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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

April 2, 2015 - 1:05 p.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

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

PRESENT:	SITE EVALUATION COMMITTEE:
Chrmn. Martin P. Honigberg (Presiding as Chairman of SEC)	Public Utilities Commission
Cmsr. Thomas S. Burack (Vice Chairman of the SEC)	Dept. of Env. Services
Cmsr. Robert R. Scott	Public Utilities Commission
Dir. Elizabeth Muzzey	DCR-Div. of Historical Res.
Cmsr. Jeffrey Rose	Dept. of Resources and Economic Development
William Oldenburg	Dept. of Transportation
Patricia Weathersby	Public Member
Roger Hawk	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: All right, folks.
3 We're going to get started. We're here for a meeting of
4 the Site Evaluation Committee. We have a few small agenda
5 items to deal with. The bulk of what we're going to do
6 this afternoon is going to be in Docket 2014-04, which is
7 the rulemaking proceeding.

8 Let's start, however, with minutes from
9 the December meeting. Yes, why don't we do introductions.
10 Thank you, Commissioner.

11 Why don't we start to my left. So
12 everybody out there knows who everybody else is up here
13 for those who don't know.

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

17 CHAIRMAN HONIGBERG: My name is Martin
18 Honigberg. I'm the Chair of the Public Utilities
19 Commission, and, by statute, that makes me the Chairman of
20 the Site Evaluation Committee as well.

21 VICE CHAIRMAN BURACK: Good afternoon.
22 I'm Tom Burack. I'm Commissioner for the Department of
23 the Environmental Services, and, by statute, I am Vice
24 Chairman of the Site Evaluation Committee.

1 CHAIRMAN HONIGBERG: Go ahead.

2 DIRECTOR MUZZEY: I'm Elizabeth Muzzey,
3 the Director of the Division of Historical Resources
4 within the Department of Cultural Resources.

5 MR. HAWK: Roger Hawk. I'm a citizen
6 member from Concord. I am a planning consultant based in
7 the state.

8 MS. WEATHERSBY: Patricia Weathersby, a
9 public member.

10 COMMISSIONER ROSE: Good afternoon.
11 Jeff Rose, and I serve as the Commissioner of the
12 Department of Resources and Economic Development.

13 MR. OLDENBURG: Good afternoon. My name
14 is Bill Oldenburg. I'm the Assistant Director of Project
15 Development at New Hampshire DOT.

16 CHAIRMAN HONIGBERG: All right. Now
17 let's turn to the minutes of the meeting on December 22nd.
18 You've all had access to the draft minutes. The title of
19 the minutes should probably be amended, because we didn't
20 just deal with Docket Number 2014-04. We did other
21 business as well. So, assuming that we amended the title
22 of the document to include other business, are there other
23 items that people believe need to be changed in these
24 minutes?

1 (No verbal response)

2 CHAIRMAN HONIGBERG: If not, I'll
3 entertain a motion.

4 VICE CHAIRMAN BURACK: So moved.

5 CHAIRMAN HONIGBERG: Is there a second?

6 COMMISSIONER SCOTT: Second.

7 CHAIRMAN HONIGBERG: Any further
8 discussion?

9 (No verbal response)

10 CHAIRMAN HONIGBERG: All in favor say
11 "aye"?

12 (Multiple members indicating "aye".)

13 CHAIRMAN HONIGBERG: Any opposed?

14 (No verbal response)

15 CHAIRMAN HONIGBERG: Thank you. The
16 minutes are approved.

17 In Docket 2014-04, the rulemaking, we
18 have received a request that Commissioner Scott and
19 Commissioner Burack recuse themselves from considering the
20 rules further. I do not believe there is a statute or a
21 rule that would require either gentlemen to recuse
22 himself. But I will ask them if they believe there's any
23 reason to recuse themselves? Commissioner Burack, if
24 you'd like to begin.

1 VICE CHAIRMAN BURACK: Certainly. Thank
2 you. No, I do not believe that there is any reason for me
3 to recuse myself. And, if I may, I would just like to
4 read into the record the email received yesterday and the
5 response that I sent this morning.

6 It is from a Kris Pastoriza, and, again,
7 received yesterday, April 1st, directed to Bob Scott,
8 myself, David Wiesner of the PUC, and Jane Murray at DES,
9 who currently serves as Secretary for the SEC. It reads:
10 "I request that Mr. Burack and Mr. Scott recuse themselves
11 from the rules making process because of their
12 relationship with Mr. Getz. The one year hiatus required
13 of former SEC members does not appear adequate to ensure
14 objectivity and fairness in the SEC process. Kris
15 Pastoriza." And, I hope I'm pronouncing that name
16 correctly, and I apologize if I'm not.

17 The response that I sent this morning,
18 April 2nd, reads as follows: "Dear Ms. Pastoriza: I
19 write in response to your e-mail of April 1 (copied below)
20 addressed to David Wiesner and Robert Scott of the Public
21 Utilities Commission, and to Jane Murray and me at the
22 Department of Environmental Services. Specifically, you
23 requested that "Mr. Scott and Mr. Burack recuse themselves
24 from the Site Evaluation Committee rulesmaking process

1 because of their relationship with Mr. Getz." This
2 response is provided on behalf of Mr. Scott and myself.
3 First, please be advised that Mr. Getz left his employ at
4 the Public Utilities Commission on February 1, 2012.
5 Moreover, neither Mr. Scott nor I have any form of ongoing
6 relationship with Mr. Getz. Second, please be aware that
7 under the current Site Evaluation Committee (SEC)
8 procedural rules, Site 202.03(c), pertaining to withdrawal
9 of a presiding officer or member from a matter pending
10 before the SEC, "Mere knowledge of the issues, the parties
11 or any witness shall not constitute good cause for
12 withdrawal." In addition, because neither Mr. Scott nor I
13 personally believe that we cannot fairly judge the facts
14 of this matter, good cause would not exist for either of
15 us to withdraw from this matter pursuant to Site
16 202.03(b)(3). Please also note that the one year time
17 period that you refer to appears to be to RSA 363:12-b,
18 which applies only to former PUC employees or
19 commissioners appearing specifically before proceedings of
20 the PUC. This statutory provision is applicable to the
21 PUC, not the SEC. There is a general six-month
22 prohibition on an executive branch official appearing as a
23 lobbyist for six months after leaving office or employment
24 with the state, and this would be applicable to a former

1 member of the SEC. See RSA 21:G-26. For these reasons,
2 and because we are confident of our respective abilities
3 to handle this matter in a fair and objective manner,
4 neither Mr. Scott nor I will withdraw or recuse ourselves
5 from this rulemaking proceeding. Respectfully, Thomas S
6 Burack."

7 CHAIRMAN HONIGBERG: Commissioner Scott.

8 COMMISSIONER SCOTT: I'll be much more
9 succinct, I think. And, thank you, Mr. Chair. I see no
10 reason to recuse myself or even question my objectivity on
11 this issue. And, I will not be recusing myself.

12 CHAIRMAN HONIGBERG: Thank you very
13 much. We're now going to turn to the rules. There is a
14 lot of material that we have already considered. There's
15 a lot of material that has come in since we were last
16 together. Things that you should already have include the
17 January version of the rules as they were filed with
18 JLCAR, and there are actually two documents dated
19 January 30th, because there were two sets of rules.
20 Commissioner Scott has some copies of those for those who
21 do not have them.

22 (Commissioner Scott distributing
23 documents to members as necessary.)

24 CHAIRMAN HONIGBERG: We have a

1 transcript of the public comment hearing we did on March
2 4th, which is either available online or you may have
3 printed it, but you may feel the need to refer to that.
4 We have received a number of comments since the public
5 comment hearing. The bulk of which came in before
6 March -- on or before March 23rd, and that raises an issue
7 I'm going to get to in just a second, but there are
8 numerous comments we've received in writing subsequent to
9 the public comment hearing. I know at least one of us is
10 looking at them online, a couple are, I think, others may
11 have copies of them. At various times, we may be
12 referring to somebody's comments. And, if it would be
13 helpful to everybody to pause at that point and let people
14 find those comments, that would be a good thing.

15 There is a document that I'll talk about
16 in a minute. But, before I get to that, let's talk about
17 late-filed comments. There were some comments received
18 after the March 23rd deadline, five, six days, in some
19 instances. We have the ability to decide what to do with
20 those comments. I think they are posted already on the
21 website, but that doesn't mean we are obligated to
22 consider them.

23 I would entertain anyone's comments on
24 late-filed comments at this point? Commissioner Burack.

1 VICE CHAIRMAN BURACK: Thank you very
2 much, Mr. Chairman. My general sense on these, and I have
3 read all of the late-filed comments, my general sense is
4 that the requirements for public comment periods really
5 set the minimum for what needs to be done or should be
6 done. And, I think it's entirely appropriate for us to at
7 least look at comments that are late filed, but recognize
8 that there will be limitations on our ability to be able
9 to give full consideration to comments that are received
10 later and later in this process. That is, I would not be
11 encouraging, unless we decide to reopen a comment period,
12 I would not be encouraging the submittal of additional
13 comments. But I also would not necessarily be comfortable
14 with just, as a blanket matter, saying "we're simply not
15 going to consider any additional comments received after
16 that initial date." But there will come a point where it
17 simply is impractical for us to read or consider further
18 comments.

19 CHAIRMAN HONIGBERG: Other thoughts on
20 comments and the deadline? Commissioner Rose.

21 COMMISSIONER ROSE: Yes. I guess my
22 thought is, and I don't know if they were all postmarked
23 but that particular date, but I think that we have had
24 them, they've had an opportunity to get posted online,

1 we've been made aware of them via email, I'm comfortable
2 accepting additional comments that were beyond the initial
3 deadline, but that have been received at this point and
4 posted on the website.

5 CHAIRMAN HONIGBERG: My understanding of
6 RSA 541-A is that we are required to have a deadline. And
7 that, if we are going to extend the deadline, we are
8 required to notify people that we are extending the
9 deadline. I am leery of any extensions that have not been
10 published to the world. I understand the instinct, and
11 it's my instinct as well, that, if we have, and if we have
12 time to consider them, that we should do so. I think that
13 it is -- there's going to become a point where it's not
14 merely impractical but impossible for us to look at any
15 further comments. Unlike a typical agency that doesn't
16 have to get seven, eight or nine people together from
17 different places, in a typical agency, they can look at
18 things right up until the day they adopt a final proposal,
19 we can't do that, because we can only act as a body when
20 we have a quorum and are all together. So, it's going --
21 there is a point at which we couldn't physically, legally
22 consider comments. We are not at that point yet. I'm
23 also aware that the Senate, anyway, has passed legislation
24 that would extend the rules deadline from June 1st to

1 November 1st, that is currently in the House, and there is
2 a hearing scheduled on that bill next week. But, as we
3 sit here today, that deadline is the deadline. And, we --
4 the July 1st, rather, deadline is the deadline. There is
5 only so much leeway we have.

6 Commissioner Scott.

7 COMMISSIONER SCOTT: I think I'd say
8 something very similar. I think, especially for the
9 audience, especially if the Legislature does not change
10 our statutory deadline, I think, as a practicality, we
11 will not be able to consider comments past the deadline
12 moving forward. Not to say we don't want ideas and
13 suggestions, but it's just not -- as a practical matter,
14 we're going to be, you know, it's going to be very
15 difficult to incorporate what we already have if we do not
16 get an extension. So, I think that's -- again, I would
17 echo what the Chair just said.

18 CHAIRMAN HONIGBERG: So, what -- yes,
19 Mr. Oldenburg.

20 MR. OLDENBURG: Mr. Chairman, maybe I'm
21 missing something, but there was a notice of extension of
22 written comments to March 23rd. What I see online, all
23 the comments were either March 23rd or before, except for
24 one.

1 COMMISSIONER SCOTT: Three.

2 CHAIRMAN HONIGBERG: I think there's
3 three. But it's not a lot. Clearly, it's not a lot.
4 And, one of them is arguably just a clarification of
5 something that was filed earlier.

6 Ms. Weathersby.

7 MS. WEATHERSBY: Just a question. If we
8 are to consider those three late-filed documents, do we
9 then need to extend the deadline to the last date they
10 were filed? I mean, what's our kind of legal position?
11 Can we even consider them without formally extending the
12 deadline?

13 CHAIRMAN HONIGBERG: I don't know the
14 answer to that. Any of the lawyers who work on this have
15 any opinions on whether we legally could? Mr. Wiesner.

16 MR. WIESNER: I mean, there's an
17 argument that if, you know, we're *de facto* extending the
18 deadline, that there should have been notice for that, and
19 I think that's what you were getting at before, Mr.
20 Chairman, under RSA 541-A.

21 And, you know, beyond that, there's
22 perhaps an issue of fairness. The three comments that
23 we've received so far have not been rebuttals of comments
24 that were timely filed, but they might have been. And,

1 then, you know, the fairness issue perhaps is "should
2 someone be permitted to have the last word because they
3 filed late, when they're really attempting to rebut the
4 comments filed by somebody on time?"

5 CHAIRMAN HONIGBERG: Just to be clear,
6 though, you've read those comments, I've read those
7 comments. I don't view them as rebuttals to things that
8 were timely filed.

9 MR. WIESNER: I don't believe they can
10 be fairly seen as rebuttals, which means they could have
11 been filed on time, but were not.

12 CHAIRMAN HONIGBERG: Ms. Muzzey.

13 DIRECTOR MUZZEY: I think there's also
14 an organizational challenge here to what we're trying to
15 accomplish. We have received a large number of comments.
16 And, we've all spent several weeks working our ways
17 through those. We have materials here that synthesize
18 those. And, part of the benefit of having a deadline that
19 is firm is that all of that information can feed into that
20 organized thinking that goes behind them. And, I
21 understand that people may have thoughts past that
22 deadline, and they may be important and they may want to
23 share them, but it presents an organizational problem in
24 trying to incorporate them. And, it's not something I

1 would want to continue to encourage, unless we put in
2 place another organized deadline for public comment.

3 CHAIRMAN HONIGBERG: Any other thoughts
4 or a motion or proposal as to how we proceed with the
5 late-filed comments?

6 (No verbal response)

7 CHAIRMAN HONIGBERG: Would people like
8 to think about it further or get organized, and then we'll
9 take it back up? Ms. Weathersby.

10 MS. WEATHERSBY: It seems to me, I
11 welcome public input, as we all do, and encourage people
12 to share their thoughts. And, when we first started, I
13 was thinking "oh, let's just let them in." But the more I
14 think about it and the more I hear we all talk, I think
15 there is some benefit to having a strict deadline, both
16 for the benefit of the Board's operation, as well as the
17 fairness issue.

18 So, I would be, I guess, in favor of not
19 officially accepting the documents. And, if we've read
20 them, that's fine, if it informs our thinking, but not
21 officially accepting those documents.

22 CHAIRMAN HONIGBERG: Can I consider that
23 a motion?

24 MS. WEATHERSBY: Sure.

1 CHAIRMAN HONIGBERG: Is there a second
2 for that?

3 COMMISSIONER SCOTT: I'll second.

4 CHAIRMAN HONIGBERG: Is there any
5 further discussion? I guess I need to understand then
6 what are we going to do with them? Are they going to
7 remain on the website? Are they -- are we going to, if
8 someone references something that's in there, what are
9 we -- what can we do with them? Ms. Muzzey.

10 DIRECTOR MUZZEY: Well, you mentioned a
11 few minutes ago that we may be changing our schedule,
12 depending on actions by the Legislature. And, given
13 further direction as to what we do with the schedule from
14 the Legislature, we may be reopening for further public
15 comments, we may not be, we don't know. But it would seem
16 we would know better what to do with continuing public
17 comment after that occurs.

18 CHAIRMAN HONIGBERG: Very true. So,
19 perhaps what is included in the motion is that we would
20 hold the documents, continue to leave them posted on the
21 website, but not have them part of our formal
22 consideration today. Is that what you're thinking?
23 You're nodding your head "yes". Mr. Patnaude has trouble
24 hearing you when you nod your head, but -- Commissioner

1 Scott.

2 COMMISSIONER SCOTT: I'd like to amend
3 that suggestion, to the extent that it is one, to, to the
4 extent these are already posted on the website, perhaps we
5 modify the posting to indicate that they are late-filed,
6 so that we would have that in the record. For those who
7 come in and read this later, they would understand that
8 perhaps those had a different status.

9 CHAIRMAN HONIGBERG: I'm going to assume
10 that we can do that. And, since we can title the
11 documents, we should, and whoever maintains the website,
12 so I think the Department of Environmental Services, we
13 should be able to note in some way that they're late.
14 That makes sense.

15 How does that sound to everybody? And,
16 Ms. Weathersby, is that consistent with what you had in
17 mind?

18 MS. WEATHERSBY: Yes.

19 CHAIRMAN HONIGBERG: All right. Is
20 there any further discussion?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: Seeing none, all in
23 favor say "aye"?

24 (Multiple members indicating "aye".)

1 CHAIRMAN HONIGBERG: Is there any
2 opposed?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: All right. Good.
5 Thank you very much.

6 All right. Here at the PUC, thanks to
7 Mr. Wiesner, in large measure, we have created a document
8 that each of you should have, and there are a number of
9 copies up here that I'll ask, Mr. Wiesner, if you could
10 put them out, put them out on the tables for people. I
11 think we made 20 copies. So, people may have to share a
12 little bit. It is an issue-by-issue, not
13 section-by-section, description of comments that came in.
14 It is not necessarily verbatim comments. In some
15 instances it is, in some instances it isn't. It was
16 working off of the January filing. So, the January filing
17 language may or may not be in each of these issue
18 descriptions. If there is black lining, chances are that
19 is reflective of the January version of the rules. But,
20 in some instances, it's just a comment or a suggestion as
21 to a different way to proceed.

22 For some of the issues, what's in this
23 document will -- should give a decent enough summary of
24 what's out there. For some issues, however, we're going

1 to have to refer to people's comments, to understand what
2 the comment was, what the basis for it was, what the
3 theory underlying the proposal was. So, this is a
4 document that may be useful to us.

5 For those who have worked in the
6 legislative arena with committees of conference, it is
7 similar, but not identical, to things that get created in
8 the committee of conference process. What's missing is
9 the first column, which has the language of one side or
10 the other. We're working off of the rules filings, and
11 then summarizing alternative suggestions.

