrase here "shall  
14 forward a copy", I think we cover ourselves, whether we're  
15 forwarding a paper or electronic copy, as determined by  
16 the earlier provision.

17 COMMISSIONER BAILEY: Thank you.

18 VICE CHAIRMAN BURACK: Does that make  
19 sense to you, Attorney Wiesner?

20 MR. WIESNER: I believe so. And, we're  
21 not specifying here whether what would be forwarded would  
22 be an electronic copy or a paper copy. So, I think,  
23 consistent with what we would expect to be the pre-filing  
24 discussion that would occur, the agencies would have an

1 ability to weigh in as to what their preference was.

2 CHAIRMAN HONIGBERG: All right. Before  
3 you continue, we're going to need to take one more break  
4 before we finish, and I think this is a logical place. We  
5 have another few pages to go, but we can see the end.

6 So, let's take a ten-minute break. Off  
7 the record.

8 *(Recess taken at 3:03 p.m. and the*  
9 *meeting resumed at 3:17 p.m.)*

10 CHAIRMAN HONIGBERG: All right.

11 Mr. Wiesner.

12 MR. WIESNER: So, I believe we're on  
13 Page 15. And, there are changes in the "Exemption  
14 Determination" section, which is 301.11. Deleted the  
15 first Subparagraph (a), which really is just a description  
16 of the Commission's authority -- excuse me, Committee's  
17 authority under the statute. What was (b) then becomes  
18 (a). And, this is the -- this is the requirement that the  
19 Committee make a determination on exemption upon request  
20 or at -- even on its own motion, if it finds that the  
21 following criteria are met, and those are tracking the  
22 statute. In (3), the "Response to the application or  
23 request for exemption from the general public", and  
24 there's a clarification that that would be -- those

1 responses would be "provided through written submissions  
2 of comments or in the adjudicative proceeding provided for  
3 in (b) below", because it's required that there be a  
4 hearing conducted in a county where the facility would be  
5 located.

6 CHAIRMAN HONIGBERG: Moving on.

7 MR. WIESNER: On Page 16 -- actually,  
8 I'll point out that, in 301.12, this is "Timeframe for  
9 Application Review". This is an example in each  
10 subsection of what we discussed earlier. Which is, when  
11 you are essentially tracking the statutory language, the  
12 best way to do that, according to OLS, is to preface your  
13 substitute provision with a reference to the statute  
14 itself. So, as we see, "Pursuant to RSA 162-H:7, VI-b" in  
15 (a), and in (b), and we've included that type of language  
16 as well in (c). And, in the last meeting, it was decided,  
17 based on a comment received from Nixon Peabody, that (d)  
18 be deleted. And, (d) is the "temporary suspension of  
19 deliberations and the specified time frames, when an  
20 application is pending before the Committee, if it finds  
21 that such suspension is in the public interest." Again,  
22 that tracks the statute. It's been deleted here. Another  
23 alternative would be to retain that language, but include  
24 a lead-in, such as you see in (a), (b), and (c), pursuant

1 to the statute.

2 CHAIRMAN HONIGBERG: I mean, my  
3 inclination is, if we're going to include these other  
4 three subsections that are all just repetitive of the  
5 statute, that we make sure we include that "ability to  
6 suspend" provision, so that people who are reading the  
7 rules aren't confused. You know, they look like pretty  
8 hard-and-fast deadlines. And, you know, if, in fact, the  
9 statute has a provision, as it does, that says "in  
10 appropriate circumstances we can suspend the time frames",  
11 I think we should include it in the rules, or, we should  
12 take them all out, take out all these time lines, because  
13 they are, in fact, just repetitive of the statute.

14 Could go either way. Commissioner  
15 Burack.

16 VICE CHAIRMAN BURACK: Mr. Chairman, I  
17 would concur that we should -- I would suggest leaving  
18 these provisions in, but adding in -- adding back in this  
19 Section (d), and consistent with the way the others are  
20 phrased above.

21 CHAIRMAN HONIGBERG: I see some nodding  
22 heads. And, so, that's what we'll do.

23 MR. WIESNER: No further changes on this  
24 Page 16. On 17, subparagraph (b), this goes to historic

1 sites, and a finding that there's no unreasonable adverse  
2 effects on historic sites, and the factors to be  
3 considered. And, again, this essentially tracks the  
4 language that was proposed by Director Muzzey, based on  
5 her analysis of public comment that was received from the  
6 Preservation Alliance and the National Historic Trust.  
7 Again, I need to change "department of cultural affairs"  
8 to "resources" in two places. And, as well, in (b)(3), we  
9 have again the reference to "consulting parties", and the  
10 cross-reference to the C.F.R. provision that specifies who  
11 those consulting parties are in the 106 process.

12 CHAIRMAN HONIGBERG: Commissioner  
13 Burack.

14 VICE CHAIRMAN BURACK: Mr. Chairman,  
15 thank you. In (b)(1), the second line, there's a  
16 reference to "any anticipated adverse effects". Should  
17 that be "potential effects" or other phrasing?

18 MR. WIESNER: Yes. I think that will be  
19 appropriate.

20 VICE CHAIRMAN BURACK: Thank you.

21 CHAIRMAN HONIGBERG: And, a really minor  
22 point. On what is now Subsection (4), something odd looks  
23 like it may have happened in the redlining process. So,  
24 when all the changes get accepted, we need to make sure we

1 take a look at that and make sure that the numbers are  
2 what the numbers are supposed to be.

3 VICE CHAIRMAN BURACK: Mr. Chairman?

4 MR. WIESNER: We'll try to fix that.

5 CHAIRMAN HONIGBERG: Commissioner  
6 Burack.

7 VICE CHAIRMAN BURACK: I'm sorry. I'm  
8 going back and re-reading and reading farther down in all  
9 of this, and we do have multiple references below to the  
10 "adverse effects". And, so, I'm wondering whether we do  
11 intend "anticipated adverse effects" in (b)(1)? Because  
12 in (b)(4), for example, we're talking about, well, right  
13 here on that first line we say "Whether the proposed  
14 facility will adversely affect", and then we've got other  
15 "adversely affecting" below.

16 CHAIRMAN HONIGBERG: And, this is in the  
17 section that is directed to the Committee and how it  
18 evaluates a proposal. This isn't -- we're no longer in  
19 the application, what's in it, where it makes sense to  
20 talk about "potential". Now, we're talking about whether  
21 there are, in fact, adverse effects, and whether those  
22 adverse effects are unreasonable, and whether -- how that  
23 leads into the public interest determination.

24 VICE CHAIRMAN BURACK: Right.

1 MR. WIESNER: Although, I'll say, in  
2 (b)(1), what the Committee is supposed to consider is  
3 "whether the application has identified all historic sites  
4 and archeological resources potentially affected, and any  
5 anticipated potential adverse effects". That may be an  
6 appropriate place to include the word "potential", because  
7 that is what the applicant is supposed to include in its  
8 application. So, in one sense, (b)(1), if I'm reading it  
9 correctly, is intended to say "did the applicant do a good  
10 job of identifying the sites and the potential adverse  
11 effects?"

