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

1  
2 CHAIRMAN HONIGBERG: We are going to  
3 resume our discussions of the comments on the proposed  
4 rules on the Initial Proposal. We were working through  
5 issues assisted by the issues list, what I call "glorified  
6 notes", regarding all the comments.

7 I think, before we get started, I'll ask  
8 the people who are the members who are here today to go  
9 around the room and introduce themselves, because I do  
10 know there's people in the audience who were not here last  
11 time and may not have been attending very much. So, I'll  
12 start to my left.

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

16 CHAIRMAN HONIGBERG: My name is Martin  
17 Honigberg. I'm the Chair of the Public Utilities  
18 Commission, and, by statute, that also makes me the Chair  
19 of the SEC.

20 VICE CHAIRMAN BURACK: Good morning.  
21 I'm Tom Burack. I serve as Commissioner of the Department  
22 of Environmental Services, and, by statute, I serve as  
23 Vice Chairman of the SEC.

24 DIRECTOR MUZZEY: Hello. My name is

1 Elizabeth Muzzey. I serve as Director of the New  
2 Hampshire Division of Historical Resources in the  
3 Department of Cultural Resources.

4 MS. WEATHERSBY: Patricia Weathersby,  
5 public member.

6 MR. HAWK: Roger Hawk, public member.

7 MR. OLDENBURG: I'm Bill Oldenburg, the  
8 Assistant Director of Project Development at the DOT.

9 CHAIRMAN HONIGBERG: I know that one of  
10 the things we talked about last time, before we pick up  
11 anything new, was the visual -- the visual effect distance  
12 question, and the lack of definition about urban, rural,  
13 and the like. And, I think, just, again, just so people  
14 understand, that no decisions have been made. What's  
15 likely to happen is, we're going to continue to discuss  
16 issues, see if we can come to some sort of point where it  
17 looks like there may be some consensus, and then generate  
18 a new version of these rules. It's almost -- there's no  
19 chance that there's going to be a final proposal adopted  
20 today, because the language isn't going to have been --  
21 going to be worked out.

22 I'll also say that the House of  
23 Representatives' Science, Technology Committee a week ago  
24 voted "ought to pass" on the Senate's bill that would

1 extend the deadline for this rulemaking process to  
2 November 1st.

3 Now, they did make a change to another  
4 part of the bill. It's not a very significant change. I  
5 don't know what the Senate -- I assume that the House will  
6 pass that bill. I don't know how the Senate will react to  
7 the proposed change. But, if I were betting, I think it's  
8 likely that the Legislature will end up extending this  
9 deadline to November 1st. As we sit here today, our  
10 deadline is July 1st. So, we're working within that  
11 construct. But I think there's a very good chance that  
12 that's out there.

13 Anyway, circling back to visual impact,  
14 we talked about just setting a mile deadline and having  
15 applicants seek a waiver, if they wanted a waiver. As I  
16 thought about that afterwards, I saw a timing problem. In  
17 that, applicants have to do all kinds of work before the  
18 SEC even knows of their existence. And, so, it's not  
19 clear when exactly and how to request a waiver in that  
20 context. So, they wouldn't necessarily be able to act, if  
21 they request a waiver, without having done a significant  
22 amount of work that they might not otherwise have to do.

23 So, the issue with the "rural"/"urban"  
24 language that was in the Draft Proposal is those terms are

1 undefined. Well, there are definitions of those things.  
2 And, we went out, and Attorney Wiesner and I were looking  
3 at the Census Bureau information. I mean, that's one of  
4 the things the Census Bureau does. It identifies areas  
5 within every state that, and I forgot exactly what their  
6 terms are, but it's "urban clusters", "urban zones",  
7 "rural", and there are defined terms. And, the State of  
8 New Hampshire has been broken up by the Census Bureau into  
9 a zillion different tracks, and each one of them is  
10 either -- is in one of those categories. And, so, it may  
11 be possible to use those definitions, to use the  
12 terminology or at least a version of the terminology that  
13 was in the Initial Proposal. It may have to be modified  
14 somewhat to track the Census Bureau language, but that is  
15 a set of definitions that's out there that we could use  
16 and would eliminate that timing problem with the waiver.

17 So, before we go further, what do people  
18 think about an approach like that? Is that -- I'm seeing  
19 some heads nodding, which is encouraging. Yes,  
20 Commissioner Burack.

21 VICE CHAIRMAN BURACK: Thank you, Mr.  
22 Chairman. That's very helpful, and really encouraging to  
23 understand that those kinds of -- that those kinds of  
24 definitions exist out there. It did occur to me, after

1 our session last time, that we do have in our midst here  
2 somebody who is an experienced planner in Roger Hawk.  
3 And, Roger, I was going to, and I don't know if you have  
4 anything you can share with us beyond, based on your  
5 experience, beyond what we just heard from the Chairman,  
6 have you seen those Census definitions used in this kind  
7 of way elsewhere? Or are you, from your planning  
8 experience, aware of other sort of objective criteria that  
9 are out there that we might use to guide us in developing  
10 rules in this arena?

11 MR. HAWK: I think the Census Bureau has  
12 the best for statewide, I think their standards probably  
13 are the best. Because, other than that, you break down  
14 into either regional or local, and they're all over the  
15 place. So, I think the Census Bureau is the way to go  
16 looking statewide.

17 CHAIRMAN HONIGBERG: Off the record.

18 (Off the record.)

19 VICE CHAIRMAN BURACK: Mr. Chairman, it  
20 sounds like --

21 CHAIRMAN HONIGBERG: We're back on the  
22 record, Commissioner Burack?

23 VICE CHAIRMAN BURACK: Yes, we're back  
24 on the record.

1 CHAIRMAN HONIGBERG: All right.

2 VICE CHAIRMAN BURACK: It sounds like  
3 we've identified an appropriate path forward for, you  
4 know, defining some standards around that. And, then it's  
5 just going to come to a question of what are, in fact, the  
6 distances that will need to be considered within those  
7 different -- within those different areas, whether urban,  
8 rural, *etcetera*. And, I think last time we had talked  
9 about having one consistent distance, and I don't think  
10 that that would be appropriate, I think, probably in a  
11 rural area, in an area where there are generally longer  
12 vistas by which people would view things, that a greater  
13 distance for the study area would be of -- or, the area of  
14 potential visual effect would be appropriate. I don't  
15 know what, you know, what that exact distance would be,  
16 but I think a fair distance. The distance should vary  
17 depending on the -- you know, certainly, the density and  
18 perhaps the topography as well.

19 CHAIRMAN HONIGBERG: Well, that's the  
20 philosophy of the Initial Proposal. The problem was the  
21 lack of definition. So, I think that that's -- we can go  
22 back to that and just import some definitions and some  
23 terminology and go from there.

24 I think the next new issue was the sound

1 study methodology. There weren't a lot of comments, but  
2 there were comments we received on that. And, I'll just  
3 remind everyone that you have received, through e-mail,  
4 all of the comments from everyone. And, they're all on  
5 the website, even the late-filed comments, which are  
6 supposed to be marked as "late-filed".

7 COMMISSIONER SCOTT: Yes, they are.

8 VICE CHAIRMAN BURACK: Mr. Chairman, may  
9 I --

10 CHAIRMAN HONIGBERG: Commissioner  
11 Burack.

12 VICE CHAIRMAN BURACK: Thank you. I've  
13 spent some time looking at the work done by the SB 99  
14 Group in this area. And, although the Group did not reach  
15 a consensus on all subjects, I think they actually reached  
16 a very high level of consensus on a number of key issues  
17 here relating to appropriate noise standards here. And, I  
18 would suggest that we look closely at adopting in the  
19 rules, as much -- with as much specificity as we  
20 reasonably can, the standards that would provide guidance  
21 for people as to what does or does not need to be done.  
22 And, I think that would apply in the pre-construction  
23 baseline survey context, with respect to predictive  
24 modeling, and also with respect to post-construction

1 compliance monitoring.

2 And, I don't know how you want to  
3 approach this, but, and, unfortunately, the pages in the  
4 SB 99 Report are not numbered, but within the -- within  
5 the section that is headed "NH OEP SB 99 Pre-Rulemaking  
6 Process Health & Safety Work Group", and this is roughly  
7 halfway through the document, maybe a little closer to the  
8 front than to the back, this area is discussed under "Wind  
9 Turbine Noise Emissions".

10 CHAIRMAN HONIGBERG: Are there other  
11 thoughts or comments? I agree. I mean, when I looked at  
12 the SB 99, I can see that there is not consensus on  
13 everything. I think the SB 99 Report made it pretty clear  
14 that there wasn't true consensus on a lot of these things,  
15 but there seemed to be fairly broad consensus. I know a  
16 lot of the comments we received indicate that there's more  
17 consensus than maybe we thought there was.

18 Other thoughts? There seems to be  
19 general agreement, as I say, with Commissioner Burack.  
20 And, I think it's possible for us to go through the SB 99  
21 document and try to tease out more of what was generally  
22 agreed upon.

23 Does that seem like a sensible thing for  
24 us to do? I see nodding heads.

1                   DIRECTOR MUZZEY: I would agree with  
2 that. A lot of work went into that document. And, we  
3 should take advantage of the parts that there was  
4 consensus on.

5                   CHAIRMAN HONIGBERG: I think there seems  
6 to be general agreement that we should try to do that.

7                   Attorney Wiesner, you have probably a  
8 better handle on that than I do, would you agree?

9                   MR. WIESNER: It wasn't clear to us  
10 initially, looking at the OEP Working Group Reports, the  
11 level of consensus that apparently had been reached  
12 regarding methodology. But there were four acousticians  
13 involved in that process. And, in terms of defining a  
14 specific methodology to be used in performing sound  
15 studies, it seems that there was substantial consensus  
16 among those professionals, and no objection from  
17 stakeholders. And, I think, as you suggested, Mr.  
18 Chairman, the comments that we received, no one objected,  
19 and there seemed to be broad support for including that  
20 level of detail.

21                   CHAIRMAN HONIGBERG: But the method --

22                   MR. WIESNER: And, it is quite detailed.  
23 I mean, the New Hampshire Wind Watch reduced the OEP  
24 recommendations to rules language, that appears on Pages

1 17 of 19 of their comments, and it is quite detailed, and  
2 it takes up two and a half pages. But, you know, it  
3 serves the purpose, perhaps, of better defining what a  
4 professional standard sound study should include.

5 VICE CHAIRMAN BURACK: Attorney Wiesner,  
6 do you have the date on that New Hampshire Wind Watch  
7 document?

8 CHAIRMAN HONIGBERG: I'm pretty sure  
9 they're all marked the "23rd".

10 MR. WIESNER: Yes. These comments were  
11 filed on the 23rd by Wind Watch and Windaction.

12 CHAIRMAN HONIGBERG: The cover letter  
13 from Lisa Linowes and Lori Lerner, right?

14 MR. WIESNER: Yes. It's a substantial  
15 document. And, as I said, these -- the methodology in  
16 rules language appears on -- beginning on Page 17 of that  
17 filing.