12 There are some issues that are going to
13 be, I think, fairly easy to discuss and make some
14 decisions about. There are some that are going to be much
15 more complicated. I'll give examples of the former and
16 the latter. In the former category, I would put
17 discussions of the issue that a number of commenters
18 raised related to second homes. The permanent residents,
19 referring to r-e-s-i-d-e-n-t-s, versus permanent
20 residences, where the word ends e-n-c-e-s. And, there was
21 some confusion, I think. Perhaps the language may be
22 confusing, and there may be places where it can be
23 clarified. Although, I think it seems fairly obvious that
24 the notion is that we're worried about buildings,

1 permanent buildings, residences, as opposed to camps,
2 tents, things like that, not -- and no intention, I don't
3 think, to distinguish between first homes and second
4 homes. That's an issue, I think it's fairly discreet,
5 understandable, we can deal with.

6 A much more complicated issue has to do
7 with "criteria". What does it mean to have "criteria"?
8 The legislation directs us to develop specific criteria.
9 The rules, as they were proposed, identified a number of
10 issues that the Committee needs to consider. And, you
11 will remember comments at the public hearing about the
12 significance of the larger public interest determination
13 that needs to be made and how those criteria listed that
14 way might be considered factors in the decision. We
15 received comments, a number of them, suggesting that those
16 aren't -- that's not criteria. Criteria are on/off
17 switches, "yes" or "no" questions. Does it or does it not
18 meet a particular standard or do something in particular?
19 There's a philosophical thing we're going to need to work
20 through there, trying to understand what the goal is and
21 what the question being answered is. If they are like
22 on/off switches or yes/no questions, does that mean that,
23 if there are seven of them, that all seven of them have to
24 be answered "yes", in order for it to be in the public

1 interest? Or could it be six? Or could it be five? And,
2 because the statute still requires a determination of
3 what's in the public interest. That's a more complicated
4 issue, it's going to, I think, be a different type of
5 discussion.

6 All right. Does anybody have any
7 questions or comments so far on anything I've said or
8 anything that we have in front of us? Commissioner
9 Burack.

10 VICE CHAIRMAN BURACK: Thank you for
11 this. And, thank you very much to Attorney Wiesner for
12 putting this summary together, I think it's going to be
13 extremely helpful to our discussions. Would it be correct
14 in understanding that the way you intended for us to
15 proceed is to work through this set of summaries of
16 issues, discuss things, not with respect to actually
17 trying, as a group body today here, to wordsmith it, but
18 to get a general consensus as to what we're looking for on
19 each of these topics, with an expectation that Attorney
20 Wiesner would be, and others perhaps assisting him, would
21 be working to develop language that would come back to us
22 in a further draft? Is that how we're going to do this?

23 CHAIRMAN HONIGBERG: I think that's
24 really the only practical way we can do this. I think we

1 have a limited number of hours here. We're going to be
2 back together again in two weeks. We may know more about
3 the legislation then, although we may not. So, there's a
4 limit as to how much we can accomplish as we sit here.
5 And, if we bog down on individual sentences and word
6 choices, unless it's obvious, we're going to end up
7 spending a lot of time on and not getting much done.

8 Other thoughts or comments before we try
9 to dig in to something and move the process along?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: All right. Seeing
12 none, let's pick up the first issue, shall we? Which is
13 about "Site Access and Control".

14 COMMISSIONER SCOTT: Page 3.

15 CHAIRMAN HONIGBERG: Page 3 of what? Of
16 the proposed rule?

17 COMMISSIONER SCOTT: Of 300.

18 CHAIRMAN HONIGBERG: So, this was in the
19 section that talked about what each application has to
20 include. And, the rule, as it was proposed, said that the
21 application had to include "Evidence that the applicant
22 has a current right of legal access to and control of or
23 the ability to acquire control of the site, in the form of
24 ownership, ground lease, easement, option or other

1 contractual rights or interests." We got a lot of
2 comments on that phrasing. Some of the comments suggested
3 that the applicant had to prove control at the application
4 phase, absolute control in the form of ownership of the
5 site. There were some other similar suggestions. Then,
6 there were other proposals to change the language in other
7 ways, and some of them are summarized here on the front
8 page.

9 Anyone have any thoughts on this issue?
10 Commissioner Burack.

11 VICE CHAIRMAN BURACK: Thank you. If
12 I'm understanding this correctly, and maybe there are some
13 other aspects I'm not seeing, but the fundamental issue
14 here is whether a particular project may be able to
15 invite -- invoke eminent domain authorities under,
16 particularly, I believe it would be federal law. I'm not
17 sure, and this is where I would have to look to PUC for
18 any clarification on this, whether there would be any
19 provisions in state law whereby, if certain authorities
20 are granted -- or, approvals are granted by the PUC for a
21 proposed energy facility, whether that would thereby
22 confer state eminent domain powers upon a private party or
23 an applying party.

24 But, assuming that there are no such

1 powers under state law, I think what we're really talking
2 about here is this language pertaining to the ability to
3 or to acquire control of the site was really intended to
4 reference this issue of potential eminent domain
5 authorities that would be conferred, if an order were
6 issued or approval were issued by the Federal Energy
7 Regulatory Commission. And, again, if I'm not mistaken,
8 that could apply particularly in the case of either a
9 pipeline or a transmission line. And, again, I may need
10 to stand corrected on that. I don't know if that would
11 only apply to a pipeline or whether it could apply more
12 broadly than that.

13 So, I think what we need to do is just
14 have language here that clearly recognizes that, and I
15 think probably in the vast majority of situations, eminent
16 domain powers would not come into play. But, if a party
17 is seeking to or expects that they will -- that they have
18 already received eminent domain authority or they will be
19 seeking that through a process with FERC, that they make
20 clear that that is how they expect that they're going to
21 attain access to a property.

22 So, that's just a conceptual thought on
23 how we might address this.

24 CHAIRMAN HONIGBERG: I think that's -- I

1 think you've hit on part of it.

2 VICE CHAIRMAN BURACK: Okay.

3 CHAIRMAN HONIGBERG: But I think there
4 is a more fundamental issue that some people have raised.
5 Which is, I think there are some people who want the
6 requirement to be proof at the time of application of
7 ownership or control in some other way over the site. Is
8 that a direction we want to go? Correct me if I'm wrong,
9 but I believe that the rules as they stand today,
10 unamended by anything we're doing here, the rules that
11 exist don't have such a requirement. Is that -- am I
12 right about that? Mr. Wiesner, am I right about that?

13 MR. WIESNER: The proposed rules would
14 impose a heightened obligation on the applicant to make a
15 showing that they have legal rights to acquire and control
16 the property, and to provide access, which is the other
17 part of this, to provide access for purposes of completing
18 studies to support the application, as well as for the
19 Committee itself to conduct site inspections in connection
20 with its consideration of the application.

21 So, yes. This is -- this is a more
22 specific and more heightened obligation on the applicants
23 to make a showing that they have such site control and
24 access. A number of people took issue with the use of the

1 word "ability", "ability to acquire control". Because
2 it's not the clearest word, perhaps, and a better
3 formulation might have said "the legal right to acquire
4 control". But we had at least one comment from Mr.
5 McLaren that wants ownership to be obtained of all
6 property that would be necessary to develop a project
7 prior to the submission of the application.

8 So, those are sort of the outer
9 boundaries, if you will, of what people are proposing
10 here. Some of it is, you know, perhaps just wordsmithing.
11 Some of it, I believe, is intended to cover the eminent
12 domain option that may be available, in particular, for
13 interstate pipelines, as Commissioner Burack suggested.
14 And, some of it is the -- the comments submitted by the
15 "Various Energy Companies", as they're characterized on
16 the website, I might refer to them as the "developer
17 group", for purposes of today's discussion, would split
18 the requirement in two, so that there's a requirement to
19 show evidence of the ability to acquire ownership.

20 And, in cases where we would be talking
21 about a water crossing, for example, or a highway
22 crossing, you actually can't acquire ownership of the
23 property, because it's owned or controlled by the state.
24 So, you get a license from this -- from the Public

1 Utilities Commission or from the Department of
2 Transportation to do that crossing. And, so, that's kind
3 of a technical point that's addressed in the developer
4 group comments. And, as I said, they also split into two
5 the notion of "site control", if you will, or the ability
6 to acquire ownership of an easement or a fee interest in
7 the site, and the concept that you have an immediate right
8 of "access to the site".

9 CHAIRMAN HONIGBERG: Thank you.

10 MR. IACOPINO: Mr. Chairman? I would
11 just point out, I think your question is --

12 CHAIRMAN HONIGBERG: Attorney Iacopino,
13 yes.

14 MR. IACOPINO: Thank you. The current
15 rule that currently exists is Rule 301.03. And, with
16 respect to the requirements of the application, it
17 requires the applicant to indicate "whether the applicant
18 is the owner or lessee of the site or facility or has some
19 legal or business relationship to it". That's the
20 presently existing rules.

21 CHAIRMAN HONIGBERG: Thank you.
22 Thoughts or comments from members of the Committee?
23 Director Muzzey.

24 DIRECTOR MUZZEY: I would certainly

1 support clarification of this particular phrase, the
2 "ability" phrase, because it is a very legal, detailed
3 item that, if we're not clear on what its meaning is, nor
4 is anyone else.

5 CHAIRMAN HONIGBERG: I think Attorney
6 Wiesner said "legal right", --

7 DIRECTOR MUZZEY: Right.

8 CHAIRMAN HONIGBERG: -- rather than
9 "ability". Is that a satisfactory substitution?

10 DIRECTOR MUZZEY: Not being an attorney,
11 I would defer to Mr. Wiesner, so -- that did seem more
12 specific to me.

13 CHAIRMAN HONIGBERG: Okay.

14 MR. WIESNER: Yes. My view is that
15 clarifies what the thrust of this is. That you need to
16 provide evidence that you have the right to acquire the
17 property. And, that might -- you know, the Nixon Peabody
18 comment goes to the eminent domain concern that
19 Commissioner Burack raised, which is, you know, there may
20 be situations where I don't have a document that said that
21 I have a right to acquire it. But, if I get a certificate
22 from the FERC, then I can use eminent domain.

23 CHAIRMAN HONIGBERG: Commissioner
24 Burack.

1 VICE CHAIRMAN BURACK: If I may, I think
2 one of the things we all are -- presumably, this language
3 is seeking to address is a situation where a party
4 effectively could file an application, although I don't
5 believe we've ever seen this, file an application that
6 essentially is speculative. That is, they don't,
7 themselves, own or control the property, and they simply
8 want to apply and see if they could get the approval, and
9 then would use that as a way of trying to negotiate a
10 purchase of a property with the property owner, whether
11 they have the property owner's consent or not, to be able
12 to file an application. And, certainly, I think that's --
13 we would all want to avoid that kind of situation.

14 And, it may be that what we need to be
15 looking at here is some language that clearly states that
16 any application must either demonstrate that they actually
17 already own or have the legal ownership necessary, legal
18 rights to be able to develop the property for the purposes
19 proposed, or that they have an agreement that would allow
20 them to do so, or, at the very least, the permission of
21 the property owner to be able to make such application.

22 I think that would be a minimum that
23 we'd be looking for here. I don't know how -- how you
24 address the situation of roads or highway crossings in

1 that setting, whether it would have to be that you need to
2 demonstrate that you have obtained those ahead of time or
3 not, if those kinds of things would be required.

4 But, again, I think we all want to avoid
5 a situation where a vast amount of time and effort are
6 spent reviewing a proposal that does not and cannot
7 reasonably be expected to obtain the necessary property
8 rights.

9 CHAIRMAN HONIGBERG: Do we have any
10 serious concern that a business venture would want to
11 engage in that kind of speculative permitting process?
12 This is not an inexpensive process under any circumstance.
13 But, I mean, my sense is that that would be an unusual
14 thing for a business looking to make money to do.

15 But there's various iterations. Let me
16 ask this question. At least one suggestion, I would put
17 it on one extreme end of things, would require absolute
18 proof of ownership of the site. Does anybody think that
19 that is an appropriate standard for the applicant to have
20 to meet?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: I didn't think so.
23 Does anyone think that something along the lines of what
24 is in the developer group -- or, I'm sorry, "various

1 energy companies", talking about "permission from a
2 federal, state or local government agency, or other
3 recognizable legal right or instrument"? With that
4 language, you've got to -- I've got to do something beyond
5 just assert that I have a plan. Commissioner Scott.

6 COMMISSIONER SCOTT: Well, I think
7 Attorney Wiesner raises a good -- a good subset of that is
8 there are cases where you need state approvals for -- can
9 you all hear me? -- state approvals for water crossings.
10 You know, these are areas where the applicant is not going
11 to purchase this property if they get any approvals. So,
12 I think we do need to have a carve-out in the rules to
13 accommodate that, since that will -- the concept of having
14 ownership certainly will never match on that end.

15 And, as touchy a subject as eminent
16 domain is for pipeline developers, that is current federal
17 law. So, I don't know how we -- I think we need to be
18 careful with that. If we effectively constructed rules
19 that would bar that federal ability, I don't know if we
20 could preempt it, I don't know how that works either. So,
21 I think we need to --

22 CHAIRMAN HONIGBERG: I think the lawyers
23 would tell you that the supremacy clause would prohibit us
24 from effectively doing that.

1 COMMISSIONER SCOTT: So, my point to all
2 that is I do think we need to accommodate those realities
3 in the rules somehow.

4 CHAIRMAN HONIGBERG: Thoughts? Further
5 thoughts? Suggestions?

6 (No verbal response)

7 CHAIRMAN HONIGBERG: And, so, we at
8 least want to clarify the "ability" language. And, I
9 think we -- I think the group seems inclined to
10 acknowledge that there may be ways to -- ways to proceed
11 that don't require actual current right, but you've got to
12 be able to point to something. And, I don't know whose
13 proposals, maybe the current language, with just evidence
14 of a legal right to acquire control, maybe, but maybe
15 that's too -- that's too much. I don't know. I'm not
16 sure we should try to wordsmith this any further.

17 Commissioner Burack.

18 VICE CHAIRMAN BURACK: I think you're
19 heading in the right direction there. And, that general
20 notion of being able to demonstrate actual ownership and
21 control or, through a legal instrument, a legally
22 enforceable instrument, the ability to be able to acquire
23 the necessary control, once other conditions have been
24 met. And, there will also need to be some kind of

1 provision for addressing approvals that may be contingent
2 upon other things happening. We've got a lot of
3 chicken-and-egg things going on here, I think, including
4 the whole eminent domain issue as it might play out. And,
5 the question, whether or not these kinds of proceedings
6 would be able to go on in parallel fashion or whether they
7 would have to be sequential? And, I think good practice
8 today in the permitting world is to try to -- to try to do
9 concurrent proceedings that bring us -- bring processes
10 more together, rather than have them be sequential and
11 stretch out over long periods of time.

12 I also would support the notion of
13 distinguishing between the rights to -- or, the rights
14 necessary to be able to actually construct a project,
15 versus those necessary to be able to accommodate a site
16 visit. And, so, that basic notion, I think, is probably
17 worth considering.

18 CHAIRMAN HONIGBERG: Commissioner Scott.

19 COMMISSIONER SCOTT: As usual, I'll kind
20 of state the obvious, perhaps, is -- so, I take it what
21 we're trying to prevent, I think, on one hand is, for want
22 of a better word, a waste of state resources, and,
23 certainly, the public's time for a project that doesn't
24 have the route firmly established. I think that's one

1 end. I also believe that there needs to be some
2 flexibility. For example, I'll pick on Environmental
3 Services, is, if the route of a particular project, for
4 wetlands or some other reason, would -- an alternative
5 location would mean now a different landowner is involved,
6 and that may be preferable, there should be some allowance
7 for that to happen dynamically, obviously, before
8 approval, and perhaps conditional approval, but -- so, I'd
9 hate to have it so prescriptive that you'd have to have
10 this all ironed out before you come to us that would
11 preclude a better alternative option. And, again, in the
12 case of wetlands, for instance, "I need you to move this
13 500 feet to the left." Now, it's on somebody else's
14 property, that type of thing. So, I think we need to have
15 some flexibility in there also while meeting those goals.

16 VICE CHAIRMAN BURACK: If I may,
17 Commissioner Scott, would you agree, though, that, for
18 purposes of the initial proposal or application that is
19 brought forward, that the applicant ought to be able to
20 demonstrate an appropriate level of control of the
21 property that they are proposing to use?

22 COMMISSIONER SCOTT: Yes.

23 CHAIRMAN HONIGBERG: Looking at the --
24 what's labeled as the "Various Energy Companies'" version

1 of this, with perhaps the added requirement that the Nixon
2 Peabody proposal added onto that, which is that, if you
3 don't yet have it, you have to provide some evidence of
4 how you're going to get it. Is that -- is that an
5 approach that makes sense to people?

6 VICE CHAIRMAN BURACK: If it's an
7 approach that would be referring, in the case of a
8 pipeline, specifically to you are in the process of a FERC
9 proceeding, which, if approvals were granted therein,
10 would confer eminent domain authority such that, if people
11 would not negotiate with the developer, you would be able
12 to otherwise acquire the property, I think that would be
13 acceptable. But, to simply say "it's okay if they don't
14 have any agreement," and even if they have been
15 negotiating with the party, they don't have an agreement
16 or they can't get to an agreement, "well, we hope we'll be
17 able to get to an agreement after we get all these
18 approvals", I could not support that.

19 CHAIRMAN HONIGBERG: Nor could I, and I
20 don't think -- I don't see that being on the table at this
21 point.

22 VICE CHAIRMAN BURACK: Okay.

23 MS. WEATHERSBY: I think maybe, if we
24 took out the -- in the Various Energy Companies, we took

1 out the "ability to acquire" language, and then added a
2 section about that they needed "a legally enforceable
3 document demonstrating control of the site".

4 CHAIRMAN HONIGBERG: But with the other
5 language that's in there, --

6 MS. WEATHERSBY: With the other
7 language --

8 CHAIRMAN HONIGBERG: -- including
9 "permission from a federal, state", *etcetera*?

10 MS. WEATHERSBY: And, then we need a
11 section on --

12 (Court reporter interruption.)

13 CHAIRMAN HONIGBERG: "And then we need a
14 section on taking" is what she said. Director Muzzey.

15 DIRECTOR MUZZEY: I have a question in
16 regards to the Nixon Peabody language. "Must provide
17 evidence of reasonable good faith efforts to obtain legal
18 access and control". Just wondering what the specific
19 meaning of "reasonable good faith efforts", and is that
20 something that would become a point of argument later and
21 not clear enough?