12 CHAIRMAN HONIGBERG: Fair enough.

13 MR. WIESNER: And, then, that leads to  
14 the findings of the Committee, which appear in the  
15 subsections below.

16 VICE CHAIRMAN BURACK: Thank you.

17 MR. WIESNER: And, editorial changes on  
18 Page 18, including, in (e)(4), change the word "views" to  
19 "analysis and recommendations of fish and game, the  
20 natural heritage bureau, U.S. Fish and Wildlife, and other  
21 agencies" regarding wildlife impacts. That may have been  
22 responsive to an OLS comment, but --

23 VICE CHAIRMAN BURACK: Mr. Chairman?

24 CHAIRMAN HONIGBERG: Commissioner

1 Burack.

2 VICE CHAIRMAN BURACK: I think it makes  
3 sense to do that. I think "analysis" probably should be  
4 "analyses", "ses", not "sis".

5 Which reminds me, Mr. Chairman, there  
6 was an earlier section that we did not spend much time on  
7 that related to there was a clause about "providing  
8 information on the source of funds". I don't recall  
9 exactly where that was. And, I meant to flag it at that  
10 time. Do you recall where I'm referring to, Attorney  
11 Wiesner?

12 I think it was -- I don't believe it was  
13 in decommissioning, I believe it was in the financial and  
14 technical --

15 COMMISSIONER BAILEY: Page 6.

16 VICE CHAIRMAN BURACK: Page 6? Sorry to  
17 take us back here. But I'm wondering whether, on Page 6,  
18 at 301.04 (a)(3), whether that might -- it might be better  
19 to take the words "amount" and "source" and make those  
20 plural. So, "including the amounts and sources of funds".  
21 Typically, in these things, you're looking at numerous  
22 different funding mechanisms for different phases of the  
23 projects and of different types throughout.

24 CHAIRMAN HONIGBERG: Commissioner Scott.

1                   COMMISSIONER SCOTT: Since Commissioner  
2 Burack took us back to that section, the following section  
3 I guess I would flag for, you know, if we get comments or  
4 not. But it strikes me that that existing language and  
5 the modified language, as far as an applicant's financing  
6 plan having to be compared by the applicant with other  
7 financing plans for similar facilities, I like the  
8 concept, but it strikes me is it could be very hard for --  
9 a lot of that information, I assume, would not necessarily  
10 be public. But I guess I just bring that up here. I'm  
11 curious if we'll get comments on that, I guess. It just  
12 strikes me as problematic for an applicant.

13                   MR. WIESNER: If the applicant itself  
14 has a track record of -- or its affiliates has a track  
15 record of development, then it may be able to offer  
16 examples from its own portfolio. But, if what needs to be  
17 compared is to other projects owned by other developers  
18 and it's not public information, that's a legitimate  
19 concern.

20                   CHAIRMAN HONIGBERG: There's no harm in  
21 asking. So, can we jump back -- or, jump forward, rather,  
22 to Page 19?

23                   MR. WIESNER: And, here, on Page 19,  
24 this is where we get into the specific siting criteria,

1 and some of the limitations that would apply to wind  
2 projects. And, there's some editorial changes, because  
3 OLS doesn't like to see captions in subparagraphs. SO, it  
4 now says "With respect to sound standards". And, then, we  
5 have kept the numbers the same. So, it is "45 decibels,  
6 or 5 decibels above background", rather than "ambient".  
7 And, again, that picks up the ANSI term, A-N-S-I, measured  
8 at the L-90 sound level.

9                   These changes, I will just note, are  
10 reflective of consensus that was received during the  
11 technical session back in June. And, there's also a  
12 specific reference to microphone placement, "at least  
13 7.5 meters", and, again, that's based on the relevant ANSI  
14 standard, "from any surface where reflections may  
15 influence measured sound pressure levels", as opposed to  
16 the "exterior wall", which was what the proposed rules had  
17 read. So, this is an attempt to more closely reflect what  
18 the relevant standards are as set forth in the ANSI  
19 documentation.

20                   And, again, we're looking at property  
21 that's owned by a non-participating landowner. So, if you  
22 signed a waiver, you're not considered for this purpose.  
23 And, "property that is used in the whole, or in part, for  
24 permanent or temporary residential purposes". And, that

1 language I came up with, it intended to both make it clear  
2 that we're not just, you know, seasonal housing is  
3 included, which was a concern of a number of commenters,  
4 and also to capture the concept that "wherever people are  
5 trying to sleep, we're going to measure the sound". So,  
6 that's "permanent or temporary residential purposes". It  
7 could cover an inn, or perhaps a campground even. So,  
8 that was the purpose for including that more expansive  
9 language.

10 And, I will say, the changes that appear  
11 here are the result of the technical session consensus,  
12 except for that final language, I believe, which is my  
13 attempt to interpret where the Committee ended up in its  
14 discussion of the types of properties that should be  
15 included for study for the noise criteria.

16 CHAIRMAN HONIGBERG: Moving on.

17 MR. WIESNER: Under shadow flicker,  
18 which is (b), we are retaining, for the moment, the "30  
19 hours per year or 30 minutes per day" standard, which  
20 appears in other contexts in other American standards.  
21 Although, I'm sure we'll receive public comment, further  
22 public comment in the next round as to that, whether or  
23 not that's the appropriate standard that should be  
24 applied, given other standards which are applied on an

1 international level.

2 And, then, the references to "at or  
3 within any", and we now have the same list of properties  
4 that we saw earlier, and this is based, again, on the OEP  
5 Working Group consensus, as reflected in the Working Group  
6 Report for the, I think, Health and Safety Working Group.  
7 And, it includes "residence, learning space, workplace,  
8 healthcare setting, public gathering area (outdoor and  
9 indoor), or other occupied building of a non-participating  
10 landowner." And, what's missing here is "roadway".  
11 "Roadway" appears in the study requirements, does not  
12 appear here, in terms of the limitation. And, that's  
13 reflective of the lack of consensus, as to whether  
14 "roadway" should be included for purposes of applying the  
15 shadow flicker limit.

16 (c) is the setback requirement, and  
17 there's been no substantive change here in the setbacks  
18 that are required. What we have done is take out the word  
19 "permanently occupied building", and just left it as  
20 "occupied building". And, again, that's to avoid some of  
21 the confusion that resulted from the use of "permanent",  
22 and whether or not that would then apply to seasonally  
23 used homes, for example, lake houses.

24 CHAIRMAN HONIGBERG: Am I correct that

1 setbacks is another area that's not -- that did not  
2 produce an agreement or a consensus during the technical  
3 session?

4 MR. WIESNER: That is correct. There  
5 was quite a bit of discussion about it. And, some of that  
6 I think is related to the concerns about ice throw, in  
7 particular, and tower collapse. In the absence of  
8 consensus and in the absence of a clear "best practice" or  
9 standard, I would say, although we may hear differently  
10 from public commenters, I believe the Committee's decision  
11 was to retain these numbers as they were originally  
12 proposed.

13 CHAIRMAN HONIGBERG: I expect we would  
14 hear or we will hear commenters with differing opinions  
15 about what the science or "best practices" shows. Is that  
16 a safe assumption?

17 MR. WIESNER: I believe we will. And, I  
18 would hope that they would support their proposals with  
19 what they believe is the most appropriate evidence that  
20 that is the correct standard.