18 CHAIRMAN HONIGBERG: Now, that's -- much  
19 of this comment, much of this language is really about the  
20 methodology. There are specific numbers in there. And, I  
21 know, from other comments received, that people had  
22 different thoughts on what the number should be for  
23 what -- how many dBA is appropriate. Am I right about  
24 that?

1 MR. WIESNER: That is the siting  
2 criteria specification, which appears on the next page of  
3 the summary -- Comments Summary List. There is one other  
4 comment that might -- from EDP Renewables, which goes to  
5 study methodology, and that's what appears in the  
6 right-hand column of Page 9 in the Summary List. Which is  
7 essentially "how far out do you go in studying sound  
8 receptors?"

9 VICE CHAIRMAN BURACK: And, Attorney  
10 Wiesner, to your recollection, was there any consensus on  
11 that topic of the measurement distance out? Because I am  
12 seeing, actually, as I look in this Table 1.a of the SB 99  
13 Report, under "Pre-construction baseline survey", it does  
14 suggest "Measurement locations should be conducted at the  
15 nearest properties from proposed wind turbines  
16 representative of all non-participating residential  
17 properties within two miles." And, there's also, under  
18 the "Preconstruction Predictive Modeling", there's also a  
19 "two mile" distance suggested there. But what you're  
20 saying is that EDP Renewables is -- well, they're  
21 specifically pointing to a "35 dBA sound contour line one  
22 mile".

23 MR. WIESNER: That's correct. So,  
24 that -- that does differ in that respect, from the

1 methodology that's otherwise presented as a consensus  
2 position of the acousticians.

3 VICE CHAIRMAN BURACK: And, if I may, I  
4 guess I'm trying to understand, I'm not schooled or versed  
5 in this area of sound or noise measurements. So, I don't  
6 know if these are mutually exclusive of each other or  
7 whether these concepts of a "35 dBA sound contour line at  
8 one mile" would also be consistent with doing  
9 measurement -- having measurement locations or doing  
10 predictions out to two miles. Do you know?

11 MR. WIESNER: I don't think -- I'm not  
12 really able to shed any light on that.

13 CHAIRMAN HONIGBERG: But, in terms of  
14 the broad methodological concepts, really, the only issue  
15 seems to be that mileage line for the approach, for the  
16 method that they're going to use to measure that.

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

18 COMMISSIONER SCOTT: I'm comfortable  
19 with the two miles that are proposed in that section.

20 CHAIRMAN HONIGBERG: Director Muzzey.

21 DIRECTOR MUZZEY: In the EDP comments,  
22 was there any reasoning given for dropping from two to  
23 one? Was there a specific justification?

24 MR. WIESNER: There's a -- in the EDP

1 comments, there's a reference to a 2011 NARUC Report --  
2 NARUC, excuse me, "Assessing Sound Emissions from Proposed  
3 Wind Farms & Measuring the Performance of Completed  
4 Projects". And, if you have those comments of EDP  
5 Renewables, this appears on Page 4.

6 CHAIRMAN HONIGBERG: If you're going to  
7 read, read slowly for Mr. Patnaude.

8 MR. WIESNER: I'm sorry.

9 VICE CHAIRMAN BURACK: And, would you  
10 please give us the date of those comments?

11 CHAIRMAN HONIGBERG: You can assume  
12 March 23rd, unless somebody tells you otherwise.

13 MR. WIESNER: Yes.

14 VICE CHAIRMAN BURACK: Okay. Thank you.

15 MR. WIESNER: So, there's a reference to  
16 that NARUC Report, 2011. And, there's also a reference to  
17 the Groton Wind Project that received a certificate at  
18 this Committee, and their sound study was modeled "on a  
19 map out to 35 dBA sound contour line or to all residences  
20 within at least one mile of every wind turbine". And,  
21 again, the closer distance to the turbine. And, that was  
22 deemed "acceptable to the Committee", according to EDP.

23 CHAIRMAN HONIGBERG: Attorney Iacopino,  
24 I have a question.

1 MR. IACOPINO: Yes, sir.

2 CHAIRMAN HONIGBERG: The EDP comments  
3 cited the Groton Wind decision for one mile for this  
4 issue. Do you know if there are other precedents of the  
5 SEC on this topic?

6 MR. IACOPINO: Yes. I believe that in  
7 every wind --

8 MR. WIESNER: If you could use a  
9 microphone, so people in the back can hear you.

10 MR. IACOPINO: Yes. Every wind docket  
11 that we've had, there's been some kind of sound  
12 measurement level. I don't know that it has the contours  
13 like you're discussing, one mile out, whatnot. Generally,  
14 it has been to the nearest residence -- not "to the  
15 nearest residence", but "at any residence", I think is the  
16 way that they have been listed in the past. And,  
17 generally, that's been in the 45 dBA range.

18 Lempster had a -- the Lempster Wind had  
19 a substantial package of mitigation that the applicant was  
20 required to offer to residents whose -- I believe it was  
21 at the exterior wall of their home where the dBA  
22 measurement was in excess of what was in the order,  
23 including things like installing air conditioners and  
24 whole house fans, things like that.

1           After Lempster, which was the first wind  
2           decision, I don't believe that the Groton Wind [Granite  
3           Reliable?], although I think there were some dBA limits in  
4           there, I don't believe that it was a big issue because of  
5           the remoteness of that project. Groton does have -- the  
6           Groton Wind Project did have some sound level  
7           requirements. And, then -- well, Antrim Wind, there was  
8           discussion, but Antrim Wind was eventually denied for  
9           other reasons.

10           But, as far as -- I think what you're  
11           talking about is contours a mile out, two miles out. I  
12           don't believe that that's the rubric that the Committee  
13           has used to date, when it comes to wind facilities.

14           CHAIRMAN HONIGBERG: What's your  
15           pleasure? Does anybody have a pleasure on this? Yes,  
16           Commissioner Scott.

17           COMMISSIONER SCOTT: Again, as a general  
18           statement, I would -- obviously, we have our own  
19           jurisdiction here, but I would like to lean, all things  
20           being equal, I would lean toward the recommendations, to  
21           the extent there is consensus, in the SB 99 Report. There  
22           was a lengthy process there, I think a lot of stakeholders  
23           involved, a lot of good work done. Which is, frankly, why  
24           I was suggesting that I'm comfortable with two miles for

1 this. Again, that doesn't mean we have to do anything  
2 within that two miles. This is talking about predictive  
3 studies. So, it doesn't mean anything is thrown out  
4 because of that. I would assume there's additional costs  
5 that are associated with doing additional studies. So, I  
6 am appreciative of that.

7 CHAIRMAN HONIGBERG: Commissioner  
8 Burack.

9 VICE CHAIRMAN BURACK: I also am  
10 comfortable with two miles, at least from the standpoint  
11 of getting a pre-construction baseline survey and  
12 predictive modeling done. Because I think that will allow  
13 all parties to have a better understanding of what the  
14 potential impacts may be of a facility, and what -- again,  
15 what the baseline conditions are before such a facility is  
16 built. In the long term, I think that's going to be  
17 helpful to all concerned. So, I'd be comfortable with  
18 following the general recommendations that appear in here  
19 in the SB 99 Report.

20 CHAIRMAN HONIGBERG: Any other thoughts?

21 (No verbal response)

22 CHAIRMAN HONIGBERG: All right. We'll  
23 work with that as a working consensus for now.

24 The next item is the "Noise Level Siting

1 Criteria", which is related, obviously.

2 (Short pause for members to review  
3 comments provided.)

4 CHAIRMAN HONIGBERG: Anyone have any  
5 thoughts on this they'd like to share? Commissioner  
6 Scott. Oh, I thought I say your hand going to the button.  
7 Was I wrong?

8 COMMISSIONER SCOTT: I would be glad to  
9 speak, Mr. Chair.

10 CHAIRMAN HONIGBERG: Commissioner Scott  
11 is going to buzz in here. Yes, Commissioner Scott.

12 COMMISSIONER SCOTT: I will say, and  
13 Attorney Iacopino mentioned that in Lempster we, and I  
14 think he characterized it very well, as far as we  
15 presented a package of scenarios where at the --  
16 effectively, at the wall of your residence, if there was a  
17 certain level, then certain mitigation could happen.

18 Generally, I'm receptive to the comments  
19 we've gotten that, just because it happens not to be  
20 your -- the wall of your abode that you reside in, do I  
21 not get to enjoy my property anyways? And, to the extent  
22 that a noise level is a nuisance to a property owner, I'm  
23 compelled by that. So, you know, whether it's your  
24 cookout on our patio or your pool.

1                   So, I'm less strong on that than I was  
2 when we did the Lempster, because I was part of that.  
3 But, having said that, and I'm not giving you an answer  
4 here, is I think at least my thinking at the time for  
5 Lempster was there was an issue for enjoyment of your  
6 property, but there's also an issue for -- a lot of the  
7 concerns we had where people were suggesting they wouldn't  
8 be able to sleep, they wouldn't be able to -- again, the  
9 more persistent concern in your house. So, that was, just  
10 for context, that was some of the thinking, anyways, at  
11 least that I had.

12                   And, also, while I'm speaking, in my  
13 view, we also need to make a differential between the  
14 absolute sound level and the gradient between the  
15 background sound levels and the impact of the project.  
16 So, obviously, if you're in a high urban environment, and  
17 you're near a highway, that background level actually may  
18 exceed these. So, that that should mean, obviously, you  
19 can't have a -- put something that makes less noise in  
20 that area, that I think is counterintuitive. So, I think  
21 there needs to be that concept baked in also. You know,  
22 what increment are you adding to that, I think is  
23 important to understand.

24                   So, that doesn't -- that is meant to be

1 more educational, at least from my thoughts, than  
2 anything.

3 CHAIRMAN HONIGBERG: Well, then,  
4 continuing with the educational aspect, I mean, the SB 99  
5 Report does list the history --

6 (Physical interruption - coughing.)

7 VICE CHAIRMAN BURACK: You want me --

8 CHAIRMAN HONIGBERG: Why don't you pick  
9 that up, pick that sentence up.

10 VICE CHAIRMAN BURACK: I'll pick up for  
11 you, I'll try to read your mind, Mr. Chairman. I think  
12 what you were referring to was Table 1.d in the SB 99  
13 Report that cites the noise limits by project, for the  
14 Lempster Wind, Granite Reliable, Granite [Groton?] Wind,  
15 and Antrim Wind Project. And, effectively, what we see is  
16 different approaches taken in each of those different  
17 matters. And, what strikes me about that is that I think  
18 it will be very challenging for us to adopt a  
19 one-size-fits-all standard here. My sense is that this is  
20 very much a locational issue, in the sense that, if you  
21 have a project that is very remote, such as the Granite  
22 Reliable Project is, and, as it turns out, the SEC did not  
23 specify any noise standards there at all for that project.  
24 And, again, there are no residences within, as I

1 understand it, many miles of that site. And, so, at least  
2 from the standpoint of protecting the human populations  
3 from noise there, that was not a concern.