22 CHAIRMAN HONIGBERG: Could be. The
23 answer is "could be".

24 DIRECTOR MUZZEY: That would be my

1 concern with that language.

2 CHAIRMAN HONIGBERG: Is that a reference
3 to water crossings and road crossings or is that something
4 else, do we think? I'm asking -- I'm looking at Attorney
5 Wiesner.

6 MR. WIESNER: The first question is --
7 excuse me, the first sentence of their comments is
8 somewhat vague. I think the second sentence is quite a
9 bit stronger in suggesting that what's -- that the efforts
10 that they're taking are efforts to receive approval from
11 some other source that would give them the right to
12 acquire the property, which I believe is really a
13 reference to eminent domain.

14 CHAIRMAN HONIGBERG: Okay.

15 MR. WIESNER: And, eminent domain is,
16 you know, I think pretty clearly available, if you're a
17 certificated interstate natural gas pipeline. In many
18 other situations, it may not be available, including for
19 an electric transmission line siting.

20 CHAIRMAN HONIGBERG: All right. Are
21 there other thoughts or comments on this issue for now?
22 Understanding that we don't have -- we are not trying to
23 wordsmith further, but I think we have an idea of an
24 approach, along the lines of what Commissioner Burack just

1 articulated, and Ms. Weathersby, I think, as well.

2 (No verbal response)

3 CHAIRMAN HONIGBERG: All right. Let's
4 move on. This relates to "Applications for Electric
5 Generating Facilities". Want to take a minute to look at
6 the section, question, and the comments.

7 (Short pause.)

8 CHAIRMAN HONIGBERG: Anyone have any
9 thoughts, comments or observations on this issue?
10 Commissioner Burack.

11 VICE CHAIRMAN BURACK: Thank you, Mr.
12 Chairman. What I'm trying to sort through in my mind is
13 which of the statutory decision factors that the Committee
14 must consider these items would relate to, and how this
15 additional information would or would not materially aid
16 the Committee in making those decisions. And, I would
17 welcome others' thoughts on this. And, I would just offer
18 the observation that, in matters that I have sat on in the
19 past with the SEC involving generation facilities, I don't
20 believe that many of these issues have come up or been
21 substantial matters of discussion or consideration by the
22 Committee. And, so, I think it would be important, as I
23 say, to try to relate these to a particular finding that
24 we need to make, or ask whether somehow these would aid

1 the Committee in being able to make a decision with
2 respect to public interest, which is the only new finding
3 that the Committee would have to make with respect to a
4 matter. So, I would welcome any thoughts anybody has on
5 those.

6 CHAIRMAN HONIGBERG: I just want to
7 clarify. What you're referring to, when you talk about
8 these additional requirements, you're referring to the
9 proposed additions that are on the summary document that
10 are identified, I think, as either the "Goodman" comments
11 or the "Watson" comments?

12 VICE CHAIRMAN BURACK: That's right.
13 That's correct.

14 CHAIRMAN HONIGBERG: Okay. Commissioner
15 Scott.

16 COMMISSIONER SCOTT: Thank you. I
17 agree, Commissioner Burack. I think, even Mr. Goodman's
18 comments, he talks about the "public good". So, I think
19 his attempt with his comments, to paraphrase anyways, is
20 that this information in his mind will help that
21 determination.

22 My concern with some of the requests he
23 has, for want of a better word, that be put in the rule
24 there are so specific, I don't think it would provide the

1 full, even if you want to take economics into account for
2 a project as part of that public good consideration, which
3 is, I guess, a broader discussion, I think there are many
4 ways to arrive at that. So, I'm a little bit concerned
5 that these go into so -- his comments go into so many
6 specifics that may not be necessarily germane, meaning
7 somebody that doesn't meet 98 percent of the price in the
8 day-ahead market, there still may be other values to that.
9 So, is that in itself a proper metric? So, I'm a little
10 bit concerned the metrics aren't necessarily on point, and
11 perhaps a little bit too specific.

12 CHAIRMAN HONIGBERG: My sense was, the
13 level of specificity, there was too much detail for the
14 application level that we're talking about here. But, you
15 know, I don't pretend to be an expert on this stuff, which
16 is one of the issues.

17 Ms. Weathersby.

18 MS. WEATHERSBY: I certainly agree with
19 what you said. But, as I look at Mr. Watson's comments,
20 those seem to be more broad-based, and particularly with
21 regard to the former Sections (c) and (e). And, I'm
22 wondering -- one of the suggestions is to leave those in,
23 and I'm wondering what the rationale was for taking those
24 out? They do seem to make sense to me.

1 VICE CHAIRMAN BURACK: Ms. Weathersby,
2 could you just clarify for us the specific language that
3 you're referencing that's being --

4 MS. WEATHERSBY: In Section (f)(3). So,
5 we're in 301.03(f), number (3), the "Type of turbine and
6 generator unit, including", and then there's a list. And,
7 former Section (c), which was stricken, "whether the unit
8 will serve base, intermediate or peaking loads", that was
9 a suggestion, to leave that in. And, then, former Section
10 (f), "Impact on system stability and reliability". And,
11 those seem to make sense to me to leave in. And, I'm
12 wondering what the rationale was for having them taken
13 out, to help me understand whether or not I really
14 understand what's going on here?

15 CHAIRMAN HONIGBERG: I had thought that,
16 at least whether it was going to be a base, intermediate
17 or peaking load, was picked up someplace else in the
18 rules. I could be wrong.

19 MR. WIESNER: I don't believe it is for
20 generating units.

21 CHAIRMAN HONIGBERG: Okay.

22 MR. WIESNER: And, I think the thought
23 was that that may go to the need for a particular plant in
24 a more regulated world, and that world has changed to a

1 more competitive model. And, that was perhaps the
2 rationale for removing that language.

3 With respect to the impact on system
4 reliability, I think the removal of that language for
5 generators, I believe, was a recognition that ISO-New
6 England and the utility -- and the interconnecting utility
7 for a project of the size that would trigger jurisdiction
8 here is going to be performing its own system impact
9 study, determining the reliability effects of the proposed
10 project, and identifying any system upgrades, as well as
11 interconnection facilities, that would have to be built.
12 And, so, I think there was a concern that it was probably
13 -- perhaps not appropriate for this Committee to duplicate
14 those efforts.

15 CHAIRMAN HONIGBERG: You are refreshing
16 my memory. That where I was thinking it was picked up was
17 in the reference to the ISO-New England responsibilities.
18 Because we're not a regulated environment anymore, where
19 utilities decide or plan on building generation that is
20 base generation or peaking generation. Those decisions
21 are made at the ISO-New England level, is that right?
22 Well, what gets dispatched is made -- that's decided at
23 the ISO, --

24 MR. WIESNER: Right. And, there may

1 not --

2 CHAIRMAN HONIGBERG: -- not by
3 utilities.

4 MR. WIESNER: And, my understanding is,
5 there may not be clear distinctions between what's an
6 intermediate or peaking, and that may have to do more with
7 the price of gas than anything else, depending on the type
8 of project. So, I think that was viewed as a holdover
9 from a more regulated world.

10 Now, Mr. Goodman's comments, you know,
11 go deep into the economics and the potential, you know,
12 benefits to the market, if you will, of any particular
13 generating project proposal, and with great specificity.
14 And, I think, you know, Commissioner Scott has spoken to
15 the concerns with that approach quite well, and it seems
16 that those concerns may be reasonable.

17 CHAIRMAN HONIGBERG: Commissioner
18 Burack, you look like you want to say something.

19 VICE CHAIRMAN BURACK: Well, I'll just
20 offer the observation that, in prior proceedings,
21 certainly, the Committee has inquired as to whether or not
22 there is a reliability report or other analysis done by
23 the ISO. And, it may be appropriate to request that a
24 copy of that be provided, if it's -- if it is available at

1 the time of application, but, if not, that it be provided
2 once ISO has issued such a document.

3 And, again, recognizing that, yes,
4 market -- the market situation certainly is very different
5 overall than it was when these rules were first developed.
6 It may be helpful simply to ask the applicant to describe
7 what their expectations are for how the plant may operate,
8 understanding that market conditions may change in the
9 future and it may operate in a different fashion. But one
10 can imagine that, with respect to an electric generating
11 facility, for example, how frequently it might operate
12 would certainly be a factor in how you might look at noise
13 issues, for example, at a particular facility. And, so,
14 having some sense of what the applicant reasonably
15 anticipates might be its mode or frequency of operation I
16 think could be helpful to the Committee. And, likewise,
17 to the extent that we can see a copy of any reports done
18 by the ISO with respect to the proposed facility, I think
19 that would be helpful to the Committee as well.

20 CHAIRMAN HONIGBERG: Other thoughts?
21 What Commissioner Burack said makes sense to me. Does it
22 make sense to anybody else? I see heads nodding. That's
23 encouraging. I think we can probably -- I think we can
24 probably figure out a way to add relevant language to that

1 to pick up both of those comments. All right. I'm going
2 to put that sheet aside.

3 And, move on to "Transmission Line
4 Application Requirements". Commissioner Burack.

5 VICE CHAIRMAN BURACK: This really, if I
6 may, Mr. Chairman, a question for members of the Public
7 Utilities Commission perhaps, is is there anything in a
8 statute, or in ISO proceedings or processes for that
9 matter, that draws a distinction between essential and
10 elective transmission line projects? Is that -- are those
11 terms that are recognized in statute or otherwise? Or is
12 there something else that provides the basis for those
13 terms?

14 CHAIRMAN HONIGBERG: Commissioner Scott.

15 COMMISSIONER SCOTT: I don't know where
16 the commenter got the language. Typically, we talk in
17 terms of, for transmission projects, electric
18 transmission, "reliability" projects, or, again,
19 "elective" is -- probably works for the other types of
20 projects. So, those are the two nomenclatures that I'm
21 familiar with.

22 CHAIRMAN HONIGBERG: Commissioner Scott,
23 are those done here or is that really at the ISO-New
24 England level?

1 COMMISSIONER SCOTT: That's all at the
2 ISO-New England level.

3 CHAIRMAN HONIGBERG: My reaction to the
4 Various Energy Companies' suggested replacement on Item
5 (10) is, in looking at Item (10), which I think is the old
6 language, I'm not really sure, that's kind of a generic
7 statement, "Impact on system stability and reliability", I
8 mean, that doesn't really mean much. Getting a copy of
9 the application might give us more information than a mere
10 statement, like the rule as it was proposed and as it
11 currently exists. So, that Various Energy Companies' --
12 Various Energy Companies' proposed substitution does make
13 sense to me.

14 Director Muzzey.

15 DIRECTOR MUZZEY: The language at
16 (g)(10) is the same language used above at (f), (e) or
17 (c), former (f), (c). So, that -- it may be a holdover as
18 well from -- as we determined it was at the top of the
19 page.

20 CHAIRMAN HONIGBERG: Uh-huh.

21 DIRECTOR MUZZEY: So, I would think that
22 comparable changes should be made in both places.

23 CHAIRMAN HONIGBERG: Makes sense.
24 Everybody else feel okay about that?

1 MS. WEATHERSBY: Yes.

2 COMMISSIONER ROSE: Yes.

3 MR. OLDENBURG: Yes.

4 CHAIRMAN HONIGBERG: Good. I see heads
5 nodding and yeses being mouthed.

6 Commissioner Scott.

7 COMMISSIONER SCOTT: The issue of system
8 stability and reliability generally, and I understand the
9 comments made, the evolution of the electric market and
10 having the ISO-New England involved now, their role is to
11 provide that insurance for us. So, on the one hand,
12 that's no longer the state's responsibility to ensure
13 these things. Where now it becomes less clear to me is,
14 when we look at a public good or a determination of some
15 sort, now perhaps a consideration is, should that be part
16 of that consideration? Does it help reliability? Does it
17 help more regional issues? I'm not saying that's our
18 purview, but that language is so nebulous, I think we need
19 to figure out that also. Okay. Probably wasn't helpful.

20 CHAIRMAN HONIGBERG: Yes. I'm not
21 exactly sure which language you were referring to just
22 there at the end?

23 COMMISSIONER SCOTT: What I'm suggesting
24 more globally is, where historically we would say that

1 ISO-New England's job is reliability, that's not our job.
2 So, we don't -- we could easily cull out these issues. To
3 the extent that we now have language for the public
4 interest language, that definition needs to be further
5 expanded to know whether we're still throwing this out, is
6 what I'm suggesting.

7 CHAIRMAN HONIGBERG: Is that different
8 than getting what the ISO's plans are and how any
9 particular project fits into its responsibilities to
10 determine and ensure that the lights stay on at all times?

11 COMMISSIONER SCOTT: Probably not. The
12 presumption would be, and which is why the ISO
13 interconnection queue is there, and the requirement for a
14 study, an interconnection study, is to ensure that, for a
15 given project, should it be built, there is no detrimental
16 impact on reliability and stability. That may include
17 additional infrastructure to go with it, but that's all
18 part of that. So, perhaps that is the right answer. And,
19 perhaps we could, on that end, we could rest on ISO-New
20 England doing their job, under that assumption, at most
21 ask for the interconnection study, if there's a question
22 in mind.

23 CHAIRMAN HONIGBERG: Other thoughts or
24 comments on this? Yes, Commissioner Burack.

1 VICE CHAIRMAN BURACK: I assume what
2 we're doing here really is, in this section of the rules,
3 we're identifying the information that we want the
4 applicant to submit. And, in a different section of the
5 rules, we will have a place where we talk about what
6 consideration needs to be given with respect to certain
7 criteria. And, so, I would assume that one of the
8 criteria that we might consider someplace would be, is
9 there -- have they demonstrated that this system or this
10 facility will not jeopardize overall system reliability?
11 And, that's one of the factors we would identify later,
12 based upon the information submitted pursuant to this
13 section.

14 CHAIRMAN HONIGBERG: Or, that it might
15 improve reliability or it might have no affect on
16 reliability.

17 VICE CHAIRMAN BURACK: Whatever the test
18 is that we would want to --

19 CHAIRMAN HONIGBERG: Right.

20 VICE CHAIRMAN BURACK: -- however, we
21 would want to define that standard.

22 CHAIRMAN HONIGBERG: Okay.

23 VICE CHAIRMAN BURACK: Yes.

24 CHAIRMAN HONIGBERG: Other thoughts or

1 comments?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Seeing none, let's
4 move on. This gets us to the Public Interest standard,
5 which is a big one to bite off. But I think we're going
6 to have to talk about it, so, let's talk about it. People
7 want to read the proposed rule, or rules, actually,
8 because there are multiple rules to consider, and then the
9 comments. So, I'll tell you what we're going to do.
10 We're going to break for eight minutes, and come back here
11 at 20 minutes after the hour, to give people a chance to
12 read. We won't talk, we'll just read. Okay? So, let's
13 go off the record.

14 (Off the record.)

15 CHAIRMAN HONIGBERG: All right. We're
16 going to go back on the record. I'm going to ask the
17 people up here, when they speak, to make sure they're very
18 close to a microphone, so the people in the back can hear.
19 Because, really, the only way the people in the back can
20 hear is if we use these microphones the way they were
21 intended.

22 So, to the extent that it wasn't clear,
23 on the summary document, with the landscape layout, the
24 references to Site 301.17 or 18 really would be references

1 to new sections that would incorporate the concepts that
2 are in some of these proposals.

3 So, do people have thoughts, comments,
4 suggestions regarding the Public Interest standard?

5 Commissioner Rose.

6 COMMISSIONER ROSE: Mr. Chairman, I just
7 had one question. I didn't have with me, there was one of
8 the statements on Page 4, under "Wagner", it referenced
9 two RSAs that appear to have already identified some level
10 of public benefit. And, I'm just curious if those were
11 readily available for our consideration?

12 CHAIRMAN HONIGBERG: They are readily
13 available to the two people who pulled them up on their
14 computers while we were sitting here.

15 COMMISSIONER ROSE: Ah. Brilliant.

16 CHAIRMAN HONIGBERG: So, Director
17 Muzzey, you want to take a crack at that?

18 DIRECTOR MUZZEY: Would you like me to
19 read what they say, would that be helpful?

20 COMMISSIONER ROSE: Yes. That would be
21 great. Thank you.

22 DIRECTOR MUZZEY: RSA 378:37, it's the
23 New Hampshire Energy Policy. "The general court declares
24 that it shall be the energy policy of this state to meet

1 the energy needs of the citizens and businesses of the
2 state at the lowest reasonable cost while providing for
3 the reliability and diversity of energy sources; to
4 maximize the use of cost-effective energy efficiency and
5 other demand-side resources; and to protect the safety and
6 health of the citizens, the physical environment of the
7 state, and the future supplies of resources, with
8 consideration of the financial stability of the state's
9 utilities."

10 The other section is longer. 362-F:1
11 falls under "Public Utilities Electric Renewable Portfolio
12 Standard". And, the purpose statement reads: "Renewable
13 energy generation technologies can provide fuel diversity
14 to the state and New England generation supply through the
15 use of local renewable fuels and resources that serve to
16 displace and [therefore] lower regional dependence on
17 fossil fuels. This has the potential to lower and
18 stabilize future energy costs by reducing exposure to
19 rising and volatile fossil fuel prices. The use of
20 energy" -- "The use of renewable energy technologies and
21 fuels can also help to keep energy and investment dollars
22 in the state to benefit our own economy. In addition,
23 employing low emission forms of such technologies can
24 reduce the amount of greenhouse gases, nitrogen oxides,

1 and particulate matter emissions transported into New
2 Hampshire and also generated in the state, thereby
3 improving air quality and public health, and mitigating
4 against the risks of climate change. It is therefore in
5 the public interest to stimulate investment in low
6 emission renewable energy generation technologies in New
7 England and, in particular, New Hampshire, whether at new
8 or existing facilities."

9 CHAIRMAN HONIGBERG: Thank you, Director
10 Muzzey. Do people have comments or observations about
11 this part of the -- of the rules? Commissioner Scott.