21 Then, in (d), this is the reference to  
22 "participating landowners". We're no longer defining the  
23 term here, because we've defined it in the general  
24 "Definition" section. But, again, this is essentially

1 saying that "the facility can exceed any of the specific  
2 standards with respect to any relevant building area or  
3 other property, if the owner thereof is a participating  
4 landowner." And, the term "area" was included, because  
5 we're now covering public gathering areas, public or  
6 private.

7 Subparagraph (g) --

8 VICE CHAIRMAN BURACK: Mr. Chairman?

9 MR. WIESNER: Sorry.

10 CHAIRMAN HONIGBERG: Commissioner

11 Burack.

12 VICE CHAIRMAN BURACK: I just want to  
13 ask a question to better understand this. The expectation  
14 then is that, if a party is a participating landowner,  
15 they are doing so and they are effectively waiving all of  
16 their rights under all of those topics? They wouldn't  
17 selectively be waiving, for example, their willingness to  
18 accept certain sound levels, but not willingness to accept  
19 shadow flicker or setback. I guess I'm wondering whether  
20 we're assuming too much in this language, whether this,  
21 and I don't know how this relates back to the definition  
22 of "participating landowner", you know, what the  
23 definition of "participating landowner" specifically says,  
24 as to whether they're waiving everything or whether

1 they're waiving some of their specific rights? And, my  
2 sense would be we probably have to be, I don't know, I  
3 don't know how we deal with that. But I'm not sure it's  
4 quite as crisp as this language might suggest.

5 MR. WIESNER: I think that's a valid  
6 point. And, there may be situations where someone says  
7 "I'll waive the setback, but, you know, I don't want you  
8 to exceed the noise level." And, that would be then sort  
9 of a -- perhaps a "limited participation", we might say.  
10 I don't know how common that is, but I'm not sure that the  
11 rules, as we propose them, contemplate that. So, we might  
12 want to look at the definition of "participating  
13 landowner". And, if it says "and" with respect to all  
14 these things, we might want it to say "or", or "and/or",  
15 although probably can't use that, but we'll find a way to  
16 capture that concept.

17 And, then, for example, here, we might  
18 say -- well, going back to the application requirements,  
19 we're now requiring the applicant to list the  
20 participating landowners and describe their property. We  
21 might also include there some description of any  
22 limitations on the scope of the waiver that they have  
23 provided. So, if they have waived two things, but not the  
24 third, that should be noted in the application.

1                   CHAIRMAN HONIGBERG: Yes. I think we  
2 would expect comment from developers on this. Because it  
3 strikes me as unlikely that the developers would do what  
4 they would need to do partially with a landowner. They're  
5 either going to get a landowner off their case or they're  
6 not. And, if they -- if they can settle with a landowner,  
7 they're going to settle. They're not going to partially  
8 settle. And, say, "Oh, well, we will" -- you know, "we'll  
9 pay you a certain amount of money, if you won't complain  
10 about (a) and (b), but you can still complain about (c)"?  
11 Maybe that happens, but I would expect, if we have some  
12 sort of "partial participation" concept, we're going to  
13 get -- we're going to maybe get instructive comments about  
14 it. So, maybe we should flag the issue by putting  
15 something in there for them. I know they're all --  
16 representatives are in the back of the room writing things  
17 down right now, but --

18                   MR. WIESNER: And, I don't know how  
19 common that is, but I could imagine a situation where  
20 someone says "you're not going to be able to site the  
21 turbine where you want to site it, because of the setback  
22 requirement. But I'll waive that, if you, you know, give  
23 me an agreement. But I don't want you keeping me up at  
24 night with your noise. So, I'm not going to waive that."

1 I mean, I don't know how often that  
2 happens, but it's possible. And, we have not clearly  
3 provided for it here. So, you know, if it's the pleasure  
4 of the Committee, we can take an attempt to at least  
5 provide for that level of, you know, *a la carte* waiver, if  
6 you will, and reflect that in the rules, and then see what  
7 kind of comment we get.

8 CHAIRMAN HONIGBERG: In looking at the  
9 definition of "participating landowner", we won't need to  
10 make any changes there, because it doesn't require  
11 "agreement on all things". The place where it will need  
12 to be changed is where we're looking, which is on Page 19.  
13 And, we'll need to carve out some aspect of the  
14 participation to make it make sense, as you guys have been  
15 discussing it.

16 VICE CHAIRMAN BURACK: I mean,  
17 presumably, it's just language that says that, you know,  
18 "these parties have waived their rights to the extent, you  
19 know, they have done so in their participating landowner  
20 agreement."

21 CHAIRMAN HONIGBERG: Something like  
22 that.

23 MR. WIESNER: And, would we also want  
24 the applicant to identify the scope of those partial

1       waivers, in addition to listing the participating  
2       landowners?

3                       CHAIRMAN HONIGBERG:  What does the  
4       current provision say about identifying participating  
5       landowners?

6                       MR. WIESNER:  I believe it's just a  
7       requirement that they be identified and their property be  
8       identified, without any indication of the limitations, if  
9       any, on their participation.

10                      VICE CHAIRMAN BURACK:  I would think it  
11       would make sense to include some provision to the effect  
12       that, you know, if their waivers are anything other than  
13       complete, that they describe what the limitations are on  
14       what they waive.

15                      COMMISSIONER BAILEY:  I think it's on  
16       Page 4.

17                      MR. WIESNER:  So, we might just add  
18       here, in addition to "identification of the owners and  
19       description of the properties owned by them, of the scope  
20       of the waivers included in their participation  
21       agreements", or something along those lines.

22                      CHAIRMAN HONIGBERG:  Something like  
23       that, where we are adding a modifier there, a "description  
24       of the properties".  But, yes.

1                   MR. IACOPINO: May I raise one legal  
2                   consideration that you might want to consider is, where  
3                   this section is on Page 19, this is the standards that you  
4                   use, as a Committee, to make determinations. And, if you  
5                   leave that Section (d) in, you're essentially, in your  
6                   rules, prohibiting yourselves from applying these  
7                   limitations to any participating landowner. There may be  
8                   a case where a wind facility is so close to a residential  
9                   structure that the Committee, just in the course of your  
10                  duties, may say "we're not going to let that turbine be  
11                  placed there." Here your rules are essentially saying,  
12                  "if there's been a participating landowner agreement, you  
13                  don't have any authority over it." So, I just want to  
14                  point that out to the Committee.

15                 CHAIRMAN HONIGBERG: Would you suggest  
16                  that we remove the section entirely?

17                 MR. IACOPINO: If you want to maintain  
18                  the ability to essentially nix a participating landowner  
19                  agreement, I would suggest that, yes. And, then, you  
20                  would have to deal with participating landowners in each  
21                  certificate with respect to an individual condition of  
22                  that certificate. That would be the difference. Because  
23                  it wouldn't be in your rules, so that, to the extent you  
24                  had participating landowners who are going to be not --

1 that were going to waive their -- they're going to waive  
2 their protections, that would have to be dealt with in the  
3 certificate each time.

