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**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**March 4, 2015** - 9:29 a.m.  
Public Utilities Commission  
21 South Fruit Street Suite 10  
Concord, New Hampshire

**IN RE: SEC Docket No. 2014-04**  
**SITE EVALUATION COMMITTEE:**  
**Site 100 through Site 300**  
**Rulemaking Proceeding.**  
*(Hearing to receive public*  
*comment.)*

**PRESENT:**

**SITE EVALUATION COMMITTEE:**

Chrmn. Martin P. Honigberg  
(Presiding as Chairman of SEC)

Public Utilities Commission

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

Dept. of Env. Services

Cmsr. Robert R. Scott  
Dir. Elizabeth Muzzey  
Cmsr. Jeffrey Rose

Public Utilities Commission  
DCR-Div. of Historical Res.  
Dept. of Resources and  
Economic Development

Patricia Weathersby  
Roger Hawk

Public Member  
Public Member

Also Present:

David K. Wiesner, Esq. (NHPUC)

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

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

1  
2 CHAIRMAN HONIGBERG: Good morning,  
3 everyone. How is the sound on this? It doesn't sound  
4 very loud to me. People can hear?

5 FROM THE FLOOR: Yes.

6 CHAIRMAN HONIGBERG: All right. We're  
7 here for a public comment hearing on proposed rules by the  
8 Site Evaluation Committee. Before we go further, we'll  
9 have the members of the SEC introduce themselves. My name  
10 is Martin Honigberg. I'm the Chair of the Public  
11 Utilities Commission, and, by statute, I'm also the Chair  
12 of the Site Evaluation Committee.

13 COMMISSIONER SCOTT: Good morning. I'm  
14 Bob Scott. I'm a Commissioner with the New Hampshire  
15 Public Utilities Commission.

16 VICE CHRMN. BURACK: Good morning. My  
17 name is Tom Burack. I serve as Commissioner of the  
18 Department of Environmental Services and Vice Chairman of  
19 the Site Evaluation Committee.

20 DIRECTOR MUZZEY: Hello. I'm Elizabeth  
21 Muzzey. I serve as Director of the Division of Historical  
22 Resources in the Department of Cultural Resources.

23 MS. WEATHERSBY: Good morning. Patricia  
24 Weathersby, a public member.

1                   COMMISSIOINER ROSE: Good morning. Jeff  
2 Rose. And, I have the pleasure of serving as the  
3 Commissioner of the Department of Resources and Economic  
4 Development.

5                   MR. HAWK: Roger Hawk. I'm a citizen  
6 member. And, in my normal work, I'm a planning and  
7 development consultant.

8                   CHAIRMAN HONIGBERG: Seven members of  
9 the SEC constitutes a quorum. There are by statute nine  
10 slots for SEC members. The eighth and ninth slots are the  
11 Commissioner of the Department of Transportation and the  
12 third Commissioner of the Public Utilities Commission.  
13 There is no third Commissioner of the Public Utilities  
14 Commission right now. So, what you have is what you have.

15                   The purpose of today's hearing is to  
16 receive comments from the public on the Initial Proposal  
17 for Site 100 to Site 300 rules, an Initial Proposal that  
18 was adopted in December by the SEC and filed with the  
19 Office of Legislative Services and the Joint Legislative  
20 Committee on Administrative Rules in January.

21                   As I hope you all know, there was a  
22 sign-up sheet when you came in. Ms. Davis, in the back,  
23 has blank copies if you came in without signing it. And,  
24 that sign-in sheet did indicate -- had a column for you to

1 indicate whether you wished to speak. By my count, there  
2 are 21 people who have signed up to speak.

3 I'm going to summarize the process to  
4 date as to how we got where we are. Last year, or I guess  
5 the year before as well, Senate Bill 245 and House  
6 Bill 1602 restructured the Site Evaluation Committee and  
7 modified the process and standards for the certification  
8 of energy facilities, with specific provisions applicable  
9 to wind energy systems. And, they directed the SEC to  
10 adopt rules to implement these changes. In August of  
11 2014, the Office of Energy & Planning delivered to the  
12 SEC, and filed and posted on the Web, its report regarding  
13 a public stakeholder process that was conducted under  
14 Senate Bill 99 from 2013, which included the conclusions  
15 of various working groups involved in that process. The  
16 OEP report has been publicly available for review by SEC  
17 members and other interested parties since that time.

18 *(Unidentified pulsating sound in room.)*

19 UNIDENTIFIED SPEAKER: That's not the  
20 fire alarm, is it?

21 CHAIRMAN HONIGBERG: Off the record.

22 *(Off the record.)*

23 CHAIRMAN HONIGBERG: Soon after receipt  
24 of the OEP report, the SEC invited advance public comment

1 on any and all subject matters within its rules. And,  
2 during the fall, the SEC received 20 separate comment  
3 filings, including comprehensive proposals for overhauling  
4 the rules, as well as specific suggestions regarding  
5 individual rules. All of those public comments have been  
6 publicly posted on the SEC's web page for this docket.

7 At the request of the Chair and the Vice  
8 Chair of the SEC, Staff counsel here at the PUC reviewed  
9 all of the filed comments, as well as the OEP report, and  
10 in consultation with the Chair, the Vice Chair, and the  
11 Attorney General's Office, prepared a Draft Rules Revision  
12 proposal for consideration by the SEC.

13 At its meeting in December, the SEC  
14 considered, discussed, debated, and approved, with  
15 specific changes, a Draft Rules Proposal. That is the  
16 proposal that was filed with some procedural changes  
17 requested by the Office of Legislative Services in late  
18 January.

19 Notice of today's public comment hearing  
20 was posted on the SEC web page for this docket on  
21 January 26, 2015, and written notices were posted in at  
22 least two public places under RSA 91-A. The formal  
23 rulemaking notice for this proceeding was published in the  
24 state Rulemaking Register on February 5th, 2015. As most

1 of you know, under current law, the rulemaking process  
2 must be completed by June 30 of 2015. We are working on  
3 that schedule, as that is what current law provides.  
4 Which would call for us to have a final version filed with  
5 the Office of Legislative Services in late April, in order  
6 to get on the hearing schedule for the Legislature to have  
7 the rules approved and in effect for June 30th.

8 I have been asked to tell you by a  
9 couple of senators that they will be introducing  
10 legislation imminently to delay that deadline by a few  
11 months. While current law is current law, it is possible  
12 the current law will change. And, so, we may be on a  
13 slower timeline at some point in the future. But, as we  
14 sit here today, we don't know that. If that deadline is  
15 postponed, and we are aware of it early enough in the  
16 process, the Committee will discuss how to proceed. One  
17 option may be to create another draft using the  
18 information that comes in now and through the written  
19 comments and have another public hearing. But, unless and  
20 until the Legislature acts, we will be proceeding on the  
21 schedule that we are required to follow by law.

22 Regarding the schedule, there has been a  
23 request filed by one of the commenters that we postpone  
24 this hearing, or, in the alternative, extend the deadline



1 for written comments. The current deadline for written  
2 comments is March 13th. That request was filed by New  
3 Hampshire Windwatch on February 25th. I believe it is  
4 within the discretion of the Committee to grant that  
5 postponement or to grant the extension of the deadline.  
6 Without having discussed this, I'm going to just say, for  
7 the benefit of the rest of the Committee, we can discuss  
8 that now. We can decide to take comment from the public  
9 and see where we are at the end of the day. If we feel  
10 another public comment hearing would be beneficial, if we  
11 think there is benefit to the process, and we can decide  
12 what else we might want to do when everybody has had their  
13 chance to speak today.

14 Does anybody have any thoughts they want  
15 to share on that right now? Yes, Commissioner Scott.

16 COMMISSIONER SCOTT: I don't see any  
17 harm in waiting till the end of the day. So, that would  
18 give any other commenter a chance to explain, for  
19 instance, why they feel it would not be in public interest  
20 to delay as requested or extend the comment period. So, I  
21 prefer to wait until the end of the -- to hear the wisdom  
22 of the other speakers.

23 CHAIRMAN HONIGBERG: Anyone else? Yes,  
24 Commissioner Burack.

1                   VICE CHRMN. BURACK: Thank you, Mr.  
2 Chairman. I concur. I think it would be appropriate for  
3 us to hear public comment today from all who are here,  
4 and, before the conclusion of today's proceeding, to  
5 determine whether or not it would be appropriate for us to  
6 take additional actions to extend the public comment  
7 period beyond March 13th or to possibly schedule an  
8 additional hearing or take whatever other measures may be  
9 necessary. But I think it would be appropriate for us to  
10 proceed as scheduled today.

11                   CHAIRMAN HONIGBERG: Anyone else?

12                   (No verbal response)

13                   CHAIRMAN HONIGBERG: Okay. Unless  
14 someone wants to make a motion that we stop doing what  
15 we're doing, we are going to proceed?

16                   (No verbal response)

17                   CHAIRMAN HONIGBERG: All right. Hearing  
18 no motions. Here's the process we're going to follow  
19 today. People who have signed in have indicated if they  
20 wish to speak. I have two full sheets of names, and a  
21 third sheet that has just one name on it at this point. I  
22 counted -- and I see there are two more in the back. So,  
23 there are somewhere in the nature on the order of 22, 23  
24 people who have signed up to speak. In order to give

1 everybody a chance to say what they -- the most important  
2 thing they want to say in the first two hours this  
3 morning, we're going to ask people to limit their initial  
4 comments to five minutes. If, at the end of five minutes,  
5 you still feel like you have more to say, then, after  
6 everyone else has had a chance and we've gone through one  
7 time, we will circle back to those people who want to say  
8 more. Depending on what time it is, we may take break  
9 after everyone has had a round one, as it were.

10 There are a couple of things I would ask  
11 people to keep in mind. If you have already submitted  
12 written comments, we have them. They are available to us.  
13 The transcript will be available to us as well. It is not  
14 necessary for you to read written comments to us. It  
15 would be better to submit them in writing and we will  
16 review them. You're certainly free to do that, if you  
17 like, but you could also express highlights, summarize,  
18 shorter versions of those written comments wouldn't be a  
19 bad thing.

20 If someone has said what you would have  
21 said, please feel free to say "I really agree with the  
22 previous speaker", "I really agree with Mr. Jones, who  
23 spoke a few minutes ago, on this topic." That's great.  
24 We will understand immediately what you would have said

1 and we'll take that accordingly.

2 I think those are the most important  
3 things I needed to say. I will -- what I'm going to do is  
4 take people in the order in which they signed up, starting  
5 on Page 1. What I will try to remember to do is say who  
6 the next couple of speakers will be, when I call any  
7 speaker. So, you can prepare, have time to prepare.

8 I am going to, however, jump to Page 2,  
9 because Jim O'Brien was here from The Nature Conservancy,  
10 but he had to leave. He and four other organizations  
11 filed written comments on February 24th. He was going to  
12 read those into the record. But, because he had to leave,  
13 what he did was he left me with copies of those written  
14 comments, which you have also all seen on the Web. And,  
15 so, we'll deal with Jim. If anybody wants to take a look  
16 at them up here, I can pass them around. But that's what  
17 Jim O'Brien would have done had he been here.

18 We have microphones in various places  
19 around the room. If you are not at a microphone, there's  
20 a microphone up front here in the first row, to my right,  
21 your left, where the blue piece of paper is. If you're  
22 sitting at a place where there is a microphone, feel free  
23 to use it. Just make sure that it is on and the red light  
24 is on, and that your mouth is close enough to it so that

1 we can -- so it gets picked up by the system.

2 Any other ground rules? Any other  
3 housekeeping we need to deal with?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: All right. The  
6 first three speakers are Parker Griffin, Robert Piehler,  
7 and Ivan Quinchia. How did I do with that name?

8 FROM THE FLOOR: You were awesome.

9 FROM THE FLOOR: Nice job.

10 CHAIRMAN HONIGBERG: I had help.

11 MR. GRIFFIN: Good job with that name.

12 Here are copies.

13 (Mr. Griffin distributing documents.)

14 CHAIRMAN HONIGBERG: All right. Mr.  
15 Griffin.

16 MR. GRIFFIN: Yes. For the record, I'm  
17 Parker Griffin. I live in Hebron, New Hampshire. And, I  
18 should just say that I do support the request for a delay.  
19 But my comments today will focus on issues relating to  
20 wildlife and natural environment, and the critical need  
21 for effective and transparent consultation with relevant  
22 agencies during the application process, and subsequent  
23 post construction oversight by those same agencies. Each  
24 is necessary in order to ensure that the Site Evaluation

1 Committee can grant a certificate based on expert data and  
2 information from reliable third party sources, and,  
3 subsequently, be confident of the post construction  
4 integrity of operation with respect to issues relating to  
5 wildlife and environment.

6 You know, as currently drafted, the  
7 proposed rules require little, if any, pre-construction  
8 studies by third parties, such as the Department of  
9 Environmental Services, the Department of Fish & Game, the  
10 Department of Resources & Economic Development, the  
11 Natural Heritage Bureau, and the Division of Historical  
12 Resources. There's also no requirement that the  
13 communication process between the applicant and such  
14 agencies be transparent.

15 Instead, the draft document typically  
16 requires only that the applicant describe how they,  
17 unqualified in these matters as they are typically likely  
18 to be, have identified critical wildlife and environmental  
19 issues, with a passing reference to communications with  
20 relevant agencies.

21 Now, in my document that you have in  
22 front of you, I quote the current stuff, you don't have to  
23 check. That's what it is. My point would be, it's not  
24 really in the interest or the expertise of the applicant

1 to identify wildlife species, rare plants with any  
2 credibility.

3 And, what I would say to that is much  
4 more credible language, which I strongly suggest that you  
5 all reconsider can be found in an October 15th, 2014  
6 letter that was sent to David Wiesner from the AMC, New  
7 Hampshire Audubon, CLF, the Forest Society, and The Nature  
8 Conservancy, so you have it, which requires the applicant  
9 to provide documentation summarizing all communications  
10 they have had with natural resource agencies, but also to  
11 rely on relevant agencies' expertise in identifying  
12 critical issues.

13 Now, in my letter, my document, I just  
14 quote that letter. You can read that. But, as an  
15 example, for people here, that -- the suggested wording  
16 that those organizations put forth to the SEC, which has  
17 not been incorporated in the current Draft, says, for  
18 instance, that "the applicant needs to include a report  
19 prepared by a qualified professional, identifying and  
20 describing any critical wildlife habitat", for instance.  
21 So, you see the items there. I would suggest, I would  
22 ask, I would just ask that you reread them and reconsider  
23 them.

24 Now, as concerns post construction

1 monitoring and adaptive measures concerning the wildlife  
2 and environment, the proposed rules require none. None.  
3 Currently, they read as follows, you can see it:  
4 Basically, it leaves it to the complete discretion of the  
5 SEC. And, I will read the wording: "Whether conditions  
6 should be included in the certificate for  
7 post-construction monitoring and reporting and for  
8 adaptive management to address potential adverse effects".  
9 This is what the SEC will consider. That's what it says.  
10 Doesn't say anything about what they might be.

11 Now, if you go back to the October 15th  
12 letter that I referenced before, you will find that there  
13 is suggested language there, which actually gives a little  
14 bit more substance and specificity to what  
15 post-construction policies might be. And, I will just  
16 merely cite one, in trying to keep to less than five  
17 minutes. For instance, and you have this in front of you:  
18 "The Site Evaluation Committee shall require, where  
19 necessary, as a condition of the certificate an  
20 appropriate protocol for ongoing monitoring, documentation  
21 and reporting of wildlife mortality or injury by facility  
22 staff." You understand then that it's quite specifically  
23 laid out what the requirements would be. You don't have  
24 to do it, but at least you put in your regulations, and



1 everyone would know from the outset what might be required  
2 subject to the discretion of the SEC. As currently  
3 drafted, it's just not specific at all.

4 Now, look, in conclusion, really, there  
5 currently exists an impression among members of the  
6 public, and especially those who have participated in this  
7 now nearly year-long process, which had the explicit  
8 intention of seeking substantive public input, that the  
9 process has not really been carried out in accordance with  
10 that original intent. None of the extensive work that was  
11 submitted to the Public Utilities Commission found its way  
12 into the proposed rules, which appear instead, actually,  
13 to be modeled after a document dated September 24th, 2014,  
14 addressed to David Wiesner, by various corporations,  
15 including Cate Street Capital, which I assume is a hedge  
16 fund; EDP Renewables North America; Iberdrola Renewables;  
17 Northeast Utilities; Public Service Company of New  
18 Hampshire; National Grid, Eolian Renewable Energy.

19 In short, the clear impression is that  
20 the rules governing the SEC process have been written,  
21 with some minor tinkering, by the industry itself, without  
22 really any public input.