12 COMMISSIONER SCOTT: Picking up on the
13 Wagner Forest comments -- Wagner Forest Management
14 comments, I think all that they're suggesting is, those
15 two sections, the Renewable Portfolio Standard designation
16 of "public interest" by the Legislature, and the least
17 cost energy planning designation by the General Court, I
18 think all that they're asking is those -- suggesting is
19 those, since it explicitly says that's in the public
20 interest, that should be one of the considerations we take
21 into account. I'm not sure I see any reason why we
22 wouldn't. I think the question would be is "do we need to
23 have that in the rules, as it's already in the statutes?"
24 But I don't know why we wouldn't take that into account.

1 CHAIRMAN HONIGBERG: I agree with that.
2 And, I have a question, really, sort of more broadly,
3 about whether we -- whether we need to include sections
4 regarding the "public interest", when we do have statutes
5 that tell us with some level of specificity what the
6 Legislature thinks is in the public interest. And, then,
7 we have sections in between 301.03 and the end of this
8 section that deal with visual impacts, effect on historic
9 sites, and all manner of very specific things that help us
10 determine what is positive and what's negative about a
11 particular project. Do these proposed -- would these
12 proposed new additions replace those? I don't think they
13 could. Would they be -- would those help inform us about
14 these last sections? They are -- everybody has a
15 different idea about what's in the public interest. The
16 Legislature has told us certain things. And, going much
17 beyond that is, it seems to me, to be a dangerous
18 proposition. But that's my instinctive reaction to all of
19 this.

20 Mr. Oldenburg.

21 MR. OLDENBURG: Mr. Chairman, I just --
22 I look at this as the heading of 301.03(h)(6), which is
23 what's in the application. And, the applicant has to
24 include information describing what's in the public

1 interest. I don't see as any of this, at least what I
2 read, is part of the application, it's more of a rating
3 criteria. It's the 103.17 [301.17?] and 18, which don't
4 exist, and how you rate it. Whether these need to be
5 included or not I guess is a point of contention. But, to
6 me, the applicant has to describe what they believe -- how
7 they believe it's in the public interest. And, all of
8 this, especially with the Various Energy Companies, that's
9 how this Committee should rate that, how we should
10 determine whether that's in the public interest or not.
11 Which, to me, isn't part of the application, it's part of
12 what we do. So, to me, that would be part of this new
13 Section 17 or 18. And, I think all the rest of that, all
14 the rest of the information that's provided is also part
15 of that. It's how we would -- how we would review the
16 application, not what is in the application. So, I don't
17 see how this, the information that's here, even pertains
18 to 301.03(h)(6). It's more the later sections.

19 CHAIRMAN HONIGBERG: I think that's
20 right. But, I think, if -- I think the thought is, if we
21 were to adopt a public interest standard in one of the
22 later sections, it would be incumbent on the applicant to
23 include, as part of their responsibility of complying with
24 301.03, to give information that's related to each of the

1 elements that's in the public interest standard later in
2 the rules. I think that's how it would be structured.

3 MR. OLDENBURG: Okay.

4 CHAIRMAN HONIGBERG: Other thoughts,
5 considerations? Commission Burack.

6 VICE CHAIRMAN BURACK: Thank you. I
7 just found myself going back to the statute to try to
8 again ground what it is we're doing here. And, I'm
9 looking at RSA 162-H:16, IV, which, again, this is in the
10 section entitled "Findings and Certificate Issuance".
11 And, this particular section reads: "After due
12 consideration of all relevant information regarding the
13 potential siting or routes of a proposed energy facility,
14 including potential significant impacts and benefits, the
15 Site Evaluation Committee shall determine if issuance of a
16 certificate will serve the objectives of this chapter. In
17 order to issue a certificate, the Committee shall find
18 that:", and then there are four different findings listed.
19 The first relates to "adequacy of financial, technical,
20 and managerial capability", again, I'm just summarizing
21 here on these. The second relates to "whether or not the
22 site and facility will unduly interfere with the orderly
23 development of the region". The third relates to "whether
24 the site will have an unreasonable adverse effect on

1 aesthetics, historic sites, air and water quality, natural
2 environment, and public health and safety". And, the
3 fourth, which is the pertinent one here, reads "Issuance
4 of a certificate will serve the public interest". So,
5 it's in this context that we're looking at this question.

6 And, the other piece of this, and I'm
7 sorry, I don't have the language in I believe it's SB 245
8 that guides us here, I don't know if somebody else can
9 find this, I think the real question is is "what has the
10 Legislature instructed us here to do?" Has the
11 Legislature instructed us to create criteria describing
12 what at least some of the factors are that constitute a
13 finding of what serves the public interest? And, I think,
14 if the Legislature has directed us that that's what we
15 need to do, then that's clearly what we need to do here,
16 and then it's a matter of determining what those factors
17 are.

18 And, I don't know, Attorney Wiesner or
19 Attorney Iacopino, do you happen to have the language of
20 SB 245 with you?

21 MR. IACOPINO: Yes. SB 245, this part
22 of it, was --

23 CHAIRMAN HONIGBERG: Just find a
24 microphone.

1 MR. IACOPINO: This part of SB 245 was
2 rolled into RSA 162-H:10, which -- Section VII, which says
3 that "As soon as practicable, but no later than July 1,
4 2015, the Committee shall adopt rules", and then I'm
5 skipping some of it, "including specific criteria to be
6 applied in determining if the requirements of RSA
7 162-H:16, IV, have been met by the applicant for a
8 certificate of site and facility."

9 VICE CHAIRMAN BURACK: Thank you. I
10 think what that's telling us is that we do, of necessity,
11 need to identify factors here that should, at a minimum,
12 be information on which should be provided by an
13 applicant. And, the method to my madness in reading
14 through those other sections earlier is I have to believe
15 that the Legislature did not mean this language as
16 surplusage in talking about the public interest. That is,
17 it must mean something different than what is covered by
18 the first three findings that need to be made there, or
19 perhaps it is some cumulative aspect of all of those, plus
20 some other things.

21 But I believe that what our challenge is
22 here is to divine what those other elements are of the
23 public interest that we would expect an applicant to be
24 able to provide information on to allow us to be able to

1 make this kind of a finding.

2 I would concur with the statements made
3 earlier that, certainly, the kinds of factors identified
4 in those two statutory sections that were read to us
5 earlier, 362-F:1 and RSA 378:37, certainly could be some
6 of those factors, but there may be others as well.

7 I would also -- well, let me just stop
8 there and see how others feel about those thoughts.

9 CHAIRMAN HONIGBERG: Yes, Commissioner
10 Scott.

11 COMMISSIONER SCOTT: I agree with
12 Commissioner Burack, in that I think it is incumbent upon
13 us, and it's expected, that we do develop what is meant by
14 "public interest" more in the rules. So that I think
15 there's a general understanding that we were to provide
16 more specificity within the rules.

17 CHAIRMAN HONIGBERG: All right. Is
18 there something that people have seen or see today that
19 catches their fancy as a way to articulate what is in the
20 public interest? Ms. Weathersby.

21 MS. WEATHERSBY: I am kind of partial
22 towards the first column here, the suggestion by the AMC
23 and CLF, and the other environmental groups. In part
24 because the categories they suggest for the information

1 seem to proximately mirror what was in the energy policy
2 statute.

3 COMMISSIONER ROSE: Commissioner Burack?

4 VICE CHAIRMAN BURACK: Yes.

5 COMMISSIONER ROSE: I'm sorry. Could
6 you reference the RSA again that you were reading from a
7 few moments ago?

8 VICE CHAIRMAN BURACK: Are you referring
9 to the statute that governs the Site Evaluation Committee
10 itself?

11 COMMISSIONER ROSE: Yes, please.

12 VICE CHAIRMAN BURACK: Yes. That's RSA
13 162-H, Section 16, it's entitled "Findings and Certificate
14 Issuance". And, it's in Section IV that the four factors
15 that must be considered by the Committee in determining
16 whether or not to issue a certificate are identified and
17 described.

18 If I may, I'll just offer the
19 observation that I think what we may want to do is to look
20 at broad categories of issues here, many of which are
21 probably identified in 362-F:1 and 378:37, and ask for
22 submittal of information relating to those broad
23 categories. I'm not sure that I am comfortable with the
24 notion of a test such as a "net environmental effect test"

1 or a "net economic effects test". I'm not sure that
2 that's consistent with what the Legislature has considered
3 and not accepted in the past in this arena. But I could
4 certainly see something, as I said before, that looks at
5 the various factors that are identified, not just in
6 362-F:1 and 378:37, but also in the "purposes" section of
7 this statute, 162-H:1, to the extent that there are
8 factors there that may go beyond what's specifically
9 identified in the other three findings that need to be
10 made. So, generally consistency with the purpose of this
11 statute I think would be important from the standpoint of
12 making a finding of a public benefit.

13 I will also offer the observation, and I
14 know this may not be accepted by some, but I think we need
15 to acknowledge that the Legislature, in creating this
16 statute, really expected that this body would act as a
17 statewide planning and zoning board and would have the
18 authority to effectively preempt local planning and zoning
19 ordinances, master plans, *etcetera*, to the extent that
20 they may exist and might otherwise lead to a different
21 outcome with respect to a particular project.

22 And, so, I could not support a provision
23 that would be counter to -- that would -- on that issue
24 that would be counter to what the Legislature intended

1 when they created the SEC and as they have over the years
2 amended it. And, I think some of the provisions as
3 crafted in here might be construed to be counter to that
4 notion.

5 CHAIRMAN HONIGBERG: That's not to say
6 that the SEC, in determining any particular aspect,
7 wouldn't consider the local master plan or other local
8 ordinances that are already on the books, right?

9 VICE CHAIRMAN BURACK: Well, that's
10 right. And, I know there's a question that we will look
11 at as to whether or not such documents should be
12 considered, because, as drafted right now, I'm not sure
13 that the rules would include those as items that the
14 Committee could or should look at. I would certainly
15 support the Committee looking at those. My point was
16 simply that a public benefit determination I don't believe
17 can turn on that kind of an issue specifically.

18 CHAIRMAN HONIGBERG: Commissioner Rose.

19 COMMISSIONER ROSE: Yes. Thank you,
20 Commissioner. I mean, I do feel as though there is a
21 request to provide greater clarity around the public
22 interest standard. But, at the same time, to provide, I
23 guess, sort of broad categories for consideration. And,
24 there's nothing in the Various Energy Companies'

1 recommendation that would make me uncomfortable. And, to
2 the point that you just referenced, Commissioner Burack,
3 it does reference "regional policy" as a consideration, as
4 well as "state policy". And, within the state policy,
5 would also have the public benefits identified in the RSAs
6 that were included within the Wagner recommendation, as
7 well as the overall environmental impacts, as well as the
8 economic impacts.

9 So, I feel as though that does capture
10 the broad categories by which we'd want to consider in a
11 way that's not so specific that it would be paralyzing.

12 CHAIRMAN HONIGBERG: Director Muzzey.

13 DIRECTOR MUZZEY: In the Wagner
14 language, we see reference to two other RSAs with a
15 "public benefit" or "public interest" statement in them.
16 Are there others as well that we should be considering
17 that other members are aware of? Or other statewide
18 guidance that we should be incorporating as well?

19 CHAIRMAN HONIGBERG: I don't know. No
20 one is speaking up, so --

21 DIRECTOR MUZZEY: I'm thinking along the
22 lines of the recent State Energy Plan, any of those, even
23 not RSAs, but guidance documents that we could take a look
24 at.

1 CHAIRMAN HONIGBERG: Commissioner Scott,
2 you are very familiar with the State Energy Plan. Do you
3 have any thoughts on whether there's something in there
4 that is in addition to what we've already been -- the
5 kinds of things we've already been talking about?

6 COMMISSIONER SCOTT: As far as statutes,
7 I'm not aware of anything.

8 CHAIRMAN HONIGBERG: What about the
9 State -- the Energy Plan itself, though, that was just
10 issued?

11 COMMISSIONER SCOTT: Nothing is coming
12 to mind. There's a lot of recommendations we should look
13 at, but I'm not being helpful, I know.

14 CHAIRMAN HONIGBERG: No, but I -- you
15 were trying to -- I was trying to remember things that I
16 don't think exists, and whether that -- whether that
17 document has different or additional things that aren't
18 already captured someplace else? Because that document
19 itself was developed in response to statutes that are the
20 same kinds of statutes we're looking at. There may be
21 something out there, but I'm not aware of anything.

22 Commissioner Burack, you were going to
23 say something.

24 VICE CHAIRMAN BURACK: I mean, the State

1 Energy Strategy document that you're referring to
2 certainly includes a broad number of recommendations, I
3 believe there's legislation pending that may, in fact,
4 result in enactment of some aspects of that strategy.
5 And, so, it may be something we could refer to at a later
6 date. One can also imagine that there may, in the realm
7 of public health or general public welfare statutes, be
8 some statutory sections that particularly talk about what
9 is in the public interest. Again, I'm speculating here.
10 I don't know that for a fact.

11 But I think that what we could do here
12 would be to include a list of a number of factors that
13 already appear in these various statutes, and maybe some
14 of the items that are on the -- in the list that the
15 various commenters have provided, but also include a
16 general catch-all category for any other information that
17 a party wishes to present that they believe would support
18 the notion that the project does serve the public
19 interest. And, that it is, you know, it is up to the
20 Committee to decide what weight and what consideration
21 it's going to give to any and all of this information as
22 we exercise our discretion in our deliberations.

23 CHAIRMAN HONIGBERG: Commissioner Scott.

24 COMMISSIONER SCOTT: I will say, and I

1 think it's been mentioned before, I kind of like the
2 construct that AMC and CLF and some of the other
3 commenters have put together, which is our first column in
4 the handout here. It doesn't lock the Committee into any
5 one of these things, it says we "shall consider", you
6 know, "whether the net environmental effects of the
7 facility", "whether the net economic impacts", "whether
8 construction and operation". It doesn't say we have to,
9 even if we decide it does, we don't have to say
10 "therefore, it's denied" or "approved". It's really a
11 listing of considerations that leave us, I think, the
12 discretion that is really needed. I think, if we get too
13 specific, we risk the -- risk the -- basically, an
14 unintended consequence that we lock ourself into in our
15 own rules of a, for want of a better word, a perverse
16 outcome that I don't think anybody would want. I kind of
17 like their language that they suggested.

18 CHAIRMAN HONIGBERG: I had, when I was
19 listening to Commissioner Rose a moment ago, looking at
20 the issues identified by the Various Energy Companies,
21 they really, in a lot of ways, are the same issues
22 identified by the AMC and CLF, the environmental
23 organizations. Just the way they have -- the Various
24 Energy Companies' approach was to just say "tell us about

1 these things". The AMC and the CLF said "actually do some
2 analysis of them as you submit the information". In a lot
3 of ways, I think they're covering the same ground.
4 They're just doing it -- the environmental groups are
5 asking that it be done -- analysis be done up front
6 regarding them, something that can be looked at. You
7 know, maybe, and if the Various Energy Companies' approach
8 were adopted, that's what they would do. But the
9 environmental groups lay it out, and that is a somewhat
10 attractive formulation. I agree with Ms. Weathersby and
11 Commissioner Scott on that.

12 And, I would actually add that, along
13 those same lines, the additional criterion or issue or
14 item identified by the New Hampshire Preservation Alliance
15 and the National Trust for Historic Preservation regarding
16 cultural and historic properties would fall within, I
17 think, that same rubric.

18 Ms. Weathersby.

19 MS. WEATHERSBY: Just might also want to
20 add the effect on public health and safety, because that
21 is part of RSA 378:37.

22 CHAIRMAN HONIGBERG: Are there other
23 thoughts or comments? Commissioner Burack.

24 VICE CHAIRMAN BURACK: Again, my

1 reference to this concern was perhaps a little vaguer
2 earlier than it should have been. I recall reading in
3 some comment or comments, I believe from folks in the
4 industry groups, that they believed that, in some of the
5 legislative proceedings, in which various formulations of
6 some of this language had been considered, that notions of
7 net -- whether it's "net environmental effects" or "net
8 economic effects" had been discussed and considered, and
9 the Legislature had chosen not to adopt those approaches.

10 Now, I don't know -- I don't recall
11 where I read those. I don't know if those are accurate or
12 valid descriptions of what occurred or not. And, I don't
13 know, if, in fact, such decisions had been made by the
14 Legislature, whether those necessarily bind us to not
15 follow that kind of approach here. But I think it's
16 important that we at least be aware that that issue has
17 been raised by some of the commenters here.

18 And, Attorney Wiesner, I don't know if
19 you have any further information on that?

20 MR. WIESNER: I believe it was the
21 Various Energy Companies that raised that issue, citing
22 the legislative history of Senate Bill 245. And, I did
23 have a chance to review that. And, I believe it is
24 correct that at one point it was considered that a net

1 benefits test be incorporated into SB 245, and that that
2 amendment was not approved. And, so, the language as we
3 have it is merely a reference to the public interest, with
4 the charge to the Committee to develop rules regarding
5 specific criteria for the various components of
6 Section 16, Paragraph IV.

7 CHAIRMAN HONIGBERG: But that's not to
8 say that, if the Committee felt that that was an
9 appropriate standard, the fact that the Legislature
10 considered but did not adopt that standard, that wouldn't
11 preclude us from doing so, would it?

12 MR. WIESNER: I mean, there's an
13 argument that that's evidence of their intent that that
14 should not be the standard. But I'm not going to tell you
15 that that is binding upon the Committee to the point that
16 the Committee couldn't, in its own judgment, adopt that as
17 what it views to be the appropriate standard.

18 CHAIRMAN HONIGBERG: Director Muzzey.

19 DIRECTOR MUZZEY: I am looking at this
20 section, and going back to something Commissioner Burack
21 said, in that it doesn't need to duplicate necessarily the
22 analysis performed for the first three tests that we need
23 to do, that public interest should be something different
24 and in addition to those items. And, in some ways, some

1 of the things in the first column do duplicate our other
2 three things to consider when issuing a certificate.

3 But what this language does offer that
4 isn't in the other three is the ability to both balance
5 adverse effects and benefits. Our test, when we look at
6 the other three, are really negative tests, in the sense
7 that we're looking at unreasonable adverse effects in my
8 cases. And, so, this does introduce the idea that that
9 new information could be weighed in in some fashion.

10 It may not be appropriate to use the
11 phrase "net environmental effects", because of the
12 difficulties with some of the legislative arguments about
13 that. But it would seem there would be room within some
14 sort of test of public interest to weigh both benefits and
15 adverse effects.