4 There's a difference here between making  
5 an individualized assessment based on the case, and having  
6 something in a rule that limits you from what you're  
7 doing, because you have to follow your own rules. So, you  
8 could have a case with this rule where you've got a wind  
9 turbine right next to somebody's home, and you might say  
10 "there's no way that us, as a Committee, is ever going to  
11 do that, I don't care what the present landowner says."

12 CHAIRMAN HONIGBERG: No, I understand  
13 that side of it. Explain the other side of what would  
14 have to be done.

15 MR. IACOPINO: Okay. So, if you don't  
16 have this in your rules, you will have to make  
17 individualized conditions in a certificate, to say the  
18 participating landowners, the sound effects, the shadow  
19 flicker effects, and the setbacks don't apply to  
20 participating landowners. Which you would still have the  
21 ability to do, because they're listed in the application.  
22 And, so, you will have the information available to you to  
23 do that, but it would have to be done as a specific  
24 condition. Just like it is now. Right now, we have no

1 rule about participating landowners. So that we,  
2 generally, if we have a condition, a sound condition,  
3 "sound level shall not be more than 45 dBA at any  
4 non-participating landowner residence", or whatever the  
5 typical language we use. That's the way we do it right  
6 now, is it's a condition of the certificate.

7 If you make it a rule, you're going to  
8 have to apply it in every case. You're going to have to  
9 follow your own rules. Unless you -- the other way that  
10 you could do it is somehow modify the rule to give  
11 yourself some authority not to accept a participating  
12 landowner agreement.

13 CHAIRMAN HONIGBERG: I am sorry. I am  
14 feeling obtuse here. So, yes, we would have a condition  
15 that it can't exceed X at a non-participating landowner's,  
16 but that's -- there's no reason why that would change,  
17 because we're talking about "participating landowners"  
18 here. And, so, what would we need to say about  
19 participating landowners? We'd have to say something like  
20 "Yes, we know it's going to sound like Grand Central  
21 Station, but that's okay in this circumstance"?

22 MR. IACOPINO: Yes. I mean, that's --  
23 what would happen is, you didn't have a rule that  
24 specifically, as this one does, that specifically excludes

1 participating landowners from the limitations, because  
2 that's what Section (d) does, right? The applicant's  
3 energy facility may exceed the limits that you're creating  
4 here in your rules, right, as long as it's a  
5 non-participating landowner. But there may be limits, for  
6 instance, setback, you may not -- they're going to put a  
7 turbine within five feet of a residence, you may not want  
8 to allow that, regardless of what the participating  
9 landowner says.

10 CHAIRMAN HONIGBERG: I got that part.

11 MR. IACOPINO: Right.

12 CHAIRMAN HONIGBERG: I got the "we can  
13 still say no" part. I got that part.

14 MR. IACOPINO: Uh-huh.

15 CHAIRMAN HONIGBERG: You're  
16 hypothesizing we'd want to say "yes" to something that  
17 would otherwise be violative. I mean, is there a reason  
18 why we can't do that, if they have waived their rights?

19 MR. IACOPINO: Oh, no. No, I'm just  
20 saying -- no, I'm just pointing out, that's what you would  
21 have to do, if you didn't have it in your rules. That's  
22 all. I'm sorry.

23 CHAIRMAN HONIGBERG: Wouldn't we have to  
24 do it if it were in the rule anyway?

1 MR. WIESNER: There's a rules waiver  
2 provision, if the Committee decides on its own motion  
3 that, or at the request of a party, that it's in the  
4 public interest to do so, a rule can be waived.

5 CHAIRMAN HONIGBERG: But the waiver is  
6 of someone's right to assert that this is a problem,  
7 that's what that -- they're waiving their right to enforce  
8 these rules. We may still choose to enforce them. But  
9 the individual landowner that has entered into the  
10 participation agreement can't. That's what the developer  
11 has bought from them. Somebody else may argue it. It may  
12 be just too darn close, and we may end up saying "no".  
13 But, if we say "yes", we would say "yes". And, we would  
14 say "despite the fact that it's really close, we're going  
15 to say "yes"."

16 MR. IACOPINO: Yes. But this rule says  
17 that "the committee shall, for wind energy systems, apply  
18 the following standards:" And, then, the last standard is  
19 (d).

20 CHAIRMAN HONIGBERG: So, without this  
21 section, Mr. Wiesner, would we need to waive this rule?  
22 If this section were not included, I think you said it a  
23 second ago, it would have to be done as a rules waiver.

24 MR. WIESNER: If we were not excluding

1 participating landowners by virtue of their being  
2 participating landowners, and there were a setback  
3 violation, then you could only approve that project if  
4 there were a rule waiver, I think. I believe that's  
5 correct.

6 On the other hand, with this, if we  
7 include this, then you might need a rule waiver in order  
8 to say "even though the landowner was willing to waive its  
9 rights, we see some other public safety concern. And, we  
10 are not -- we're going to waive this rule, in order to  
11 hold the developer to the setback that's specified, even  
12 though the landowner said they don't care."

13 I mean, that's an additional finding,  
14 according to additional standard, and waiving a rule that  
15 would otherwise apply. But, even if it's in the rules, I  
16 think you can get there either way.

17 I think what Attorney Iacopino is  
18 suggesting is that, under the current process, we have  
19 no -- form no formal recognition of participating  
20 landowners, but we understand they're out there, and that  
21 can work its way into the conditions that apply to a  
22 specific certificate.

23 CHAIRMAN HONIGBERG: Okay.

24 MR. IACOPINO: Sorry to muddy the

1 waters, but I think it's something the Committee should  
2 consider when they're talking about rules.

3 CHAIRMAN HONIGBERG: Commissioner  
4 Burack.

5 VICE CHAIRMAN BURACK: So, Mr. Chairman,  
6 if -- I think we all understand the discussion that we  
7 just had, which has been very helpful. We would be best  
8 to strike this provision. And, that enables the Committee  
9 to look at each of these, determine whether or not we  
10 think they are waivers that we're going to -- we're going  
11 to effectively honor, but we're not legally bound to honor  
12 them.

13 And, however, if we leave this language  
14 in, and we are effectively legally bound to honor them,  
15 unless we go through a lot of hoops to effectively waive  
16 the rule and make findings that we have to make.

17 Is that a fair summary, Attorney  
18 Iacopino, of where we are?

19 MR. IACOPINO: If that's your -- yes.  
20 The substance, I mean, I don't sit on the Committee, so  
21 I'm not going to make a substantive judgment.

22 VICE CHAIRMAN BURACK: Right.

23 MR. IACOPINO: But, indeed, I think  
24 that, procedurally, you're correct.

1                   VICE CHAIRMAN BURACK: Yes. And,  
2                   substantively, I would recommend that we strike this  
3                   Section (d) here.

4                   CHAIRMAN HONIGBERG: Other thoughts on  
5                   this section?

6                   (No verbal response)

7                   CHAIRMAN HONIGBERG: Do people feel like  
8                   we should strike that subsection?

9                   I see one head nodding. I see another  
10                  head nodding. Commissioner Scott.

11                  COMMISSIONER SCOTT: All right. I'll  
12                  play Mr. Contrary here. I think that the standard way we  
13                  operate is if, so far, historically, as a Committee, is if  
14                  the applicant has participating landowners, that we have  
15                  exempted them from these requirements. That's the normal,  
16                  I understand what Attorney Iacopino is saying, but I think  
17                  that's definitely something we haven't done yet. And,  
18                  that would definitely be the exception, not the norm.