23 And, so, my message today, you know, I  
24 understand that many of you are newly serving in your

1 roles in this Committee. And, if so, the way I would put  
2 it is, you have a wonderful opportunity to disprove this  
3 impression, by actually adopting rules that incorporate  
4 substantive public comment, so that the SEC process will  
5 be meaningful, rigorous, and to the benefit of the state.  
6 Thank you very much for your time.

7 CHAIRMAN HONIGBERG: Thank you very  
8 much, Mr. Griffin. You were right on five minutes. I  
9 don't know you did that.

10 MR. GRIFFIN: You know, I practiced. I  
11 practiced.

12 CHAIRMAN HONIGBERG: Am I correct, you  
13 have not submitted the written statement?

14 MR. GRIFFIN: I have not.

15 CHAIRMAN HONIGBERG: But we will, it  
16 will end up in the record. We will have it posted on the  
17 website. Does anybody have any questions for Mr. Griffin?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: Seeing none, thank  
20 you very much.

21 MR. GRIFFIN: Thank you.

22 CHAIRMAN HONIGBERG: Next up is Robert  
23 Piehler, followed by Ivan Quinchia and Tripp Blair.

24 (Mr. Piehler distributing documents.)

1 MR. PIEHLER: That was not submitted  
2 electronically.

3 CHAIRMAN HONIGBERG: Thank you.

4 MR. PIEHLER: I'm Robert Piehler, from  
5 Alexandria, New Hampshire. Thank you for --

6 (Court reporter interruption.)

7 MR. PIEHLER: Robert Piehler, from  
8 Alexandria, New Hampshire. I'm going to talk on setbacks.  
9 I'm concerned that property landowner rights involving  
10 potential industrial wind turbine sites should protect the  
11 landowner on all corners of their property. The SEC has  
12 the flexibility to permit site structures so they're far  
13 enough away from property boundaries to ensure no  
14 industrial or intrusions of falling debris, fire or ice  
15 throw will occur.

16 As of now, in some instances, one and a  
17 half times the height of a tower can be from a property  
18 line. It's been seen in some projects that that seems to  
19 be very close. However, on steep slopes, this presents a  
20 problem, ice throw has far more travel potential from a  
21 tower than on level terrain. Tip speeds can reach  
22 180 miles an hour, enhancing the potential for further  
23 throw, blade parts, if they become damaged. The landowner  
24 should be under no obligation to accept harm to its people

1 or property from such events.

2 Therefore, I suggest the SEC rules  
3 respect the landowner rights at all times. Proper setback  
4 rules are needed to protect the rights. Rules should  
5 answer the question. "How close is close enough?"

6 The projects are usually placed on many  
7 thousands of acres, and then reduced to a smaller  
8 footprint. That should make it less of a problem for a  
9 wind company if they are required to have a specific  
10 setback assuring that set property lines will not be  
11 intruded upon under any circumstances.

12 Again, I ask, in developing your rule  
13 changes, that you remember that people have the right to  
14 use every corner of their property all seasons of the  
15 year.

16 The SEC actually is an end run round  
17 eminent domain; it could become eminent domain without due  
18 process. Rule adjustment is needed so this is not the  
19 case in the future. Addressing this eminent domain issue  
20 has occurred in other siting problems after-the-fact,  
21 where landowners had to take suit to settle improper  
22 placement. And, if you want to enter into an agreement  
23 with a company to allow certain things to be done or near  
24 your property, that's between the landowner and the

1 company. But, after it's built, to be forced into  
2 negotiation is a misjustice and a miscarriage of justice  
3 that you never asked for this litigation. And, that's  
4 what I would, you know, make you aware of, that those  
5 property lines, when you look at those on a map, these are  
6 the faces that are out here that you'll have to deal with.  
7 It's people. It's not just property lines. It's a way of  
8 life that's going to be potentially impacted on an  
9 industrial scale.

10 So, that's why I feel that, you know,  
11 property rights are imperative for you people to take into  
12 due consideration. And, at that, I would just say thank  
13 you for letting me speak.

14 CHAIRMAN HONIGBERG: Thank you,  
15 Mr. Piehler. We will make sure that your comments are on  
16 the website. Does anybody have any questions for  
17 Mr. Piehler?

18 (No verbal response)

19 CHAIRMAN HONIGBERG: Seeing none. Next  
20 up, Mr. Quinchia, followed by Tripp Blair and Dennis  
21 Cashman.

22 MR. QUINCHIA: Great job on the name, by  
23 the way. Good morning. And, I'd like to go on the record  
24 as supporting the extension that was requested by

1 Windwatch as well. Thank you for the opportunity to  
2 participate in this public hearing regarding the  
3 establishment of rules for the siting of synergy  
4 facilities.

5 The Legislature was very clear when it  
6 SB 281 and SB 245 were passed that decommissioning of an  
7 existing power plant, particularly a wind plant, needs to  
8 be carefully considered. Performance below specific  
9 levels or extended turbine downtime should also be  
10 considered as a reason for decommissioning a project or an  
11 identified turbine. Rusting, abandoned 500-foot towers  
12 are a problem not just for the host community, but for the  
13 State of New Hampshire. It is also important to target  
14 the restoration of a site to be as close to its original  
15 condition before it was developed.

16 This means the removal of all towers and  
17 its components, the removal of all concrete and the  
18 restoration to the original state of all areas disturbed  
19 during construction and maintenance of the site. It  
20 should also cover all mitigation of hazardous substances  
21 that may be stored or present at the site. It should also  
22 include the planting of vegetation species originally  
23 removed during construction so that the site is restored  
24 as close to its original state. Any reached agreement

1 must be funded -- must be funded for a decommissioning  
2 plan and a secured bond or letter of credit must be part  
3 of the agreement.

4 Civil Engineers, Mechanical Engineers  
5 and experts must be involved in the plan for restoring the  
6 site to its original condition and have to be engaged in  
7 the process, as well as legal counsel to negotiate the  
8 payment bond or letter of credit to cover decommissioning.

9 And, I attached the proposed rules.  
10 Thank you for your time.

11 CHAIRMAN HONIGBERG: Thank you very  
12 much. Does anybody have any questions for Mr. Quinchia?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: And, we'll be  
15 posting his comments on the website.

16 Next up is Mr. Blair, followed by  
17 Mr. Cashman, and then Bruce Cummings.

18 MR. BLAIR: I didn't know how many to  
19 make. So, how's that? I'll give three over here.

20 (Mr. Blair distributing documents.)

21 MR. BLAIR: Good morning. My name is  
22 Russell Blair. I'm a resident of Bridgewater, New  
23 Hampshire. I'm a retired engineer and serial  
24 entrepreneur. I participated in five out of the six

1 meetings of the Office of Energy & Planning SB 99  
2 pre-rulemaking Health and Safety workgroup last spring and  
3 summer.

4           The SB 99 Health and Safety workgroup  
5 had over 19 interested parties attend some or all of the  
6 meetings. The group comprised of interested citizens,  
7 wind energy representatives, law firms, and, oddly enough,  
8 a meteorologist, who happens to be sitting in this room.  
9 Often we were assisted by guest attendees depending upon  
10 the subject matter that was to be discussed. We were  
11 assisted by four accredited acousticians -- that's a hard  
12 word to say -- Stephen Ambrose, Edward Duncan, Richard  
13 James and Ken Kaliski. There was a general consensus from  
14 all the participants on the methodology for conducting a  
15 preconstruction sound modeling and post construction sound  
16 background study. These methodologies, all listed in the  
17 final report, were not incorporated in the draft document,  
18 and should be. I put the section down there. In the past  
19 SEC deliberations, the discussion regarding conducting  
20 post -- pre and post sound modeling/background methodology  
21 took a substantial amount of testimony time. And, since  
22 all of the interested parties, including, you know,  
23 adversaries, have agreed on the methodology, it seems of  
24 little value not to incorporate that, that methodology, in



1 the rulemaking. I have attached the proposed changes to  
2 this document for your consideration. It's attached to  
3 the back. I don't want to read it.

4           Additionally, I want to comment on the  
5 proposed criteria to relative -- excuse me -- criteria  
6 relative to findings of unreasonable adverse effects for  
7 public health and safety for wind energy. And, the draft  
8 language is there in the letter. I have objections to the  
9 overall sound -- I have no objections, I'm sorry, to the  
10 overall sound pressure levels proposed in the language.  
11 Except, however, the language "as measured at the exterior  
12 wall of an existing permanently occupied building of a  
13 non-participating landowner's property, or at a  
14 non-participating landowner's property line if it is less  
15 than 300 feet from an existing occupied building" is  
16 objectionable. By only measuring the sound levels at an  
17 existing occupied building, and not at the property line  
18 of the participating [non-participating?] landowner, the  
19 wind energy facility potentially is using the space above  
20 the landowner's property to mitigate the sound pressure  
21 and limiting the landowner's rightful use to their land.  
22 Somewhat to what Bob Piehler was saying earlier. If the  
23 facility desires to use the landowner's space to mitigate  
24 sound pressure, they can easily reach an agreement with

1 the landowner for such purposes. The landowner then  
2 becomes a participating landowner and this rule doesn't  
3 even apply.

4 In addition, the exception that the  
5 sound levels are permitted to exceed 40 and 50 decibels  
6 for three minutes each hour is unreasonable. In the  
7 Antrim decision, there is no such exception. And, I list  
8 the Antrim decision.

9 This exception would allow extremely  
10 high sound pressure levels of one minute duration three  
11 times an hour. If the sound levels were high enough, this  
12 could cause sleep disruption, nausea, and other public  
13 health issues and the facility would still be in  
14 compliance. For this reason, I request striking those  
15 sound level exceptions.

16 It is important to have fair,  
17 consistent, and appropriate noise standards that protects  
18 the public's rights to fair use of their property and  
19 still provide a standard that an applicant can properly  
20 evaluate and decide if a particular location is  
21 appropriate for a wind energy facility. With the  
22 increasing requirements to have a greater percentage of  
23 the renewable energy in New England -- New England's  
24 energy mix, more and more wind energy facilities will be

1 proposed, and these wind energy facilities must be  
2 appropriately sited and must respect the rights of  
3 abutters as well as the local community at large. Thank  
4 you.

5 CHAIRMAN HONIGBERG: Thank you,  
6 Mr. Blair. We'll make sure that your comments are posted.

7 Next up we have Dennis Cashman, followed  
8 by Bruce Cummings, and then Fred Ward.

9 (Mr. Cashman distributing documents.)

10 MR. CASHMAN: Hi. My name is Dennis  
11 Cashman. And, thank you for the opportunity to speak  
12 today. I live in Bridgewater, New Hampshire. I want to  
13 express my support for the development of clear energy  
14 facility siting criteria as was the stated direction of SB  
15 99's public stakeholder pre-rulemaking initiative, which  
16 was to balance the voice of the people with the  
17 consultants and lobbyists supporting industrial wind. In  
18 my testimony, I want to comment on organizational  
19 decision-making processes, as well as offering siting  
20 criteria for the areas of scenic resources of state or  
21 national significance, a process that was adopted in  
22 Maine. The impetus behind this is to protect our precious  
23 scenic resources, the main drive of our robust tourism  
24 economy. I'm a PhD-degreed management consultant and

1 college professor, and I teach doctoral and Masters level  
2 leadership and management programs. My interest in scenic  
3 resources in the State of New Hampshire began 35 years  
4 ago. My wife and I discovered Newfound Lake. We  
5 eventually moved from Connecticut to our permanent  
6 residence on Newfound, one of the natural unspoiled areas  
7 called "The Most Beautiful Lake" by Yankee Magazine, and  
8 it's a popular tourist destination. I am joined today by  
9 many of my neighbors who share similar stories.

10 Unfortunately, our tourist area has also become a popular  
11 target for industrial wind developers. The surrounding  
12 mountain ridgelines that define our spectacular views also  
13 happen to be producers of thermally generated winds.

14 One of the management skills that I  
15 teach my students is objective critical decision-making.  
16 It is characterized by the establishment of a clear  
17 decision statement and clear, objective, priority-weighted  
18 decision criteria that are established well ahead of any  
19 generated alternative decision paths. These criteria are  
20 defined, articulated, and weighted by a democratic process  
21 to build buy-in and objectivity. Factual, unbiased  
22 research-based data is far more desirable for sound  
23 decision-making over ingratiation or political coalition  
24 building. That's an influence technique that's often used

1 by wind developers. In the absence of objective data and  
2 in support of fuzzy criteria, they often use a "data dump"  
3 technique, where there is so much information that the  
4 decision-maker assumes that it meets the criteria, because  
5 the criteria were never clearly defined in the first  
6 place.

7 A recent example was a wind developer's  
8 4,500 page application, complete with multiple career wind  
9 experts' benefit claims for improvements in the economy,  
10 jobs, tourism, wildlife, etcetera. Unfortunately for New  
11 Hampshire's profitable tourist economy, more industrial  
12 wind facilities are being proposed in our scenic areas,  
13 ready to take advantage of our fuzzy siting criteria.

14 In research, there is a concept known as  
15 "face validity". It is the first test for something that  
16 we believe is true because it matches our experience and  
17 makes sense. In order to move to statistical validity, it  
18 generally requires a funded study. Members of the public  
19 are good sources of face validity, but unfortunately we  
20 just don't possess the funding to move it to the level of  
21 a formal study. In place of these informal face validity  
22 studies, the public's sensibilities are often dismissed in  
23 favor of corporate-funded studies. However, we always  
24 return to face validity. Said in another way, we ask

1 ourselves if the study matches our experience. Does it  
2 make sense? Tourists who visit New Hampshire and our New  
3 Hampshire lakes cite our water quality and scenic value as  
4 their main draw. Clear criteria would assess the impact  
5 on Scenic Resources of Significance.

6           Upon review of the literature, a recent  
7 recommendation set forth by the Maine Department of  
8 Environmental Protection's review of the Bowers Wind in  
9 the Down East Lakes Region, I thought it was very close to  
10 what we are feeling in our Lakes Region, it provides an  
11 excellent template for New Hampshire's siting criteria.  
12 As in the Down East Lakes Region, New Hampshire's tourism  
13 is chiefly based upon scenic and natural resource value.  
14 The metrics suggested here are to assess a project's  
15 impact upon the Scenic Resources of State or National  
16 Significance. What the Maine DEP did was to quantify  
17 through specific and measurable criteria visual impact,  
18 because they knew that tourism was dependent on scenic and  
19 natural resource value. In New Hampshire, our focus must  
20 be to protect and mitigate the risk to our robust tourist  
21 economy. Over the past week, and you can read it for  
22 yourself, the Union Leader had an interview with a  
23 Newfound area-based realtor. He reported vacation rentals  
24 on the lake are booked over 90 percent so far. You might

1 argue it's because of all of the snow that we've had in  
2 Massachusetts and the surrounding areas. But he reported  
3 that 100 -- he had 145 rental weeks that he was  
4 responsible for. He represents about 10 percent of the  
5 entire market in our small lake, three by seven miles.  
6 That equals a conservative estimate of two and a quarter  
7 million dollars, not including the boost to the local  
8 economy. Again, our focus should be to promote and  
9 protect tourism.

10 Now, the Maine DEP process, which I've  
11 outlined on the back of the copy that I've distributed to  
12 the Committee, suggested Assessment of Impact to Scenic  
13 Resources of State or National Significance. I'll just  
14 highlight what I thought was most important. First of  
15 all, the purpose was overall "any proposed project should  
16 not unreasonably interfere with existing scenic, aesthetic  
17 or recreational use of a protected natural resource."

18 CHAIRMAN HONIGBERG: Mr. Cashman,  
19 please --

20 MR. CASHMAN: Yes?

21 CHAIRMAN HONIGBERG: Please bring  
22 yourself to a close as quickly as you can.

23 MR. CASHMAN: I will. So, the highlight  
24 of the process is that within 10 miles the -- any areas of

1 scenic -- any scenic resource of state or national  
2 significance should be considered in the areas of  
3 national -- natural landmarks, historic places, state  
4 parks, lakes, rivers, viewpoints, scenic turnouts. And,  
5 what should be studied? The extent of the impact: How  
6 many visible turbines? Nature of the impact: Visible  
7 angle. Duration: Is it seasonal? Is it occasional? Is  
8 it permanent? Effect upon enjoyment and continued use,  
9 and the scope and scale.

10 And, I appreciate the opportunity to  
11 speak with you today.

12 CHAIRMAN HONIGBERG: Thank you,  
13 Mr. Cashman. We'll make sure your written comments are  
14 posted. Next up we have Bruce Cummings, followed by Fred  
15 Ward, and Mark Watson.

16 MR. GRIFFIN: Here you go. Thank you.

17 (Mr. Griffin distributing documents.)

18 MR. CUMMINGS: All right? Good morning  
19 to the Committee. I am Bruce Cummings. I live in  
20 Bridgewater, New Hampshire. I represent the third  
21 generation on that lake of my family, and my grandson this  
22 summer represents the fifth. So, you can see we have a  
23 lot of history in New Hampshire and on that lake.