16 MS. WEATHERSBY: So, this section is for
17 the -- what needs to be provided in the application. And,
18 I think it would be helpful, I know that me, as an SEC
19 member, to understand not only the positive contributions,
20 but the negative as well. And, so, if we, instead of
21 having them provide us with their net determination, if
22 they -- we have changed it to providing us with the
23 positive effects and the adverse effects on the various,
24 you know, economy and, you know, different tests that are

1 here in these, we'll look at the first column, just have
2 them provide that information, and then we can do the
3 analysis ourselves.

4 CHAIRMAN HONIGBERG: And, again, this
5 does tie back to what Mr. Oldenburg and I had an exchange
6 about a few minutes ago. I think the idea is you'd need
7 to have a standard. You wouldn't necessarily put that
8 entire standard in what's included. You'd say "you need
9 to give us public interest information consistent with",
10 you know, "or as described in a later section", and that
11 later section would be this. That's not to say that what
12 you just said isn't a good way to approach it. You know,
13 "Don't give me the net. Give me the positive and the
14 negative. I can do the math, if I need to."

15 Commissioner Scott.

16 COMMISSIONER SCOTT: My other issue with
17 the -- for want of a better word, the second column here,
18 the "net benefit" approach is, as proposed, certainly, it
19 looks to be discrete issue, discrete issue, discrete
20 issue, and pass/fail, pass/fail, pass/fail. And, when I
21 think of this, a "public interest" standard, I think you
22 need to look at globally, again, the balance. And, so,
23 it's not impossible, I would hope not, but -- hope that it
24 wouldn't happen, but the balance would be tilted, okay, it

1 perhaps could have -- obviously, the law currently says it
2 "can't have unreasonable adverse effects", but it could
3 have a net adverse effect on one of the criteria, but, on
4 the whole, it benefits New Hampshire public, so,
5 therefore, we would, you know, we would allow that. I
6 think we need to have that flexibility. And, I'm
7 concerned that this "net benefit" approach that's been
8 suggested would tie our hands more than we like.

9 CHAIRMAN HONIGBERG: Just to be clear,
10 you're referring to the second column now, I think, are
11 you not?

12 COMMISSIONER SCOTT: Correct.

13 CHAIRMAN HONIGBERG: All right. What's
14 your feeling on the first column? If the first column
15 "net provisions" were changed to "tell us about the
16 positives and negatives, gives us both the benefits and
17 the adverse effects"?

18 COMMISSIONER SCOTT: I'm fine with that.
19 But, as I said earlier, I think the -- again, the first
20 column, I don't think it ties us to "if the net effect is
21 a positive", I think it just says "you should consider" --
22 "these are the considerations you should have."

23 CHAIRMAN HONIGBERG: Okay.

24 COMMISSIONER SCOTT: So, I'm comfortable

1 with leaving the language as suggested.

2 CHAIRMAN HONIGBERG: Other thoughts or
3 considerations? Because I think what we're at least
4 moving in the direction of is something along the lines of
5 creating a new section that is somewhat like the language
6 in the first column. And, then, the 301.03 Application
7 inclusion doesn't necessarily have to change. It just has
8 to refer to the public interest standard that is provided
9 in a later section, be it, you know, 301.17 or 18, or
10 wherever it would go.

11 Now, I'm also going to take back
12 something I said a minute ago about the "historic
13 properties and cultural resources", because I'm reminded
14 that that is a different aspect of 162-H:16. There are
15 four findings. Those are separate findings. And, we're
16 talking about the public interest finding right now. You
17 can include some of that stuff, or you could ask for all
18 of it to be included, but that's not necessarily the case.

19 DIRECTOR MUZZEY: Or some could consider
20 that as part of (1), being part of the environmental
21 effects.

22 CHAIRMAN HONIGBERG: Yes.

23 DIRECTOR MUZZEY: That resources do
24 exist in an environment.

1 CHAIRMAN HONIGBERG: Yes, that's true.
2 Mr. Oldenburg.

3 MR. OLDENBURG: In reference to column
4 number one, I guess my only concern would be with number
5 (5). I mean, if we're going to lay out what needs to be
6 included in the application, number (5) is "and anything
7 else we want". So, I would have a concern about including
8 something that is an unknown to the applicant.

9 CHAIRMAN HONIGBERG: I had not focused
10 on that, but that's a good point. Commissioner Burack.

11 VICE CHAIRMAN BURACK: I'll offer just
12 the contrary view, that I think you always want to leave
13 an opportunity for other information or arguments to be
14 presented. There, I believe, I mean, there should be
15 certainly criteria that we want information on, but there
16 may be other factors that we just can't envision today
17 with respect to a particular kind of project that could be
18 very significant down the road. It's just a different
19 view.

20 MR. OLDENBURG: Yes. I was just
21 thinking, that's got to be somewhere in here, some other
22 place.

23 CHAIRMAN HONIGBERG: Yes. The concept
24 has got to be there. But, if we're telling an applicant

1 what to put in, because what's going in the application is
2 going to tie to the public interest standard. And, so, I
3 don't know how you would -- how you would do that. How
4 would an applicant put in something on an additional
5 public criterion that we haven't told them about?

6 MR. WIESNER: If I can jump in? I guess
7 the thought I might have is that, if we agree that some
8 version of this is the appropriate language for the siting
9 criteria that might show up in a new 301.17, then the
10 application requirement might just say "submit", you know,
11 "materials supporting the public interest criteria
12 enumerated in (1) through (4)."

13 CHAIRMAN HONIGBERG: Uh-huh.

14 MR. WIESNER: And, then, the catch-all
15 is for the Committee, perhaps based on record evidence
16 that might be submitted during the hearing, but is not a
17 requirement that needs to be met by the applicant at the
18 time of the application.

19 CHAIRMAN HONIGBERG: That could work.

20 COMMISSIONER SCOTT: I like that,
21 because the benefit of it is, the applicant could see
22 "okay, yes, I should check these boxes. But I got a big
23 box over here I want to give you", and this allows that, I
24 think. So, --

1 CHAIRMAN HONIGBERG: And it also allows
2 for some flexibility during the proceeding, if there is an
3 issue that presents itself, the parties identify through
4 the early parts of the proceeding or comes up during the
5 proceeding, I think. Is that what you had in mind,
6 Mr. Wiesner?

7 MR. WIESNER: I guess my thought was, we
8 want to be clear enough so that the applicant, in
9 submitting an application, to know whether they have
10 submitted a complete application. If they hit on every
11 one of (1) through (4), perhaps they have done so. But
12 that doesn't limit the Committee's consideration, when it
13 comes time to make a decision.

14 CHAIRMAN HONIGBERG: Mr. Oldenburg.

15 MR. OLDENBURG: Maybe a list (1) through
16 (4) and say "as a minimum, you will submit (1) through
17 (4), or additional information as required by the
18 Committee."

19 CHAIRMAN HONIGBERG: Uh-huh. Director
20 Muzzey.

21 DIRECTOR MUZZEY: That would be for the
22 application?

23 MR. OLDENBURG: Right.

24 DIRECTOR MUZZEY: Then, I would change

1 the final phrase to that, not to "as required by the
2 Committee", but "at the applicant's discretion", because,
3 again, they can't know what we want ahead of time.

4 MR. OLDENBURG: I would agree.

5 CHAIRMAN HONIGBERG: Yes, Commissioner
6 Rose.

7 COMMISSIONER ROSE: Yes. Thank you,
8 Mr. Chairman. If we're forecasting in largely on I want
9 to say the far left column, I'd like to try to strike the
10 word "net" out of that consideration, "whether the net
11 economic effects" or "whether the net environmental
12 effects". I just -- I feel like that's kind of what our
13 job will be. And, to have them either outlined or listed
14 would be fine, but I feel like that's trying to make them
15 make that determination, when that would really be the
16 responsibility of the Committee.

17 CHAIRMAN HONIGBERG: I agree. I think
18 we had covered that --

19 COMMISSIONER ROSE: Okay.

20 CHAIRMAN HONIGBERG: -- earlier a little
21 bit.

22 COMMISSIONER ROSE: Sorry.

23 CHAIRMAN HONIGBERG: That's all right.
24 We didn't close the loop. We hadn't closed the loop on

1 it.

2 Are there other thoughts or
3 considerations? Commissioner Burack.

4 VICE CHAIRMAN BURACK: Just a question
5 of whether we are still including in this notion looking
6 at the language in the other statutes we discussed
7 earlier, including the "purposes" section of this
8 particular statute, to see if there are factors there that
9 are not otherwise in this list of four categories here?

10 CHAIRMAN HONIGBERG: It's been a while.
11 Why don't we listen to them again, hear if there are
12 things that are listed in either the "renewables" section
13 or the "planning" section or the "purpose" section of
14 162-H.

15 VICE CHAIRMAN BURACK: If I may, before
16 we go there, I guess the question is, is the reference in
17 Item (3) there to "federal, regional, state, and local
18 policies", is that broad enough to encompass what's in at
19 least 362-F and 378:37?

20 MR. WIESNER: I would think so. And, to
21 avoid any doubt, we might even say "including but not
22 limited to those statutory references".

23 VICE CHAIRMAN BURACK: All right.

24 DIRECTOR MUZZEY: That would be my

1 opinion as well. To say whether or not something is
2 "consistent with federal, regional, state, and local
3 policies" is an incredibly wide net. And, an
4 incrementally large assignment for an applicant or the SEC
5 to consider. So, I would agree that more specificity,
6 particularly when it comes to our own New Hampshire
7 policies, in regard to energy would be helpful to everyone
8 involved.

9 CHAIRMAN HONIGBERG: Uh-huh. Anyone
10 else?

11 (No verbal response)

12 CHAIRMAN HONIGBERG: All right. Let's
13 put these two pages away.

14 Decommissioning. People want to take a
15 few moments and refresh your memories on what the issues
16 are.

17 (Off the record.)

18 CHAIRMAN HONIGBERG: We have quite a
19 range of proposed solutions to this problem. Anyone care
20 to offer up any thoughts or observations on what makes
21 sense? Commissioner Scott.

22 COMMISSIONER SCOTT: In no particular
23 order, I will say, and for the group here, I'm looking at
24 the left-hand column, I do gravitate towards the idea of a

1 funding level commensurate with how much it would cost to
2 remove whatever is in place. So, I think some of the
3 commenters had suggested that decommissioning funding
4 would be at a later date such that you would be able to
5 use proceeds from the operation of the facility to then
6 fund the decommissioning plan. And, my biggest concern
7 with that is, I think what people have voiced in the past
8 to projects we've had before us, is what if, for whatever
9 reason, bankruptcy or whatever, halfway through the build
10 process everything falls through, and now you're left with
11 half a project or some subset. So, I like the idea of --
12 it makes sense to me to have some level of -- some plan in
13 place that would cover that spectrum.

14 Having said that, and then going down to
15 the second page, in the bottom, I see multiple commenters
16 talk about a trigger for decommissioning, if the project
17 were to fall below 65 percent of output projected when it
18 came before us. I don't believe I'm in favor of that.
19 However, having said that, I can see some language being
20 needed on what's a trigger for decommissioning. So, the
21 reason why I say that is, if I'm cynical and I see a
22 project that doesn't want to -- hasn't properly funded
23 decommissioning or doesn't want to decommission, so they
24 declare themselves still viable, when the project has been

1 sitting there for years unused and dilapidated, you know,
2 how do we determine that on our own volition? Do we need
3 that in rules? Maybe we don't. But that, to me, there
4 should be some trigger where we say "look, we're going to
5 look at this, your facility is not in service", or that
6 type of thing.

7 CHAIRMAN HONIGBERG: Other thoughts or
8 observations? Commissioner Burack.

9 VICE CHAIRMAN BURACK: Thank you. It
10 sounds like I have some of the similar -- some similar
11 sentiments to those of Commissioner Scott, in the sense
12 that I think greater, rather than lesser, detail is
13 important here in our rules, to be clear what it is that
14 we expect decommissioning will consist of. I'm not
15 comfortable with the very broad and general statements
16 that are offered in the comments on the right-hand side.
17 I'm not sure that the entire level of detail that's
18 described there on the left-hand side, and I think those
19 apply pretty much all to, well, many of those appear to be
20 related to wind energy type projects, but I think that we
21 need to provide some specifics as to what a
22 decommissioning plan must consider.

23 And, the notions of funding level, I
24 think, are important that they're commensurate with how

1 much has actually been constructed on the site. I agree
2 with Commissioner Scott that we need some trigger for at
3 least investigating whether or not it would be appropriate
4 to suggest to a party that it's time to decommission. But
5 I'm not quite sure, beyond what he offered, that I have
6 any specific language to propose there.

7 But I will offer just the general
8 observation that the notion of ensuring that there are
9 adequate funds to decommission a facility doesn't apply
10 just in the case of an energy facility. It's the kind of
11 concerns that exist with respect to landfills or
12 facilities that operate hazardous waste sites. So, there
13 are certainly other precedents we can look to in state or
14 federal regulations for addressing these things.

15 CHAIRMAN HONIGBERG: Commissioner Rose,
16 you look like you wanted to say something.

17 COMMISSIONER ROSE: Well, thank you, Mr.
18 Chairman. I guess one question I had was, where did the
19 initial proposal that was incorporated in the docket fall
20 short of what we were seeking to try to accomplish? Does
21 that language that's in there sort of satisfy some of the
22 concerns?

23 CHAIRMAN HONIGBERG: Mr. Wiesner, do you
24 know where the existing language is right now? What

1 section?

2 DIRECTOR MUZZEY: Page 11.

3 CHAIRMAN HONIGBERG: Eleven? Well, my
4 sense, Commissioner Rose, is that there's people who think
5 that the provision doesn't describe with adequate
6 specificity what it means to decommission. And, there's
7 disagreement about how much security needs to be posted to
8 secure the performance of the decommissioning, whatever
9 it's going to entail. And, there's some people who think
10 that every dollar should be put up. There's people who
11 think that adequate assurance is much less than that. I
12 think that we probably have an equally wide disagreement
13 about how much -- what it means to "decommission".

14 COMMISSIONER ROSE: I guess, Mr.
15 Chairman, I just, based on some of the previous
16 experiences, you know, having a standby letter of credit
17 or performance bond and security bond typically satisfy a
18 lot of those concerns. So, I'm just trying to see if
19 there was -- if this language might accomplish what we
20 think to be a reasonable standard.

21 CHAIRMAN HONIGBERG: And, we could
22 certainly conclude that the rule as it was proposed covers
23 what needs to be covered. That whatever -- they're going
24 to have to make a proposed plan that's going to be the

1 subject of discussion during the proceeding. And,
2 whatever conditions are put on the certificate, one of
3 them could be a decommissioning plan with certain
4 requirements in it.

5 Ms. Weathersby, and then --

6 MS. WEATHERSBY: I think I'd be a little
7 more comfortable with describing more what decommissioning
8 consists of. I mean, what -- "removal of all structures",
9 and what are the structures? Does that include overhead
10 wires? Does it include underground items? You know, just
11 "restoration of the facility site", does that include
12 replanting vegetation? You know, there's a lot of
13 ambiguity, I think, in the way it's written. So, I would
14 be more comfortable with some more specificity concerning
15 what decommissioning consists of, and also when it is
16 triggered.

17 CHAIRMAN HONIGBERG: Director Muzzey.

18 DIRECTOR MUZZEY: Given that this is
19 something that's requested as part of the application, my
20 question was, would it be more appropriate to talk about
21 triggers for decommissioning in another part of these
22 rules? Something, for instance, in the section that
23 describes what the Committee will certificate.

24 VICE CHAIRMAN BURACK: I mean, for

1 example, one of -- I suppose one of the factors that one
2 could consider in the public interest determination is
3 whether or not there is an appropriate plan for
4 decommissioning that ensures that, in the long term, once
5 the facility no longer operates, that, you know, the
6 public interest has been protected from that standpoint.
7 Is that what you were thinking, Director Muzzey? Would
8 that be an example of how that might be considered? It
9 may not be the right way to do it, but it's one way it
10 could be considered.

11 DIRECTOR MUZZEY: That would be
12 something to add to the "public interest" statement. And,
13 it would hopefully inspire complete and meaningful
14 decommissioning plans submitted as part of the
15 application. But I do remember certain proceedings where
16 we did add details on what "decommissioning" meant as part
17 of an order or a certificate.

18 VICE CHAIRMAN BURACK: I'm also
19 recalling now, I think correctly, but Attorney Iacopino
20 will correct me if I'm wrong, that there have been
21 instances in which some details of decommissioning have
22 been discussed between a facility and the local community,
23 and have been part of agreements between a local community
24 and the facility and incorporated as conditions of

1 certificates in one or more proceedings.

2 Am I correct in my recollection there,
3 Attorney Iacopino?

4 MR. IACOPINO: Yes. And, under the old
5 rules, that's the way that the issue of decommissioning is
6 most often introduced into the proceeding, through an
7 agreement with the local towns. It wasn't required to be
8 done that way, but, just as a practical matter, that's how
9 it had occurred, in almost every -- every docket that
10 we've considered it.

11 VICE CHAIRMAN BURACK: Thank you.

12 CHAIRMAN HONIGBERG: What was discussed
13 up here, and I'm not 100 percent sure if you were able to
14 follow that part of the conversation, was --

15 MR. IACOPINO: I'm sorry, I had to take
16 a call.

17 CHAIRMAN HONIGBERG: That was a
18 different question. Was adding to the public interest
19 consideration an appropriate decommissioning plan, and
20 that would encourage applicants to deal with it up front,
21 but would also allow it to be a subject of the case, and,
22 if appropriate, an agreement among the interested parties.
23 That's something that Director Muzzey and Commissioner
24 Burack were discussing a moment ago. Is that something

1 that's consistent with the way things -- well, no, let me
2 put it a different way. Would that work in your
3 experience with --

4 MR. IACOPINO: I think it would work,
5 because it has in the past.

6 CHAIRMAN HONIGBERG: Okay.

7 MR. IACOPINO: I mean, I think that's
8 ultimately how things were -- how the Committee eventually
9 reached a decision on the conditions of a certificate in
10 past dockets.

11 CHAIRMAN HONIGBERG: What about the
12 up-front part of that? If it's a part of the public
13 interest consideration that there be an appropriate
14 decommissioning plan, do applicants come forward initially
15 with it or would this be the opportunity to get them to do
16 it?