4 Likewise, from looking at both the  
5 Groton Wind and the Antrim Wind Projects, there there were  
6 differentiations made between daytime and nighttime noise  
7 levels. And, in one of those matters, the Groton Wind,  
8 there was a separate standard set for a campground, which  
9 would be more of that constant outside experience that  
10 people would have, where you don't have the benefit of  
11 walls of a building to, presumably, to buffer any noise.

12 So, I think we ought to be looking at  
13 something that -- a standard that recognizes that  
14 different locations may warrant different levels of  
15 protection or controls on noise. And, so, that's just one  
16 thought I have.

17 And, then, the other thought is that it  
18 would appear that different daytime versus nighttime  
19 standards, in settings where there are residences or other  
20 facilities near by that would be affected by the noise, at  
21 night, ought to have the benefit of a lower nighttime  
22 standard.

23 CHAIRMAN HONIGBERG: Other thoughts?  
24 Considerations?

1 COMMISSIONER SCOTT: I have a --

2 CHAIRMAN HONIGBERG: Commissioner Scott.

3 COMMISSIONER SCOTT: So, Commissioner  
4 Burack, on your last statement, again, just to help my  
5 thinking, maybe you can help me in my memory. So, we've  
6 differentiated in the past a difference between daytime  
7 and nighttime. And, I guess I'm trying to remember why we  
8 did that. Is it the presumption that nighttime is  
9 typically sleeping time, and that's when -- when it would  
10 be more of a concern? Maybe you could help me with that.

11 VICE CHAIRMAN BURACK: Again, having not  
12 sat, personally, on any of these wind siting projects, I'm  
13 not aware of the details of it. Perhaps Attorney Iacopino  
14 could help us, give us a general understanding of what the  
15 concerns or issues have been raised in that context?

16 MR. IACOPINO: Yes. Although, all the  
17 various adjudicatory proceedings blend into one in my  
18 mind, I do recall, in the Lempster and in the Groton Wind,  
19 there being concerns about nighttime noise. It was  
20 particularly -- some particularly passionate testimony in  
21 Groton Wind from the owner of the campground about how it  
22 would affect her business there.

23 In Lempster, similarly, there was  
24 testimony about requiring lower noise levels in the

1 evening, at night, so that people could sleep. That  
2 was -- it was generally that's when people are normally  
3 asleep. I think that that was the general criteria that  
4 underlied those decisions that were made by the Committee  
5 at the time in each of those dockets.

6 CHAIRMAN HONIGBERG: Commissioner  
7 Burack.

8 VICE CHAIRMAN BURACK: Thank you. If I  
9 may? Was there also testimony or evidence to the effect  
10 that, overall, and I may not be using the right term, but  
11 ambient or background noise levels tend to be higher  
12 during the day, just because of vehicle traffic and other  
13 kinds of activities, industrial activity or whatever else  
14 that may be occurring, as compared to nighttime? Did  
15 you --

16 MR. IACOPINO: I don't recall that being  
17 the subject of much testimony. It may have been, I  
18 don't -- I just don't recall. But I do recall that each  
19 of the -- or, where you have imposed noise standards, they  
20 have generally had a limit, and then an "or not greater  
21 than" a certain amount above ambient. And, that was, in  
22 fact, the case in Lempster, and I believe in Groton as  
23 well, off the top of my head.

24 VICE CHAIRMAN BURACK: One other thought

1 does occur to me, a non-wind matter that the SEC heard  
2 several years ago was a pipeline expansion with a  
3 compressor station, --

4 MR. IACOPINO: Yes.

5 VICE CHAIRMAN BURACK: -- in was it  
6 Windham? Am I recalling that correctly? Somewhere in  
7 that part of -- Londonderry perhaps?

8 MR. IACOPINO: I think it's Plaistow.

9 VICE CHAIRMAN BURACK: Plaistow? Okay.

10 MR. IACOPINO: Pelham. Pelham.

11 VICE CHAIRMAN BURACK: Pelham. Thank  
12 you. I think that's right. I recall now that there was  
13 some discussion of noise matters in that -- noise issues  
14 in that matter, but I don't recall how the Committee  
15 resolved those or addressed those.

16 MR. IACOPINO: I don't, off the top of  
17 my head, but I'll try to check for you right now.

18 VICE CHAIRMAN BURACK: Well, thank you.  
19 It may be helpful to look at that as well. Because,  
20 certainly, these issues of noise arguably are applicable  
21 not only to a wind facility, but potentially at other  
22 kinds of facilities as well. As we're going through these  
23 rules, we probably need to be thinking about to what  
24 extent some of these standards may appropriately apply to

1 other types of facilities.

2 MR. IACOPINO: Mr. Vice Chairman, I  
3 would also point out, I believe it was addressed in the  
4 wood-burning plant in Berlin as well, I believe we  
5 addressed noise.

6 VICE CHAIRMAN BURACK: Thank you. So,  
7 again, it may be instructive to look at what we did there  
8 as well.

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: So, rounding back  
11 to my question to the Vice Chair, I was really thinking  
12 out loud. But I think, generally, obviously, most people  
13 sleep at night. But, to the extent this is a broadbrush  
14 rulemaking we're talking about, obviously, there are those  
15 who sleep during the day. They're on shifts work or  
16 whatever. So, I do think that is a consideration.

17 Having said that, again, I think the  
18 real key here is the increment above ambient levels that  
19 helps that. But, and again, just thinking out loud.

20 CHAIRMAN HONIGBERG: I mean, it seems to  
21 be a fairly common, if not constant, approach, that it's a  
22 maximum or the amount above the ambient, because it  
23 accounts for both scenarios. And, it does seem to make  
24 some level of sense whether, and I think -- well, I forgot

1 who it was, it might have been Commissioner Burack said at  
2 the beginning, this is always going to be fact-specific,  
3 because you're always going to be in a different place  
4 that might have different circumstances around it. But,  
5 you know, maybe there should be a maximum, or you should  
6 be dealing with the level above ambient.

7 And, if, for some reason, in a  
8 particular application, that doesn't make sense, that's  
9 when the request for a waiver would be appropriate.

10 Commissioner Scott.

11 COMMISSIONER SCOTT: So that discussion  
12 aside, the issue of where to measure, I am frankly leaning  
13 towards the property line generally, rather than at the  
14 wall, exterior wall of a permanently occupied building. I  
15 guess, again, the context we're talking fairly broadbrush  
16 rules here applying to everybody. I'm struggling with  
17 either just at the property line, which is probably  
18 cleanest, or, failing that, but I think it gets very  
19 complicated, putting in a lot of caveats. You know, so,  
20 if you have a pool, if you have a patio, you have, you  
21 know, a dog walk, I guess, whatever, and I don't know how  
22 to do that and capture everything appropriately. So, I'm  
23 leaning towards perhaps just the property line is where  
24 you measure.

1 CHAIRMAN HONIGBERG: Ms. Weathersby.

2 MS. WEATHERSBY: Just kind of going back  
3 to the approach we just did on the noise level, it could  
4 be something like the lesser of the wall of the house or  
5 within, say, 200 feet. You know, if someone has 25 acres,  
6 you don't want it necessarily to be the property line.  
7 But you definitely want to protect people who are out  
8 gardening, *etcetera*. So, you know, do some kind of an  
9 either/or approach.

10 CHAIRMAN HONIGBERG: Director Muzzey.

11 DIRECTOR MUZZEY: I was also looking for  
12 some sort of qualifier in the case of very large  
13 properties, 200-acre farms, that type of thing. Is it the  
14 same in the back of a woodlot as it is next to -- next to  
15 a house? And, I couldn't think of a good way of  
16 differentiating that as well.

17 But what I do remember hearing, in the  
18 case of the Antrim Project, in some of the jurisdictional  
19 hearings, is that some people chose to live on large  
20 properties because of the rural nature and the quiet that  
21 those properties provided. So, I'm hesitant to even think  
22 of something as small as a 200 foot buffer, because some  
23 people have a much larger view and use of their property  
24 than just however many hundred feet, you know, we could

1 think about.

2 CHAIRMAN HONIGBERG: This is an ignorant  
3 question regarding sound, but is there a significant  
4 difference in the sound level 200 feet away? I mean, if  
5 you've got a loud thing near you, 200 feet isn't going to  
6 help you very much, I don't think. So, either measure  
7 from the buildings, just make it consistent, or measure  
8 from the property lines. I don't know. If you try and do  
9 anything else, you're making, I think, an arbitrary guess.

10 Mr. Oldenburg.

11 MR. OLDENBURG: I guess I can offer a  
12 slight indication of that is, at the Department of  
13 Transportation, we do a lot of sound wall analysis to  
14 mitigate for roadway noise. A lot of the information that  
15 we have is a lot of people like putting tree buffers in  
16 between the road and their home. You know, they're  
17 looking for trees. And, 100 foot of thick tree growth  
18 virtually does nothing to mitigate sound noise from a  
19 road. I'm not sure that's the same as noise from a wind  
20 farm. It's not until you get over about 100 feet thick of  
21 forest that you would actually see a sound deadening.

22 But we also, you know, we're talking,  
23 just for knowledge, we're talking that we don't even look  
24 at noise below 60 decibels. You know, road noise is,

1 typically, that's the ambient background noise of the  
2 road. And, the mitigation that we're talking is probably  
3 about the same, five decibels, if we put up a wall. Below  
4 that, it's hard to distinguish the difference. You know,  
5 the human ear, you know, three decibels is almost an  
6 indistinguishable noise level.

7 So, trees, like you said, if you had  
8 25 acres or 100 acres, that would probably deaden the  
9 noise. You know, if you're an acre lot, and there's not a  
10 lot of trees on it, you know, that difference from the  
11 property line to the house, my thought is probably isn't  
12 going to -- isn't going to make any difference. But  
13 that's sort of the experience we have at Transportation.

14 CHAIRMAN HONIGBERG: No, that's helpful.  
15 Other thoughts? Comments? Commissioner Burack.

16 VICE CHAIRMAN BURACK: Just want to  
17 follow up and make sure we understand that, because that's  
18 very helpful information to have.

19 So, Mr. Oldenburg, you're saying that  
20 typical ambient noise or standard noise coming from a  
21 roadway that has regular traffic on it is 60 dBA  
22 approximately?

23 MR. OLDENBURG: Well, that's where we  
24 would start to look at mitigation. If it's higher than

1 60, like if you were sitting next to the interstate, a  
2 busy interstate, not Littleton, but Salem, you would  
3 probably be over 60. And, that would -- that would start,  
4 well, we would consider that would start interfering with  
5 being able to hear someone in your background, on your  
6 deck. It would be a noise that would be bothersome to you  
7 if you, you know, had a gathering on your deck or  
8 something like that.