24 I'm going to -- my comments that I -- my



1 letter that I passed you highlight three areas. I'm going  
2 to go through them quickly for you, just to give you what  
3 I consider the meat. When we first started hearing about  
4 the wind turbine industry in the area, it was the Wild  
5 Meadows Project. And, I can remember looking at the Wild  
6 Meadows visual stimulations [simulations?]. And, here was  
7 all the mountains that we look at every day and enjoy, and  
8 then there were these towers on these visual simulations.  
9 And, these towers were represented by tiny little posts  
10 sitting up there, with no blades showing.

11 So, one of the things that I think that  
12 the Rules Committee should -- the Committee should look at  
13 in the rules is an acceptable standard of what these  
14 visual simulations look like when they're represented to  
15 the public. Because what we saw in the Wild Meadows, for  
16 example, was really not that case. And, so, in my letter,  
17 I've adopted some visualization standards for wind energy  
18 developments that I'd like the Committee to consider.

19 The second area I'd like to highlight is  
20 in the private -- is private property. The proposed  
21 requirement for visual impact gives no consideration to  
22 assessing aesthetic impacts on private property, such as  
23 residential areas. Noise and shadow flicker information  
24 is required, but none is for the aesthetic property.

1 Visual impacts should be assessed and considered a primary  
2 factor in the rules and subsequent SEC decision.

3 And, finally, my third point deals with  
4 so-called "good neighbor agreements". I didn't see any  
5 "good neighbor agreements" referenced as I went through  
6 the material in the rules. But the good neighbor  
7 agreements appear to becoming increasingly common practice  
8 for wind energy in dealing with complaints from citizens  
9 or property owners outside of the agreements that the wind  
10 energy people make with the property owners where the  
11 towers are actually placed and that access has been  
12 granted. These silencing tactics and waivers are  
13 indicative, in my opinion, of buy-offs, and should be  
14 banned, as they stifle legitimate issues that the Rules  
15 Committee is working and discussing today. These were  
16 made more popular up in the northern county of Coos. And,  
17 if you've gotten familiar with that, you know that  
18 they're -- they have become an issue up there. But making  
19 agreements with the landowners, outside of the ones that  
20 are directly affected by towers on their property, should  
21 be regulated and considered very carefully, if not banned  
22 altogether. Because what they're doing is they're making  
23 agreements to buy off these folks, because they're having  
24 problems or whatever with the actual turbines and the rest

1 of it. So, rather than fix it, we'll go and we'll just  
2 buy off these people. I think that's a landmine full of  
3 issues and trouble for the future. And, I think it's  
4 something that the Committee should look at very  
5 seriously.

6 CHAIRMAN HONIGBERG: Thank you.

7 MR. CUMMINGS: That's my points.

8 CHAIRMAN HONIGBERG: Thank you,  
9 Mr. Cummings.

10 MR. CUMMINGS: Sure.

11 CHAIRMAN HONIGBERG: We'll make sure  
12 your written comments become part of the record.

13 Next up we have Fred Ward, followed by  
14 Mark Watson, and then Nancy Watson. So, Mr. Ward.

15 MR. WARD: Yes. I think most people  
16 know I'm a meteorologist, and I am not taking blame for  
17 the weather the last month. One thing you can go away  
18 with is, you'll all be able to tell your grandchildren and  
19 great grandchildren is you lived through the coldest and  
20 snowiest month that New Hampshire ever had. So, if that  
21 gives you satisfaction, fine.

22 I only have really two points to make.  
23 First of all, wind energy is a meteorological problem.  
24 And, the corollary to that is, there's been almost no

1 meteorological data put into the mix so far. And, if I  
2 accomplish anything, I want the people to understand that,  
3 while I am not saying how the meteorology should be  
4 handled, I can give you cases that show that it better be  
5 handled, it hasn't been. And, unless there's something in  
6 the rules that requires developers to put the proper  
7 meteorology in, we're never going to end up with the real  
8 needs that we know. We're not going to be able to  
9 calculate what noise problems are, because it's a  
10 meteorological problem, and it varies tremendously from  
11 one type of meteorological situation to another. Shadow  
12 flicker: It's handled very badly, because nobody is  
13 worrying about the geometry, the astronomy, and the  
14 meteorology of how it gets put in. Icing: We know that,  
15 and I'm sure you all know, there's very little icing at  
16 this level [indicating]. If you've ever been to Mount  
17 Washington, they get ice all the time. We don't know --  
18 we know it changes, but we don't know where it is at the  
19 height of the turbine blades, at 1,000, 2,000, 2,500 feet.  
20 Nobody has the data.

21 Now, I did take it on myself to talk to  
22 Scott up at the Mount Washington Observatory, and he would  
23 be delighted if a wind energy person came in and said "how  
24 about making some measures of icing at one, two, three

1 thousand feet." As a meteorologist, I'd love that.

2 As far as the noise is concerned, the  
3 only thing that counts is ducting. Night, when the wind  
4 energy is the most, is the time when you would get  
5 ducting, which is warm air over cold air. Now, you take  
6 warm air over cold air, the noise does not go up, it goes  
7 out. Add that to an ice-covered snowpack on the bottom,  
8 and you've got the perfect thing for bouncing noise all  
9 over the place. No measurements have been made of that.

10 Finally, if we talk about icing, and we  
11 talk about the requirement of 15 percent wind energy by,  
12 what was it, 2025, or whatever it was. If you take the  
13 number of turbines that are required to give you that,  
14 okay, let's take them, I think it's like, I don't know,  
15 hundreds, or whatever it is. I've gone into the weather  
16 data. And, it turns out that every one of those turbines  
17 will be on simultaneously or off simultaneously. If you  
18 look at the wind data, all over New England, including  
19 Mount Washington, there's a very high correlation between  
20 strong winds at one place and strong winds at another. I  
21 can't imagine what the midnight surge would be if we had  
22 very many wind farms. The point being, that if the  
23 requirement is for 15 percent, it's going to blow the grid  
24 almost every good night.

1 All I'm going to -- I will submit -- I  
2 had submitted some things before, and I thought they were  
3 in the rules, but they're not. So, I will make it a point  
4 to make some very specific recommendations. But, mainly,  
5 to require the wind developer to make the measurements,  
6 present them to us, so that we can look and see whether it  
7 makes any difference or not. It affects noise, shadow  
8 flicker, icing. It affects everything. Thank you.

9 CHAIRMAN HONIGBERG: Thank you,  
10 Mr. Ward.

11 Next up, Mark Watson, followed by Nancy  
12 Watson, and then Lisa Linowes.

13 MR. PIEHLER: I'm handing Mark's here  
14 just to save him climbing around.

15 (Mr. Piehler distributing documents.)

16 MR. WATSON: For the record, my name is  
17 Mark Watson. And, I reside in Groton, New Hampshire.  
18 And, I would like to say Mr. Ward's comments were very  
19 appropriate, and I appreciate his time. My comments today  
20 will center on New Hampshire RSA 162-H:16, IV, Sections  
21 (b) and (e). They state: "Issuance of a certificate will  
22 serve the public interest" and "The site and facility will  
23 not unduly interfere with the orderly development of the  
24 region with due consideration having been given to the

1 views of the municipal and regional planning commissions  
2 and municipal governing bodies."

3 The Site Evaluation Committee's draft of  
4 proposed rules dated January 30th, 2015 has neglected to  
5 adequately address municipal input. Local governing  
6 bodies must be given due consideration in the SEC hearing  
7 process for siting an energy facility. Planning boards  
8 across the state have assembled area-specific master  
9 plans. New Hampshire RSA 674:2 states: "The purpose of a  
10 master plan is to set down as clearly and practically as  
11 possible the best and most appropriate future development  
12 of an area under the jurisdiction of the planning board  
13 and to aid the board in designing ordinances that will  
14 result in preserving and enhancing the unique quality of  
15 live and culture in New Hampshire."

16 CHAIRMAN HONIGBERG: Mr. Watson, just  
17 slow down a little. Mr. Patnaude's hands are going to  
18 explode.

19 (Laughter.)

20 MR. WATSON: I've only got five minutes.

21 CHAIRMAN HONIGBERG: No. I mean, we  
22 have your written comments. We're stopping the clock.  
23 But we have your written comments.

24 MR. WATSON: Okay.

1 CHAIRMAN HONIGBERG: We'll be able to  
2 read them. But poor Mr. Patnaude is trying to keep up  
3 with you, and I can see the smoke coming out.

4 (Laughter.)

5 MR. WATSON: Okay. The SEC's omission  
6 of any reference of master plans is a direct violation of  
7 serving the public interest.

8 Town zoning ordinances must also be  
9 adhered to while siting an energy facility. If a town has  
10 ordinances that identify specific siting guidelines, the  
11 SEC should, in the public interest, honor the intent of  
12 the ordinance. The currently proposed SEC rules do not  
13 cover all possible siting guidelines. Guidelines that are  
14 not covered by SEC rules, but have been enacted by the  
15 municipality should be given due consideration by the SEC  
16 to assure that the public is being served.

17 I will just note a few town-specific  
18 siting guidelines that I know of: One is steep slopes;  
19 the other is impact on public infrastructure, such as  
20 roads; communication interferences in TV and internet.

21 Sections that should be rewritten to  
22 specifically state that master plans and zoning ordinances  
23 of the host and abutting municipalities are included are  
24 Site 301.09, Effects on Orderly Development of the Region;



1 Site 301.15, Criteria Relative to a Finding of Undue  
2 Interference; and Site 301.03(h)(6), application shall  
3 include information describing how the proposed facility  
4 will be consistent with public interest.

5 Other sites that should be revised in  
6 the public interest are: Site 201.01 and 201.02. They  
7 address public information sessions prior to the  
8 application and after the application. Both sections take  
9 direct quotes from New Hampshire RSA 162-H:10, which  
10 states: "shall present information regarding the project  
11 and receive comments from the public." This sentence  
12 needs a definitive narrative. Let me break it down.  
13 "Present information". This vague term allows the  
14 applicant to provide the public with only an abstract  
15 description of the project. The applicant avoids  
16 supplying the public any specific technical,  
17 environmental, financial or siting guidelines. The second  
18 part of the sentence "receive comments from the public."  
19 Shouldn't that rule read "receive and answer questions  
20 from the public"? I have participated in public  
21 informational sessions. The applicant's overuse of the  
22 following phrases: "I don't know" or "I'm not an  
23 engineer, I can't answer that", do not serve public  
24 interest.

1 Another disappointment is Site  
2 301.03(f). "If the application is for an electric  
3 generating facility, the applicant shall include the  
4 following information: (3)c Whether the unit will serve  
5 base, intermittent or peak loads", and (3)e, "Impacts on  
6 system stability and reliability." Why were items (3)c  
7 and (3)e deleted. How can the SEC possibly approve an  
8 electrical facility if you don't know the impact on system  
9 stability and reliability? Have you completely forgotten  
10 the public interest and the ratepayers of the state? Any  
11 facility in New Hampshire must prove they will enhance  
12 stability and reliability, not diminish it.

13 Also, Site 301.03(f) must require that  
14 parasitic power consumption be documented. Without  
15 parasitic consumption knowledge, the net value of a  
16 project cannot be determined.

17 I will close by directing the Committee  
18 back to New Hampshire RSA 162-H:16, IV, you know, the  
19 "issuance of the certificate will serve the public  
20 interest" and "the site and facility will not unduly  
21 interfere with the development of the region with due  
22 consideration given to municipal planning boards". Thank  
23 you.

24 CHAIRMAN HONIGBERG: You came in right

1 at five minutes. So, you were perfect at that speed.  
2 We'll make sure your written comments are made part of the  
3 record.

4 Next up is Nancy Watson, followed by  
5 Lisa Linowes and Mark Rielly.

6 MS. WATSON: Good morning. My name is  
7 Nancy Watson. And, my home is in Groton, New Hampshire.  
8 And, as the previous speakers have stated, I also support  
9 the extension of the deadline.

10 Today I'm going to address shadow  
11 flicker. And, the changes I request are taken verbatim  
12 from the Office of Energy & Planning report that was filed  
13 on August 12 of 2014. The Pre-Rulemaking report was a  
14 culmination of the public stakeholder process to develop  
15 regulatory criteria for the siting of energy facilities.  
16 SB 99 made this process a legal requirement in the State  
17 of New Hampshire.

18 Last year, the OEP work groups  
19 documented that shadow flicker can be completely  
20 eliminated by project layout, setback distances, and  
21 curtailment technology. To allow shadow flicker at a  
22 residence, learning place, workplace, health care setting,  
23 public gathering area (outdoor and indoor), and roadways  
24 is a gross disrespect to the people of New Hampshire.

1 Shadow flicker is a health and safety concern, and it can  
2 be completely eliminated by simply requiring developers to  
3 respect non-participating landowners. Do not allow  
4 developers the opportunity to exploit landowners by  
5 providing a rule using arbitrary numbers such as 30 hours  
6 per year and 30 minutes per day.

7 The four items in need of correction  
8 regarding shadow flicker are: Number (1) Site 102.39.  
9 "The definition "shadow flicker" means the alternating  
10 changes in light intensity that can occur when the  
11 rotating blades of a wind turbine are backlit by the sun  
12 and cast moving shadows on the ground or on structures."  
13 To this definition must be revised to the inclusion of the  
14 moon as well.

15 Number (2) is Site 301.08, number (2).  
16 "Effects on Public Health and Safety". The current Health  
17 and Safety section only states "shadow flicker expected to  
18 be perceived at all buildings occupied or used for another  
19 purpose." This statement is not acceptable. The OEP work  
20 group identified specific areas of public health concerns.  
21 "Shadow flicker assessments shall identify the  
22 astronomical maximum (worst case) and anticipated hours  
23 per year of shadow flicker for each residence, learning  
24 space, workplace, health care setting, public gathering

1 (both outdoor and indoor), and roadway that falls within  
2 the study area." This section needs to be rewritten to be  
3 more comprehensive.

4 (3) Shadow flicker modeling, in  
5 general, assumes a maximum impact distance of 10-rotor  
6 diameters, the shadows of which for a 100-meter or  
7 328-foot road diameter would be expected to fully  
8 dissipate after 3,280 feet. The work group heard from  
9 representatives of Mason County, Michigan where turbines  
10 sited beyond 6,000 feet or 18-plus rotor blade diameters  
11 were casting significant shadowing on homes. And, I have  
12 provided the Mason County, Michigan report in my written  
13 testimony for your reference, and I won't state it here.

14 And, the assumption of 10-rotor  
15 diameters may have been appropriate for shorter blades.  
16 However, the longer, wider blades of today's machines and  
17 different shadow profiles for different blade shapes,  
18 which are manufacturer-dependent, suggest that the  
19 10-rotor limit is no longer an adequate standard. I would  
20 recommend that shadow flicker impacts be assessed assuming  
21 an impact distance of one and a half to two miles.

22 And, number (4), Site 301.14(f)(2)b.  
23 proposes a shadow flicker standard of "30 hours per year  
24 or 30 minutes per day within any occupied permanent

1 residence of a non-participating landowner". It is common  
2 to see the 30-hour limit codified in ordinances across the  
3 United States. However, Germany's 30-hour limit from  
4 which the limit is derived refers to the astronomical  
5 maximum figure, while the more realistic maximum of eight  
6 hours per year is permitted at homes and places where  
7 people work, learn, and gather. And, once again, I  
8 provided a reference to the Minnesota Department of  
9 Commerce, which you will see.

10           Once again, too, I will stress that, as  
11 I stated earlier, last year the OEP work groups documented  
12 that shadow flicker can be completely eliminated by  
13 project layout, setback distances, and curtailment  
14 technology. Shadow flicker is a health and safety concern  
15 that must be eliminated. It is important that the SEC  
16 give weight to the documented evidence of known problems  
17 of shadow flicker modeling and impact distances, as  
18 reported by county and state officials with more  
19 experience with wind turbine siting. To assume the  
20 relaxed standard of 30 hours per year of shadow flicker  
21 would be contrary to the public interest and the Committee  
22 would knowingly expose New Hampshire residents to impacts  
23 with no good justification.

24           I have, on the third page, attached a

1 page listing Proposed Rules, which they include a Shadow  
2 Flicker Assessment, a Shadow Flicker Modeling Assumption  
3 for distance, and a Shadow Flicker Standard, which you can  
4 review at a later time at your convenience. Thank you.

5 CHAIRMAN HONIGBERG: Thank you very  
6 much, Ms. Watson. We'll make sure your comments are made  
7 part of the record.

8 Next up we have Lisa Linowes, followed  
9 by Mark Rielly, and Jennifer Goodman.

10 MS. LINOWES: Thank you, Mr. Chairman.  
11 There's four copies there.

12 (Ms. Linowes distributing documents.)