17 MR. IACOPINO: Well, if I were on the
18 Committee, I would want to see it as part of the
19 application. I'd want to see as much information as I
20 could up front. And, that also structures the outline of
21 what the issues may be in any given docket for the parties
22 who eventually participate.

23 CHAIRMAN HONIGBERG: Commissioner Scott.

24 COMMISSIONER SCOTT: Attorney Wiesner,

1 in the existing proposed language, I was wondering if
2 maybe you could help refresh my memory, that it would bar
3 incorporation of salvage value. And, I was wondering if
4 you could maybe help me with some of the thoughts. Was
5 the thought that that would be too speculative to be part
6 of a plan? Why is -- can you help me with some of the
7 thoughts that have been expressed on why is that a bad --
8 why is it bad to have salvage value part of the
9 decommissioning?

10 MR. WIESNER: I think that's the primary
11 basis for it. And, in some other states, it's not taken
12 into account, although in some it may be. I think it's
13 speculative. If the plant gets to the end of its useful
14 life, what is the salvage value of the equipment that
15 remains, what is the condition of it, and can you really
16 count on it? And, shouldn't you have a plan and financial
17 assurance to support that plan that covers the worst case
18 scenario, when there's zero value of salvage? And, that
19 is, you know, that's a contentious issue, and it's been
20 challenged by developer commenters. And, at least one of
21 which has pointed out that that also was a feature of
22 Senate Bill 281, which was then stripped out of that
23 language when it migrated over to House Bill 1602. And,
24 so, we have a similar argument that the Legislature has

1 rejected that as a feature. And, as I said before, I'm
2 not going to tell you that that's binding on this
3 Committee, but it is an argument that the Legislature
4 chose not to impose that requirement -- or, that
5 restriction, I should say.

6 On the other hand, it is a feature of
7 Senate Bill 245 now reflected in 162-H Application
8 Requirements, that the application describe in reasonable
9 detail the elements of and financial assurances for a
10 facility decommissioning plan. So, it is something that
11 is called for for all proposed energy facilities.

12 And, another question, which we haven't
13 really gotten to yet, because I think we focused on the
14 level of specificity that might apply to decommissioning
15 of wind facilities, some other commenters have raised the
16 issue whether it is overly restrictive, especially for
17 large, well-capitalized companies, to require them to
18 obtain a third party security instrument, such as a bond
19 or a letter of credit. And, obviously, there's an
20 additional expense involved in that. And, I think the
21 proposal is that, from those commenters, is "wouldn't it
22 be sufficient, if you were a large enough,
23 well-capitalized company, just to rely on that financial
24 strength or the guarantee of a parent company which has

1 that level of financial strength?"

2 CHAIRMAN HONIGBERG: Well, certainly, in
3 some circumstances, that's adequate. It would need to be
4 updated, reconfirmed each year. Because a decommissioning
5 plan for a company that's losing capital, losing its
6 position every year, you know, wouldn't be as well funded
7 in year ten as it would be in year one, if they're losing.
8 So, I think we'd need to write in some regular update and
9 certification of the position, if they're not going to
10 have to do a letter of credit or some other kind of third
11 party guarantee.

12 MR. WIESNER: And the analysis might be
13 very different for a special purpose entity owning a
14 generation facility, as opposed to, you know, a large
15 transmission provider, for example.

16 CHAIRMAN HONIGBERG: Uh-huh.
17 Mr. Oldenburg.

18 MR. OLDENBURG: Mr. Chairman, is this
19 the only location that discusses the decommissioning plan?

20 CHAIRMAN HONIGBERG: I don't know. It
21 may be. And, it may be that it needs to be in a more
22 general section. Attorney Wiesner.

23 MR. WIESNER: I mean, this is the
24 section that requires the applicant to provide a plan.

1 And, then, one of the findings that the Committee would
2 have to make is that the plan is adequate.

3 MR. OLDENBURG: Because if this is -- if
4 was reading -- I guess I would look at it as I think there
5 needs to be more specifics in what the plan needs to
6 entail. Given this, it basically says that they just have
7 to come up with a plan, show some money, and say what
8 they're going to do. I don't know if it has to be as
9 specific as the first column, but I think there should be
10 an expectation of what this decommissioning plan should
11 entail from a financial standpoint, and an expectation of
12 what has to be removed, what has to be, you know,
13 reestablished. I know this, I know the first part applies
14 just to wind energy, but the second part, the (c)(2), is
15 for all energy facilities. So, if it's abandoned or
16 somebody walks away from it, you know, how does -- what
17 needs to be restored, I guess? And, I think that we
18 should have an expectation and give them an expectation of
19 what would be required in that plan, more than what's
20 proposed.

21 COMMISSIONER SCOTT: If I could add to
22 that, too. On the restoration side of it, restored to as
23 it was pre-construction? As it was in 1900? I don't
24 know. Perhaps, you know, hopefully, I'm throwing out a

1 wild idea, but I don't think it would hurt to have some
2 specificity.

3 DIRECTOR MUZZEY: One of the people who
4 submitted comments did cite Vermont as an example of what
5 is required in a decommissioning plan. And, it may be
6 helpful to look at that language to see whether there's
7 anything we would like to adopt here.

8 MR. WIESNER: I think what appears on
9 the left side of the column here is substantially the
10 Vermont model.

11 DIRECTOR MUZZEY: Oh. Okay.

12 MR. WIESNER: And that is what they're
13 referring to. And, again, that only -- that specifically
14 applies to wind turbines, and wouldn't necessarily be
15 appropriate for other types of energy facilities, which,
16 you know, we're focused on perhaps electric transmission
17 and wind turbines, but the definition of "energy facility"
18 is fairly broad and may cover other types of installations
19 where this would not be the correct level of specificity.

20 CHAIRMAN HONIGBERG: Commissioner Rose.

21 COMMISSIONER ROSE: Thank you,
22 Mr. Chairman. I know there's some decommissionings going
23 on currently within the state that have more of a federal
24 overview. And, I was just curious if there might be a

1 federal standard that we might want to consider, and
2 perhaps that might provide us guidance and just
3 consistency.

4 CHAIRMAN HONIGBERG: I mean, to what are
5 you referring?

6 COMMISSIONER ROSE: I was thinking of
7 the Vermont Yankee decommissioning that's taking place,
8 and whether or not there might be some consistencies at
9 the federal level that might bring some benefit, in terms
10 of some of the decommissioning standards requirements that
11 are asked of generators.

12 CHAIRMAN HONIGBERG: I guess I would say
13 it can't hurt to look. Although, decommissioning a
14 nuclear plant isn't probably much like decommissioning
15 anything else, but I'm not sure.

16 MR. WIESNER: And, there's specific
17 funding requirements for nuclear decommissioning plans
18 that have to be developed over a long period of time.
19 It's hard for me to see the direct analogy to some of the
20 projects that we would be considering here. Well, unless
21 there's another nuke.

22 COMMISSIONER SCOTT: So, on the
23 currently proposed language for wind says "a plan that
24 provides for removal of all structures", and that seems

1 pretty definitive to me. I don't know how you get -- that
2 seems to me very specific in itself. And, when I look at,
3 for instance, on the left-hand column, "all turbines",
4 "transformers", "power conductors", I'm just wondering,
5 and in some cases, broad is more -- you know, less is
6 more, I guess. And, I'm concerned that, by detailing like
7 they have, you know, is that necessary? If you say "you
8 got to take the whole wind tower down", for instance, "the
9 structure", and does that not allow for you to, by being
10 so prescriptive, to miss something. Okay, there's a work
11 house/storage house over here. I assume, by saying "all
12 structures", that would go, too. But I don't see that
13 necessarily captured in some of the suggested language
14 here. So, I'm not as moved by the need for, at least from
15 my view, specifying anything more than "the structures".
16 But I do think the funding mechanism and how that, you
17 know, those components of specificity are what I'm looking
18 for anyways.

19 CHAIRMAN HONIGBERG: Commissioner
20 Burack.

21 VICE CHAIRMAN BURACK: I think that part
22 of what the language here from Vermont is getting at is an
23 assurance not only that things are disassembled, but
24 actually that materials are removed from the site. And,

1 so, it comes back to your point earlier, Commissioner
2 Scott, of what is the -- what's the level of restoration
3 that's expected? That is, is the site to be taken back to
4 its pre-energy development state, whatever that was, or is
5 it something else? And, I think we would need to be clear
6 on that.

7 My preference would be to, recognizing
8 that in some instances these may be built on, effectively,
9 greenfields or previously non-developed sites, others may
10 be built on sites that were previously developed, that
11 there would be an expectation that buildings would be
12 removed, all of the components, *etcetera*, would be removed
13 from the property for proper disposal or recycling, reuse,
14 whatever it might be, and that the site is effectively
15 restored to its pre-energy development condition to the
16 extent feasible.

17 CHAIRMAN HONIGBERG: Director Muzzey.

18 DIRECTOR MUZZEY: Is there any need to
19 specify whether the structures are both those built at the
20 time of certificate and built during operation of the
21 facility?

22 CHAIRMAN HONIGBERG: I guess I would
23 say, if you define what you're going back to, that would
24 answer the question. If you're going back to

1 pre-development, you're taking whatever happened during
2 operation.

3 DIRECTOR MUZZEY: True. True.

4 CHAIRMAN HONIGBERG: So, that would
5 cover both, I think. Mr. Oldenburg.

6 MR. OLDENBURG: I guess, when we talk
7 about "structures", are we talking --

8 (Court reporter interruption.)

9 MR. OLDENBURG: When we talk about
10 "structures", I guess underground, as well as above
11 ground? And, when everybody thinks of a "structure", you
12 think of a building. But there's foundations, there's
13 underground conduits and vaults. And, the section is the
14 "Effect on Public Health and Safety". I would think one
15 of the things is making the site safe when it's
16 decommissioned, making sure there's not things that people
17 could climb on or climb into that, you know, could
18 potentially be a hazard. So, whether it's removal or
19 demolition, if it's underground, or just, you know, that's
20 sort of why I think just having "removal of all
21 structures" is a little vague.

22 CHAIRMAN HONIGBERG: Well, the Wind
23 Watch/Bridgewater proposal does discuss underground
24 infrastructure. Ms. Weathersby.

1 MS. WEATHERSBY: I would also like to
2 include that materials other than structures be removed.
3 Perhaps there's construction materials or perhaps there's
4 fuel in a fuel tank. You know, that all of that gets
5 removed, to expand "structures".

6 CHAIRMAN HONIGBERG: My sense is that
7 this -- we need to take a new look at this section and see
8 what we might want to do with it. I think we're going to
9 need to take a break for a few minutes. The plan is to go
10 to 4:30 today and then end, which is essentially the end
11 of the state workday. We have another date scheduled in a
12 couple of weeks. Maybe the Legislature will have done
13 something else to tell us about our deadlines.

14 But let's take a five-minute break, and
15 then come back and see how much more we can do before
16 4:30. So, we'll adjourn. Recess, not adjourn. Recess.
17 Stop. Pause.

18 (Recess taken at 3:31 p.m. and the
19 meeting resumed at 3:38 p.m.)

20 CHAIRMAN HONIGBERG: So, I think we're
21 going to move off of decommissioning, recognizing that it
22 is a specific point in SB 245. We'll give some thought to
23 how to both broaden and focus that requirement, and move
24 onto something else.

1 The next item in our packet here is
2 "Good Neighbor Agreements". How can that be bad?
3 Thoughts on the issue of settlements, good neighbor
4 agreements? Commissioner Burack.

5 VICE CHAIRMAN BURACK: Thank you,
6 Mr. Chairman. I'm not terribly familiar with how these
7 agreements are structure typically or what's in them, as a
8 general matter. But I'm also trying to understand how the
9 existence or nonexistence of such an agreement would
10 determine who is or who is not going to be defined as a
11 "participating landowner" in a proceeding. And, I'm
12 searching to see whether or not we have a definition of
13 "participating landowner", to see if that's a term on
14 which some determinations would be made. I see that that
15 term does appear, at least in my version, in -- let's see
16 here, it's right at the end of Section 301.14, the very
17 last section, (f)(2)(d) of that refers -- there's a
18 heading or a caption reading "Participating Landowners",
19 and also the term "participating landowner" appears in
20 prior sections there as well, in (f). So, again, I'm just
21 trying to understand where this comes from.

22 And, Attorney Wiesner, could you help us
23 to understand that aspect?

24 MR. WIESNER: Well, in these rules, as

1 you note, Commissioner Burack, there's basically an
2 exception. If you're a participating landowner, which
3 means that you've executed an agreement waiving the
4 requirements for a setback, let's say, then those setbacks
5 would not be applied to you, and the project could be
6 built closer to your property than would have otherwise
7 have been participating if you weren't participating.
8 And, I understand those agreements are fairly common in
9 developments, particularly, perhaps, you know, wind
10 developments. And, then, we've gotten a number of
11 comments that have referenced those. One comment, as you
12 see, would ban them entirely. Other commenters are
13 looking to have those disclosed, so that it's known what
14 they cover, what the impact might be, how it might affect
15 future assessments or future development in the area.
16 And, I don't believe that's been the practice in the past,
17 I don't think that's been the precedent of the Committee,
18 and it does raise a number of issues. But it is -- it was
19 a particular focus on a number of comments that were
20 submitted on March 23rd.

21 VICE CHAIRMAN BURACK: Yes. Thank you.
22 And, I'm certainly aware that there were a lot of
23 comments. One thing I would note is that, unless I'm
24 working off an incorrect version of the rules, we do not

1 have a definition of "participating landowner" in our
2 "definition" section, in Site 102. And, I don't know if
3 that's an oversight on our part that we need to correct or
4 not, but it would seem to me it may be helpful to do so.

5 Then, I do have a question, building on
6 what you just said, for Attorney Iacopino, as to whether
7 or not this is something that we have dealt with in other
8 proceedings, whether wind proceedings or otherwise, where
9 there have been these kinds of agreements here? And, if
10 so, how has the Committee historically addressed these
11 matters?

12 MR. IACOPINO: I don't know that good
13 neighbor agreements or anything entitled an "impact
14 easement" has ever come up in the context of the actual
15 proceeding. I think that there have been some complaints
16 about the various applicants entering into those
17 agreements, but we've never approved or disapproved them
18 in any proceeding that we've had. And, I think the reason
19 why that is, Mr. Vice Chairman, is because the parties
20 that have -- I assume that the parties that sign these
21 agreements remove themselves from the proceedings if
22 they're already involved, so that we don't really, at
23 least to date, we have not really had knowledge of what
24 the reasons are, why a particular party may have withdrawn

1 from a proceeding. So that we've never approved them or
2 disapproved them, nor required any kind of publication of
3 them in the past. In fact, they could be going on without
4 the Committee knowing.

5 VICE CHAIRMAN BURACK: So, if I may, is
6 it the case then that we have not, in other proceedings to
7 date at the SEC, we have not had differential setback
8 standards for some abutting landowners than for others?
9 That has not been -- that has not been a practice, based
10 on whether a party considered themselves to be
11 participating and have some kind of an agreement with a
12 project developer?

13 MR. IACOPINO: I think there -- I mean,
14 my recollection is, in most of our dockets, it's always
15 been the lessor of the land who has been involved, and
16 they have primarily been the participating landowners.
17 I'm not sure I can identify a non-lessor or non-owner of
18 the property as being a participating landowner in any of
19 our prior dockets. And, Mr. Scott is looking at me
20 quizzically, I don't -- maybe he recalls an example, but I
21 don't.

22 CHAIRMAN HONIGBERG: Commissioner Scott.

23 COMMISSIONER SCOTT: No, you're probably
24 right. I was thinking of Lempster and Mr. Onnela, I guess

1 his name is.

2 MR. IACOPINO: Mr. Onnela owns virtually
3 the entire site.

4 COMMISSIONER SCOTT: You're right.

5 MR. IACOPINO: That's my understanding.
6 And, I don't know if, in that particular project, there
7 are any of these good neighbor agreements with other
8 landowners in the vicinity. But I think that site was on
9 one person's land.

10 COMMISSIONER SCOTT: That's correct.

11 MR. IACOPINO: We have considered other
12 applications where there's been more than one landowner,
13 but they have all had an arrangement with a developer. So
14 that the site actually extended over more than one
15 landowner's property, but there was -- all the landowners
16 had an agreement with the -- usually a lease with the
17 developer.

18 CHAIRMAN HONIGBERG: Commissioner Scott.

19 COMMISSIONER SCOTT: So, in that case,
20 were they not participating landowners in that --

21 MR. IACOPINO: No, they were.

22 COMMISSIONER SCOTT: Right.

23 MR. IACOPINO: But they're also the
24 owners of the land that the site is actually on. I guess

1 my question is, off-site landowners, I don't think we've
2 ever had a situation where we've had to determine them to
3 be participating landowners.

4 VICE CHAIRMAN BURACK: And, if I may,
5 Mr. Chairman?

6 CHAIRMAN HONIGBERG: Absolutely.

7 VICE CHAIRMAN BURACK: And, when you say
8 "participating landowner", you mean "participating" in
9 what sense? Participating in the sense that they have
10 been a party to an SEC proceeding or a party that has land
11 that is directly affected by the development, in the sense
12 that they have some lease or sale agreement with the
13 developer?

14 MR. IACOPINO: The term "participating
15 landowner" has been used in some of our prior dockets.
16 And, the sense that it was used in in those dockets I
17 believe always applied to an owner of the property, who
18 had either leased the property to the developer or had
19 some other kind of contractual arrangement, but they had
20 some connection to the property. It wasn't property that
21 was off-site, like the good neighbor agreements that are
22 discussed in the comments, it wasn't, you know, that was
23 off-site. In fact, I don't even think we've ever had an
24 agreement presented to us when, for instance, shadow

1 flicker off of a wind site was negotiated away by a
2 landowner. In other words, they say "okay, this property
3 is going to be affected more severely by the shadow
4 flicker, but this landowner doesn't care. They agree with
5 us. And, they're -- you know, they're willing to live
6 with the shadow flicker."

7 CHAIRMAN HONIGBERG: So, it seems like
8 the use of the phrase "participating landowners" in the
9 precedents is different from its usage in this draft rule,
10 because this draft rule really seems to be more like a
11 settling abutter or something like that.