19                  And, I see the rule, as written right  
20                  now, would cater to the, you know, the vast majority of  
21                  the cases we see, not the exceptions. So, I guess, in  
22                  that context, I'm not so sure I want to take it out.

23                  CHAIRMAN HONIGBERG: Attorney  
24                  Weathersby.

1 MS. WEATHERSBY: I'd be in favor of  
2 taking it out. But, if we do leave it in, I think we at  
3 least need to give the Committee an out with some  
4 qualifying language. You know, attitude as something, you  
5 know, "unless the Committee finds that the proposed  
6 facility will have unreasonable adverse impacts on the  
7 non-participating [participating?] landowner". Something  
8 that allows us to protect them, even though they don't  
9 want to be protected.

10 CHAIRMAN HONIGBERG: I know we're going  
11 to get comments on this.

12 MR. IACOPINO: Sorry.

13 CHAIRMAN HONIGBERG: That's okay.  
14 Attorney Wiesner.

15 MR. WIESNER: I was just going to say,  
16 if we're going to take this out, then are we still going  
17 to require the applicant to list the participating  
18 landowners, because it doesn't have the same effect? I  
19 mean, or maybe it does, because they could support a  
20 certificate condition.

21 CHAIRMAN HONIGBERG: Attorney Iacopino.

22 MR. IACOPINO: I don't think there's any  
23 harm in leaving in that they have to identify them.  
24 Because if you do, either if you do decide to put

1 conditions that exclude the participating landowners, you  
2 know who they are, and your record is complete, that  
3 you've done an examination, and you know exactly what  
4 you're excluding from a particular condition.

5 CHAIRMAN HONIGBERG: So, what is the  
6 pleasure of the Committee? Because this -- because a  
7 provision, not specifically as you see it here, because  
8 there were some changes made, but because there was a  
9 provision in the rule that was filed in January, if we  
10 take it out, it will be apparent that we took it out, and  
11 people will know to comment on its removal. Or, we can  
12 leave it in, because it will appear, and people will know  
13 to comment on its presence. At this point, I don't think  
14 it matters much.

15 Commissioner Burack.

16 VICE CHAIRMAN BURACK: My preference  
17 would be to take it out, and have those who feel that it's  
18 essential that it be there to give us a very good reason  
19 why it should be put back, if we -- that would just be my  
20 preference.

21 CHAIRMAN HONIGBERG: Quick show of  
22 hands. Who agrees with Commissioner Burack?

23 (Show of hands.)

24 CHAIRMAN HONIGBERG: Who disagrees with

1 Commissioner Burack?

2 (Show of hands.)

3 CHAIRMAN HONIGBERG: All right.

4 Mr. Hawk and I haven't stated opinions at this point. So,  
5 because the majority of those who voted suggest that we  
6 should take it out, that's what we'll do for purposes of  
7 the draft that we're going to be floating.

8 Moving on.

9 MR. WIESNER: Subparagraph (g) is where  
10 the Committee will now be considering the cumulative  
11 impacts of any energy facility, not just wind, and  
12 basically tracks the language that we looked at earlier.  
13 So, it covers "natural, wildlife, habitat, scenic,  
14 recreational, historic, and cultural resources", and, in  
15 particular, and we'll put the commas in the right place.

16 CHAIRMAN HONIGBERG: I think the comma  
17 is, in fact, there.

18 MR. WIESNER: Okay.

19 CHAIRMAN HONIGBERG: I think that  
20 Commissioner Burack's comma is there in this paragraph.

21 MR. WIESNER: We got it right. The  
22 potential impacts of various forms of observation, as were  
23 defined in the Definition sections.

24 And, if we can move ahead to Page 20, we

1 still have a Section 301.16, which is the "Additional  
2 Criteria Relative to Wind Energy Systems". And, it  
3 contains two separate things as were originally proposed.  
4 One of them is "cumulative impacts", which now applies to  
5 everyone, and the other is "Best practical measures to  
6 avoid, minimize, or mitigate adverse effects of the  
7 proposed wind energy system." And, I'm not convinced that  
8 we need to retain this section anymore, but couldn't bring  
9 myself to delete it. So, it's still here.

10 VICE CHAIRMAN BURACK: Mr. Chairman?

11 CHAIRMAN HONIGBERG: Commissioner  
12 Burack.

13 VICE CHAIRMAN BURACK: Just a question  
14 for Attorney Wiesner. I think we probably could all find  
15 where the "cumulative impact" piece is that applies to  
16 every energy facility. Is there a specific place in the  
17 rules that you could point us to, Attorney Wiesner, where  
18 "best practical measures to avoid or mitigate adverse  
19 effects of any energy system" is required?

20 MR. WIESNER: It's more issue-specific  
21 for wind. Although, if I recall the discussion we had at  
22 this Committee, there was a view that "it should apply to  
23 all facilities." So, perhaps that's the way to address  
24 this. Is to indicate that "best practical measures should

1 apply to any energy facility", and it could be included  
2 then as a new (h), in 301.14, and then there would be no  
3 need for this separate section for wind projects.

4 CHAIRMAN HONIGBERG: Commissioner Scott.

5 COMMISSIONER SCOTT: I support that. I  
6 don't see anything listed here that's unique just for wind  
7 facilities.

8 CHAIRMAN HONIGBERG: Other thoughts or  
9 comments? Commissioner Bailey.

10 COMMISSIONER BAILEY: I think that's a  
11 good fix.

12 CHAIRMAN HONIGBERG: Does anyone  
13 disagree with that?

14 (No verbal response)

15 CHAIRMAN HONIGBERG: Doesn't look like  
16 it. Let's make that change, Attorney Wiesner.

17 MR. WIESNER: I expect we'll get  
18 comments, but so noted.

19 CHAIRMAN HONIGBERG: Oh, I think we  
20 will. But I think that in -- I think this is a public  
21 hearing where there may be an opportunity to explain that  
22 that concept wasn't lost, it was made applicable to  
23 everyone, in fact. But, you're right, we will get  
24 comments.

1 MR. WIESNER: And, then, the next  
2 section, and this is a brand new section. It was  
3 "301.17", it will be "301.16", the "Criteria Relative to a  
4 Finding of Public Interest". We addressed this early on,  
5 I believe in one of the meetings in April. And, this is  
6 essentially the proposal of the AMC, I believe, and other  
7 environmental groups, with the removal of the concept of  
8 "net benefits". And, it's stated in the form of factors  
9 that must be considered by the Committee. There are also  
10 statutory references in Subparagraph (c), which were  
11 suggested by Committee members. And, those are references  
12 to the State Energy Plan Purpose section and the Purpose  
13 section for the Renewable Portfolio Standard statute,  
14 362-F.