13 MS. LINOWES: Thank you, Mr. Chairman,  
14 members of the Committee. I appreciate the opportunity to  
15 speak with you today. My name is Lisa Linowes. I'm a  
16 resident of the State of New Hampshire. I'm also  
17 Executive Director of the Windaction Group, which is a  
18 national organization that focuses on the policies that  
19 incentivize renewable energy, and also the impacts and  
20 costs, in particular, of wind energy. I served on the ad  
21 hoc committee that produced the first set of rules that  
22 were never adopted back in the 2007-2008 timeframe. I've  
23 been engaged on siting issues pertaining to wind for more  
24 than a decade.

1                   I moderated the SB 99 stakeholder  
2 process group that was engaged in public health and  
3 safety. Today, I would like to limit my comments to  
4 setback issues. And, I know some people have already  
5 spoken on setback. I will not be repeating what they had  
6 said.

7                   I am very hopeful -- just a few comments  
8 to begin with. I'm very hopeful that the Legislature will  
9 see fit to extend this period of review. I have a real  
10 concern that there is not enough time for this Committee  
11 to actually review and consider rules surrounding setback,  
12 setbacks and other siting issues regarding wind energy.  
13 This is a very technical and very comprehensive and  
14 complex process that many jurisdictions have undertaken.  
15 This will be really a first for this Committee. And, I've  
16 been before this Committee many times. I respect your  
17 work tremendously. With all due respect, I do not believe  
18 that this Committee has the requisite knowledge to  
19 actually deliberate and consider the comments that are  
20 being made and make a decision as to which is better,  
21 which rules to adopt. And, I'm very concerned we will end  
22 up with something that will not be appropriate for New  
23 Hampshire.

24                   With that said, with regard to the



1 question of delay, I would like to see a delay -- I would  
2 rather not see a delay on the March 13th date, if it means  
3 we can get another round of review of the rules before you  
4 go through your deliberations.

5 That said, with regard to setbacks, the  
6 safety setbacks, for decades, the wind industry has  
7 advanced the notion that industrial turbines can be sited  
8 with a few hundred feet of people's homes. They have  
9 usually relied on setback distances of 1.1 times or 1.5  
10 times the turbine height, that will be the total turbine  
11 height, including the blades in the 12 o'clock position.  
12 It appears that the setback safety standards that have  
13 been put into the Draft Rules are derived from that same  
14 thinking. That is very old thinking. And, these days, no  
15 one is using -- anyone with any knowledge or experience  
16 with turbine siting, they are not siting turbines that  
17 close to property lines or to homes.

18 Simple math describing the motion --  
19 motion shows that ice or debris from 100-foot long blades  
20 could easily travel 1,700 feet, or up to 1,700 feet,  
21 perhaps better under windy conditions, and when it's at a  
22 site that's elevated.

23 The Vestas safety manual for the V90  
24 turbine, which is the turbine that is sited up in the Coos

1 County wind project, recommends a 1,300-foot safety buffer  
2 around those turbines. That's the basis of the 1,300-foot  
3 distance or safety buffer that was approved by the SEC for  
4 the Granite Reliable Wind Project. Vestas has reported to  
5 Chris Jensen of New Hampshire Public Radio that debris  
6 from its V90 turbine has been known to be thrown as far as  
7 1,600 feet. Even a turbine that isn't properly -- that is  
8 working properly will throw ice, as we heard about. GE  
9 Wind states that the rotating turbine blades can propel  
10 ice fragments up to several hundred meters, depending upon  
11 turbine dimensions, rotational speed and the like. GE  
12 refused to site turbines in Charleston, Massachusetts, and  
13 Falmouth, Massachusetts, because of the proximity to  
14 property lines. In those cases, the property lines were  
15 actually further away than the 1.1 time that -- time  
16 distance that is currently in the draft rules.

17 New Hampshire Fish & Game biologist,  
18 Will Staats, testified before a Vermont committee that --  
19 about the danger of ice throw that he experienced at the  
20 Coos County Wind Project. And, he is cited there saying  
21 that he is -- it's highly threatening when he was up  
22 there, and I won't read his quote, but it is in my  
23 testimony. But the one thing he did say was that one  
24 operator of a wind installation, presumably that is the

1 Coos County Wind Project, told him that "machines will  
2 throw a 400 pound chunk of ice a thousand feet."

3 CHAIRMAN HONIGBERG: Ms. Linowes, you're  
4 at five minutes now. Do you want to --

5 MS. LINOWES: Oh.

6 CHAIRMAN HONIGBERG: Do you want to wrap  
7 up now or do you want to -- are you able to do that  
8 quickly or do you want to circle back in Round 2?

9 MS. LINOWES: Really? I'm already at  
10 five minutes.

11 CHAIRMAN HONIGBERG: Time flies when  
12 you're having fun.

13 MS. LINOWES: Okay. All right. Let me  
14 wrap up then. There's no justification for placing  
15 property owners and the public at risk. Safety setbacks  
16 should be a minimum of three to five times total turbine  
17 height, including the blade, as measured from the property  
18 line, and elevation should be taken into account.

19 And, that is it. Thank you.

20 CHAIRMAN HONIGBERG: Thank you, Ms.  
21 Linowes. We'll get your written comments into the record.

22 Next up is Mark Rielly, followed by  
23 Jennifer Goodman, and Pamela Martin.

24 MR. RIELLY: Thank you, members of the

1 Committee. My name is Mark Rielly. I am Senior Counsel  
2 at National Grid. And, I am in the Legal Department of  
3 the New England Permit and Siting Group. In New  
4 Hampshire, National Grid operates electric transmission  
5 only. So, that's the lens through which I am viewing  
6 these proposed regulations. We did recently process a tap  
7 line project before the Committee and received a  
8 certificate. And, we will be preparing an application for  
9 a new 345 kV line that will be filed in the coming months.

10 Our projects are linear projects,  
11 they're often large and complex. And, in generic terms,  
12 we have two important considerations: One being  
13 permitting certainty, and the other cost-effectiveness of  
14 that process. Clear regulations go a long way to  
15 achieving those goals. And, this Draft I believe is a  
16 good start, it's a strong start. I do have two areas of  
17 comment that I think there could be improvement, again,  
18 from my perspective in electric transmission.

19 First being aesthetics. Proposed Rule  
20 301.05(b)(4), would require visual impact assessments for  
21 electric transmission lines longer than a mile at  
22 different distances, depending on the density of the  
23 development in the area: Half mile in urban areas;  
24 two miles in suburban, rural residential, and village

1 areas; three miles in lightly developed or undeveloped  
2 landscapes where the line would be going in an existing  
3 corridor, and five miles in those same areas in a new  
4 corridor.

5 I believe this structure is problematic  
6 for a few reasons. First, it's ambiguous. I don't know  
7 the definition of what an "urban", "suburban", "rural  
8 residential", "village", "lightly developed" or  
9 "undeveloped areas" are. I don't know who decides them or  
10 defines them, and then, once they're decided, where they  
11 begin and end. This creates complexities for the  
12 analysis. It's difficult to instruct our consultants to  
13 do the work.

14 And, in addition, and relatedly, our  
15 visual analysis would not be uniform, but would weave in  
16 and out and expand and contract through this, the linear  
17 corridor line. Again, that complicates the job, it adds  
18 uncertainty, and also adds expense to our permitting.

19 And, the last comment I'd make on  
20 aesthetics is that I did participate in the aesthetics  
21 focus group during the pre-rulemaking process. And, I  
22 didn't see then, and I haven't seen since, strong  
23 empirical evidence or any, really, for that matter, that  
24 would support extending visual impact analyses for

1 electric transmission lines beyond two miles. These  
2 structures vary in height from, depending upon the  
3 topography and achieving mandated clearances, perhaps from  
4 55 feet to maybe 100, 110 feet. They're often made of  
5 wood, so they would blend in, to the extent possible, with  
6 a forested background, which is frequently the landscape  
7 up in New Hampshire. To be sure, sometimes they are  
8 steel. But, if they're in an existing corridor, it's an  
9 incremental difference. And, there's no moving parts.  
10 They don't -- they are shorter than turbines, they don't  
11 stand out in the landscape in the same way. And, even  
12 against a blue sky background, at three, let alone five  
13 miles, they're really not very visible at all. So, I  
14 think extending a visual analysis to three and five miles  
15 for electric transmission structures is not warranted, and  
16 it would be an unnecessary complication and expense that  
17 would ultimately be passed on to customers.

18 My second area of comment is with  
19 respect to decommissioning. The proposed rule would  
20 require all energy facilities to include a decommissioning  
21 plan. With a description of sufficient and secure funding  
22 to implement the plan, including the provision of  
23 financial assurance in the form of an irrevocable letter  
24 of credit, performance bond, or surety bond. National

1 Grid would urge the Committee to craft a more flexible  
2 regulation on this. I'm not saying "no financial  
3 assurance is needed", but that requirement should be able  
4 to be met in a variety of different ways. Specifically,  
5 the Committee should allow companies, like National Grid,  
6 to satisfy the financial assurance requirement by  
7 demonstrating its financial strength and reliability,  
8 without having to tie up monies for long periods of time.

9 Our electric transmission facilities  
10 have useful lives of 50 years or more. And, it's  
11 burdensome to have to set aside a dedicated fund, not only  
12 to tie up those monies, but then to have to monitor  
13 compliance with that and administrate -- administer those  
14 funds for 50 plus years.

15 CHAIRMAN HONIGBERG: Mr. Rielly, you're  
16 at five minutes now. Are you able to wrap up quickly or  
17 do you want to come back?

18 MR. RIELLY: I can wrap up in two  
19 minutes. Not two minutes, sorry. Minute and a half. One  
20 minute.

21 FROM THE FLOOR: Sold.

22 CHAIRMAN HONIGBERG: One minute.

23 MR. RIELLY: Well, so, National Grid,  
24 and companies similarly situated, are multibillion dollar

1 companies that have the strength and reliability. And, I  
2 would point to the Federal Bureau of Ocean Energy  
3 Management and Regulations. We just went through this for  
4 the Deepwater Wind in Rhode Island. That would allow to  
5 satisfy this financial assurance requirement through that  
6 demonstration and they have standards for that. And, I  
7 can provide those regs to the Committee, if that would  
8 help. But -- so, the point here, on this decommissioning,  
9 is to make it more flexible, and not necessarily require  
10 surety.

11 So, I'll wrap up there. Thank you.

12 CHAIRMAN HONIGBERG: Commissioner Burack  
13 has a question, I believe.

14 VICE CHRMN. BURACK: Mr. Rielly, I just  
15 want to make sure I understand your first point relating  
16 to aesthetics. Is it your recommendation then that the  
17 standard be two miles for any project, regardless of  
18 whether it's in an urban, rural, or other area? Or, do  
19 you not have a specific recommendation?

20 MR. RIELLY: No. I think, having a more  
21 narrow, in an urban area, having a more narrow scope makes  
22 sense. But, going beyond two miles, as I understand it,  
23 and in our projects, our consultants have said that's sort  
24 of their standard, their industry standard. And, going



1 beyond that, you know, the likelihood of having any visual  
2 impact just diminishes to almost nothing.

3 So, I would say two miles is the cap,  
4 but there could be flexibility in urban areas to narrow  
5 that.

6 VICE CHRMN. BURACK: Thank you. I would  
7 also request that, if you do have a suggestion for  
8 different ways to look at the financial assurance  
9 mechanism, you provide that to us as well.

10 MR. RIELLY: I'd be happy to.

11 VICE CHRMN. BURACK: Thank you.

12 MR. RIELLY: Thank you.

13 CHAIRMAN HONIGBERG: Next up is Jennifer  
14 Goodman, followed by Pamela Martin. And, I want to make  
15 sure that, Gail Beaulieu, that's an "N" in that column,  
16 right?

17 MS. BEAULIEU: Right.

18 CHAIRMAN HONIGBERG: You did not want to  
19 speak, correct? Okay.

20 So, after Pamela Martin, it looks like,  
21 is it Robert Shep, is that right?

22 MR. SHEA: Shea.

23 CHAIRMAN HONIGBERG: Shea. Okay. So,  
24 after Ms. Martin will be Mr. Shea. So, Ms. Goodman.

1 MS. GOODMAN: Good morning. I'm  
2 Jennifer Goodman, the Executive Director of the New  
3 Hampshire Preservation Alliance. The New Hampshire  
4 Preservation Alliance appreciates the important progress  
5 toward the goal of improving the Site Evaluation Committee  
6 process that's been made in the many steps leading up to  
7 this point. The Preservation Alliance is a statewide  
8 historic preservation -- historic preservation  
9 organization. We're very involved in projects and have  
10 deep networks and relationships across New Hampshire.  
11 We've seen a substantial increase in calls for assistance  
12 about how to address the potential impacts on historic  
13 resources from energy project proposals over the last  
14 three and four years.

15 Constituents or owners of historic  
16 properties, citizens very concerned about scenic and  
17 historic landscapes, as well as representatives of private  
18 and public sector groups, like heritage commissions,  
19 historical societies, groups involved in community and  
20 economic development.

21 Much of our work relates to investment  
22 in old buildings and downtowns. And, from a planning  
23 perspective, finding that balance, finding out ways to  
24 encourage growth, including important energy projects,

1 while protecting and enhancing special places, the  
2 important landmark structures, these wonderful historic  
3 landscapes. Those special places that make our state an  
4 important place and a significant place, a good place to  
5 live, work, and to visit.

6 I'm here just to emphasize three areas  
7 of recommendations. And, we'll be making some detailed  
8 comments, in written comments, by the deadline relating to  
9 these three areas that I'm mentioning today.

10 The first is -- has to do with criteria  
11 and considerations relative to findings of "unreasonable  
12 adverse effects" as it relates to historic resources. We  
13 want to continue the path that you're already on, using,  
14 relying on known reliable processes, federal processes,  
15 emphasizing that we're dealing with archeological  
16 resources, as well as historic resources. And, those  
17 historic resources are not only the typical historic  
18 building, but these settings and landscapes that are also  
19 so significant and so important to us and to the state.  
20 And, we're going to -- also just wanting to make sure that  
21 those suggestions related to "unreasonable adverse effect"  
22 really parallel other sections of the rules. So that was  
23 my first area.

24 Second is just some very minor

1 clarifications to the rules, describing the effects on  
2 historic resources. That's Site 301.06. I think there's  
3 been improvements there. Just have some little  
4 clarifications that we want to share.

5 And, the last point is just reinforcing  
6 the suggestion that have come from several New Hampshire  
7 conservation organizations and others relative to the need  
8 for specific criteria on the concept of "public interest".  
9 So, we've been collecting data from stakeholders,  
10 utilizing the experience of people close to the SEC  
11 process, as well as other productive state and federal  
12 processes.

13 Just wanted to note that we're also very  
14 pleased that you'll be receiving some recommendations from  
15 the National Trust for Historic Preservation. They have  
16 taken a real interest in New Hampshire processes and plans  
17 before you, and have similar appreciations and similar  
18 concerns to ours at the New Hampshire Preservation  
19 Alliance.

20 I do have a copy of a letter from the  
21 Trust. I believe they also e-mailed it to you. So, I  
22 won't make my way out to share it with you at this point  
23 in time. But just wanted to say thank you for your  
24 consideration. You certainly have a great responsibility

1 and opportunity before you.

2 CHAIRMAN HONIGBERG: Just to make sure I  
3 understand, Ms. Goodman. You think that letter has  
4 already been filed?

5 MS. GOODMAN: I believe it has.

6 CHAIRMAN HONIGBERG: I think I do recall  
7 seeing one. So, I think it's in already.

8 MS. GOODMAN: I can make sure you have a  
9 copy later in the proceedings.

10 CHAIRMAN HONIGBERG: Okay. Thank you  
11 very much.

12 Next up, Pamela Martin, followed by  
13 Mr. Shea, and then Susan Geiger.

14 MR. SHEA: Is it me?

15 CHAIRMAN HONIGBERG: Is the red light  
16 on?

17 MS. MARTIN: Now it is.

18 MR. SHEA: Okay.

19 MS. MARTIN: For the record, my name is  
20 Pamela Martin. I'm from Plymouth. And, I've made several  
21 suggestions, actually, these suggestions come not just  
22 from myself, but there are several of us who got together  
23 and have made suggestions. So, I have the signatures at  
24 the end. But I'm speaking for all of us.