9 Below that, we use federal standards.  
10 That, below that, we wouldn't even review it, review that.

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

13 CHAIRMAN HONIGBERG: Attorney Iacopino.

14 MR. IACOPINO: Thank you. Just to  
15 answer Vice Chairman Burack's request before. On the  
16 Tennessee Gas Concord Lateral Project, which is the one  
17 that had the compressor station down in Pelham, we did not  
18 actually put a decibel limit on that compressor station,  
19 because there was already a FERC limit of 55 dBA. What we  
20 did do was the Committee considered the design features  
21 that were presented to the Committee, and considered data  
22 that indicated that it would produce a sound level of 46  
23 to 48 dBA, and required the Committee -- required the  
24 applicant to use those design features. And, we were

1 dealing with a FERC limit.

2           There was a noise complaint in that  
3 particular docket after the construction of the facility.  
4 A sound survey was done. And, the Committee found that  
5 the -- that the facility was operating within the FERC  
6 limit. So, I think the shortcut answer to that is we  
7 essentially adopted the FERC limit for that particular  
8 project.

9           On the Berlin BioPower construction of  
10 the wood-burning facility, which was in the middle of  
11 Berlin, New Hampshire, the noise requirements were a  
12 little bit different. They were 70 dBA in the daytime at  
13 the property line of the facility, is the way that we --  
14 is the way that we set that one up, and 60 dBA at the  
15 property line of the facility at nighttime. So, we did  
16 make a daytime/nighttime distinction. And, in that  
17 particular case, it was noted in our decision that  
18 those -- that those noise levels were within an ordinance  
19 that had been passed by the City of Berlin.

20           So, in those two, and they're both  
21 non-wind cases, we did something a little bit different  
22 than what we've done in the wind cases.

23           CHAIRMAN HONIGBERG: All right. Any  
24 other thoughts or comments? Suggestions with how to deal

1 with this? Director Muzzey.

2 DIRECTOR MUZZEY: I have a question  
3 regarding the use of "8:00 a.m. to 8:00 p.m." versus  
4 "day/nighttime". That seems to be another change that the  
5 commenters suggested. Is that something we need to  
6 discuss or think of changing?

7 CHAIRMAN HONIGBERG: I think we can  
8 certainly discuss. You've identified it as something that  
9 there doesn't seem to be agreement on the language.

10 DIRECTOR MUZZEY: Well, I often lean  
11 toward a clearer standard. And, certainly, "8:00 a.m. to  
12 8:00 p.m.", it's very clear as to when day begins and night  
13 begins. If we go by the presence of daylight, that, of  
14 course, changes throughout the year. And, we have long  
15 days right now.

16 So, unless there is a compelling case  
17 otherwise, I would feel that being more specific about  
18 those times would be more helpful to everyone involved.

19 CHAIRMAN HONIGBERG: Commissioner Scott.

20 COMMISSIONER SCOTT: I agree with that.  
21 And, my other concern, if we went just "sunrise to sunset"  
22 for the standard, I think some of the intent of this, as  
23 we discussed, is to accommodate that the majority of the  
24 citizenry sleep at night. And, as you're aware, sometimes

1 during the year the Sun could be rising, depending on  
2 where we are, for Daylight Savings Time, it's relatively  
3 early. And, if the Sun rises, for instance, at 5:15, if  
4 it's a weekend, I'm not -- I'm likely not to be wanting to  
5 wake up at that time.

6 So, I think -- so, my presumption is  
7 that was the -- some of the reason for the "8:00 a.m. to  
8 8:00 p.m.", that was to accommodate sleep cycles as much as  
9 anything else, less than when the Sun comes up and comes  
10 down.

11 CHAIRMAN HONIGBERG: I see no appetite  
12 for further discussion of this.

13 VICE CHAIRMAN BURACK: Mr. Chairman, I  
14 mean, do you want to -- are you going to propose a  
15 specific dBA level for the daytime, the 8:00 a.m. to  
16 8:00 p.m., with an ambient -- an amount above ambient as  
17 an alternative to that? Do you want one of us to do that?  
18 What are you looking for here?

19 CHAIRMAN HONIGBERG: I would -- if  
20 someone has a proposal to make, that would be wonderful.  
21 Director Oldenburg.

22 MR. OLDENBURG: I guess I don't want to  
23 cloud the issue too much. But, when you think about it,  
24 if you have a facility that operates, be it a wind farm or

1 an energy plant, it's -- I think of it, it's going to  
2 operate with a certain noise day and night. So, really,  
3 if you have a different standard for day and night for  
4 noise level, I got to believe that that's like operations,  
5 trucks, things like that. I live near Merrimack Station,  
6 and they have a moratorium on when they can load the coal  
7 trucks and things like that.

8 So, I don't -- is the expectation that  
9 the facility has the ability to lower the noise level at  
10 night? Like, do they turn the turbines -- some of the  
11 turbines off or do they stop doing some activity to be  
12 able to regulate that? Or, is it all on or all off? So,  
13 if we're putting a difference from the energy facility, is  
14 it ultimately going to be the lowest number that they're  
15 going to have to meet, because they can't regulate their  
16 noise beyond that?

17 And, so, I think -- I don't know if  
18 there's a difference. Is it the operation is the noise or  
19 is it daytime work activities, with backup buzzers and  
20 bigger trucks or something else that they can actually  
21 regulate the noise on? So, I don't know -- I don't know  
22 how the facility can regulate their noise, I guess, from  
23 day to night. If we're putting undue --

24 CHAIRMAN HONIGBERG: Well, I think that,

1 just looking at the summary of the way New Hampshire Wind  
2 Watch and EDP Renewables, both, in one way or another, I  
3 think acknowledge what you just said, because they don't  
4 actually make a distinction. I think EDP Renewables has  
5 the measurement point at night. They don't say anything  
6 about a different time, different level during the day.  
7 And, I think that Wind Watch also I don't think makes any  
8 distinction, it's just a level. They're different levels,  
9 but they're both ultimately, I think, agreeing with you,  
10 that you set a level, and that level is going to be the  
11 level for wind projects. I may be misreading the  
12 comments. It wouldn't be the first time.

13 MR. WIESNER: I believe EDP does propose  
14 a differential between day and night, based on prior  
15 precedent at the Committee for wind farms, which are  
16 actually constructed and existing in the state.

17 CHAIRMAN HONIGBERG: Okay.

18 MR. WIESNER: And, that's the 55 and 45  
19 that appears in the right-hand column of this document.

20 CHAIRMAN HONIGBERG: Oh, you're right.  
21 You're right. There is a difference. Without the color,  
22 it's sometimes hard for me to tell what's still alive and  
23 what's not.

24 MR. WIESNER: And, you know, my

1 knowledge of this is very limited, but I believe there are  
2 operating strategies that could be pursued to mitigate  
3 noise levels at different times. And, I think that's the  
4 genesis of the common differential between nighttime and  
5 daytime noise limits.

6 CHAIRMAN HONIGBERG: Commissioner Scott.

7 COMMISSIONER SCOTT: Here's my proposal:  
8 On the draft language, I think I would keep the existing  
9 times, keep the existing decibel limit, the existing  
10 increment above ambient. And, I'm sorry, I'm referencing  
11 the Draft, Site 301.14(f)(2)a. However, I think I would,  
12 as I suggested earlier, change the requirement, delete the  
13 language about "exterior wall", and what I think I'd like  
14 to see is just go to the property line, with some  
15 exception -- basically, what I'd like to see is some  
16 differential for non-commercial property, unless it's  
17 commercial, which, and I don't know the language here, you  
18 know, campgrounds, hotels, Bed & Breakfasts, some  
19 carve-out. So, it would be at the property line for  
20 non-commercial and those type of exemptions. That's what  
21 I'd be more comfortable with.

22 Again, so, if it's an auto body shop, I  
23 don't think I'm as aggrieved by anything else. It's more  
24 the residential and businesses that are focused around

1 people sleeping, I guess.

2 CHAIRMAN HONIGBERG: Director Muzzey.

3 DIRECTOR MUZZEY: I would agree with all  
4 of your points on that, with the exception of the last  
5 one, which is really a very difficult thing to carve out.  
6 Given the importance of the tourism industry in New  
7 Hampshire, I would hesitate to venture into the realm of  
8 "commercial", given that so many of them -- of our  
9 commercial enterprises do relate to tourism. I don't have  
10 a good substitute for that.

11 COMMISSIONER SCOTT: How about if I use  
12 the word "industrial", instead of "commercial"?

13 DIRECTOR MUZZEY: As long as there is a  
14 clear definition similar of what an "industrial property"  
15 is, whether that's coming from local zoning or some other  
16 status, I don't know. But I would be more comfortable  
17 with "industrial" than "commercial".

18 CHAIRMAN HONIGBERG: Ms. Weathersby.

19 MS. WEATHERSBY: I think you run into a  
20 little bit of trouble with that approach in that uses can  
21 change. What is a campground now may become industrial,  
22 and vice versa. And, so, if you plan for the project on X  
23 date, five years later it could really have a negative  
24 impact on someone trying to sleep.

1                   CHAIRMAN HONIGBERG: Commissioner Scott.

2                   COMMISSIONER SCOTT: So, what I'm trying  
3 to articulate is that, and maybe just the property line  
4 period, but let's say I'm a -- I own huge tracts of land,  
5 for foresting, let's say. So, I own hundreds and hundreds  
6 of acres. Should they be, and there's no buildings,  
7 nobody is staying there, etcetera, do we want to hold that  
8 same standard to if it's your backward? It's an open  
9 question, but I guess that's -- because my concern is, if  
10 we just say "property line", it doesn't matter at that  
11 point. Cleaner, perhaps. And, I guess we have to decide  
12 what our goal here is.

13                   DIRECTOR MUZZEY: Well, certainly, we've  
14 heard some information from Bill that trees do serve a  
15 buffer for sound, when they're in large enough quantities.  
16 So, I immediately thought in my mind that, if you had  
17 large tracks of forested land, that they would serve as a  
18 natural buffer for sound hopefully.

19                   COMMISSIONER SCOTT: But, again, I think  
20 that's why we have used in the past the side of the  
21 building, effectively, to get around all that. That was  
22 the other end of that, that's the simplest way on that  
23 end, I guess.

24                   DIRECTOR MUZZEY: Although, we did

1 receive a lot of comments requesting a change to "property  
2 line".

3 COMMISSIONER SCOTT: Correct.

4 CHAIRMAN HONIGBERG: Commissioner  
5 Burack.

6 VICE CHAIRMAN BURACK: I don't mean to  
7 complicate this any further than it already is, but I  
8 agree with much of what Commissioner Scott suggested here,  
9 which I think is consistent with the language that is in  
10 this Draft that, is it 301.14(f)(2), subpart a.