15 CHAIRMAN HONIGBERG: Moving on.

16 MR. WIESNER: 301.18, this is a set --  
17 which will be now "301.17, "Conditions of Certificate".  
18 Still not exactly sure whether the Committee decided that  
19 such a section should be included, but I prepared one for  
20 your consideration. And, what this is is an attempt to  
21 provide a menu of typical conditions that might be  
22 included in a certificate, with some catch-all provisions  
23 at the end. And, one condition would be, I mean, (a) and  
24 (b) are essentially prompt notification requirements for

1 certificate holders, the applicants who are now  
2 certificate holders, because they have been issued a  
3 certificate, to provide notice to the Committee of  
4 ownership changes. And, also changes in the location,  
5 this is (b), "location, configuration, design,  
6 specifications, construction, operation, or equipment  
7 components of the facility. And, requirement that in each  
8 of those two cases approval of the change be requested by  
9 the -- of the Committee. So, those are the first two.

10 (c) is a requirement that "the  
11 certificate holder continue consultations with the  
12 division of historical resources and any applicable  
13 federal agency", that's with respect to the 106 process  
14 for historical resource evaluation. And, I believe that's  
15 a condition that often appears in certificates, because  
16 that consultative process continues, and is likely to  
17 continue even when the certificate is issued.

18 (d) and (e) are specific conditions that  
19 would delegate responsibility, either to "the SEC  
20 administrator or to another state agency or official to  
21 monitor construction or operation of the facility subject  
22 to the certificate and to ensure that related terms and  
23 conditions of the certificate are met." I'm thinking here  
24 that there may be a general delegation to the

1 administrator.

2           There may also be specific delegations  
3 to specific agencies. So, for example, if there's a  
4 requirement that the property be built in a certain way  
5 with respect to affected wetlands, that DES might be  
6 designated as the agency that would have authority to  
7 monitor and enforce that requirement. Perhaps, with other  
8 requirements, it would be the administrator who would be  
9 the individual tasked with that monitoring role.

10           And, (e) is similar, "delegation to the  
11 administrator or another state agency or official of the  
12 authority to specify the use of any technique,  
13 methodology, practice, or procedure approved by the  
14 committee within the certificate and with respect to any  
15 permit, license, or approval issued by a state agency  
16 having permitting or other regulatory authority." And, my  
17 understanding is that this is consistent, except for the  
18 reference to the "administrator", this is consistent with  
19 the current practice, of the Committee essentially tasking  
20 the appropriate agency with enforcing its permit  
21 conditions as they're incorporated in the overall  
22 certificate. So, that's (d) and (e).

23           (f) comes out of the recent changes to  
24 the statute, which authorized "the administrator or

1 another state agency or official to specify minor changes  
2 in route alignment for proposed electric transmission line  
3 or" --

4 CHAIRMAN HONIGBERG: There's that pesky  
5 phrase again.

6 MR. WIESNER: We'll have to change that  
7 word. But, yes, "energy transmission pipeline", we'll  
8 change that.

9 Attorney Iacopino points out to me that  
10 the use of that term, and we'll have to check this, may be  
11 right from the statute itself. Although, "energy  
12 transmission pipeline" is not a term which is itself  
13 defined. So, we'll have to think about how to deal with  
14 that.

15 COMMISSIONER BAILEY: Mr. Chairman?

16 CHAIRMAN HONIGBERG: Commissioner  
17 Bailey.

18 COMMISSIONER BAILEY: Maybe the easiest  
19 way to do it is just define it. Leave it in, because it's  
20 tracking the statute, the statute isn't clear what it  
21 means, let's say what it means, and then not change the  
22 text. And, you could say what it means, you know, we mean  
23 it to mean "gas or oil pipeline".

24 CHAIRMAN HONIGBERG: Commissioner Scott.

1                   COMMISSIONER SCOTT: I just want to  
2 point out to Attorney Wiesner, if we do do that, earlier  
3 sections we talk about just "transmission", there's no  
4 modifier at the beginning. Well, we mean "electric  
5 transmission". So, we need to be more specific in those  
6 other sections. We talk about "transmission lines", and  
7 we were talking about "electric transmission" earlier.

8                   MR. WIESNER: But, other than the use of  
9 the term, this is tracking the statute, and the delegation  
10 of it that may be made by the Committee "to the  
11 administrator or another state agency to approve minor  
12 route changes", if that route change is essentially  
13 required as a result of information that was unavailable.

14                   For instance, you start building, and  
15 you find out that you have to now site a transmission  
16 tower in a slightly different location than was originally  
17 approved. This would be a delegation to the administrator  
18 to approve that change, because of some subsurface  
19 condition that was not known at the time the application  
20 was made.

21                   And, then, (g) and (h) are intended to  
22 be more catch-all provisions. One of the -- (g), excuse  
23 me, references compliance with the certificate, to track  
24 the specifications of the application itself. And, (h) is

1 a more general provision, that just refers back to the  
2 statute, and other conditions that would "support the  
3 findings made pursuant to 162-H:16". And, for example,  
4 this is a place where treatment of participating  
5 landowners might be specified, as well as other relevant  
6 conditions, on a case-by-case basis.

7 Again, to the extent we're tracking  
8 statutory authority, and prior practice and the  
9 Committee's general authority, I'm not going to tell you  
10 that we need this section. It may be helpful, in terms of  
11 laying out a brief laundry list of the types of conditions  
12 that may be considered. It is not exhaustive, it's not  
13 exclusive. So, I think it's a policy call whether this  
14 should be included in the rules.

15 CHAIRMAN HONIGBERG: Thoughts or  
16 comments? Any? Commissioner Burack.

17 VICE CHAIRMAN BURACK: Mr. Chairman, not  
18 having seen this in written form, had been thinking for a  
19 long time that this probably wouldn't be helpful. But,  
20 seeing it now in written form, I think it may actually  
21 provide some greater understanding, particularly for those  
22 who are not regularly engaged in this process, as to, you  
23 know, what they can expect and where this might go. I  
24 also think that, just for the Committee members

1 themselves, it may be a -- it may be a helpful initial  
2 list, if they do find themselves in situations where the  
3 Committee is inclined to issue a certificate, to at least  
4 have a starting place for determining what are the  
5 conditions that ought to be considered or at least  
6 discussed by the Committee.

7           So, my gut now, having seen this in this  
8 format, is to put this in, and let's get comments on it.  
9 And, I don't -- I don't see how it can do any harm, and,  
10 in many ways, I think it could be helpful to us.

11           CHAIRMAN HONIGBERG: Any other thoughts  
12 or comments?

13           (No verbal response)

14           CHAIRMAN HONIGBERG: Seeing none, that  
15 seems like a reasonable way to proceed.

16           MR. WIESNER: 301.19, which will now  
17 become "18", is the extensive "Sound Study Methodology".  
18 Again, this is -- this essentially tracks what was agreed  
19 to through the SB 99 Working Group process, and contains  
20 numerous references to ANSI standards and ISO standards.  
21 That's a different ISO than the ISO-New England. And, I'm  
22 hopeful that I captured everything that needs to be  
23 captured there. And, if not, I expect that we will  
24 receive comments that points out potential revisions.

1                   If we want to jump ahead to Page 24,  
2                   this is the "Enforcement" section. And, a couple of  
3                   meetings ago we decided that, in Subparagraph (b), we  
4                   would not limit the Committee's right to inspect or have  
5                   access to a site to "reasonable times and subject to  
6                   reasonable conditions", so that language has been deleted  
7                   from (b). And, all of Subparagraph (c), which required  
8                   the "5 day prior written notice of any inspection" has  
9                   been deleted as well, consistent with the Committee's  
10                  decision.