1                   We've made several suggestions to the  
2 rules. And, I won't go through all of them. But I just  
3 want to direct my remarks today about the contents of the  
4 application, which would be Site 301.03. And, this is for  
5 electric transmissions. And, I don't see that this has  
6 been covered in the rules. So, I wanted to see that it  
7 could be covered. I would add number "3", "Describe how  
8 the facility follows FERC recommended setbacks for new  
9 transmission lines regarding mature height of existing and  
10 future native trees outside of the right of way." So,  
11 those are FERC requirements. And number "4", "Describe  
12 planned setbacks that indicate the distance between each  
13 electric tower and the nearest landowner's existing  
14 occupied building, out building, and property line, and  
15 between each tower and the nearest public road and explain  
16 why the indicated distances are adequate to protect the  
17 public from risks associated with the proposed tower  
18 following HUD building guidelines." And number "5,  
19 "Including" -- "Include an assessment of the risks of  
20 tower collapse, by calculating a fall zone for each tower  
21 design and why the indicated distances are adequate to  
22 protect the public from risks associated with the proposed  
23 tower following HUD building guidelines."

24                   It appears to me that the -- there are

1 no setbacks in the draft, the document that I have seen  
2 that includes electrical transmission lines. So, these  
3 would be setbacks for transmission lines.

4 I have included in my -- I'll give you a  
5 package here at the end. These are the HUD fall zone  
6 setbacks. I won't read them to you, but I will give them  
7 both to you. They are covering all sorts of towers, wind  
8 turbines, radio/TV transmission towers, radio relay  
9 dishes, satellite, and transmission towers, which has  
10 been, as far as I can tell, not included in the Draft  
11 Rules.

12 I know that I went on line and tried to  
13 find information about setbacks for transmission towers.  
14 And, most documents say that transmission towers collapse  
15 upon themselves. But the pictures -- I have included  
16 pictures here, and these are pictures of transmission  
17 towers that have fallen in storms. And, they do fall over  
18 and they do cause damage. So, I've included the pictures,  
19 so you can look at these, to prove that transmission  
20 towers do fall over.

21 This is a document from the Carnegie  
22 Mellon Electrical Industry Center. And, it states, I've  
23 just given you copies of the pertinent areas here, "the  
24 cost of storm-caused transmission outages is significant,

1 costing utilities and users on the order of \$270 million  
2 per year and 2.5 billion per year, respectively. So, in  
3 other words, utility companies are paying 270 million per  
4 year, but we, as ratepayers, are paying 2.5 billion a  
5 year. So, there's significant damage to personal property  
6 when towers fall over, to businesses, their property,  
7 their homes. Current available data suggests that the  
8 frequency and severity of hurricanes and ice storms will  
9 increase in the future. I don't know if anybody was here  
10 at the time, but, in 1998, we had an ice storm that was  
11 all over New England. It caused 3.5 billion worth of  
12 damage from downed power lines. As far as I know,  
13 Northern Pass has said they are not going to bury their  
14 power lines. So, that means that we, as ratepayers and as  
15 customers, will have to make up the difference. When  
16 those towers fall, we have to pay the difference. So, I  
17 think setbacks should be included in the Draft Rules.  
18 And, we're hoping that that can be done here.

19 So, I've included all of the FERC  
20 recommendations and HUD's recommendations. And, I would  
21 give you a copy of what I have.

22 CHAIRMAN HONIGBERG: Okay. Thank you,  
23 Ms. Martin. So, you have one copy of what you're  
24 submitting?



1 MS. MARTIN: One copy.

2 CHAIRMAN HONIGBERG: Okay. Would you  
3 hand it to the gentleman to your right. That's  
4 Mr. Wiesner. When there's multiple copies, we can take  
5 them up here. But, when there's only one, I want to make  
6 sure it gets to one place where it will get preserved.  
7 So, is that all you have?

8 MS. MARTIN: That's all I have.

9 CHAIRMAN HONIGBERG: Thank you very  
10 much.

11 Let's see. Next up is Mr. Shea,  
12 followed by Ms. Geiger, and then Martha Papp. Mr. Shea,  
13 what's the last letter of your last name?

14 MR. SHEA: "A".

15 CHAIRMAN HONIGBERG: That is an "a".  
16 Okay. Go ahead.

17 MR. SHEA: My name is Robert Shea. I  
18 don't know if it makes much difference, but I am a native  
19 of New Hampshire. I've lived here my whole life, except  
20 for the three years I was in the military.

21 Industrial wind towers in rural New  
22 Hampshire I feel is wrong. But I am pro Northern Pass,  
23 because I know that's something that's been going on 30,  
24 40 years, trying to get down in here to get power to the

1 grid. I'm just a working class person. But, last year,  
2 me and my girlfriend, we bought a house in Orange, New  
3 Hampshire. A lot of people don't know where that is. You  
4 have to go up Mount Cardigan Road, and I've reached  
5 heaven. And, I don't need industrial wind towers in my  
6 backyard. I can walk anyplace from my house and know what  
7 pristine is. I've sacrificed a lot in my life in New  
8 Hampshire. I have to leave New Hampshire right now  
9 because all this has put on the back burner a lot of "oh,  
10 let's stall it some more." Let's make some decisions, get  
11 some things done, because I have to leave to go to work in  
12 New York. I just can't work in New Hampshire, because  
13 there are no living wage jobs. If you're an industrial or  
14 you're a big factory or you're, you know, an executive in  
15 a corporation, which I choose not to be, I am just a  
16 working class person, but I am doing what I have to do to  
17 survive in New Hampshire, because I love it here.

18 You want to see disturbances, just ride  
19 down Route 3 and the Tenney Mountain Highway and look at  
20 the lines along the edge of the roads where all these  
21 towers were put in, and it is horrid. As a person who  
22 installs things, I worked in Monroe for a matter of  
23 probably a year or so, and understand what that was.  
24 Those are things that were put in in the past 80, 90 years

1 ago. The infrastructure, I actually know, was there a day  
2 after, somebody who got pinned to the ground by 80 year  
3 old infrastructure that collapsed on him, that has been  
4 put off and stalled.

5 Getting this here into the hands of  
6 people in New Hampshire to make things restored, things  
7 that have been put off that other people from other states  
8 have come in, but I've lived here my whole life. All the  
9 places I hunt and fish are now housing developments. So,  
10 I've moved up into Orange, New Hampshire, in order to just  
11 have my pristine New Hampshire back. To see my son enjoy  
12 it. Where, you know, I don't have the deep pockets like a  
13 lot of people. I'm just a working class person. I need a  
14 job to go to. But, yes, I've been able to move out into  
15 the mountains, and I'm willing to do what I have to work.  
16 But it would be nice for things to get done here in New  
17 Hampshire for a change. Thank you.

18 CHAIRMAN HONIGBERG: Thank you,  
19 Mr. Shea. Mr. Patnaude, how are you doing done there?

20 (Brief off-the-record discussion with  
21 the court reporter regarding a recess.)

22 CHAIRMAN HONIGBERG: All right. We're  
23 going to break. So, it's seven minutes before 11. We're  
24 going to try and come back at 11:00. And, when we do come

1 back, we'll be starting with Ms. Geiger, followed by Ms.  
2 Papp, and then David Publicover. So, we will break until  
3 11:00. Thank you.

4 (Recess taken at 10:53 a.m. and the  
5 hearing resumed at 11:06 a.m.)

6 CHAIRMAN HONIGBERG: All right. Ms.  
7 Geiger.

8 MS. GEIGER: Thank you, Mr. Chairman and  
9 members of the Committee. Can you hear me? Is this on?  
10 My name is Susan Geiger, for the record. And, I'm from  
11 the law firm of Orr & Reno, and I'm here presenting  
12 comments on behalf of EDP Renewables. EDP is the third  
13 largest wind developer, owner and operator of wind farms  
14 in the United States. It has 31 operating wind projects  
15 here in the United States, with a total installed capacity  
16 of approximately 40,000 megawatts in 11 states. EDPR is  
17 currently constructing three projects and developing new  
18 projects around the country, including here in New  
19 Hampshire. That's just a little bit of the background  
20 about the client.

21 EDPR was an active member of the  
22 stakeholder groups that worked on Senate Bill 245 last  
23 year, which resulted in changes to RSA 162-H, which is  
24 prompting this rulemaking. And, in developing Senate Bill

1 245, the Legislature and a broad variety of stakeholders  
2 sought to establish a fair and open siting process, with  
3 appropriate procedures and evaluative criteria, while  
4 avoiding blanket moratoria or unreasonable requirements.  
5 EDPR believes that the SEC rules should reflect the  
6 balance that was struck by Senate Bill 245.

7 EDPR appreciates the Committee's and the  
8 Staff's hard work on the Draft Rules. However, the  
9 Company believes that there are several areas that need to  
10 be addressed and revised. And, briefly, I'll summarize  
11 the areas, in the event that I use up all of my five  
12 minutes, I'll at least give you an indication of the areas  
13 of concern.

14 The first is the definition of  
15 "cumulative impacts". The next is "scenic resources"  
16 definition and other visual impacts requirements,  
17 including shadow flicker, sound standards,  
18 decommissioning, and the public interest standard.

19 EDPR will file more comprehensive  
20 written comments by whatever deadline the Committee  
21 establishes, and that we take no position with respect to  
22 whether or not there should be an extension of time.

23 "Cumulative impacts", at Site 102.14, is  
24 defined in a way that requires a proposed project to

1 demonstrate its effects on, among other things, "all  
2 proposed energy facilities for which an application has  
3 been accepted". This requirement means that an applicant  
4 must evaluate impacts of another project that's simply  
5 under consideration by the SEC, but not yet approved.  
6 This would be difficult and should be eliminated, as it  
7 could result in a rush to file applications. Speculative  
8 projects might prematurely seek siting simply to avoid  
9 having to evaluate the cumulative impacts of another  
10 proposed project.

11           The rule could also create wasted effort  
12 by the Committee and other parties. A recent example  
13 exists with respect to the Antrim Wind Project. If  
14 another project, an energy project application had been  
15 filed while the Antrim Project was under consideration by  
16 the Committee, the new applicant would have had to present  
17 information about the cumulative effects of the Antrim  
18 Project, in addition to its proposed project. Given that  
19 the Antrim Project was never approved, this would have  
20 been a wasted analysis.

21           The second area of concern relates to  
22 "scenic resources" and "visual impacts" criteria. The  
23 definition of "scenic resources" in Site 102.36 includes,  
24 among other things, "resources designated by municipal

1 authorities". Our concern here is that we're not aware of  
2 any process or standards by which municipal authorities  
3 would have to make these designations. And, in the  
4 absence of these standards, the municipal "scenic  
5 resource" designations could be made arbitrarily or for  
6 the sole purpose of creating an obstacle for an applicant.  
7 So, in addition, we believe that this criterion is not  
8 necessary, because it's duplicative of other criteria,  
9 such as 301.14(a)(1), which requires consideration of the  
10 existing character of the area of potential visual effect.

11 Also, in that same section, 102.36, the  
12 SEC should clarify that recreational trails, parks or  
13 other publicly funded areas must have a scenic quality in  
14 order to be designated as a "scenic resource". Otherwise,  
15 any publicly funded area, like a parking lot, could be  
16 determined to be a "scenic resource", and we don't believe  
17 that that's what the rule intends.

18 With respect to aesthetics impacts  
19 criteria, we have concerns with 301.14(a). The first  
20 concern is that it requires the Committee to consider the  
21 existing character of the host community, as well as  
22 "communities abutting or in the vicinity of the proposed  
23 facility". This is a vague standard. So, we believe the  
24 rules should be revised to say that the existing -- to say

1 something like "the existing character of the communities  
2 within the area of potential visual effect". This would  
3 capture the most relevant areas, those that are actually  
4 within the appropriate area that's being studied.

5 CHAIRMAN HONIGBERG: Ms. Geiger, you're  
6 at five now. Do you want to circle back in Round 2 or do  
7 you want to wrap up real quick?

8 MS. GEIGER: I apologize for the length.  
9 And, I --

10 CHAIRMAN HONIGBERG: It's fine. If you  
11 want to come back in Round 2, that's fine.

12 MS. GEIGER: Sure.

13 CHAIRMAN HONIGBERG: I mean, it's not a  
14 problem.

15 MS. GEIGER: I prefer to get through the  
16 list. I have maybe another minute and a half, two  
17 minutes.

18 CHAIRMAN HONIGBERG: All right. If you  
19 can finish up in two minutes, go ahead.

20 MS. GEIGER: Okay. Again, continuing on  
21 visual impacts. Section (6), under the rule I just  
22 mentioned, requires the SEC to consider "whether a  
23 proposed facility would be a dominant feature of a  
24 landscape in which human development is not already a



1 prominent feature as viewed from an affected scenic  
2 resources". We believe this goes beyond the statutory  
3 standard.

4 In addition, we have concerns with  
5 respect to shadow flicker reporting requirements. And, we  
6 believe that shadow flicker should be evaluated from  
7 occupied buildings, and not from buildings that are used  
8 for another purpose. This could include tool sheds or  
9 other buildings that are uninhabited.

10 We believe the sound modeling study  
11 should be -- should be changed from 35 dBA sound contour  
12 lines, or two miles down to one mile, this is consistent  
13 with a NARUC study that was performed in 2011, which we  
14 believe is a credible resource for the Committee to  
15 consider. Also, we believe that the sound standards  
16 articulated in the rules are excessive. They don't comply  
17 with or line up with what this Committee has previously  
18 approved for existing and operating wind farms, and we see  
19 no reason to make more restrictive standards for new  
20 applicants.

21 We believe decommissioning is an issue,  
22 and that that should -- that the definition that we agree  
23 with with Mr. Rielly. I think the definition should track  
24 the language in the statute, and it should not reflect --

1 decommissioning assurances should not reflect or include  
2 salvage value. We think that is contrary to industry  
3 practice. And, the Legislature considered salvage value  
4 in Senate Bill 281 last year, and that bill ultimately did  
5 not prevail.

6 And, the last item on my list is "public  
7 interest". We think that we'll need to approve a "public  
8 interest" standard. We would direct the Committee's  
9 attention to the case of *Appeal of Pinetree Power*, 152 New  
10 Hampshire 92, basically upholding a PUC definition of  
11 "public interest" that is something that serves the  
12 overall public benefits, such as economic and  
13 environmental benefits for the State of New Hampshire and  
14 the region.

15 So, I apologize for the length of my  
16 comments.

17 CHAIRMAN HONIGBERG: That's all right.  
18 We're just trying to be fair to everybody, Ms. Geiger.

19 MS. GEIGER: Thank you.

20 CHAIRMAN HONIGBERG: Thank you very  
21 much.

22 Next up is Martha Papp, followed by  
23 David Publicover, and Robert Tuveson.

24 MS. PAPP: Thank you. My name is Martha

1 Papp. I'm a resident of Canaan, New Hampshire. My spouse  
2 and I live on a beautiful piece of land that's been  
3 preserved since the '60s by our family through many  
4 sacrifices. Every day we can get up and look at the  
5 majestic beauty of Cardigan Mountain. Today, I am here in  
6 part to bring words from Jennifer Tuthill, of Alexandria,  
7 New Hampshire. Unfortunately, she couldn't be here to  
8 read her comments due to pneumonia.

9 I would like to bring your attention to  
10 Site 103.05, Committee Administrator and Staff. This  
11 section addresses the appointment of an administrator to  
12 serve as overseer of energy products in the state. This  
13 position is extremely critical, and I view it as very  
14 wisely added to the docket. Had there been a capable  
15 external monitor for industrial wind projects under  
16 construction in the past, many troublesome errors might  
17 have completely been avoided. With an administrator, the  
18 SEC will be able to assure itself, and the public, that  
19 projects are, in fact, proceeding according to the signed  
20 permit. Buildings would not be built 150 meters from the  
21 original permitted sites; structures would be sited  
22 exactly to the approved and permitted plans; roads and  
23 access would be according to the grade agreed to by the  
24 SEC; and fire and public safety issues would be consistent

1 as approved by the SEC. Major and troubling deviations  
2 can be prevented by the parameters you put in place for  
3 this position.

4           However, it is of ultimate importance to  
5 your committee to give specific guidelines for the  
6 administrator. I urge you to be extremely specific about  
7 what your administrator might approve. For example, there  
8 cannot be any deviations of site/structure placement from  
9 the agreed upon permit unless such deviations are brought  
10 directly to the SEC. There can be no deviation in grade  
11 of road construction from original approved and permitted  
12 plans.

13           The administrator will verify that the  
14 project complies with all state standards for inspection,  
15 safety, and certification regarding the standards of the  
16 state Fire Marshal.

17           Additionally, the specific  
18 qualifications required and submitted by applicants for  
19 the position of administrator should be clearly stated.  
20 What specifically is the Committee looking for? Ph.D  
21 qualified? Masters degree? Other specific experience and  
22 training? By looking carefully and seriously at the  
23 suggestions mentioned, I believe the SEC can avoid endless  
24 hours of complaints, hearings, and misunderstandings by

1 the companies involved, and the public at large. Thank  
2 you for your time.