12 MR. IACOPINO: Yes.

13 CHAIRMAN HONIGBERG: Isn't that --

14 MR. IACOPINO: I agree that that's what
15 the present rule gives to the -- that's the definition
16 that can be interpreted from what we have in front of us
17 in the proposed rule. I'm just saying is that, the
18 question is, "in the past, what have we done?" And, my
19 answer is that, in the past, we really haven't had that
20 situation that has come to light before the Committee.

21 CHAIRMAN HONIGBERG: But we've --

22 MR. IACOPINO: Now, there may be private
23 agreements, but not that have come to light before the
24 Committee.

1 CHAIRMAN HONIGBERG: But we've used the
2 phrase, and it has meant something different than the
3 implied definition here, is that right?

4 MR. IACOPINO: Yes. I think it's
5 generally meant the people own the property --

6 CHAIRMAN HONIGBERG: Okay.

7 MR. IACOPINO: -- and leased to the
8 developer.

9 CHAIRMAN HONIGBERG: All right. I think
10 that needs to be clarified. And, I think we're going to
11 -- we should probably come up with a different phrase to
12 describe the people in this section, other than
13 "participating landowners".

14 MR. WIESNER: My understanding is that
15 that is the phrase that is often used in similar siting
16 regulations in other states. And, it does refer to
17 abutters who have basically agreed to waive their rights.
18 And, they are participating in the development in the
19 sense that they have agreed not to object on grounds that
20 they might have objected. So, even if they're within a
21 setback area or might be affected by noise, they're not
22 even considered.

23 CHAIRMAN HONIGBERG: I mean, that would
24 be okay. Then, we're just going to have to define the

1 term.

2 MR. WIESNER: We'll have to define the
3 term. That's right. That's right.

4 CHAIRMAN HONIGBERG: Commissioner
5 Burack.

6 VICE CHAIRMAN BURACK: So, Attorney
7 Wiesner, I'm just trying then to understand the language
8 that we see then here, in Section 301.14, for example,
9 that references this term, is this based upon an effort to
10 try to take what came out of the SB 99 workgroup efforts
11 and see where there might have been consensus there and
12 build something? Is that where this language comes from?

13 MR. WIESNER: I think the concept was
14 addressed in the SB 99 process. And, I'm not recollecting
15 that there was firm agreement on all of these criteria.
16 But, I think, in terms of setbacks, now that we're
17 considering having rules that specify what those setbacks
18 must be, I suppose to leaving it to a case-by-case
19 determination, which I understand has been the precedent,
20 this is basically an attempt to say "if there's a setback,
21 you can violate it, if the person who the property would
22 be violated by the setback has agreed, has basically
23 waived their rights." And, that would seem to be, you
24 know, a private contractual right that they have. The

1 question is, is that required to be submitted to the SEC?
2 Is it required to be made public? What is the effect of
3 that? What are the grounds for doing that? And, as I
4 say, at least one of the comments would ban those types of
5 agreements entirely.

6 CHAIRMAN HONIGBERG: Go ahead.

7 VICE CHAIRMAN BURACK: Mr. Chairman, if
8 I may? Thank you. My sense would be that, as you
9 suggested a moment ago, Attorney Wiesner, that it would be
10 beyond the legal authorities granted to the SEC by the
11 Legislature, to be able to effectively prohibit a certain
12 kind of private transaction. I am having difficulty right
13 now seeing where that -- where that kind of legal
14 authority would come from here. I'm also not sure where
15 our legal authority would come from to necessarily require
16 the disclosure of the existence of such an agreement.
17 But, certainly, it's something we could explore. It may
18 be that it would be a situation where we would, unless a
19 party were to inform us otherwise, we would presume that
20 any -- that any and every party, in fact, does have such
21 an agreement. But, again, perhaps I'm still struggling
22 with and we all are still struggling with, with why is it
23 that it's a problem if these are or are not disclosed?
24 Can you help us understand how that plays out here?

1 CHAIRMAN HONIGBERG: Just a minute,
2 Attorney Wiesner, before you do that.

3 VICE CHAIRMAN BURACK: Yes.

4 CHAIRMAN HONIGBERG: I actually want to
5 disagree somewhat with the premise, Commissioner Burack,
6 and that might change the way you would answer the
7 question. I think what we would see is that, if there are
8 setback requirements, and the applicant came in with a
9 plan that had less of a setback than was required, that
10 one could presume the existence of such an agreement. We
11 would inquire as to why it doesn't meet the setback, and
12 the applicant would say "because I have an agreement with
13 the landowner". And, you would see it as a matter of
14 course, in whenever the requirements were not going to be
15 met with respect to a particular parcel near the project.
16 Isn't that how it would have to work?

17 MR. WIESNER: I think they would
18 represent that that's a "participating landowner" within
19 the definition that we're going to come up with. And, of
20 course, the owner of that property is public record, no
21 doubt, through town tax records and the Registry of Deeds.
22 But the terms of it being disclosed, that's another
23 matter.

24 CHAIRMAN HONIGBERG: Right.

1 MR. WIESNER: You know, if it's in the
2 form of an impact easement, it may very well be recorded
3 in some form at the Registry of Deeds and that would be
4 public information. But it may be that the financial
5 terms and some of the other restrictions and conditions of
6 that agreement are not public.

7 CHAIRMAN HONIGBERG: Yes. I think all
8 the lawyers in the room are nodding their heads.
9 Commissioner Scott.

10 (Court reporter interruption.)

11 COMMISSIONER SCOTT: I'm sorry.

12 CHAIRMAN HONIGBERG: Attorney Wiesner, I
13 think Commissioner Scott wonders, are you done or can he
14 interrupt you at this point?

15 MR. WIESNER: Oh. Sure. Interrupt.

16 COMMISSIONER SCOTT: On its face, I
17 wonder why we would step into this at all. I agree, if
18 somebody wants to waive their rights, I think, waive their
19 rights there -- well, what would be their rights, I
20 suppose, under the rules we did, I think that that should
21 be left to them. I do wonder, to the extent that we staff
22 the SEC and are responsible for enforcing certificates,
23 the value of understanding who does and -- who has waived
24 their rights and who has not, to the extent we have

1 somebody doing site visits, that type of thing. So, as a
2 practical matter, I'm wondering is there a value to some
3 identification of that also?

4 MR. WIESNER: The rationale that's been
5 offered for requiring disclosure, and it may just be
6 easiest for me to reference you to -- these are the
7 comments I'm looking at of New Hampshire Wind Watch and
8 Wind Action Group. On Page 5 of those comments, there's a
9 statement of the reasons why it's argued that there should
10 be greater disclosure of the terms of these agreements.
11 And, one of which is post construction compliance
12 monitoring and assessments of impacts could be skewed, if
13 there is data pertaining to where impact easements have
14 been put in place. And, then, there's an example from
15 Wisconsin, and an example from Coos County, with respect
16 to the Granite Reliable facility, where apparently there
17 was an agreement between the developer and certain
18 property owners to basically cover some of their tax
19 burden that might be related to the siting of that project
20 that was not publicly known, and then there was
21 legislation that relieved property owners of a portion of
22 their tax burden. So, that suggests that there was a
23 local tax impact that might not have occurred if those
24 agreements had been known. But I'm not positive whether

1 those impacts are squarely within the concern of this
2 Committee.

3 And, these comments also refer to
4 unintended consequences involving property abatements,
5 again, that the property owner may seek an abatement
6 because of the effects of living next to a wind farm,
7 when, in fact, they have waived their rights to object to
8 noise, shadow flicker, and things that arguably do impact
9 the value of those properties. And, there's also a
10 reference to "building permits". So, if there's a setback
11 requirement that would apply under the local zoning
12 ordinance, that may be inconsistent with the waiver of
13 setback requirements that would apply under the good
14 neighbor agreement or impact easement. Again, you know, I
15 question whether all of those potential affects are within
16 the purview of the SEC.

17 CHAIRMAN HONIGBERG: Commissioner
18 Burack.

19 VICE CHAIRMAN BURACK: What's the date
20 of that letter from New Hampshire --

21 MR. WIESNER: I'm sorry. This is the
22 comments letter dated March 23rd, --

23 VICE CHAIRMAN BURACK: Thank you.

24 MR. WIESNER: -- from New Hampshire Wind

1 Watch.

2 VICE CHAIRMAN BURACK: Thank you.

3 CHAIRMAN HONIGBERG: Director Muzzey.

4 DIRECTOR MUZZEY: There is, for me, on
5 this issue of disclosure, the larger, almost philosophical
6 question of "when does the waiver of an individual's
7 rights impact the larger community?" And, some of the
8 comments that we received try to work to answer that
9 question both in the realm of public health and safety, as
10 well as orderly development. And, I'm assuming that their
11 concern is that, if enough individuals waive their rights
12 during a proposed energy facility, when does that begin to
13 impact the SEC's review of the effects on orderly
14 development and public health and safety? And, it is a
15 difficult thing to pin down, but they fear -- they seem to
16 feel that the SEC knowing more of the details of those
17 agreements would assist us in making our determinations.

18 I'm not sure of an individual's legal
19 protections when it comes to making that type of private
20 transaction, and whether they can be forced legally to,
21 either the individual or the company proposing the
22 facility, can be forced to disclose that information.
23 And, I would look for legal advice as to whether that can
24 be -- can be done.

1 MR. WIESNER: I can imagine that there
2 are certain portions of those agreements that both parties
3 would agree should be kept confidential, and they would
4 probably seek confidential treatment even if they were
5 required to disclose the existence of the agreement here,
6 and then that would be a determination that would have to
7 be made by the Committee.

8 But requiring disclosure of the
9 existence of an agreement, I think, as Chairman Honigberg
10 suggested, there's likely to be a representation that a
11 landowner is participating with an agreement if they fall
12 within the setback area or if they're clearly identified,
13 let's say, in a shadow flicker study as having a home that
14 would be affected by shadow flaker, and yet the developer
15 is saying "disregard that, because this is a participating
16 landowner", that would effectively identify that lot as
17 having entered into one of these agreements. And, then,
18 what would not be transparent is -- are the terms of the
19 agreement, and what financial arrangements might have been
20 made, what other conditions might apply. And, you know,
21 again, I question whether those terms would be within the
22 purview of the Committee in assisting its review.

23 DIRECTOR MUZZEY: Those are two
24 possibilities, the flicker example and the other, the

1 setback example that you gave. But, if we extend our
2 thoughts beyond just wind facilities, you know, are there
3 other situations that it would not be as transparent that
4 there must be some sort of agreement in place. And, would
5 it be helpful to have that information for any type of
6 facility?

7 MR. WIESNER: I mean, it probably
8 depends on how we would define "participating landowner".
9 And, as it's not defined in the current version of the
10 rules that's proposed to be amended, but the suggestion is
11 that a "participating landowner" is one that would fall
12 within an area of concern to the Committee, but will not
13 be considered because it has waived its rights. So, for
14 example, if you were outside the setback, and you signed
15 an agreement to be a good neighbor, basically agreeing not
16 to object for some financial consideration, you know, I
17 question whether that would ever come within the concern
18 of the Committee.

19 CHAIRMAN HONIGBERG: All clear?

20 DIRECTOR MUZZEY: I continue to see some
21 value in knowing whether or not these agreements are in
22 place. Not necessarily the details, but I think it would
23 provide a fuller picture of the proposed facility, the
24 public's opinions of it, and factors that we may not be

1 able to think of at the moment, but could come into play.

2 CHAIRMAN HONIGBERG: Attorney Iacopino,
3 do you have something?

4 MR. IACOPINO: I was just going to make
5 a suggestion that, in order to address that concern is you
6 might, once you have your definition of "participating
7 landowner" or "impact easement", you might just say that
8 "the application has to identify all participating
9 landowners/holders of impact easements." It's not
10 requiring the disclosure of the documents or any financial
11 terms, but it lets you know who has an agreement.

12 CHAIRMAN HONIGBERG: Anyone have any
13 other thoughts or comments they want to share on this
14 issue? Commissioner Scott.

15 COMMISSIONER SCOTT: Back to my earlier
16 comment on enforcement of a certificate, and piggybacking
17 on Mr. Iacopino's -- Attorney Iacopino's last statement,
18 the other value of that perhaps would be, if it was known
19 who the -- not the details again, but who was a
20 participating landowner, that perhaps could mitigate
21 unnecessary complaints to the SEC, that somebody -- some
22 facility is not complying, because X landowner is too
23 close or however that is, so that it would help mitigate
24 that by understanding -- for the public to understand

1 who's in and who's not in, as far as complaints to us or
2 actions against the facility itself.

3 CHAIRMAN HONIGBERG: Attorney
4 Weathersby.

5 MS. WEATHERSBY: I would just add that
6 the obligation of the applicant should be a continuing
7 one, to update the list as submitted with the application.
8 But, if other good neighbor agreements are entered into
9 during the application process -- or, the certification
10 process, an agreement after the certificate is issued,
11 that the applicant should be required to update this list
12 of agreements. Thank you.

13 CHAIRMAN HONIGBERG: I sense some level
14 of consensus here on this. All right. We'll put this one
15 aside. Yes, Attorney -- I'm sorry, Director Muzzey.

16 DIRECTOR MUZZEY: Just wanted to add the
17 request then that whatever we call these documents, they
18 would be defined as well, in addition to "participating
19 landowner" in our "definition" section.

20 CHAIRMAN HONIGBERG: I'm sorry, which
21 documents?

22 DIRECTOR MUZZEY: Either "good neighbor
23 agreement", "impact easement", whatever we are using to
24 decide to call them, we should perhaps have a definition

1 of that?

2 CHAIRMAN HONIGBERG: I think the
3 expectation is that the definition would sweep in the
4 types of documents that get created.

5 DIRECTOR MUZZEY: Yes.

6 CHAIRMAN HONIGBERG: And, that there
7 would be some ability to seek confidential treatment for
8 the confidential terms, but the other aspects of it may
9 well have to be filed in some way.

10 Yes, Mr. Oldenburg.

11 MR. OLDENBURG: I wasn't going to say
12 anything, but she opened up the door. Are we going to, if
13 there's a requirement of the list of participating
14 landowners, are we going to also require the conditions of
15 what rights they have given away or whatever? Because I
16 could see it as, if they have agreed to, say, the noise,
17 they waive their noise right, but they didn't waive the
18 setback right. And, all of a sudden something is within
19 the setback. I mean, do we need to know that sort of a
20 specific? Because I could see where somebody said "hey I
21 agreed to this, but I only agreed to noise, not setback,
22 and this thing is too close to me." Do we need to know
23 that detail? I can see keeping the financial thing out of
24 it and everything else. But do we need to know what

1 rights were waived or what they have agreed to in that
2 instance?

3 DIRECTOR MUZZEY: The question I would
4 have on that is, is it the SEC's responsibility to enforce
5 those agreements? And, I don't see how it would be, that
6 that would be a question they would take to their own
7 attorney.

8 MR. OLDENBURG: Again, I guess I would
9 just see us getting in the middle of it.

10 DIRECTOR MUZZEY: Well, that's probably
11 true.

12 MR. OLDENBURG: If it wasn't specific.

13 CHAIRMAN HONIGBERG: Well, and I think
14 one of the things that Attorney Wiesner, and maybe
15 Attorney Iacopino as well, may have been implying, is that
16 there are certain things that are outside the scope of the
17 SEC's authority. And, we don't want to put ourselves in
18 the position of trying to do things we shouldn't be doing.
19 So, I think we need to think about what's doable and
20 what's appropriate for us to do. And, I suggest they may
21 be different.

22 MR. WIESNER: Sorry. Just in connection
23 with what Mr. Oldenburg said. In a situation where the
24 applicant came here and said "this landowner is a

1 participating landowner for purposes of setback." If that
2 were not the case, that would be a misrepresentation on
3 behalf of the applicant. I mean, but the question is, to
4 what extent does the Committee want to verify what the
5 applicant is representing, by receiving even a redacted
6 copy of the agreement perhaps, to confirm that it does
7 cover setbacks, for example, in addition to noise or
8 shadow flicker or some other -- some other subject of a
9 complaint or potential complaint that's been waived by the
10 property owner.

11 CHAIRMAN HONIGBERG: You want to say
12 something, Commissioner Burack?

13 VICE CHAIRMAN BURACK: This brings us
14 back to perhaps our very first discussion of the day,
15 which is what, you know, what demonstration do you have of
16 the legal rights to a piece of property to be able to
17 support your project, and maybe we've -- maybe we've
18 talked ourselves to a place where, if somebody is going
19 to -- if a developer of a project is going to claim that
20 they -- certain conditions exist with respect to what they
21 can and can't do, either on their own property or an
22 abutting property, it is -- basically, the burden is
23 theirs to demonstrate that they have, you know, they have
24 the necessary legal rights. And, presumably, that's going

1 to mean disclosure of documents.

2 MR. WIESNER: So, that would suggest
3 that a pure list may not be sufficient.

4 VICE CHAIRMAN BURACK: In the first
5 instance, it may be, but there may be additional -- they
6 may ultimately need to provide the documents to
7 demonstrate what they, in fact, have.

8 MR. WIESNER: And, that perhaps could be
9 the subject of discovery.

10 VICE CHAIRMAN BURACK: It could be.

11 MR. WIESNER: That may or may not be
12 introduced as evidence at the hearing.

13 CHAIRMAN HONIGBERG: All right. Can we
14 move along from this one and see if we can talk about
15 visual impact areas?

16 Areas of Potential Visual Effect, we
17 have a wide range of suggestions here, from I think one
18 mile, up to 100 miles. I see 30 miles, 20 miles,
19 10 miles. There's a lot of possibilities here. And,
20 related to this actually probably would be the
21 photosimulation discussion, but maybe we can hold off on
22 that one and talk about the area first. If people want to
23 take a minute and review.

24 (Off the record.)

1 CHAIRMAN HONIGBERG: Anyone have any
2 thoughts on visual impact areas? Commissioner Burack.

3 VICE CHAIRMAN BURACK: Thank you, Mr.
4 Chairman. I think the language that we have before us in
5 the current draft I think is actually a very good starting
6 point. And, from what I can see and from what I've read
7 across these many sets of comments, and the work, for
8 example, of the SB 99 group, is that this is, if I'm
9 recalling correctly, there seem to be not complete
10 consensus, but some level of consensus that a 10-mile
11 radius, at least with respect to wind turbines, probably
12 had a fair -- again, a fairly high level of acceptance.
13 I'm not going to represent that I think everybody agreed
14 to that, but I think there was a relatively high level of
15 acceptance there.