11                  And, then, in (d), there is an editorial  
12                  comment, responsive to OLS, where, instead of saying  
13                  "therefor", we're referring to "for the committee's  
14                  consideration of suspension" of a certificate.

15                  And, similar changes, again responsive  
16                  to OLS, in Subparagraph (f), an attempt to track the  
17                  "shall/if" formation -- formulation, excuse me. And, this  
18                  language will appear in several other places as we proceed  
19                  through this "Enforcement" section. And, what I've done,  
20                  for your consideration, is impose a standard that a  
21                  suspension order in this case would follow, "if the  
22                  Committee determines that suspension is necessary to  
23                  protect the public health and safety or the natural  
24                  environment."

1                   And, that may be -- that might be seen  
2                   as limiting of the Committee's jurisdiction. It seemed to  
3                   me that those are the circumstances in which the Committee  
4                   would be most likely to order a suspension, rather than  
5                   taking some other sort of action. But that's something  
6                   that we should give some careful consideration to. There  
7                   may be another way to state that or to address the issue  
8                   in some other way.

9                   CHAIRMAN HONIGBERG: Commissioner Scott.

10                   COMMISSIONER SCOTT: On that last  
11                   Section (f), I guess it's (f) now, if we took that out,  
12                   does that -- that does not mean that we couldn't suspend,  
13                   if we decide to, correct?

14                   MR. WIESNER: If we take out the "if",  
15                   and "may" becomes "shall" --

16                   COMMISSIONER SCOTT: No, no. Took out  
17                   that whole section, that last -- if we took out this whole  
18                   what is now (f) on your draft.

19                   CHAIRMAN HONIGBERG: 302.01(f), the "14  
20                   days written notice provision"?

21                   COMMISSIONER SCOTT: No. I'm sorry.

22                   MR. WIESNER: What was "(g)", that is  
23                   now "(f)"?

24                   COMMISSIONER SCOTT: Yes. Thank you.

1 MR. WIESNER: Right. That is, I mean,  
2 the whole of this section is basically leading up to that.  
3 That this is what -- this is when the Committee, well, not  
4 all of it, but the preceding subsections lead you to this  
5 determination that there should be a suspension.

6 MR. IACOPINO: It does limit the  
7 Committee. If you look at RSA 162-H:12, which is the  
8 Enforcement statute. Under that statute, the enforcement  
9 proceeding can start, if there is a violation of any  
10 condition of the certificate. And, in addition, you can  
11 suspend the certificate, if you determine that there's  
12 been material misrepresentations made to you, which is not  
13 caught in the new regulation. So, just so you know, it is  
14 a -- sort of a limitation to just those two areas.

15 Whereas, you might be before off, from a  
16 legal standpoint, of just referring back to the  
17 Enforcement section of the statute.

18 CHAIRMAN HONIGBERG: Commissioner Scott.

19 COMMISSIONER SCOTT: I gather -- it  
20 sounds like I'm agreeing with Attorney Iacopino. What I  
21 viewed as Section 302.01 is the process by which we would  
22 determine there's a violation. And, my comment on the  
23 very last part, which formally "(g)", now "(f)", I don't  
24 support that we would tie our own hands and say, if we

1 decide there's a violation, you know, the conditions by  
2 which we would suspend, I think that's something that's  
3 very conditional, depending on what the situation is.

4 So, I was reading the lead-up, as  
5 Attorney Wiesner calls it, I think, to be just "these are  
6 things we do to determine if we think there's a  
7 violation". I don't know why we'd go forth and tie our  
8 hands to that very last condition, is what I was trying to  
9 get at. So, if we just refer to the Enforcement section,  
10 perhaps that works.

11 CHAIRMAN HONIGBERG: I agree with  
12 Commissioner Scott. And, I see other nodding heads.

13 VICE CHAIRMAN BURACK: So, if I may just  
14 inquire, Mr. Chairman. This would basically mean that we  
15 would go back to the formulation that I think we had  
16 agreed we would apply in a number of other situations,  
17 where we would say "pursuant to RSA 162-H:12", and then  
18 recite what our authorities are, but not limit ourselves  
19 to having to make a finding that, effectively, that  
20 something would be a threat to public health and safety or  
21 the natural environment. There could be multiple reasons  
22 beyond those that I would argue we currently have the  
23 authority to be able to suspend a certificate. And, I  
24 would not want to in any way limit our authority by a

1 choice of words here.

2 CHAIRMAN HONIGBERG: I think folks agree  
3 with that.

4 MR. WIESNER: And, in 302.02, this is  
5 actually an entirely separate section, which covers the  
6 "misrepresentation" concept, which also appears in  
7 Section 12 of the statute, but it has the same issue, on  
8 Page 25. Which is when the -- in an attempt to remove  
9 "may" and include "shall/if", we still -- we have this  
10 language as well that refers to "public health and  
11 safety".

12 CHAIRMAN HONIGBERG: And, I think we  
13 should deal with it the same way.

14 MR. WIESNER: Yes.

15 CHAIRMAN HONIGBERG: We should resist  
16 the "shall/if", because the "shall/if" ends up limiting  
17 us.

18 MR. WIESNER: We don't like the "if", so  
19 we'll do "pursuant to". And, we'll find a way to make  
20 that work.

21 Under "Revocation of Certificate", this  
22 is basically saying that, if there's been a suspension,  
23 and there's a "failure of the certificate holder to  
24 correct and mitigate the consequences of the violation or

1 misrepresentation that was the basis for the suspension  
2 within the period of time specified in the suspension  
3 order", is the new language, then "the Committee shall  
4 initiate an adjudicative proceeding to revoke the  
5 suspended certificate."

6 And, I believe that inclusion is  
7 responsive to an OLS comment. So, essentially, what this  
8 is saying is you're going to be -- you have an opportunity  
9 to cure, if you will, during the suspension. But, if  
10 you've not done so, and now I'm saying that, you know, I'm  
11 not sure this works in terms of timing, the Committee  
12 shall initiate an adjudicative proceeding.

13 And, the suspension order might say "if  
14 there's going to be a cure or mitigation, it needs to  
15 occur on or before such and such date, or we will commence  
16 an adjudicative proceeding." And, I think that's what is  
17 trying to be captured here.

18 So, if there's a comfort level with that  
19 language.

20 CHAIRMAN HONIGBERG: Commissioner  
21 Burack.

22 VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
23 just trying to read that provision in conjunction with  
24 302.03(c). And, I want to make sure that we're not

1 saying -- we're not effectively saying here that, "once  
2 that time period has run, if you still haven't fixed it,  
3 then we've got to then give you 90 days written notice"?  
4 Is that how somebody could read this? And, I'm also  
5 trying to track that back against the language in  
6 162-H:12, III, Subsection III or Section III.

7 MR. WIESNER: I mean, the statute  
8 requires a 90-day written notice of the Committee's  
9 consideration of revocation, after a certificate has been  
10 suspended.