3 And, those were the words of Jennifer  
4 Tuthill.

5 CHAIRMAN HONIGBERG: Thank you, Ms.  
6 Papp.

7 MS. PAPP: Thank you.

8 CHAIRMAN HONIGBERG: We're sorry Ms.  
9 Tuthill is not feeling well. We'll make sure that her  
10 written comments become part of the record.

11 MS. PAPP: Okay.

12 CHAIRMAN HONIGBERG: Next up is David  
13 Publicover, followed by Robert Tuveson, and then Dolly  
14 McPhail.

15 MR. PUBLICOVER: Hello. Hello.

16 CHAIRMAN HONIGBERG: Perfect.

17 MR. PUBLICOVER: Okay. Hi. I'm David  
18 Publicover. And, I'm here to summarize the written  
19 comments that have been previously submitted by the  
20 Appalachian Mountain Club. We've been an active  
21 participant in efforts to enact clearer criteria for the  
22 siting of energy projects for many years. We co-lead the  
23 effort that prepared the proposed wind power siting  
24 guidelines that are posted on the SEC website. Susan

1 Arnold, from our staff, was a member of the advisory group  
2 that oversaw the SB 99 public outreach process, and I was  
3 actively involved in the pre-rulemaking process, and serve  
4 as co-leader of the aesthetics work.

5 We appreciate the work that's gone into  
6 preparing these Draft Rules. However, it's our opinion  
7 that some considerable changes are needed in order to make  
8 the proposed rules compliant with the intent of SB 99, SB  
9 245, and HB 1602.

10 Our most significant concerns relate to  
11 Section 301.14, which is criteria relative to the findings  
12 of unreasonable adverse impacts. SB 99 and 245 require  
13 that the SEC adopt rules that include specific criteria to  
14 be applied in determining if the requirements of 162-H:16,  
15 IV, have been met. Now, a criteria is a standard rule or  
16 test on which a judgment or a decision can be based. And,  
17 in particular, the sections on aesthetics and natural  
18 environment contain nothing that could be considered  
19 criteria, but merely lists the information that the SEC  
20 should consider. This listing does not constitute a  
21 standard against which an application may be judged in any  
22 reasonably transparent way.

23 Now, the criteria related to noise,  
24 shadow flicker, and setbacks provide an example of

1 criteria that are appropriately formulated, although we  
2 offer no comment on the substance of those criteria. They  
3 set clear standards against which an application may be  
4 judged. Now, not all impacts are amenable to that type of  
5 quantitative and objective standard. However, the fact  
6 that a criteria may require the SEC to exercise judgment  
7 in determining whether it has been met does not eliminate  
8 the need for specific criteria. This is what was mandated  
9 by SB 99, and the sections on aesthetics and natural  
10 environment fail to do this. Now, our written comments  
11 contain detailed suggestions on the criteria that we  
12 believe should be included in this section.

13 Similarly, there is a lack of any  
14 criteria necessary to make the finding that the proposed  
15 facility is consistent with the public interest, even  
16 though such criteria were required by SB 245. Our written  
17 comments, as well as the comments we submitted jointly  
18 with the other environmental organizations, contain our  
19 detailed suggestions for the criteria that we believe  
20 should be included in this section.

21 Excuse me. Our written comments include  
22 numerous other areas where we believe the proposed rules  
23 should be approved. And, I just will mention one of  
24 these. The definition for "area of potential visual

1 effect", in combination with the application requirements  
2 for a visual impact assessment, imply that 10 miles will  
3 be the limit for which visual impacts will be considered  
4 for wind power projects. And, there are similar, though  
5 narrower, limits for transmission lines. We believe that  
6 this limit unduly restricts the SEC's ability to consider  
7 the visual impacts of these projects.

8 And, in recent years, turbines have  
9 gotten much larger. The turbines at Lempster, Groton, and  
10 Granite Reliable are about 400 feet tall. The proposed  
11 turbines for the Antrim and Wild Meadows Projects were  
12 nearly 500 feet tall. And, the Maine DEP is currently  
13 considering two applications for projects with turbines  
14 that are nearly 600 feet tall. Rotor diameters have also  
15 increased significantly. Ten miles has become the  
16 unofficial standard in New Hampshire for visual impact  
17 assessments for wind power projects. However, these  
18 larger turbines are visual at much greater distances.  
19 While 10 miles is an appropriate starting point, the rules  
20 should make clear that this is a minimum distance, not a  
21 maximum. And, that the SEC has the authority to consider  
22 impacts beyond this distance when circumstances warrant.  
23 And, such circumstances should include particularly large  
24 projects or particularly significant viewpoints or scenic



1 landscapes.

2 We thank you for the opportunity to  
3 comment. We'd be happy to discuss these in more detail or  
4 depth at your convenience. And, we look forward to seeing  
5 the next iteration of the rules.

6 CHAIRMAN HONIGBERG: Thank you very  
7 much. I know that your comments are already on the  
8 website, the written comments were. So, we thank you very  
9 much.

10 Next up is Robert Tuveson, followed by  
11 Dolly McPhail, and then Will Abbott.

12 MR. TUVESON: My name is Bob Tuveson.  
13 I'm from Holderness. Here as a concerned citizen. I'd  
14 like to talk this morning about the use of existing  
15 right-of-ways for transmission projects. I will read,  
16 it's very short, what I submitted, and it's on the docket.

17 "The SEC shall take into consideration  
18 the surrounding environment at the time the existing  
19 rights-of-way were given in relation to the surrounding  
20 environment presently. For example, what was forest and  
21 farm land when easements were granted or taken by eminent  
22 domain for rural electrification, 1920's to the 1950's,  
23 they are now residential neighborhoods."

24 In Holderness, there's a right-of-way.

1 It's two and a half miles long. And, this is an example  
2 of what I just said. I looked at the right-of-way east  
3 and west 200 feet -- 2,000 feet. I found 194 homes on the  
4 four tax maps. Twenty-one of them were built 1954 or  
5 prior, that's the last time the right-of-way was used; 173  
6 were built since 1955. Eighty-nine (89) percent of the  
7 homes in the environmental area of the right-of-way in  
8 Holderness were built after the present structures were  
9 erected.

10 Thank you for letting me speak.

11 CHAIRMAN HONIGBERG: Thank you very  
12 much. And, I do know that your written comments are  
13 already on the website.

14 Next up we have Dolly McPhaul, followed  
15 by Will Abbott. And, then, the last speaker that I have  
16 identified is Tom Getz. Am I missing anybody?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Ms. Davis, there  
19 are no other names back there, are there?

20 MS. DAVIS: No.

21 CHAIRMAN HONIGBERG: All right. Thank  
22 you. Then, it would be Ms. McPhail.

23 MS. McPHAUL: First, it's "McPhaul".  
24 I'm from Sugar Hill.

1 CHAIRMAN HONIGBERG: Sorry. Sorry.

2 MS. McPHAUL: And, I don't have a  
3 testimony to give you, because I changed my mind about  
4 handing it in. Then, this morning I wrote another one as  
5 I was sitting here, but I've decided to forget that one as  
6 well. So, I have a third one. I hope I can make sense.  
7 And, I appreciate you listening.

8 These hearings were said to be for the  
9 public. Now, I know Ms. Geiger just said that it involved  
10 "industry" -- I mean, "economy and environment". However,  
11 the dictionary defines "public" as "general people as a  
12 whole". So, I do not think that "economy and environment"  
13 would be in the context of the general people. The ones  
14 that she's referring to, she's representing a company that  
15 is paying her to be here and paying her to say what they  
16 want her to say so that they may come in and destroy our  
17 lands.

18 So, I take exception with, first, the  
19 definition of "public" in all areas. In the stakeholder  
20 process, of which I was a part, and there were almost as  
21 many energy representatives on that process as there were  
22 public people. That should not have happened. We  
23 protested. I gave the definition of "public"; it didn't  
24 matter. They were allowed to continue, and influenced the

1 rules quite dramatically, I would say. And, I was  
2 prepared to give you examples of that, but I would like to  
3 address some of the comments. The man from the Grid, you  
4 know, the --

5 CHAIRMAN HONIGBERG: Mr. Rielly.

6 MS. McPHAUL: -- not the National Grid,  
7 but whatever --

8 CHAIRMAN HONIGBERG: Mr. Rielly, yes.

9 MS. McPHAUL: Thank you. Stated that  
10 towers would be grossly shorter than they could most  
11 likely be, especially in the case of the Northern Pass.  
12 I'm not here fighting the Northern Pass. I'm here trying  
13 to defend our beautiful state. So, he gave a lower  
14 description of towers. The Northern Pass plans on using  
15 towers 85 feet, to -- there have been a couple places as  
16 high as 150, and I believe they can go higher in the  
17 National Forest. A pine tree is 65 feet tall. So,  
18 they're talking about towers that will be twice the height  
19 of a pine tree. So, picture that.

20 He said that most of them are wooden  
21 poles. Wooden is no longer used to the extent that it has  
22 been, especially not in direct current situations. The  
23 towers are going to be steel, with arms, that, as I said,  
24 can be twice the height of a pine tree. They can go, as I

1 understand it, every five to seven hundred feet through  
2 187 miles of New Hampshire. Now, anybody that thinks that  
3 is acceptable for the profit of a private company needs to  
4 think again. It's outrageous.

5 The decommissioning rules criteria were  
6 attacked by them and attacked by both sides. We are the  
7 ones that would have to be left with these outrageous  
8 structures, if a company were to go broke, if they decided  
9 there was a better technology. They should have to be  
10 responsible and made to totally remove everything and  
11 restore the land to what it was initially.

12 We were told that it would be too  
13 expensive for a lot of companies to do projects because of  
14 the decommissioning costs. Well, then, in the next  
15 breath, this man said that they are a "multibillion dollar  
16 company". Now, if they are a multibillion dollar company,  
17 they can afford to tie up some of their money in  
18 protecting the citizens of New Hampshire with their  
19 decommissioning charges.

20 Let me see. The cumulative effect that  
21 was discussed that they wanted removed, in my mind, first  
22 come/first serve. If they're applying for an application,  
23 they only have to be concerned with what is against --  
24 ahead of them. If the next company comes along, okay,

1 then they look at what's ahead of them. You don't have to  
2 anticipate every single project that might possibly come  
3 through.

4 Scenic resources, they obviously don't  
5 hold the same importance to scenic resources that the  
6 residents of this great state do. But, admittedly,  
7 they're getting paid money, in some cases quite a bit of  
8 money, to come here to spout off, not necessarily their  
9 opinions, but what they're paid to say. These people here  
10 have spent years trying to protect this state. And, it is  
11 very enraging to have people paid overrule us.

12 The example of a "toolshed", you  
13 "shouldn't be concerned with what you get from a  
14 toolshed." Well, that's -- that's ridiculous. That's  
15 there to provide a loophole for these people to get their  
16 way.

17 CHAIRMAN HONIGBERG: Ms. McPhaul, you're  
18 at five minutes now.

19 MS. McPHAUL: I have one final comment  
20 then.

21 CHAIRMAN HONIGBERG: Go ahead.

22 MS. McPHAUL: The job of the government  
23 is to serve the people. It's in the U.S. Constitution,  
24 it's in the New Hampshire Constitution. And, New

1 Hampshire feels so strongly about it that we are the only  
2 state in the Union that is given, according to the  
3 Constitution, the "Right to Revolt". And, it says in that  
4 section that, if the government is not taking care of the  
5 people, it is the people's job to change it.

6 Thank you very much. Oh, you have a  
7 question?

8 FROM THE FLOOR: No, I'm just supporting  
9 you.

10 MS. McPHAUL: Oh.

11 CHAIRMAN HONIGBERG: She was expressing  
12 solidarity.

13 We have Mr. Abbott, followed by  
14 Mr. Getz.

15 MR. ABBOTT: Thank you, Mr. Chairman. I  
16 want to -- first, my name is Will Abbott. I'm here from  
17 the Society for the Protection of New Hampshire Forests.  
18 I'd like to go on record as supporting the extension that  
19 you talked about earlier, but I'm hoping it would only be  
20 two or three months, and not a few months. And, would ask  
21 that, as you work with the senators you mentioned, that  
22 you try to refine that to a point where there's an actual  
23 endpoint.

24 CHAIRMAN HONIGBERG: To be clear, Mr.

1 Abbott, I have no control over that. It was information  
2 provided to me. And, I don't have any more detail than  
3 what I provided at the beginning.

4 MR. ABBOTT: Thank you. I have two  
5 comments that I'd like to address. In addition, they're  
6 not in the joint comments that were mitigated by the five  
7 conservation organizations, of which we were one. One has  
8 to do with the content of the application and the second  
9 has to do with criteria relative to findings of  
10 unreasonable adverse impact. As for the content issue,  
11 specifically, I'm referring to Site 301.03(c)(6), which  
12 relates to what constitutes a demonstration by the  
13 applicant that legal control over the land necessary to  
14 build a project is actually demonstrated. And, we will be  
15 submitting language that we think is more appropriate to  
16 the rulemaking task ahead of you than what's in the Draft.  
17 Primarily because we think that it's really imprudent for  
18 the Site Evaluation Committee to invest a lot of time  
19 reviewing an application, if an applicant does not, in  
20 fact, have complete control over the real estate that need  
21 to build their project. Either the applicant has control  
22 or it doesn't. And, it either should be demonstrated that  
23 it has this control or that they failed to demonstrate  
24 that they have that control. And, the rule, as drafted,



1 isn't as precise about that point as it should be, in our  
2 view.

3           The second point I'd like to address has  
4 to do with the criteria relative to findings of  
5 unreasonable adverse impacts. And, it gets to issues  
6 which have been raised by several others, which has to do  
7 with aesthetics, and specifically about Site 301.08(a) and  
8 (b). Now, in our view, there is a real value, historic  
9 value, to landscapes in the State of New Hampshire. And,  
10 while the rules address specific aesthetic issues that  
11 must be addressed in the process, and the rules address --  
12 the Draft Rules address specific issues relative to  
13 historic sites. There's no explicit mention of the value  
14 of historic landscapes. And, while I'm not going to read  
15 anything from this book, back in 1859, Thomas Starr King  
16 wrote one of the most descriptive analyses of the four  
17 major river tributary valleys in the State of New  
18 Hampshire north of Concord, describing what was in place  
19 at the time, in 1859. And, if you read these  
20 descriptions, it's remarkable how much the visual aspects  
21 of the Connecticut River Valley, the Pemigewasset River  
22 Valley, the Saco River Valley, and the Androscoggin River  
23 Valley, which he writes about, are relatively the same as  
24 they were 150 years ago.

1                   Our argument is that part of your job  
2 ought to be to assure that they're there 150 years from  
3 now. And, we think there ought to be a clarification in  
4 the rules that addresses this oversight. Thank you.

5                   CHAIRMAN HONIGBERG: Thank you,  
6 Mr. Abbott. Mr. Getz.

7                   MR. GETZ: Good morning, Mr. Chairman,  
8 members of the Committee. I'm Tom Getz. I'm an attorney  
9 with the law firm of Devine, Millimet & Branch. And, I'm  
10 appearing this morning on behalf of Eversource Energy,  
11 formerly Northeast Utilities. Thank you for the  
12 opportunity to speak today. You've been presented an  
13 enormous task, and, under the circumstances, relatively  
14 little time to accomplish it. It's reassuring to hear  
15 that an extension is being considered to complete this  
16 daunting task.

17                   As explained in the JLCAR drafting and  
18 procedural matter -- manual, a rule is adopted to  
19 implement, interpret or make specific a statute enforced  
20 or administered by an agency. If nothing else, reading  
21 the manual makes clear that rulemaking is a painstaking  
22 exercise. And, under the most straightforward  
23 circumstances, rulemaking is labor-intensive and requires  
24 extremely close attention to detail.

1                   And, just let me say, Mr. Chairman, I'm  
2 probably going to push that five-minute limit. Just give  
3 me the hook when we get there, and I'd like to avail  
4 myself to the second round.

5                   CHAIRMAN HONIGBERG: Understood.

6                   MR. GETZ: In the context of  
7 adjudicative bodies, like the SEC or the PUC, which are  
8 more akin to courts, rulemaking needs to be viewed to a  
9 very different and broader lens from agencies that are  
10 more administrative and less deliberative in nature.

11                   Among the JLCAR's manual's basic  
12 drafting and structure principles are the requirements  
13 that rules be clear and specific. Which focuses on avoid  
14 vague or ambiguous words, such as "substantial",  
15 "significant" or "reasonable", because they can lead to  
16 case-by-case variations. Those words are the fundamental  
17 pieces of what this agency is supposed to address. These  
18 are the tools of your trade. The manual uses as an  
19 example of a discretionary decision involving approval or  
20 a denial of a permit, for instance, a rule when lights are  
21 required for boat moorings, which is barely analogous to  
22 the discretion that the SEC is called upon to exercise.  
23 The manual is very concerned about the so-called trap of  
24 oral rulemaking, that is rules that need clarification or

1 interpretations.