11 But we do have this issue of  
12 non-participating landowners versus participating  
13 landowners. We also have the challenge that this language  
14 here makes reference to "existing occupied buildings", and  
15 we don't have a definition of what is or is not an  
16 "occupied building". So, I think we're going to need to  
17 define that.

18 I guess I'm assuming that, by an  
19 "occupied building", we meant a residence of any type.  
20 But it could be a facility that's used for any purpose  
21 that has people in it regularly.

22 And, Attorney Wiesner, I don't know if  
23 you had any particular thoughts on what that means? But  
24 I'm wondering whether we need to go to this

1 industrial/commercial issue, given that it appears we're  
2 going to have this overlay. And, I believe we agreed last  
3 time of defining what it means to be a "participating  
4 landowner" in a project and requiring disclosure of where  
5 those lines are, effectively, by disclosing who is a  
6 participating landowner that, I assume, has an agreement  
7 with a party to accept some particular imposition on their  
8 property rights otherwise.

9 MR. WIESNER: It sounds like we may be  
10 moving in a direction where we're going to look at the  
11 property line, but we're also -- there is some sense that  
12 perhaps how that property is used is relevant for what  
13 level should apply or whether any level should apply.  
14 And, I guess I would raise the issue of "what if it's a  
15 vacant lot?" If someone owns the property, maybe they're  
16 not participating, but there's no occupied structure on  
17 that property. So, should those sound limits even apply  
18 then? Or, should that be a matter for a waiver request by  
19 the applicant, to say "even though my study shows that  
20 this property will have sound levels which may exceed the  
21 limit, please disregard that, because it's currently not  
22 occupied." Then, to Director Muzzey's point, I think that  
23 that change -- that property usage may change over time  
24 and someone may move in.

1                   In terms of commercial/industrial, I  
2                   guess one way to distinguish it perhaps might be, and I  
3                   don't know exactly how to do this definitionally, but, if  
4                   it's a property where people sleep at night, if it's used  
5                   for residential purposes, even if it's temporary,  
6                   overnight residential purposes, in the nature of a  
7                   campground or a B&B, maybe that's subject to, you know, a  
8                   lower nighttime limit, which would not apply if it's used  
9                   for an auto body shop, which is only being used during the  
10                  day.

11                  So, I'm probably just muddying the  
12                  waters further, but that's, you know, I think we run into  
13                  a number of issues regardless of how we approach this.  
14                  And, I'm not sure the "occupied building exterior wall"  
15                  was the best way to go. But designating the property line  
16                  doesn't necessarily relieve us of considering these other  
17                  questions as well.

18                  CHAIRMAN HONIGBERG: Director Muzzey.

19                  DIRECTOR MUZZEY: Given that we're  
20                  considering noise in this discussion, perhaps we don't  
21                  need to further distinguish as to industrial, commercial,  
22                  sleeping or non-sleeping, but we could potentially allow  
23                  the concept of ambient levels of noise make that  
24                  differentiation for us. If it's an industrial property,

1 it may be -- it may be noisy. Certain types of industry,  
2 of course, are not noisy at all. And, if we continue to  
3 have some sort of consideration of the ambient noise, then  
4 maybe that's enough to differentiate between properties  
5 that are very affected by a new facility, versus not so  
6 much.

7 CHAIRMAN HONIGBERG: That makes sense to  
8 me. Commissioner Burack.

9 VICE CHAIRMAN BURACK: Well, we're still  
10 going to need a point at which the test or the measurement  
11 can be done to both get the baseline background to do  
12 predictive modeling, and ultimately to determine whether  
13 or not a facility is or is not compliant. And, so, we are  
14 going to have to designate effectively a point of  
15 compliance. It's the same issue we have when we're  
16 monitoring air quality, for example. What is the point of  
17 compliance? Is it at the top of a smokestack or is it at  
18 the boundary line of a facility?

19 I'm inclined to think that the place to  
20 measure, as a general matter, is at a property line. But  
21 I'm -- as I'm reading this language here, it refers to  
22 "non-participating landowner's property line if it is less  
23 than 300 feet from an existing occupied building." I  
24 think this is coming more to Attorney Weathersby's

1 comments about providing some kind of a -- of a zone there  
2 that is going to be protected, rather than necessarily  
3 being right up at the exterior wall.

4 CHAIRMAN HONIGBERG: So, if we can  
5 define "occupied building", come up with -- that's not a  
6 currently defined term, but it's built in here, then we  
7 can essentially use the language that's here, can't we?

8 VICE CHAIRMAN BURACK: I think we could.

9 CHAIRMAN HONIGBERG: Other thoughts?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: All right. Seeing  
12 none, let's move to the next issue. Off the record.

13 (Brief off-the-record discussion  
14 ensued.)

15 CHAIRMAN HONIGBERG: Okay. We're going  
16 to take a break for ten minutes, come back at 25 minutes  
17 to 11:00.

18 (Whereupon a recess was taken at 10:25  
19 a.m. and the meeting resumed at 10:43  
20 a.m.)

21 CHAIRMAN HONIGBERG: We're going to  
22 continue with noise level. I thought we were done, but  
23 we're not.

24 Within the proposed rule, there was a

1 provision that would -- that says "can't be exceeded for  
2 more than three minutes within any 60 minute period".  
3 And, there are a number of commenters who think that that  
4 should be removed. So, let's talk about that for a  
5 minute, or for three minutes. Commissioner Burack.

6 VICE CHAIRMAN BURACK: Just as a  
7 question for Attorney Iacopino. Have we, in any of our  
8 prior decisions, built in any exceptions of this kind, do  
9 you recall?

10 MR. IACOPINO: I want to say that back  
11 in the late '90s there may have been that kind of  
12 specificity in either the Newington energy facility or the  
13 AES Londonderry gas plants. I do recall that there were  
14 some specifics in those about pure tones and things like  
15 that. And, there may have been this, you know, hour  
16 limit, minutes per hour limit. But I don't recall in any  
17 of the -- and, certainly, I don't recall that in any of  
18 our wind cases. Now, that may have been in some of the  
19 sound studies that have been presented to you in the  
20 course of those proceedings, but I don't recall that --  
21 about that sort of limitation, those sort of criteria  
22 finding there way into an ultimate decision.

23 VICE CHAIRMAN BURACK: And, if I may, do  
24 you have an understanding, and I simply don't recall from

1 the comments, what the rationale is that's given for  
2 including this kind of an exception? And, I notice that  
3 the comments from at least one of the industry groups  
4 leaves that language in, whereas the comments from New  
5 Hampshire Wind Watch takes it out, and then some others  
6 leave it in. So, I'm just trying to understand what's  
7 the -- what's the rationale here? Is it the trucks  
8 backing up issue? Is it that winds can be variable at  
9 different times, and so you may have occasional instances  
10 where winds just carry more noise farther? Do you have  
11 any sense of that?

12 MR. IACOPINO: I think the concern is  
13 for excessive noise over a short period of time that  
14 doesn't, if you measure the noise, you're measuring it  
15 over a longer period of time. And, that this is an  
16 additional limiter, so that there's not a excessive amount  
17 of noise for a short period of time. I think that's the  
18 rationale. I'm trying to -- I'm informed that we may have  
19 had something like that in the Antrim Wind decision, which  
20 I'm trying to pull up as we speak.

21 VICE CHAIRMAN BURACK: So, you're saying  
22 this -- this is to protect against sort of excessive use  
23 of an averaging approach as a way of tolerating higher  
24 levels at some times and much lower levels at others?

1 MR. IACOPINO: Yes.

2 VICE CHAIRMAN BURACK: Thank you.

3 CHAIRMAN HONIGBERG: Attorney Wiesner,  
4 did you want to say something? It looked like you were  
5 pulling the microphone towards you at one point.

6 MR. IACOPINO: He was just trying to get  
7 it away from me.

8 MR. WIESNER: Yes. And, I pushed it  
9 back. I mean, this is a very limited tolerance for an  
10 exceedance. And, it's possible that it's built into some  
11 of the noise levels, in order to permit the facility an  
12 opportunity to, for instance, implement whatever operating  
13 changes might be necessary to reduce the noise level at a  
14 given point in time.

15 CHAIRMAN HONIGBERG: Thoughts?  
16 Comments? Director Muzzey.

17 DIRECTOR MUZZEY: I would again defer to  
18 the SB 99 consensus findings, if it's mentioned there, to  
19 go with that group's determinations.

20 CHAIRMAN HONIGBERG: Does anyone know  
21 off the top of their heads if the SB 99 Group had that  
22 within what was consensus? I don't see it. But I have a  
23 question about the significance of the "weighted average"  
24 or the "weighted equivalent sound levels". I mean,

1 those -- we are talking about a fluctuating sound level,  
2 are we not? And, it's the -- there's some sense it's  
3 going to be higher and lower, and that the average can't  
4 be exceeded, is that not right? And, then, this provides,  
5 to the extent that it is higher, it can only be higher for  
6 a very short period of time. If you removed that, would  
7 that not allow higher levels more, if, ultimately, the  
8 average is what we're talking about? Because, if it were  
9 quiet for long periods of time, would that not allow you  
10 to run at a much noisier level at other times? Can  
11 anybody answer that?

12 VICE CHAIRMAN BURACK: Well, first, I  
13 just would ask of, again, those who understand this better  
14 than certainly I think I do, are we, in fact, talking  
15 about averages here? When we're talking about an  
16 "A-weighted sound level", an "A-weighted equivalent sound  
17 level", are we talking about an average or are we talking  
18 about an instantaneous measurement?

19 DIRECTOR MUZZEY: I had the same  
20 question as well. Given that, Paragraph A, under sound  
21 standards, does not use the term "average". It says  
22 "During operations shall not exceed the greater of 45 dBA,  
23 or 5 above ambient level, between 8:00 and 8:00, and the  
24 greater of 40, or 5, at other times during the day."

1           I know that it's probably been practiced  
2           in sound studies just to average out the sounds. But this  
3           particular rule, as currently drafted, does not say  
4           "average".

5                         CHAIRMAN HONIGBERG: Attorney Iacopino.

6                         MR. IACOPINO: I think the term  
7           "average" is probably the wrong term to be using.  
8           That's -- I don't think it's an "average", I think it's  
9           a -- and I can't tell you exactly how the measurement is  
10          made, but it is a measurement that they're talking about,  
11          when you talk about the dBA level, it is measured over  
12          time. And, that's why -- so that you could be -- I'm not  
13          sure that it is an average, but there is some measurement  
14          that is made.

15                        I don't know, I'm not the engineer that  
16          can make those sound level assessments. But I think that  
17          this particular clause is in there for precisely to stop  
18          if there is a loud noise for more than a period of time.