11 VICE CHAIRMAN BURACK: Okay. So,  
12 this -- so, the first provision is simply suspension, and  
13 the second is revocation. So, effectively, do you have  
14 to -- yes, you have to wait until you've suspended the  
15 order, before you can commence a revocation process, is  
16 that what this is saying?

17 MR. IACOPINO: I don't think it actually  
18 does. Because, if you look at 302.03(b), it starts with  
19 "If the Committee has suspended a certificate".

20 VICE CHAIRMAN BURACK: Okay.

21 MR. IACOPINO: And, then, you've given  
22 them, in the suspension order, a time period to mitigate  
23 the consequences of the violation or misrepresentation.  
24 You then initiate a revocation proceeding, which at that

1 case -- which at that point is just going to be "we gave  
2 them this amount of time, they didn't do it." So, I think  
3 that -- I don't think that 302.03 requires a suspension  
4 first. I think that you could -- you could institute a  
5 proceeding to revoke, just as long as you give 90 days  
6 written notice.

7 CHAIRMAN HONIGBERG: Yes. (b),  
8 Subsection (b) won't always apply, because we won't always  
9 have suspended. Could go straight to (c) and give them 90  
10 days notice.

11 VICE CHAIRMAN BURACK: Okay. Thank you.  
12 That's helpful.

13 MR. WIESNER: And, that is the last  
14 change.

15 CHAIRMAN HONIGBERG: All right. With  
16 that having been done -- yes, Commissioner Scott.

17 COMMISSIONER SCOTT: Sorry to pull us  
18 back from finishing. It's not a change, but since, I'm  
19 now reading that section of RSA 162, and I'm looking now  
20 at the rules back in 302.03(b), "except for emergencies",  
21 which makes sense to me, "the Committee shall conduct an  
22 adjudicative hearing." Does the statute actually support  
23 the "except for emergencies"? I don't see that. The  
24 statute seems to say we must, before we revoke. I don't

1 see an exception there. I think an exception makes sense,  
2 but I don't see it in the statute. Or, is that "exception  
3 for emergencies", is that 162-H:12, I, is that where the  
4 exception is?

5 MR. IACOPINO: Yes. The Section I of  
6 RSA -- Section I of RSA 162-H:12 does have the "except for  
7 emergencies" language.

8 COMMISSIONER SCOTT: And, you think that  
9 overrides Section III?

10 MR. IACOPINO: Well, Section III is  
11 about "revocation", as opposed to "suspension".

12 COMMISSIONER SCOTT: Correct. And, I'm  
13 referring to "revocation", under 302.03.

14 MR. IACOPINO: I guess you're probably  
15 correct. Because, if it's an emergency situation, you're  
16 more likely to suspend immediately than revoke.

17 COMMISSIONER SCOTT: That's the way I  
18 read it. I read the statute to say we can, for emergency,  
19 we can suspend. But, for revocation, we don't have a  
20 choice but to do the -- do the notice, in which case I  
21 would say (d), as much as I think it makes sense, I don't  
22 think is legal.

23 VICE CHAIRMAN BURACK: So, you're  
24 proposing just to strike (d)?

1 COMMISSIONER SCOTT: Correct.

2 VICE CHAIRMAN BURACK: That makes sense.

3 MR. IACOPINO: And, I don't think you  
4 hamper yourself, because you still have the ability to  
5 suspend.

6 CHAIRMAN HONIGBERG: Yes. If there's an  
7 emergency situation, you go through, you suspend, and  
8 initiate the revocation process.

9 MR. IACOPINO: Yes.

10 MR. WIESNER: Right.

11 CHAIRMAN HONIGBERG: And, there's  
12 presumably some constitutional property right in the  
13 certificate, which you can't revoke without giving them a  
14 hearing. But you can sure as heck suspend them.

15 All right. Are we done now?

16 (No verbal response)

17 CHAIRMAN HONIGBERG: I see no one's  
18 finger going to their microphone, which is good.

19 So, there are some things that we need  
20 to clean up. What I would like is for the Committee to  
21 authorize Attorney Wiesner and me to make the necessary  
22 changes, and to proceed to take the steps necessary to  
23 publish a new draft and schedule a public comment hearing  
24 in mid-September. Commissioner Scott.

1 COMMISSIONER SCOTT: So moved.

2 VICE CHAIRMAN BURACK: Second.

3 CHAIRMAN HONIGBERG: Is there any  
4 further discussion?

5 (No verbal response)

6 CHAIRMAN HONIGBERG: Seeing none, all in  
7 favor say "aye"?

8 *(Multiple members indicating "aye".)*

9 CHAIRMAN HONIGBERG: Are there any  
10 opposed?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: The "ayes" have  
13 it.

14 Let's talk briefly about the schedule  
15 going forward. I think we did identify the date and time  
16 for the public comment hearing. Off the record for a  
17 minute.

18 *(Brief off-the-record discussion*  
19 *ensued.)*

20 CHAIRMAN HONIGBERG: September 15th, at  
21 9:00 a.m. We will, as we typically do, leave a period of  
22 time after the public comment hearing for written  
23 submissions. I think we contemplated leaving those open  
24 until Friday, the 18th?

1 MR. WIESNER: It's a very short  
2 timeline.

3 CHAIRMAN HONIGBERG: We are under a  
4 deadline.

5 MR. WIESNER: Right.

6 CHAIRMAN HONIGBERG: So, we are going to  
7 do our best to give everybody the opportunity they need,  
8 but we are limited in what we can do.

9 We have gotten an excellent response,  
10 thank you all, to the *doodle.com* poll for two meetings  
11 after we've received all of our public comments. That  
12 will take place during the week of the 21st, maybe rolling  
13 over to Monday, the 28th, although that's not our  
14 preference. If we need to do the 28th, we will. But the  
15 better would be to do both meetings during the week of the  
16 21st, so that we have as much time as possible to make  
17 whatever changes need to be made, and get the final  
18 version filed with OLS.

19 Did I get that right, Mr. Wiesner?

20 MR. WIESNER: Yes, Mr. Chairman. That  
21 sounds correct.

22 CHAIRMAN HONIGBERG: All right. Are  
23 there any other thoughts or comments, before we adjourn?

24 (No verbal response)

1 CHAIRMAN HONIGBERG: Commissioner Rose  
2 moves we adjourn. Commissioner Bailey seconds.

3 VICE CHAIRMAN BURACK: Can we just say  
4 thank you to Attorney Wiesner for his extraordinary work,  
5 and to Attorney Iacopino, for his support as well. And,  
6 to you, Mr. Chairman, for your sense of humor throughout  
7 this challenging process. So, we all appreciate it.

8 CHAIRMAN HONIGBERG: I will say that  
9 99.9 percent of the thanks go to Mr. Wiesner in this  
10 building for all the work that was done on this.

11 So, with that, I will take a vote on the  
12 motion to adjourn. All in favor, say "aye"?

13 *(Multiple members indicating "aye".)*

14 CHAIRMAN HONIGBERG: Are there any  
15 opposed?

16 *(No verbal response)*

17 CHAIRMAN HONIGBERG: We are adjourned.

18 ***(Whereupon the meeting was adjourned at***  
19 ***4:24 p.m.)***