2 In the case of adjudicative bodies, such  
3 interpretation, however, is fundamental to the nature of  
4 these bodies, and those interpretations are better  
5 characterized as "precedent". Trying to apply the narrow  
6 drafting approach from the manual, which may work well  
7 with mooring lights, to an adjudicative body like the SEC,  
8 overlooks the fact that the underlying concerns of the  
9 manual are already addressed. The SEC exercises its  
10 authority to issue certificates on a case-by-case basis,  
11 subject to the requirements of RSA 541-A and due process  
12 as determined by the New Hampshire Supreme Court.

13 Consequently, some of the basic premises  
14 of the manual, such as avoiding words like "reasonable",  
15 are called into question. In fact, the very essence of  
16 the SEC's task is to make decisions on a case-by-case  
17 basis in highly complex circumstances. And, the manual's  
18 concerns about arbitrariness in those decisions is fully  
19 addressed through the statute of the Administrative  
20 Procedures Act, 541-A.

21 Ultimately, it is impossible to reduce  
22 to a set of purely objective tests the series of  
23 inherently subjective statutory findings that the SEC is  
24 called upon to make in RSA 162-H:16.

1                   Taking into consideration the  
2                   adjudicative nature of the SEC, which issues decisions  
3                   based on volumes of evidence, provided by expert  
4                   witnesses, given under oath, subject to cross-examination,  
5                   subject to rehearing and appeal, the structure of the  
6                   proposed rules that are in the Initial Proposal of the  
7                   Committee make perfect sense. The proposed rules meet the  
8                   requirements of Senate Bill 245 regarding the adoption of  
9                   new rules, inasmuch as they establish specific criteria  
10                  regarding the evidence that an applicant must produce on  
11                  each of the required findings, and they establish specific  
12                  criteria that the SEC must consider or apply when making  
13                  each of the required statutory findings necessary to issue  
14                  a certificate.

15                  While the basic approach taken in the  
16                  Initial Proposal is sound, there are a number of areas  
17                  that require clarification and a number of areas that we  
18                  would urge be revised or eliminated.

19                  CHAIRMAN HONIGBERG: Just before you  
20                  start, you were correct. You've hit your five minutes  
21                  now. But, as I've said at the beginning, if people need  
22                  more time, there's a number of ways we can do that. You,  
23                  obviously, are going to need a number of minutes, I can  
24                  tell, to get through what you want to do.

1                   Is there anyone out there who feels like  
2                   there is something else they want to say and need to say,  
3                   based on what they've heard so far? I just want to get a  
4                   show of hands, to get a sense if there are others who want  
5                   to speak again? I see two hands. Would you prefer to  
6                   wait for Mr. Getz to finish, or would you like to go now  
7                   and we'll circle back to Mr. Getz?

8                   MR. PIEHLER: It's up to you.

9                   MS. LINOWES: I'm happy to wait.

10                  CHAIRMAN HONIGBERG: Okay. Mr. Getz,  
11                  why don't we let you then finish up, and then we'll circle  
12                  back to the two speakers who want to add additional  
13                  information, okay?

14                  MR. GETZ: Thank you, Mr. Chairman. The  
15                  fact that there are numerous clarifications or revisions  
16                  that we would propose shouldn't be taken as a criticism of  
17                  the process, but merely a recognition of the enormity of  
18                  the undertaking. Writing rules is not easy. And, these  
19                  rules cover a lot of new territory and seeks to implement  
20                  new law as well. I'm not going to try to cover all of  
21                  those issues today. I'll highlight some of those areas  
22                  and follow up with specific language.

23                  But, in that regard, and the notion of  
24                  extending the deadline for written comments, I think two

1 things I'd like to point out. Is one is it would be very  
2 useful to have the transcript of this hearing available.  
3 And, I also suspect that there are going to be more  
4 documents posted on line that would be good to see. So, I  
5 urge an extension of the deadline for written comments  
6 until the end of the month.

7 First, just in a general drafting, as a  
8 general matter or point, there's at least three types of  
9 general drafting issues that come up in looking at the  
10 rules. There are a number of areas where the rules  
11 paraphrase the underlying statute. Typically, unless  
12 grammar demands it, the language from the statute should  
13 be used in the rule. And, we'll point out in the written  
14 comments exactly where those circumstances are.

15 Second, there are a number of areas  
16 where the introductions to similarly situated areas use  
17 different language. And, I'm thinking here in terms of  
18 the type of information that needs to be submitted under  
19 the heading of "unreasonable adverse effects". Some  
20 places it's "best practical measures", sometimes it's  
21 "measures", sometimes it's "reasonable", sometimes it's  
22 "unreasonable". And, it just should be consistent. And,  
23 we would have a recommendation on how that would be done.  
24 And, there are a number of provisions where there are

1 lists. I think one was already mentioned, in terms of  
2 decommissioning. Where it's not entirely clear of the  
3 list -- whether the list is intended to be examples of the  
4 types of things that would need to be done to qualify, or  
5 if it's an all-inclusive list, "these are the only things  
6 that would qualify." So, we would point those out as  
7 well.

8 One significant larger substantive issue  
9 that I think is created in some respects by the new  
10 statute is with respect to the role of state agencies.  
11 And, it goes in two pieces: One, with respect to  
12 completeness, and the other with respect to how agency  
13 members would participate in a proceeding.

14 Now, Senate Bill 245 amended 162-H:7 and  
15 created a new section, 7-a, dealing with the "Role of  
16 State Agencies". The statute incorporates some of the old  
17 language, but has some new language. Says that "an  
18 application shall contain sufficient information to  
19 satisfy the application requirements of each state agency  
20 having jurisdiction to regulate any aspect of construction  
21 or operation and include each agency's application forms."  
22 The statute also talks about "state agencies that have  
23 permitting or other regulatory authority". And, "such  
24 agencies are involved in the completeness determination,



1 they submit progress reports, and they submit final  
2 decisions on their permitting authority to the Committee."

3 On the other hand, you have state  
4 agencies not having permitting or other regulatory  
5 authority, and that's laid out in 7-a. And, these  
6 agencies participate in the proceeding in a way similar to  
7 other intervenors, in essence.

8 A close reading of the statute suggests  
9 that the agencies that would be involved in the  
10 completeness determination are agencies like DES, the PUC,  
11 DOT, agencies where the applicant applies or petitions for  
12 some specific permission or approval, and that agency  
13 makes a decision. Agencies who do not make such decisions  
14 consequently are not part of the completeness review, and  
15 would participate in the process as set forth in  
16 162-H:7-a, III.

17 It would be helpful to the process if  
18 the SEC were to identify these agencies in its rules to  
19 eliminate any uncertainty. And, I think some uncertainty  
20 was created in the Wild Meadows decision. And, now, the  
21 law has changed since that decision was issued. But I  
22 think there is some vagueness about what goes beyond the  
23 "agencies with permitting or other regulatory authority".  
24 I would contend that "other regulatory authority" means

1 such as other permitting, licensing, petition-type  
2 authority.

3 Under the new statute, there's also  
4 the -- I think there's some proposed rules require some  
5 additional clarification with respect to how agency  
6 personnel are expected to conduct themselves in light of  
7 the *ex parte* rules, which, for the Committee, is 202.30.  
8 Senate Bill 245 creates the notion of an agency liaison,  
9 but it's not entirely clear how such a person would  
10 fulfill their role. Are they like a witness? What's the  
11 relationship if it's from an agency that's a member of  
12 this Committee? And, do the *ex parte* rules apply to them?  
13 So, I think there's an issue between what's the  
14 relationship between a member of the Committee and an  
15 employee of their agency? Also, Rule 202.05, as proposed,  
16 talks about the advisory status of SEC personnel. And,  
17 it's a question of whether that advisory status is of the  
18 same nature that they would be subject to the *ex parte*  
19 rules. And, there's also issues about agency staff and  
20 the Committee. I think it might be useful to look at the  
21 PUC statutes, 363:30 through 35, for an example of how to  
22 treat agency personnel that have different roles in  
23 adjudicative proceedings. I think it's just an area where  
24 some further definition would be helpful to the process.

1           The issue of site control has come up.  
2     The proposed rules basically create two provisions out of  
3     an existing provision. If you look at 301.03(b)(7) and  
4     (c)(6), I think what was trying to be accomplished was  
5     making a distinction between the land and the structures  
6     on the land. (b)(6) I think just talks about the  
7     facility, while -- (b)(7) talks about the facility, while  
8     (c)(6) talks about the site. I think, at a minimum,  
9     (c)(6) should be some changes to make it clear that a --  
10    that the demonstration of the control of the site is not  
11    merely limited to contractual rights or interests, because  
12    there are certainly consideration of projects. And, I  
13    think would have been -- this would have been covered  
14    under the original rule as it stands, but there are,  
15    especially with the longitudinal, the linear projects,  
16    there may be areas where highways are crossed or public  
17    lands might be crossed, or public waters, that would  
18    require permissions from governmental agencies. So, I  
19    think the -- if this route is pursued, it just needs to be  
20    expanded to consider that there's more than contractual  
21    rights that are involved, but there may be, you know,  
22    agency permissions. And, we'll propose language on that.

23           I don't want to go too deeply into this,  
24    I don't want to take up too much of your time, another

1 large area, though, is under the heading of "best  
2 practical measures". HB 1602 established certain  
3 requirements for rules for wind facilities, they're set  
4 forth in 162-H:10-a. But the notion of "best practical  
5 measures" is also inserted in the rules in the context of  
6 all projects. And, I think it raises a fundamental legal  
7 issue of what is meant by the introduction of that  
8 language. And, I think it's in this context: 162-H:16  
9 constitutes a test based on results effects. "Best  
10 practical measures" appears to introduce a test that may  
11 be based on the means or methods. So, the question that  
12 arises, what's the relationship between the findings in  
13 162-H:16 and in the rules establishing requirements about  
14 "best practical measures"? Are the two compatible? How  
15 do they interact? If an applicant uses best practical  
16 measures, does that mean that there can be no finding of  
17 unreasonable adverse effects, because they have used best  
18 practical measures? On the other hand, if best practical  
19 measures are not used, does that automatically lead to a  
20 finding of unreasonable adverse effects, even if the facts  
21 suggest that -- would suggest otherwise? So, I think that  
22 some thought needs to be given to how those two things  
23 interact.

24 And, finally, with respect to the public

1 interest, there's been a proposal with respect to criteria  
2 that would introduce a net benefits approach to the  
3 criteria for determining the public interest. The  
4 Legislature, in consideration of Senate Bill 245, rejected  
5 the net benefits approach. It was discussed at a hearing  
6 in the Senate Energy Committee. There were amendments at  
7 different times that proposed language almost identical to  
8 what is being proposed. And, I think it would be contrary  
9 to legislative intent to adopt standards or a test based  
10 on an approach that the Legislature had considered and  
11 rejected.

12 So, just in closing, this is a huge task  
13 that you're presented. And, there's probably only one  
14 thing that everybody in this room would agree on, and  
15 that's that the stakes are high, and getting it right is  
16 the highest priority. And, to the extent that additional  
17 time works its way through the process, through the  
18 legislative process, and to the extent that a second round  
19 of proposal were considered, I think that would be helpful  
20 to everyone's interests.

21 CHAIRMAN HONIGBERG: Thank you, Mr.  
22 Getz. All right.

23 MR. GETZ: Thank you.

24 CHAIRMAN HONIGBERG: Thank you, Mr.

1 Getz. We'll circle around now. Sir.

2 MR. PIEHLER: I don't think I need a  
3 microphone. But I'd like to address the industry. They  
4 like to dismiss, you know, personal input and how it --  
5 how it sways the whole argument. And, that's exactly what  
6 it's about. They use words like "how do you define  
7 "reasonable", "common sense"?" That's an interesting  
8 question. I was accused of being "unreasonable" with  
9 industry, when I refused to talk to them about using my  
10 property as a pass-through or as an abutter. They said  
11 "let's be reasonable." That's their terms, not mine. I  
12 said "my answer is "no"."

13 The other thing is, the addressing of  
14 the public. How do you address the issue that every town  
15 that has taken votes for a wind siting project around  
16 Newfound area, now moving into the Cardigan area, they  
17 have sent out fliers, memorandums, and the company and the  
18 industry have been routed at the polls. When you lose 65  
19 to 70 percent of the public, I think that should be a  
20 major consideration of protection of people's rights to  
21 their property. Sends a big statement. No scientific  
22 thing. They have argued that "well, only so many people  
23 voted." But, in most elections, we've either met or, you  
24 know, went ahead of whatever was required for a legitimate

1 vote. That should be taken into consideration for you to  
2 really look down and say "what is the planning board's?"  
3 We do wildlife studies, impact studies, planning things,  
4 and they have said, which may not be defined, "we want to  
5 keep the rural character of a community." The gentleman  
6 had said "Well, how do you define "rural" or  
7 "semi-rural"?" I think we all know what "rural" is or  
8 "semi-rural" or "city" is.

9 That's, basically, I want to keep it at  
10 that.

11 CHAIRMAN HONIGBERG: Thank you.

12 MR. PIEHLER: Thank you.

13 VICE CHRMN. BURACK: Sir, just to  
14 clarify, your name for the record?

15 MR. PIEHLER: Bob Piehler, from  
16 Alexandria.

17 VICE CHRMN. BURACK: Thank you very  
18 much.

19 COMMISSIOINER ROSE: That's what I was  
20 going to ask.

21 CHAIRMAN HONIGBERG: All right. Thank  
22 you, Mr. Piehler. Ms. Linowes.

23 MS. LINOWES: Thank you, Mr. Chairman.  
24 David Publicover, in his comments, had made the point that

1 some topics easily lend themselves to quantitative  
2 criteria and others don't. The area that I was focusing  
3 on will be, and continue to focus on, are noise, shadow  
4 flicker, and safety setback distances. And, we will be  
5 submitting comments that were derived from the SB 99  
6 process.

7 But the main point I wanted to make on  
8 that was, during the adjudicative proceedings for Antrim  
9 Wind, Groton Wind, and Lempster Wind, which were the three  
10 projects that were built closest to where people live,  
11 there was a significant amount of time spent in  
12 cross-examination and testimony debating whether or not  
13 the studies that were conducted by the applicant were  
14 appropriately completed, and that is the pre-construction,  
15 and also a definition of what the post construction sound  
16 studies would be.

17 And, these rules that we're going to be  
18 submitting, they were agreed to via the stakeholders that  
19 were involved in my committee, including EDPR. I think  
20 it's very important that, if the Committee's rules, the  
21 SEC rules, can adopt these methodologies for how the  
22 studies are conducted, it will save a tremendous amount of  
23 time during the adjudicative process. There won't be  
24 those hours of debate. Thank you.



1                   CHAIRMAN HONIGBERG: All right. I think  
2 we've come to the end. Is there anyone here who has not  
3 had a chance to speak who would like to?

4                   (No verbal response)

5                   CHAIRMAN HONIGBERG: Is there anyone who  
6 has had a chance to speak who would like to say anything  
7 else at this time? Yes, Mr. Abbott.

8                   MR. ABBOTT: Thank you, Mr. Chairman. I  
9 would just like to respectfully disagree with Mr. Getz on  
10 the legislative intent of the "public benefit" language.  
11 If the Legislature had wanted all of us to read what they  
12 wrote as suggesting that "there should be no net benefit  
13 determination", I respectfully submit they would have said  
14 so in the statute. Thank you.

15                   CHAIRMAN HONIGBERG: All right. Now, is  
16 there anyone who has anything else they would like to say  
17 at this time? If not -- yes, I see two hands. One from  
18 someone who has not yet spoken and one from Ms. McPhaul.

19                   Ma'am, all the way in the back, do you  
20 have something you'd like to say? You're going to need to  
21 come to a microphone and identify yourself.

22                   MS. OLSON: Hi. My name is Alix Olson,  
23 A-l-i-x, O-l-s-o-n. I am a resident of Canaan, New  
24 Hampshire. And, I didn't speak earlier, because I've been

1 sick also. But listening to some of the corporate  
2 comments today has actually made me feel even sicker.

3 And, I just want to say that it's the  
4 people who live in the places that will be impacted who  
5 need to be heard, who need to be felt. All of you sitting  
6 in this room, who are going to make these rules happen, I  
7 don't know if you've had a chance to visit these places  
8 that we're talking about. Just think of the people who  
9 live here, who live there. I mean, the wildlife, the  
10 birds, the clean air and water, the soil, the granite that  
11 this state is founded on, you can't replace those things.  
12 Once they're taken away, they're gone forever.

13 I'm very concerned about the lack of  
14 transparency with the company that wants to build the wind  
15 turbines, and their apparent disregard for the natural  
16 beauty that they will inevitably destroy.