19                        I did look at the Antrim order, and the  
20          Antrim is the same as the other ones we've had. It's just  
21          a limit. Whereas this language of "not to exceed" -- "not  
22          to exceed exceedance levels for up to three minutes within  
23          any 60 minute period" is not in there.

24                        However, as I said before, I do recall

1 that, when these sound studies are presented to us, we  
2 often see sections of the sound study that address these  
3 types of issues, in the studies themselves.

4 CHAIRMAN HONIGBERG: Commissioner  
5 Burack.

6 VICE CHAIRMAN BURACK: And, to your  
7 recollection of those studies, when they talk about this  
8 issue, do they talk about specific factors contributing to  
9 these higher periods of noise? For example, is it this  
10 issue, as Mr. Oldenburg was saying, of backup alarms on  
11 vehicles that can cause a higher noise level for a short  
12 period of time or is it something else that's  
13 contributing?

14 MR. IACOPINO: My recollection, and I  
15 don't have any of the sound studies' estimates in front of  
16 me, but my recollection is that it's really something that  
17 comes from some of the various standards that the sound  
18 experts have brought before us, like the WHO guidelines  
19 and -- the World Health Organization guidelines, the EPA  
20 levels guidelines. There's a number of those during  
21 various -- at various times that are presented to us.  
22 And, my recollection is this type of language being used  
23 in explaining those various directives from social  
24 agencies.

1                   VICE CHAIRMAN BURACK:  What I would like  
2   to ask then, is that Staff take a look at those documents  
3   or the types of documents that Attorney Iacopino just  
4   described, and see if there is a standard way in which  
5   this issue is addressed.  Whether it's by World Health  
6   Organization or other recognized entities that have  
7   studied this issue extensively.  And, come back to us and  
8   tell us what, you know, how those other entities do  
9   address this issue, if at all.

10                   And, if there seems to be some sort of  
11   standard approach within those, then we may want to adopt  
12   those.  Otherwise, I could see us either staying with  
13   what's here, again, if there seems to be some basis in  
14   some standard out there.  Or, alternatively, we leave it  
15   out.  And, this would be an -- if somebody feels they need  
16   a waiver from this, they could seek a waiver and give us  
17   reasons why, at a particular site, they need to be able to  
18   exceed for some period of time, based on particular  
19   site-specific factors or facility-specific factors.

20                   CHAIRMAN HONIGBERG:  Any other thoughts  
21   or comments?

22                   (No verbal response)

23                   CHAIRMAN HONIGBERG:  All right.  Seeing  
24   none, let's talk about shadow flicker.

1                   And, again, we have, as we did with  
2                   sound, we have a methodology consideration, and then a  
3                   criteria -- criterion consideration. So, let's start with  
4                   the methodology.

5                   (Short pause for members to review  
6                   comments provided.)

7                   CHAIRMAN HONIGBERG: This is an area  
8                   where the SB 99 Group identified certain areas of  
9                   consensus, and didn't necessarily offer rules language,  
10                  but did identify some issues in which there seemed to be  
11                  agreement. I'm not sure if the language in the Initial  
12                  Proposal captured all of the areas of agreement. I  
13                  believe one of the commenters, identified as last name  
14                  "Watson", I think essentially quoted from the SB 99 Report  
15                  as to what should be included. And, there are some other  
16                  suggestions as well that we've received.

17                  Commissioner Scott.

18                  COMMISSIONER SCOTT: Again, I'll start  
19                  with more of a question for educational -- for my  
20                  education than anything else. So, when I look at the  
21                  draft rule we have, which is I think 301.08(a)(2), I  
22                  think, which is Page 10 of the Initial Proposal.

23                  VICE CHAIRMAN BURACK: I'm sorry, what  
24                  was the citation again?

1 COMMISSIONER SCOTT: It's on Page 10 of  
2 the Initial Proposal, the very bottom, I believe it's --  
3 it's hard to follow the pagination here, but --

4 CHAIRMAN HONIGBERG: It's 301.08(a)(2).

5 VICE CHAIRMAN BURACK: Thank you.

6 COMMISSIONER SCOTT: Thank you. So, if  
7 we're all there? So, the very bottom of that page, I'm  
8 just questioning, and I think that's -- some of the  
9 comments have gone there. So, we have defining the "most  
10 conservative case scenario". And, so, one question I  
11 have, when I read that, is do we know what that is and how  
12 do you define the "most conservative case scenario"? And,  
13 we do give, which is commented on, we do give some, a  
14 little bit more guidance in the rule here, including the  
15 "astronomical maximum shading duration".

16 So, my question is, is, even independent  
17 of the comments, I suppose, is the "most conservative case  
18 scenario", is that -- are we providing enough guidance  
19 when we say that? What does that mean?

20 VICE CHAIRMAN BURACK: I believe that  
21 where that's addressed is actually in the SB 99 Area of  
22 Agreement that's described in Table 2.a there, that really  
23 talks about the "astronomical maximum (worst case) and  
24 anticipated hours per year of shadow flicker" for various

1 types of facilities, and also "roadways". Again, I'm  
2 putting aside for a moment the question of "what specific  
3 types of facilities we might address?" But I think that  
4 this term "astronomical maximum" seems to be an area of  
5 consensus. Although, certainly, we saw comments that  
6 suggest that conditions with the moon in the background  
7 should be considered, and also the comments from Mr. Ward  
8 suggesting that there may be other factors that could  
9 contribute, such as reflective snow, ice, and water  
10 surfaces, as well as brightness contrast issues, among  
11 others perhaps, that would also be important to factor in.

12 But what's -- I think what's challenging  
13 here is this is clearly an evolving area, an evolving  
14 discipline. And, it does not appear that there is a real  
15 sort of scientific consensus as to (a) what the real sort  
16 of issue is, and (b) then how to describe it and how to  
17 measure it. And, so, I think we're -- that's the  
18 challenge that we have here.

19 And, certainly, we can see that, in  
20 Germany and in Denmark, you know, they have taken certain  
21 regulatory approaches there. But, again, they, you know,  
22 there doesn't appear to be a whole lot of consistency  
23 between those two approaches either.

24 So, that's -- that's the challenge we

1 have. But I do think, if we could focus on an  
2 "astronomical maximum" notion, and then consider whether  
3 or not we want to build in moon or other factors, such as  
4 Mr. Ward has suggested.

5 CHAIRMAN HONIGBERG: Other thoughts?  
6 Comments?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: People are  
9 pondering and reading, I think.

10 COMMISSIONER SCOTT: So, could I --

11 CHAIRMAN HONIGBERG: Commissioner Scott.

12 COMMISSIONER SCOTT: For the Vice Chair.  
13 So, would you -- is your suggestion, not to put words in  
14 your mouth, that, rather than say the "most conservative  
15 scenario", we just go right to the "astronomical maximum"?

16 VICE CHAIRMAN BURACK: Absolutely. I  
17 think the more explicit and the more specific we can be in  
18 this arena, the less likelihood is we're going to have  
19 disagreements as to what study is required, and then  
20 whether the study was done properly or not.

21 COMMISSIONER SCOTT: Well, I do think,  
22 in this case, we need to be more specific, I think.  
23 Because I think, otherwise, we'll end up with endless  
24 debate over what is "most conservative", I'd suspect.

1 VICE CHAIRMAN BURACK: Right.

2 CHAIRMAN HONIGBERG: Attorney  
3 Weathersby.

4 MS. WEATHERSBY: I think it might be  
5 helpful, too, as it has been suggested, that we define  
6 "astronomical maximum". So, we're all -- it's clear what,  
7 you know, that's a shading duration, and, you know, just  
8 define it so everyone understands it, because, you know, I  
9 didn't know what it was.

10 CHAIRMAN HONIGBERG: Commissioner Scott.

11 COMMISSIONER SCOTT: So, this section  
12 that we're discussing right now, my understanding is this  
13 is just what the report should evaluate. So, the comments  
14 kind of, well, not "kind of", they add a concept of "and  
15 how often". So, and again, I think it's important that we  
16 define, tell developers, tell the public what we're  
17 expecting here. Right now, the language is rather vague,  
18 just "Include a report evaluating the shadow flicker",  
19 *etcetera*. So, perhaps -- I guess we do have it here, at  
20 the very end, I missed, I apologize. So, we have the  
21 "maximum shading duration". Is that sufficient? And,  
22 there's also a thought in the comments about, for the  
23 modeling, "how far away is it modeled also?"

24 CHAIRMAN HONIGBERG: Director Muzzey.

1                   DIRECTOR MUZZEY: The other difference  
2 that I see from our current draft is, rather than using  
3 the language of "all buildings occupied or used for  
4 another purpose", we have a list of types of buildings,  
5 and even including "roadways" and "public gathering areas  
6 (outdoor or indoor)". So, there were comments wishing to  
7 make this more specific, instead of more general, as well  
8 as to the types of places this matters.

9                   CHAIRMAN HONIGBERG: I mean, as I said,  
10 that list of those specific titles that are in the Watson  
11 comments, that is almost a verbatim --

12                   DIRECTOR MUZZEY: From SB 99?

13                   CHAIRMAN HONIGBERG: -- from the SB 99  
14 Report. I assume the indoor gathering areas would have to  
15 have windows, in order for the shadow flicker to be  
16 relevant to them?

17                   DIRECTOR MUZZEY: Even we have two  
18 windows.

19                   CHAIRMAN HONIGBERG: Yes, Roger.

20                   MR. HAWK: I'm having a little trouble  
21 on the alternative proposed by Mr. Ward. There's a  
22 comment about impacts on streets and roads. And, I'm  
23 having trouble figuring out why that's even an issue? I  
24 mean, driving down a highway, and I -- take any non-summer

1 season, when you have foliage on and off and you go by and  
2 there are shadows in the road. But what is that -- what's  
3 the importance of that? I don't get it.

4 DIRECTOR MUZZEY: I would turn to our  
5 representative from DOT, to see whether he has any  
6 knowledge of this being a concern on roadways.

7 CHAIRMAN HONIGBERG: Just before you --  
8 just while you're thinking about that, the Watson comments  
9 include roadways, but roadways are not, as I'm scanning  
10 the SB 99 Report, I don't think there is, at least aware  
11 of any.

12 VICE CHAIRMAN BURACK: The Item 2  
13 there, --

14 CHAIRMAN HONIGBERG: Oh, "roadway that  
15 falls" --

16 (Court reporter interruption.)

17 VICE CHAIRMAN BURACK: I'm sorry. In  
18 Table 2.a, at the end of Item 2 there, it reads "and  
19 roadway that falls within the study area."

20 CHAIRMAN HONIGBERG: Right. So, it is  
21 included.

22 VICE CHAIRMAN BURACK: Right.

23 CHAIRMAN HONIGBERG: And, that's in the  
24 areas of consensus from the SB 99 Group.

1                   So, Mr. Oldenburg, is there an answer to  
2 this question that you know of?

3                   MR. OLDENBURG: Our opinion, the less  
4 shadow there is in the road, the better it is, because it  
5 melts -- the Sun melts the ice better, but --

6                   (Laughter.)