16 So, I'm comfortable with that as a
17 reasonable place for us to be with respect to the visual
18 impact assessment. I certainly stand to be corrected if
19 I'm mistaken in what the SB 99 group discussed.

20 Where I think that, and this is in
21 301.05(b)(4), which is described in the "computer-based
22 visibility analysis", we then get into, first, it talks
23 about the visual impact area "extending to a 10-mile
24 radius from each wind turbine in the proposed facility".

1 And, then, we get "for electric transmission lines longer
2 than one mile, shall be a half mile in urban areas, two
3 miles in suburban, rural residential, and village areas,
4 three miles in lightly developed or undeveloped areas, and
5 five miles in lightly developed or undeveloped
6 landscapes", *etcetera*.

7 I recall a comment and testimony both in
8 writing and written that that would be a very difficult
9 standard to apply, because there are no -- there are no
10 bright lines sort of defining where in one person's mind
11 you cross from urban to suburban or some other category,
12 or rural, some other category of development. And, I'm
13 not sure what the right answer is here, but I think we
14 probably need to have a more or less consistent standard.
15 And, I don't know whether it's two miles or three miles,
16 but there just needs to be a very consistent standard.
17 And, if a party believes that that's inappropriate for a
18 particular circumstance, or at least an applicant believes
19 that to be the case, they could request a waiver and seek
20 to do it on some other scale, if they can make a great
21 case for doing so. But, otherwise, I would propose that
22 we, for a transmission corridor, we set a specific
23 distance and anticipate waivers.

24 CHAIRMAN HONIGBERG: Other comments?

1 Thoughts? Anybody agree with Commissioner Burack on this?
2 Mr. Oldenburg.

3 MR. OLDENBURG: I would agree that it
4 would be much easier and take a lot of confusion out of it
5 if it was a set distance. Some of the terms, "urban",
6 "suburban", it depends on who's measuring it, what
7 information you're getting it from, and as to what is --
8 what do you consider "urban", what do you consider
9 "suburban". So, I would agree, a set limit.

10 One of the other things that I see
11 commented on was also where -- where is the measurement
12 taken. Like, for a wind turbine, is it the top of the
13 blade? Is it the top of the turbine? Is it at ground
14 level? I think that determines a lot of what height and
15 visibility you have. I don't see where we reference for
16 visibility. Is it the top of the -- for wind, is it the
17 top of the turbine? For power lines, is it the top of the
18 structure? You know, where that is measured from.

19 CHAIRMAN HONIGBERG: Other comments?
20 Thoughts? Director Muzzey.

21 DIRECTOR MUZZEY: I would also support
22 having a consistent mile radius for electric transmission,
23 to solve some of the problems others have already
24 described, as well as the idea of a waiver system. But,

1 under that waiver, I would also think there should be an
2 accommodation for highly scenic areas, and some sort of
3 consideration of the growing size of many of these
4 installations. We heard a lot of comments about the
5 growing size of wind turbines in particular. So, there I
6 think flexibility in a number of areas would be helpful.

7 CHAIRMAN HONIGBERG: Commissioner Scott.

8 COMMISSIONER SCOTT: On the minor point
9 of what components should be taken into account, even if
10 we're silent on it, to me, it would be the whole project.
11 So, I think that would be the simplist reading. If some
12 component of your wind tower or your transmission tower is
13 higher than others, then the visibility assessment needs
14 to be the whole project. That's my reading of how we
15 would do that.

16 MS. WEATHERSBY: I think a question, I
17 guess. If we go with the single standards, it seems like
18 we'd have to take the longest distance, to cover the
19 undeveloped rural areas. And, in which case, there would
20 be an awful lot of waivers. If we go with something
21 shorter, those less developed areas are not protected.

22 CHAIRMAN HONIGBERG: Thoughts on other
23 issues? I know that there is issues about private land
24 versus public land. I mean, one, I mean, maybe this is

1 the photosimulation idea, but there was a proposal that
2 photosimulations be done from private land, which I can
3 see being extremely difficult for certain projects to
4 accomplish. But there's a lot of complicated or many
5 moving parts when we talk about how to demonstrate this.

6 So, are there other considerations
7 people want to float? Yes.

8 MS. WEATHERSBY: There was a
9 consideration raised about the study being done with the
10 absence of foliage. I think that would be important, not
11 taking that into consideration.

12 CHAIRMAN HONIGBERG: Were people
13 generally -- generally accepting of the current language,
14 with just modifying the distance for transmission, to make
15 it one number, acknowledging that there will be waivers
16 requested in certain applications? Director Muzzey.

17 DIRECTOR MUZZEY: This is a very minor,
18 minor note. But, in 301.05(b)(3), second line refers to
19 "cultural features".

20 CHAIRMAN HONIGBERG: Uh-huh.

21 DIRECTOR MUZZEY: And, the word
22 "cultural" appears in a number of places throughout these
23 rules, and I think the meaning is always "historic
24 features". So, just a simple search-and-replace

1 "cultural" with "historic" would lend consistency.

2 CHAIRMAN HONIGBERG: We're all about
3 consistency.

4 DIRECTOR MUZZEY: Uh-huh. The other
5 thing I can add is that there -- thinking of the foliage,
6 there was also a comment about "photosimulations should be
7 on a clear day". And, again, it all gets back to the idea
8 that the photosimulations should be done at a time when
9 the facility would be most visible, given a number of
10 different factors.

11 CHAIRMAN HONIGBERG: How prescriptive do
12 we feel we need to be regarding photosimulations, which is
13 really the next page? But there are some very, very
14 specific standards people have proposed. As a lawyer, I
15 keep going back to the standard that applies in court.
16 That, if it's a reasonable representation of what it
17 purports to be, then it's admissible. And, you know,
18 people get put in prison for relying on photographs that
19 are a reasonable representation of what the photograph
20 purports to be. But, I mean, maybe the considerations
21 here are different, and that it is -- maybe it is easy
22 enough to do. I don't really know. But the level of
23 specificity was really kind of intimidating. Attorney
24 Burack -- or, Commissioner Burack.

1 VICE CHAIRMAN BURACK: Thank you, Mr.
2 Chairman. Yes. Again, looking back to the SB 99 report,
3 and I had thought that there had been some level of
4 agreement on this issue of standards for photosimulation
5 or visual simulations, but it appears that there was not.

6 You know, there is something to be said
7 for having a consistent standard and a consistent,
8 recognized or accepted form of presentation of these
9 materials. And, I certainly would respect your sort of
10 legal analysis of what would be acceptable as evidence in
11 a court of law. But I do wonder whether there would be
12 some benefit to our having a specification of what we
13 would be looking for at a minimum, that could be the
14 standard that's laid out here, which reads "Photographs
15 used in the simulation should be taken at an equivalent
16 focal length of 50 millimeters", that is, i.e., the
17 "normal view". And, simulation should represent the
18 equivalent of what would be taken with a 75 millimeter
19 focal length lens on a full-frame 35 millimeter camera and
20 printed at 15.3 inches by 10.2 inches for handholding."

21 I think there could be real value to our
22 specifying that as a clearly minimum acceptable standard.
23 People could provide that, and something additional, if
24 they wanted to. But that's what we would be looking for

1 at a minimum.

2 CHAIRMAN HONIGBERG: Just so I'm clear,
3 you were reading from the SB 99 report, is that right?

4 VICE CHAIRMAN BURACK: That's correct.
5 And, I believe that that standard -- that the citation
6 here is to "visualization standards for wind energy
7 development developed by the Highland Council in the
8 United Kingdom."

9 CHAIRMAN HONIGBERG: Mr. Oldenburg.

10 MR. OLDENBURG: I guess I would agree.
11 I think the 50 millimeter normal view is what the average
12 eye sees. I could see where, if you used a wide-angle
13 lens, you could make something look farther away, or, with
14 a telephoto lens, you could make it look closer. So, I
15 think having the normal view, the 50-millimeter, would
16 give you a representation of what you would actually see,
17 what it would actually look like. So, I would agree that
18 some standard of what you would actually see should be
19 developed.

20 CHAIRMAN HONIGBERG: Do others agree
21 with that? I'm seeing heads nodding.

22 COMMISSIONER SCOTT: Yes.

23 CHAIRMAN HONIGBERG: Well, we've put
24 that aspect aside. Are there other parts of this visual

1 impact section we want to talk about? We're going to make
2 that the last thing we deal with. Yes, Commissioner
3 Burack.

4 VICE CHAIRMAN BURACK: I just want to
5 come back to the issue that Attorney Weathersby raised
6 regarding the viewing from private properties. We've had
7 a lot of public comment on that. It was clearly a subject
8 that was discussed by the SB 99 group. It does not appear
9 to me that there was any real agreement within that group
10 as to how to address that. But, certainly, we know that
11 it is an area of very real concern. I think, certainly,
12 at a minimum, we need to have the visual analysis done
13 from the major public perspectives and sites, as are laid
14 out here in this proposed draft that we have. But I think
15 it would be worth our giving some consideration to whether
16 there is some way to enable visualizations to be done from
17 private properties. And, I don't know, again, it's not
18 clear to me whether, to be able to do a visualization of
19 this kind, one actually needs to have access to the
20 property to be able to do that, or whether one could do it
21 strictly on a computer modeling basis.

22 So, I would just ask that, if nothing
23 else, perhaps Attorney Wiesner could explore that
24 question, and explore whether there would be a way to

1 either do some representative views or, alternatively, to
2 provide an opportunity for parties who wish to request
3 that visualizations be done from their properties, to
4 request that to be done. Obviously, it would have to be
5 done in a way that isn't overwhelming to the process,
6 perhaps. But I just would encourage us to give some
7 consideration to how impacts on private property owners
8 would be considered here.

9 CHAIRMAN HONIGBERG: Director Muzzey.

10 DIRECTOR MUZZEY: And, I would add a
11 request, as did several commenters, that historical
12 properties that are important for their scenic qualities
13 also be added to that. Some historic properties aren't
14 important for their scenic qualities. For example, an
15 historic mill might not, you know, have an important
16 scenic value, but many others in the state do. So, I
17 would want to expand, and many are owned by private
18 property owners.

19 CHAIRMAN HONIGBERG: Okay. Other
20 thoughts? Yes, Commissioner Scott.

21 COMMISSIONER SCOTT: On the electric
22 transmission component of this, sounds like we've kind of
23 landed on perhaps one standard, so we don't get into the
24 urban, rural, rural/residential, etcetera, mix. I'm

1 wondering if we apply, and I'm not sure it's the right
2 number, right now the highest, largest distance is
3 five miles, we applied that to -- no matter where it was,
4 and then also had, you know, "the greater of five miles or
5 furthest viewable distance", or whichever -- excuse me,
6 the lesser of, I guess. So, if it's five miles away you
7 can see it, that's what the analysis -- visual impact
8 analysis would show. If there's apartment buildings in
9 the middle at one mile, then that's the closest you would
10 show. Just a suggestion.

11 CHAIRMAN HONIGBERG: Does everybody
12 understand what Commissioner Scott just said? How do
13 people feel about that?

14 VICE CHAIRMAN BURACK: Just so -- so,
15 this is essentially taking into account the topography of
16 the area? So that, if from five miles out, you wouldn't
17 be able to see it, because there are buildings or hills or
18 whatever else in the way, you'd go to the point that's
19 closest to where you could actually see it from, and
20 that's the point from which you would make your
21 visualization?

22 COMMISSIONER SCOTT: Correct. Because I
23 believe the one mile and the three miles and five miles,
24 *etcetera*, depending on the setting that's currently in

1 there, was intended to, with an understanding, if you're
2 in an urban environment, going back five miles is not
3 appropriate to do the analysis, and I assume that's
4 because there's other things in the way. I'm assuming
5 that.

6 CHAIRMAN HONIGBERG: Mr. Oldenburg.

7 MR. OLDENBURG: I guess I had the same
8 question. But I read, under (b)(1) of the proposed
9 language, that, sort of the last line, "based on bare
10 ground conditions using topographic screening only and
11 with consideration of screening by vegetation or other
12 factors." So, I sort of looked at that and said is it --
13 are we saying, like, for a wind, it's a 10-mile radius,
14 regardless of whether there's a mountain in the way. And,
15 I sort of read that and said "well, no, that would mean,
16 if there was a mountain in the way or a building, or
17 something that would prohibit the view from a certain
18 direction, you would eliminate that."

19 So, I don't know if that covers your
20 concern or not, or if you want to expand on that, on that
21 statement in (1).

22 CHAIRMAN HONIGBERG: Commissioner Scott.

23 COMMISSIONER SCOTT: No, I think perhaps
24 that would. And, again, I would argue for just a single

1 standard for transmission, so we don't have to, as the
2 developers have pointed out in their testimony, to try to
3 differentiate is going to be difficult.

4 CHAIRMAN HONIGBERG: Commissioner
5 Burack.

6 VICE CHAIRMAN BURACK: I'm feeling at a
7 bit of a loss here, because I've never personally had the
8 benefit of seeing an example of one of these visual impact
9 assessments, whether for a -- well, for any type of --
10 well, actually, I've seen some for an electric generating
11 station. I don't think I've ever seen them for a --
12 certainly, a power line that I can recall or for a wind
13 turbine. And, so, I'm struggling with understanding
14 actually what the difference is between what's called for
15 in (b)(1) and what's called for in (b)(4). I think these
16 are two different things. I think (b)(1) is really just a
17 description and map of what could be visible from some
18 location. But then (b)(4) is an effort to try to, from a
19 distance out looking toward the facility, identify what
20 you'd actually be seeing. But I don't understand whether
21 or not those are strictly from fixed locations or whether
22 they're from any location ten miles out and going in, how
23 that -- how that works.

24 And, I don't know, Attorney Iacopino or

1 Attorney Wiesner, can you describe for us what this
2 "computer-based visibility analysis" really is and what it
3 provides?

4 CHAIRMAN HONIGBERG: Attorney Iacopino.

5 MR. IACOPINO: Yes. In my experience,
6 when it comes to wind facilities, it's -- the first part
7 of it is computerized. I'm trying to pull up one right
8 now from one of our recent dockets. But it's computerized
9 and it plots ten miles around where the facility is going
10 to be located. And, there is initially a computerized
11 determination of where there might be possible views.
12 And, then, the second half of it is the actual going out
13 and creating the visual simulations. So, I'm trying to
14 pull up the one in Antrim Wind, which I think I've just
15 got it. I could probably show it to -- or, one of them
16 anyway.

17 VICE CHAIRMAN BURACK: And, I'm just
18 asking these questions, because I just want to make sure
19 that we're understanding that what the technology can
20 provide and we're taking best advantage of that to aid the
21 Committee in its understanding here.

22 MR. IACOPINO: Unfortunately, I pulled
23 up the responsive one, which didn't do the whole analysis.

24 CHAIRMAN HONIGBERG: Well, Director

1 Muzzey, you had something you want to say while Attorney
2 Iacopino is looking for that?

3 DIRECTOR MUZZEY: Well, to give him just
4 a minute, I can relate that, in my office's review of both
5 cell towers and wind farms, we use this type of mapping on
6 a somewhat regular basis. And, so, again, depending on
7 the size of the facility and the extent of the facility,
8 there is a -- let's use ten miles, you know, a large
9 circle drawn around the facility, which is not actually a
10 circle, because the facility is not shaped in a circle,
11 usually some sort of oblong area of potential effect.
12 But, within there, considering development and
13 topographic, there are areas that are not colored in,
14 because the facility is not visible due to topography and
15 development. And, so, you do get that outside boundary,
16 but then there are blotches in it, which are actually not
17 affected by any type of visual impact.

18 VICE CHAIRMAN BURACK: And, if I may
19 then, what does the -- what does the program actually
20 provide you in terms of visual impact? Does it allow you
21 to see visual impact from one mile at a particular
22 location and five miles at a particular different
23 location, and ten miles? Where do you -- do you actually
24 see -- do you see what it is you would be seeing from

1 ten miles out, if you were looking towards the facility?

2 DIRECTOR MUZZEY: My experience with
3 these, it's a yes/no, "is it visible?" And, then, as
4 Attorney Iacopino said, that's where the photosimulations
5 come into play. And, so, you are provided with
6 representative views from different parts within the area
7 of potential visual effect, to see what those look like.
8 There may be even more extensive modeling available now,
9 that you could click and get a view anywhere within the
10 area of visual potential effect. But that's not something
11 I've had experience with. That would be terrific and very
12 useful, if it existed.

13 VICE CHAIRMAN BURACK: Thank you.
14 That's very helpful in my understanding.

15 CHAIRMAN HONIGBERG: And, Attorney
16 Wiesner, you have something?

17 MR. WIESNER: I was just going to say, I
18 think the key in the proposed rules, as they currently
19 exist, is that you define the relevant radius which
20 defines the area of potential effect. And, then, within
21 that, you're identifying the scenic resources that are
22 going to be evaluated and from which the view will be
23 characterized. And, this is Paragraph (6), and the list
24 of factors under that Paragraph (6) that apply to scenic

1 resources that have been identified. And, the key there
2 is that the current definition of "scenic resources" does
3 not include private property.

4 Now, if the computer modeling technology
5 would permit some type of photosimulation to be done from
6 private property within the radius, then that would
7 simplify things. Otherwise, it might be necessary to have
8 access to the specific properties themselves, within the
9 10-mile radius for a wind farm, let's say.

10 CHAIRMAN HONIGBERG: All right. Well,
11 this is something we will continue to think about. We're
12 going to break for the day. We are scheduled to come back
13 on April 15th, at 9:00. And, we'll pick up where we left
14 off and see how much more business we can do. We will all
15 give a lot of thought to what we heard today, and be
16 prepared to discuss the rest of the issues that have been
17 identified by everybody when we return.

18 Is there any other business we need to
19 transact today?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: Seeing none, I'll
22 entertain a motion to adjourn?

23 COMMISSIONER SCOTT: So moved.

24 CHAIRMAN HONIGBERG: Is there a second?

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VICE CHAIRMAN BURACK: Second.

CHAIRMAN HONIGBERG: All in favor say
"aye"?

(Multiple members indicating "aye".)

CHAIRMAN HONIGBERG: Any opposed?

(No verbal response)

CHAIRMAN HONIGBERG: We are adjourned.

**(Whereupon the meeting of the Site
Evaluation Committee was adjourned at
4:41 p.m., and the meeting to reconvene
on April 15, 2015, commencing at 9:00
a.m.)**