17 I know that their bottom line is money.  
18 The public's bottom line is natural beauty and resources,  
19 and the ability to raise our children and grandchildren in  
20 a place that does not look like an industrial wasteland.  
21 And, to be able to look out and see mountains that look  
22 like mountains, not pincushions.

23 I don't know what else to say. But I  
24 hope that, when you make your decisions about rules and

1 all this cut-and-dried Senate Bill this and that stuff,  
2 that you also think about your emotions. And, your  
3 ability to help preserve something that can never be  
4 replaced. Thank you.

5 CHAIRMAN HONIGBERG: Thank you, Ms.  
6 Olson.

7 Ms. McPhaul, do you have something else  
8 you want to say?

9 MS. MCPHAUL: Just a quick thing. First  
10 of all, I agree totally with the lady that preceded me.  
11 And, in my testimony, I failed to say that I feel all  
12 of -- not all of these, I feel these draft rules need to  
13 be thoroughly re-gone over and reevaluated, because they  
14 grossly favored industry over the people of this wonderful  
15 state. And, I don't think, in all respect to you all, I  
16 don't think you understand the extreme power that you  
17 have. What you can do to thousands of lives. And, I  
18 really hope that you will consider that when you make your  
19 decisions on rules and weigh that against corporate  
20 profit. Thank you.

21 CHAIRMAN HONIGBERG: Last call?

22 (No verbal response)

23 CHAIRMAN HONIGBERG: We're going to  
24 close the public comment portion of this. The Committee

1 needs to consider deadlines. We have meetings scheduled  
2 on I want to say April 2nd and April 13th. The current  
3 deadline for the submission of written comments I believe  
4 is March 13th. The requests generally are to extend it to  
5 the end of the month.

6 Off the record.

7 (Brief off-the-record discussion with  
8 the court reporter regarding the  
9 production of the transcript.)

10 CHAIRMAN HONIGBERG: So, back on the  
11 record. Anybody want to make a motion or make an offer or  
12 make a suggestion? Mr. Burack.

13 VICE CHRMN. BURACK: Just for purposes  
14 of getting some discussion going here, it does strike me  
15 that there would be benefit in providing additional time  
16 for comment. I am concerned that, however, if the comment  
17 period is lengthened so much that we only see comments  
18 just before we as a body have to sit down and really  
19 deliberate and talk about what revisions we want to see to  
20 the rules, based on all the comments that we've received,  
21 or I should say to the Draft Rules. If April 2nd is the  
22 date that we're doing that, I'm concerned that getting  
23 comments as late as the end of March wouldn't give us  
24 enough time to do the study and consideration of those.

1                   So, what I might propose would be, I'm  
2                   sorry, I don't have my calendar -- might propose that we  
3                   look to extend the date from March 13th, out to -- I would  
4                   be looking at either March 20th or March 23rd at the  
5                   latest.

6                   UNIDENTIFIED SPEAKER: March or April?

7                   VICE CHRMN. BURACK: Because, again, I'd  
8                   like to have at least one full week, before we meet on  
9                   April 2nd, to be able to actually review and consider all  
10                  of the comments that we receive.

11                  So, maybe for purposes of discussion,  
12                  again without making this a motion, I'll suggest that we  
13                  look at a deadline of maybe 4:00 p.m. on Monday, March  
14                  23rd, for provision of comments. And, that would give us  
15                  then a full seven days after that date, actually eight  
16                  days, for the Committee to be able to consider all the  
17                  comments that have been received.

18                  So, I'll put that out as a suggestion,  
19                  just to see how that works with folks.

20                  CHAIRMAN HONIGBERG: Commissioner Scott.

21                  COMMISSIONER SCOTT: I just wanted to  
22                  fill in that conversation a little bit. So, correct me if  
23                  I'm wrong, the importance of April 2nd, which is what  
24                  we're trying to get to, and why we have some concern over

1 the full length of time being requested, is in order to  
2 meet the statutory requirements to get these rules in  
3 place, is that correct?

4 CHAIRMAN HONIGBERG: Basically. And,  
5 the difficulty of scheduling eight people, and we only got  
6 seven here today anyway. It is -- it was virtually  
7 impossible to find the two periods that we found, and yet  
8 we found these two periods. Three. The first being  
9 today. And, then, April 2nd and April 13th were pretty  
10 much it. Those are the only days when we could get the  
11 Committee together. So, yes. Given the schedule that we  
12 need to keep to fulfill our statutory obligation to get  
13 these rules in place by the end of June, working  
14 backwards, we needed to have the meetings when we have  
15 them scheduled. So, adjusting those is going to be much  
16 more difficult than adjusting the comment period.

17 VICE CHRMN. BURACK: If I may, Mr.  
18 Chairman, I would just add, just to correct your previous  
19 statement, I believe it's April 2nd and April 15th that we  
20 have as dates here.

21 CHAIRMAN HONIGBERG: And, actually Tax  
22 Day was in my head when I said that, and I should have  
23 remembered that.

24 VICE CHRMN. BURACK: But if I could also

1 just add that I think that we need, as a Committee, as you  
2 suggested in your opening remarks, we need to proceed on  
3 the understanding that we are currently subject to that  
4 June 30th/July 1 deadline for having rules in place. And,  
5 I think we have an obligation to do everything we can to  
6 be on that schedule. If the Legislature should choose to  
7 give us an extension of time, presumably that would allow  
8 us to step back and have additional time to do it. But, I  
9 think, in the interim, we have to proceed on the  
10 understanding that we only have the period of time given  
11 us, and we just have to make the very best use of that  
12 time as we can.

13 CHAIRMAN HONIGBERG: Commissioner Burack  
14 has floated close of business on Monday, March 23rd, for  
15 the submission of written comments. Does anyone have  
16 anything else they want to say about that before we turn  
17 that into a motion? Commissioner Rose.

18 COMMISSIOINER ROSE: Yes. Just real  
19 quick. What would the turnaround time be, in terms of, if  
20 we received comment on the 23rd, that afternoon, for it to  
21 either get posted onto the website or disseminated to the  
22 members of the Committee?

23 CHAIRMAN HONIGBERG: Right now, the  
24 website is being maintained over at the Department of

1 Environmental Services. Typically, what I'm seeing is  
2 things are getting turned around in 24 hours, assuming  
3 someone, you know, pays attention to it.

4 VICE CHRMN. BURACK: Right. We would  
5 make every effort to ensure that we get those posted  
6 within 24 hours of receipt. And, I think that has been --  
7 I believe that's been pretty much standard practice,  
8 except during the weekends. But, I mean, this would give  
9 people the opportunity to have one additional weekend to  
10 be able to generate comments. I understand that there may  
11 be many people who would find it helpful to have that  
12 weekend time, rather than time during the busy workweek,  
13 to be able to do that.

14 And, so, I think we could provide a  
15 pretty high level of assurance, and we'd make a commitment  
16 to make sure that we have staff available to get whatever  
17 we receive by 4:00 p.m. that day posted, if not that day,  
18 then as quickly as possible the following morning.

19 COMMISSIOINER ROSE: Okay. Thank you.  
20 Because I, too, share in your concern about just make sure  
21 that we have enough time to read and digest and make notes  
22 to the different comments that we receive.

23 CHAIRMAN HONIGBERG: Let me ask a  
24 question of those who are likely to be submitting



1 additional written comments. You know, personally, I  
2 always hated Monday deadlines. I always prefer Friday  
3 deadlines. I mean, would people prefer the Friday  
4 deadline of the 20th or would they prefer the Monday  
5 deadline of the 23rd?

6 MR. GETZ: Monday.

7 CHAIRMAN HONIGBERG: Mr. Getz, you're  
8 saying the 23rd?

9 MR. GETZ: Monday, please.

10 CHAIRMAN HONIGBERG: Others? I mean,  
11 Ms. Linowes, I --

12 MS. LINOWES: It's fine. Monday would  
13 be fine.

14 CHAIRMAN HONIGBERG: Okay. Yes,  
15 Mr. Iacopino.

16 This is Attorney Mike Iacopino, who  
17 often serves as Counsel for the SEC. I don't think you  
18 have any official status in the rulemaking process, but  
19 you have a lot of experience working with the SEC, do you  
20 not?

21 MR. IACOPINO: Yes. Thank you. The one  
22 thing that I was going to point out, with respect to these  
23 comments, is they will get turned around quicker if we get  
24 them in electronic format. Because it's much easier for

1 Jane Murray, who undertakes that role at DES, to  
2 disseminate electronic comments, than having to get them  
3 scanned first, which I think actually goes to a different  
4 department, before they're put on the website.

5 CHAIRMAN HONIGBERG: Everybody  
6 understand that? Better to send an e-mail with an  
7 attachment than snail mail or something.

8 VICE CHRMN. BURACK: And, if I may just  
9 add to that. It doesn't matter whether you submit it as a  
10 Word document or a *pdf* document, we would convert all of  
11 the things that we receive into *pdf* documents and post  
12 them in that format. At least that's my understanding.  
13 As a non-technical person, my understanding is technically  
14 how we would handle it. So, --

15 CHAIRMAN HONIGBERG: All right. Well,  
16 Commissioner Burack I think has converted his suggestion  
17 into a motion, that the new deadline for written comments  
18 be 4:00 on Monday, March 23rd.

19 Is there a second to that motion?

20 COMMISSIONER SCOTT: Second.

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

23 (No verbal response)

24 CHAIRMAN HONIGBERG: Seeing none, all

1 those in favor say "aye"?

2 (Multiple members indicating "aye".)

3 CHAIRMAN HONIGBERG: Any opposed?

4 (No verbal response)

5 CHAIRMAN HONIGBERG: All right. The new  
6 deadline will be March 20 -- I'm sorry, yes, March 23rd.  
7 We will post something in the docket to make that clear.

8 Attorney Geiger?

9 MS. GEIGER: Yes. Do the parties need  
10 to make a paper filing, as well as sending the Committee  
11 the electronic document?

12 CHAIRMAN HONIGBERG: Yes. I would say  
13 so. Because I think the rules, I don't think we would  
14 waive that rule specifically, because there is a  
15 requirement, I think, that things get filed in paper, is  
16 there not?

17 VICE CHRMN. BURACK: I'm not sure. Are  
18 we talking about --

19 UNIDENTIFIED SPEAKER: In general.

20 CHAIRMAN HONIGBERG: In general.

21 VICE CHRMN. BURACK: -- 541-A, for a  
22 rulemaking proceeding, do comments need to be, David  
23 Wiesner, do you know the answer to that, do comments  
24 actually have to come in in writing or can we accept

1 comments solely in electronic format?

2 MR. WIESNER: To date, we have been  
3 accepting emailed comments and electronically submitted  
4 comments and posting those --

5 CHAIRMAN HONIGBERG: Oh, that's true.

6 MR. WIESNER: -- without requiring a  
7 paper follow-up. So, in the interest of flexibility, I  
8 think we've been doing that to date in this proceeding.

9 CHAIRMAN HONIGBERG: You are correct.  
10 We have been. So, the answer is "no". I think we will  
11 continue the process we've been following. If someone  
12 just sends in an e-mail, that will end up getting accepted  
13 and turned into a comment in this.

14 Other issues? Other questions? Yes,  
15 Ms. Linowes.

16 MS. LINOWES: Mr. Chairman, thank you.  
17 I have a question regarding the process. Because right  
18 now there is a Draft Rule that was composed from comments  
19 that came in the fall. And, now, you're going to be  
20 receiving comments. Will those comments first be put into  
21 the rules, and then you would deliberate on them? Or will  
22 you be deliberating on all of these comments and then  
23 ultimately produce a final document?

24 CHAIRMAN HONIGBERG: The latter. The

1 next time that these rules will get picked up will be on  
2 April 2nd, with -- I mean, some people will be looking at  
3 the rules in connection with the comments that have been  
4 submitted orally and submitted in writing. But the next  
5 time that there will be -- the official document will be  
6 taken and considered will be on April 2nd, the next time  
7 this group is together. And, that's when we'll discuss  
8 changes, what changes should be made, could be made, might  
9 be made. To the extent we can make decisions on  
10 April 2nd, we will make them and try to implement them, so  
11 that, on April 15th, we will be in a position to adopt a  
12 final proposal.

13 MS. LINOWES: If I may then. So, there  
14 will be no filter between the comments that you receive  
15 and your deliberations on April 2nd?

16 CHAIRMAN HONIGBERG: I'm not sure what  
17 you mean by "filter"?

18 MS. LINOWES: There will be no comments  
19 that, for instance, comments that were received throughout  
20 the fall, some of those made it into the Draft Rules and  
21 some did not. So, there was a filtering process that's  
22 happened there. And, I didn't quite understand how that  
23 went. So, I'm hearing now, I think, that you're saying  
24 that the comments, let's say, that my organization

1 submits, will go directly to you and you will deliberate  
2 on those comments, --

3 CHAIRMAN HONIGBERG: That's correct.

4 MS. LINOWES: -- and decide whether or  
5 not they will make it. And, then, one last follow-up  
6 question then. That final document that you will look at  
7 on April 15th, will that be made available to the public  
8 and will comments be allowed on that document?

9 CHAIRMAN HONIGBERG: On the current  
10 schedule, under the current obligation, the answer is  
11 probably "no".

12 MS. LINOWES: Okay.

13 CHAIRMAN HONIGBERG: The deliberations,  
14 the meeting on April 2nd, will be to try to do as much as  
15 possible to make a final document that would be adopted on  
16 the 15th. There may be additional changes. If you'll  
17 recall, for those who were here in December, there were  
18 decisions made to make certain changes. Those were  
19 executed outside of the presence of the Committee, and  
20 then -- but they were at the Committee's direction. That  
21 is the document that got filed. I would expect a similar  
22 process. Under the current schedule, we're no longer in a  
23 position, after the written comments are submitted, to be  
24 receiving comments from the public, under the -- and

1 that's under RSA 541-A. That's how RSA 541-A works for  
2 rules adoption. It's not anything we made up. That's the  
3 state law.

4 MS. LINOWES: Thank you.

5 CHAIRMAN HONIGBERG: Commissioner  
6 Burack.

7 VICE CHRMN. BURACK: Mr. Chairman, --

8 MR. WARD: One comment --

9 CHAIRMAN HONIGBERG: Just a minute, Mr.  
10 Ward. Let Commissioner Burack first, then we'll turn to  
11 you.

12 VICE CHRMN. BURACK: It may be helpful  
13 just if we could, either if you or Attorney Wiesner could  
14 just describe what the steps are in the process, after the  
15 Committee adopts a final proposal on, presumably, on the  
16 15th of April, based on the current schedule. What  
17 happens from there? And, what are the -- are there  
18 additional opportunities for public input into the  
19 process?

20 CHAIRMAN HONIGBERG: Attorney Wiesner,  
21 are you able to do that?

22 MR. WIESNER: I'm able to speak to that,  
23 I believe. Once a final proposal is adopted by the  
24 Committee and filed with JLCAR, then the JLCAR process

1 would begin, and that would involve a public comment  
2 hearing before that Legislative Committee. And, that  
3 would then be the next opportunity that public commenters  
4 would have to speak to what would emerge from the  
5 Committee as a Final Rules proposal.

6 CHAIRMAN HONIGBERG: Is that what you  
7 had in mind?

8 VICE CHRMN. BURACK: That is. And, we  
9 don't, obviously, know a specific date on which that might  
10 occur or do we have a set of dates that we may be aiming  
11 for, in order to be able to have the rule adopted by  
12 July 1st?

13 MR. WIESNER: He are targeting, under  
14 the current proposed schedule, a May hearing date before  
15 JLCAR. And, I don't have the specific date at my  
16 fingertips.

17 CHAIRMAN HONIGBERG: It's sometime  
18 around the 20th, though, isn't it?

19 MR. WIESNER: That sounds -- that sounds  
20 correct. And, that's why we're targeting May, because  
21 June would probably be too late to address any concerns  
22 that JLCAR might have and then adopt Final Rules by the  
23 June 30 current deadline.

24 CHAIRMAN HONIGBERG: Mr. Ward.



1 MR. WARD: It was just a question. As I  
2 read "written required" for our comments, we were  
3 required -- okay.

4 CHAIRMAN HONIGBERG: No. No.

5 MR. WARD: The e-mail is fine?

6 CHAIRMAN HONIGBERG: Yes. That's  
7 correct.

8 MR. WARD: Thank you.

9 CHAIRMAN HONIGBERG: Any other business  
10 to transact?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: I'll entertain a  
13 motion to adjourn.

14 DIRECTOR MUZZEY: So moved.

15 COMMISSIONER SCOTT: Second.

16 CHAIRMAN HONIGBERG: All right. All in  
17 favor say "aye"?

18 (Multiple members indicating "aye".)

19 CHAIRMAN HONIGBERG: Any opposed?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: All right. We are  
22 adjourned. Thank you all very much.

23 **(Whereupon the hearing was adjourned at**  
24 **12:17 p.m.)**