7                   MR. OLDENBURG: I am not sure from that  
8 statement. I guess my only comment, not pertaining to the  
9 roadway part of it is, there's a report that's going to be  
10 done. And, what is that report going to be used for?  
11 Everywhere else we have sort of limits, and that is, if  
12 the report shows that a house is going to be totally, you  
13 know, have flicker every day of the year, is there a  
14 criteria that has to be met for a "yes"/"no"? Is it --  
15 it's elsewhere, right?

16                  CHAIRMAN HONIGBERG: Yes. That's the  
17 301.14(f)(2) later in the document, --

18                  MR. OLDENBURG: So, that's later. Okay.

19                  CHAIRMAN HONIGBERG: -- has the  
20 placeholder for the standard. And, the next page of the  
21 summary sticks up the comments from various people about  
22 what that standard should be. How much --

23                  MR. OLDENBURG: So, this is just what  
24 the report needs to contain.

1 CHAIRMAN HONIGBERG: Correct.

2 VICE CHAIRMAN BURACK: Again, I'm not  
3 schooled in this issue, but I would assume that the  
4 particular concern, with respect to shadow flicker on a  
5 roadway, would just be a safety concern of a constant or a  
6 very regular movement from light to dark, light to dark,  
7 and that's what I'm assuming is the issue here. But I  
8 don't recall seeing anything specific in the written  
9 comments that we received, or really seeing anything in  
10 the SB 99 Report, unless I missed it, that really  
11 describes what the specific nature of the concern is, if  
12 it's something other than that.

13 MR. OLDENBURG: I, from a Transportation  
14 standpoint, I can't -- not that I'm aware of. I mean, you  
15 can see it from day-to-day, as you drive down the road,  
16 either early in the morning or late at night, when the Sun  
17 is low, and you're driving down the road and the Sun is in  
18 the trees. And, you can see the -- you sort of go through  
19 almost a flicker as you pass by those trees and the  
20 shadows of those trees, and sometimes it's annoying,  
21 especially when it's from the side. But I don't know of  
22 anything that, from a Transportation standpoint, that we  
23 would look at with regards to that.

24 CHAIRMAN HONIGBERG: For me, it's

1 actually, that there was consensus in the SB 99 Workgroup  
2 that it is an issue, tells me that it's probably an issue.  
3 And, it's got to be safety. There's no other thing it  
4 could be, really.

5 MR. WIESNER: If I can just jump in,  
6 I'll note, this is looking at Table 2.a of the OEP Report  
7 that the Vice Chairman referred to, it appears that there  
8 was consensus that roadway -- that the effects in roadways  
9 within the study area of the potential shadow flicker  
10 should be studied. But, then, when he talk about  
11 limitations on shadow flicker, and this is in Bullet 3 in  
12 Table 2.a, it does not list "roadways". It just lists  
13 "residences, learning places, workplaces, health care  
14 settings, [and] public gathering areas (outdoor and  
15 indoor)". And, the proposed rules contain the word  
16 "occupied building", which, you know, very well covers  
17 "residences, learning spaces, workplaces, health care  
18 settings", but doesn't cover "outdoor public gathering  
19 areas", because there would be no building, I guess, by  
20 definition.

21 So, it seems that there may not have  
22 been consensus that roadways need to be subject to a  
23 shadow flicker limit. Although, there was consensus,  
24 apparently, that they would be subject to the study.

1 CHAIRMAN HONIGBERG: Indeed, in the  
2 areas where there was not agreement in the Report, it  
3 notes that at least one suggester, in Table 2.b, the very  
4 last line, "whatever the limit, it should not apply to  
5 roadways", is what one -- at least one person in that  
6 working group thought was the right answer with respect to  
7 roadways. It does seem that there is consensus that the  
8 Report should include it.

9 Director Muzzey.

10 DIRECTOR MUZZEY: From what I'm hearing  
11 of SB 99, it refers to "the study area". And, we do -- we  
12 have gone back and defined the "area of potential visual  
13 effect", although I'm not sure we have defined the "study  
14 area". And, so, I think we need to decide whether or not  
15 we want to put some sort of distance limit on where shadow  
16 flicker will be studied, or if we are just looking for a  
17 report that summarizes everywhere the shadow flicker may  
18 happen.

19 CHAIRMAN HONIGBERG: New Hampshire Wind  
20 Watch says "1.5 miles", Watson says "2 miles".

21 DIRECTOR MUZZEY: SB 99 says "the study  
22 area". And, as the rule is drafted, it just -- it doesn't  
23 say that. So, we are to assume that anywhere there is  
24 shadow flicker it's being reported in what's submitted

1 with the application materials.

2 CHAIRMAN HONIGBERG: I agree with you.

3 MR. WIESNER: That's correct. And, it  
4 also is noted as an "area without agreement", in Table 2.b  
5 in the OEP Report, "Distance at which shadow flicker is a  
6 problem". And, you will often see in the literature "10  
7 times rotor diameter width". But, then, alternatively,  
8 there's "one mile", "6,200 feet", which is more than a  
9 mile, or, you know, the assumption that it could be a  
10 problem at any distance and should be subject to study  
11 with respect to each particular location.

12 So, it seems that this is an area where  
13 it may be difficult or at least a challenge to pick the  
14 right distance and build it into the rules.

15 DIRECTOR MUZZEY: Although, as it's  
16 drafted now, the language says "defining the most  
17 conservative case scenario". So, we're back to that  
18 language. And, if it's "most conservative", then anywhere  
19 that the shadow flicker exists.

20 CHAIRMAN HONIGBERG: Probably. Does  
21 anyone want to put a limit on or should we just stick with  
22 what seems to say "wherever you can find it, you've got to  
23 report it"?

24 DIRECTOR MUZZEY: Given no compelling

1 reason for the other distances, I would suggest that we  
2 leave the language as drafted.

3 CHAIRMAN HONIGBERG: You want to grab  
4 "6,200 feet", as in Mason County, Michigan?

5 DIRECTOR MUZZEY: Haven't been there.

6 CHAIRMAN HONIGBERG: Other thoughts or  
7 comments on this?

8 (No verbal response)

9 CHAIRMAN HONIGBERG: Do we think we  
10 should add the more specific language that comes from the  
11 SB 99 Report?

12 DIRECTOR MUZZEY: That would be  
13 consistent with our other decisions today.

14 VICE CHAIRMAN BURACK: When you say "the  
15 more restrictive language", what are you referring to?

16 CHAIRMAN HONIGBERG: I didn't say  
17 "restrictive". I said "specific".

18 VICE CHAIRMAN BURACK: "More specific".  
19 Which language are you referring to?

20 CHAIRMAN HONIGBERG: Essentially, what's  
21 in Table 2.a.

22 VICE CHAIRMAN BURACK: Okay. Well,  
23 certainly, I think the language in Table 2.a, to the  
24 extent that it converts to regulatory language, would make

1 sense to -- would make sense to include. I guess I'm a  
2 little troubled by this notion of "you've got to identify  
3 shadow flicker wherever it may exist", because I'm just --  
4 there must be a point at which it becomes sufficiently  
5 attenuated that it's really not an issue. And, I think we  
6 could -- we could make it very difficult for people to  
7 know what's appropriate and what's necessary in terms of  
8 study here.

9 So, I guess my inclination would be to,  
10 and I don't know if this is arbitrary or not, but to pick  
11 a specific distance from a turbine, and it's either, I  
12 mean, the two different numbers we've got in front of us  
13 here, at least in what's been proposed to us, is either  
14 "1.5 miles" or "2 miles". And, I guess my inclination  
15 would be just to pick one of those and see if we can make  
16 that work.

17 CHAIRMAN HONIGBERG: Well, from the SB  
18 99 Report, we've also got "one mile" and "10 times the  
19 rotor diameter width". How big is a rotor diameter,  
20 roughly?

21 MR. WIESNER: And, that may differ. You  
22 know, these turbines keep getting bigger. And, one of the  
23 problems with picking a specific number of feet is that,  
24 as the turbines get larger, maybe you're going to see the

1 600-foot turbine with even larger rotors, and that could  
2 have an effect potentially that extends beyond, you know,  
3 the one mile limit.

4 CHAIRMAN HONIGBERG: So, a 600 or a  
5 620-foot rotor would get you to the 6,200 feet in Mason  
6 County, Michigan.

7 MR. WIESNER: That's correct. I don't  
8 think the rotors are that big. But we can figure out what  
9 the math might be, I think, and maybe use that as a  
10 guideline.

11 I guess I will point out as well that,  
12 you know, the SB 99 Report has a more specific list of the  
13 types of buildings that will be considered. But, in one  
14 sense, it is more restrictive than using "occupied  
15 building". Because, if you don't fall within the  
16 definition of "residence, learning space, workplace,  
17 health care setting, or public gathering area", you  
18 wouldn't be covered. And, I'm not saying that's a  
19 problem, I'm just pointing it out.

20 VICE CHAIRMAN BURACK: And, maybe this  
21 gives us some insights into how we might define "occupied  
22 building" or "occupied space", to include all of those,  
23 indoor and outdoor, potentially, and maybe then some  
24 catch-all language as well.

1           Mr. Chairman, maybe the way to leave  
2 this issue is to ask Staff if they could take a further  
3 look at this, in terms of where -- what standards have  
4 been adopted, in terms of distances elsewhere, and help us  
5 understand a little better what the rationales are for  
6 different instances.

7           CHAIRMAN HONIGBERG: Director Muzzey,  
8 then Commissioner Scott.

9           DIRECTOR MUZZEY: I second the thought  
10 that Commissioner Burack just summarized. Particularly,  
11 when it comes to the list of specific locations where this  
12 would happen, because it's easy to consider places that  
13 aren't on this more specific list. And, I will come back  
14 to the idea of tourism again, but a lot of them do relate  
15 to our tourism industry. And, so -- and, at least the  
16 ones I'm thinking of at the moment. So, I would  
17 appreciate a more general definition of those occupied  
18 places as well. And, it would help to have Staff take a  
19 stab at that, so we could think further about it.

20           CHAIRMAN HONIGBERG: Commissioner Scott.

21           COMMISSIONER SCOTT: So, building on  
22 your comment just now, I'm trying to envision a occupied  
23 building that doesn't -- isn't in the Table 2.a, number 2,  
24 one of those, "residence", "learning space, "workplace"

1 that's pretty broad, "health care setting", "public  
2 gathering area". I'm struggling to figure what doesn't  
3 fall into that. You know, what would that be missing, I  
4 guess? Because the implication is is this is not  
5 sufficient, so it should be more general to include  
6 everything.

7 DIRECTOR MUZZEY: I can tell you the two  
8 places that had popped into my mind. One would be a  
9 library. Although, you could call that potentially a  
10 "public gathering area". And, also, I was thinking of,  
11 you know, some of our historic villages and, say, a  
12 country store, where tourists would go. You know, we have  
13 a number of those that have been in operation for decades,  
14 if not centuries, here in New Hampshire. And, I didn't  
15 see how that would fit into one of those categories.

16 CHAIRMAN HONIGBERG: Commissioner Scott.

17 COMMISSIONER SCOTT: Wouldn't, even a  
18 general store, wouldn't that be considered a workplace for  
19 somebody?

20 CHAIRMAN HONIGBERG: And, if you're  
21 looking at the Watson comments, Watson did not include  
22 "workplace".

23 DIRECTOR MUZZEY: Yes, and nor did Wind  
24 Watch.

1 CHAIRMAN HONIGBERG: But Table --

2 COMMISSIONER SCOTT: 2.a.

3 CHAIRMAN HONIGBERG: Table 2.a did.

4 DIRECTOR MUZZEY: Okay. I'm sorry. I  
5 wasn't looking at 2.a.

6 CHAIRMAN HONIGBERG: I had a feeling  
7 that was the case.

8 DIRECTOR MUZZEY: Okay.

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: Perhaps we could  
11 ask Attorney Wiesner, since he has nothing to do all day,  
12 just to help us tease out if -- I'm in favor of using the  
13 language in Table 2.a, sub 2, because I think it captures  
14 everything that I can see. But, you know, maybe you can  
15 help think on would there be exclusions that we don't need  
16 to make if we were to do that, so maybe that would help  
17 the discussion. As a homework assignment, I suppose.

18 MR. WIESNER: I think the sense of the  
19 list is "where people spend a significant amount of time".  
20 And, that's consistent with the view that shadow flicker  
21 presents a public health risk, not merely an annoyance  
22 when it occurs. And, therefore, we want to determine  
23 where people are spending time, which may be an outdoor  
24 public gathering space or it may be a place of business.

1 And, I guess "workplace", and, again, we can play with the  
2 terminology, but I think we can come up with language that  
3 covers what needs to be covered. Whether it's "occupied  
4 building, plus public gathering space" or some other  
5 formulation, I think we can spend some time trying to  
6 develop that language.

7 CHAIRMAN HONIGBERG: One more general  
8 thought I have, and this is an area where I think this  
9 might be useful, is that, assuming the Legislature does  
10 extend the deadline to November, one thing that might make  
11 sense to do would be to convene some sort of technical  
12 session, for stakeholders to come together and perhaps  
13 come up with language in some of these places that goes  
14 beyond general agreements, like you see in the SB 99, to  
15 actual language that would do that. That's something that  
16 I know some people have floated as a possibility, which  
17 sounds appealing to me in the moment.

18 MR. WIESNER: We've had some interest  
19 expressed from various stakeholders in having that type of  
20 session. And, in other contexts, that's been very helpful  
21 in hammering out language and fleshing out issues.

22 CHAIRMAN HONIGBERG: Anybody disagree  
23 with that?

24 (No verbal response)

1                   CHAIRMAN HONIGBERG: Thought not. I  
2 think also lurking in this question is whether the moon  
3 needs to be included in this. A couple of comments talk  
4 about shadow flicker caused by the moon.

5                   Commissioner Burack.

6                   VICE CHAIRMAN BURACK: Well, again, just  
7 reading here in the SB 99 Report, this Footnote 2, on,  
8 again, pages are not numbered, but it's in Section 2 of  
9 "Key Findings on Shadow Flicker". The footnote reads  
10 "There was some discussion within the work group on  
11 whether moon light could create the same shadowing effect.  
12 No formal evidence was available to suggest moon flicker  
13 is a problem."

14                   And, again, it may just be that this is  
15 something that we would, if we do have more time, and we  
16 can convene a -- some kind of a technical group or work  
17 group on this, to further understand that issue of moon  
18 flicker, and also to perhaps further explore some of  
19 the -- some of the thoughts raised by Mr. Ward, regarding  
20 whether or not reflective surfaces also contribute to this  
21 or whether there are other seasonality or intensity issues  
22 involved that would cause other factors beyond just the  
23 Sun to have to be considered.

24                   So, my recommendation would be for the

1 moment, we proceed on the assumption that we, you know,  
2 we're trying to be in a position to be able to have  
3 something ready in time for July 1, unless we have a  
4 deadline extension. I'm going to suggest we just focus on  
5 the issue with the Sun for the moment. If we have more  
6 time, then we go and we look at these other issues in  
7 greater depth.

8 CHAIRMAN HONIGBERG: I agree with that.  
9 Any other thoughts or comments?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: All right. Let's  
12 talk about the siting criteria for shadow flicker. The  
13 section of the rules is 301.14(f)(2). It's the same page  
14 that has the sound standards, it's the next standard down.

15 (Short pause for members to review  
16 comments provided.)

17 CHAIRMAN HONIGBERG: It's Page 17 of the  
18 Rules Proposal. Commissioner Burack.

19 VICE CHAIRMAN BURACK: Again, I don't  
20 know for sure what the genesis is of this. It appears to  
21 be somewhat consistent in certain ways with what we see in  
22 Table 2.b, which is under the "Alternative Proposals for  
23 Areas Without Agreement". Again, this is in the SB 99  
24 Report section. Where there's a discussion of a "German

1 standard of 30-hour astronomical maximum per year with an  
2 actual number of 8 hours per year; limit of 30 minutes per  
3 day." But this is a much greater number of hours. This  
4 is 30 hours per year, rather than 8 hours, but it does  
5 include the "30 minutes per day" piece. But this also --  
6 this language also limits it solely to "occupied permanent  
7 residences of a non-participating landowner".

8 So, it feels as if we're in a situation  
9 where we're studying shadow flicker at -- excuse me -- a  
10 much larger number of types of facilities, not just  
11 residences, but learning spaces, workplaces, health care  
12 settings, public gathering areas.

13 But, in terms of the actual standard for  
14 determining whether there's an unreasonable adverse  
15 effect, we're basing it solely upon, or, if we were to  
16 adopt this language, be basing it solely upon impacts on  
17 occupied permanent residences. And, I'm just trying to  
18 understand, is that -- is that an appropriate sort of test  
19 or standard? Is there a reason why that same standard  
20 would only apply -- wouldn't apply to any of the other  
21 kinds of spaces that would be part of the study itself?

22 And, Attorney Wiesner, I don't know if  
23 you can shed any light on that?

24 MR. WIESNER: Well, I mean, as we just

1 discussed, there was fairly general language in the  
2 proposed rules regarding how the study would be performed  
3 and what the scope of it would be, and then this limit is  
4 restricted to residential properties. It does make sense,  
5 if the scope of the study is going to be broadened, to  
6 cover other sorts of property uses, that that would carry  
7 over here. With the, you know, with the caveat that, as  
8 noted in the OEP Report, there was some disagreement about  
9 whether roadways should be subject to a limit, although  
10 there seemed to be a consensus that they could be included  
11 in the study itself.

12 CHAIRMAN HONIGBERG: My distinct is the  
13 same as Commissioner Burack's. That there's a reason why  
14 all these types of places might be affected that should be  
15 part of the criteria evaluated. And, maybe for some it is  
16 a much less significant effect, and so it would be  
17 weighted differently when you consider how to apply those  
18 criteria.

19 But what strikes me is that, if there is  
20 a consensus that it could be a problem in all kinds of  
21 different settings, that that should be reflected in the  
22 criteria, as well as the report. And, I would say that  
23 the Wind Watch proposal I think tries to capture that I  
24 think. The Wind Watch proposal seems to match the

1 language from the Report and also in the criteria.

2 Although, perhaps can someone explain  
3 how the "30-hour astronomical maximum per year" and a  
4 "limit of 30 minutes per day" and "an actual number of 8  
5 hours per year" works? That's the -- it's cited, I mean,  
6 it's identified as the "German standard" in the SB 99  
7 Report, and it's picked up in the Wind Watch comments.

8 Attorney Wiesner.

9 MR. WIESNER: The German limit does  
10 recognize that, this is my understanding, the German limit  
11 does recognize that difference between "astronomical  
12 maximum", which is sort of a "worst case" scenario, versus  
13 the "actual number of hours where shadow flicker occurs at  
14 a site". And, a study that looks at both of those would  
15 determine both the "worst case" and the projected actual.  
16 And, then, as is noted in a number of the comments, the  
17 actual limit that's applied in Germany and Denmark is  
18 quite a bit lower than the 30 hours. In this country,  
19 it's quite common, for whatever reason, to see the limit  
20 as expressed as "30 hours per year", without  
21 distinguishing whether that's "astronomical maximum" or  
22 "actual hours".

23 And, I think that's the precedent that  
24 we've had at the Committee in prior cases, that it's just

1       been 30 hours, without distinguishing the circumstances of  
2       those hours. And, so, the proposal here, and, in  
3       particular, the Wind Watch proposal, is to recognize that  
4       distinction and basically adopt the German limit here.  
5       So, in effect, it's two limits. The perhaps more relevant  
6       one is the "8 hours actual in a given year".

7                   CHAIRMAN HONIGBERG: Mr. Oldenburg.

8                   MR. OLDENBURG: I agree. I think the  
9       language that's in there is a little bit too restrictive.  
10       I think more needs to be included. I guess my only  
11       concern --

12                   (Court reporter interruption.)

13                   MR. OLDENBURG: I guess my only concern  
14       with the wording that's in there from the Watch folks is,  
15       it lists a whole bunch of stuff, but it also has just  
16       "private property" is one of them. To me, that includes  
17       half of the other things. So, all houses and buildings,  
18       and, you know, it's either private property or town  
19       property. So, then, and we sort of talked about the  
20       roadway area. But I agree. I think it needs to be opened  
21       up a little bit more. I think of seasonal homes,  
22       campgrounds, things like that, where the flicker would  
23       have a big effect. So, --

24                   CHAIRMAN HONIGBERG: Yes. I think an

1 attempt to sneak "private property" into a laundry list of  
2 other things is probably a bit of an overreach. But  
3 that's just me.

4 Other thoughts or comments?

5 Commissioner Burack.

6 VICE CHAIRMAN BURACK: Just trying to  
7 understand this table that's in the 99 Report, under 2.4,  
8 "Other General Comments", says "shows the results of the  
9 shadow flicker modeling submitted with the four wind  
10 energy applications reviewed by the SEC." So, what we're  
11 seeing here in this Table 2.c then I gather is what the  
12 modeling for those projects identified as the potential  
13 for shadow flicker, the number of hours per year on which  
14 properties, at least in the case of Groton and Antrim, and  
15 residential properties nearby for Lempster, the number of  
16 hours affected. But it doesn't indicate whether or not  
17 there was any actual restrictions imposed by the SEC with  
18 respect to any of those projects.

19 So, Attorney Iacopino, I'm just curious  
20 to know, do you have -- do you recall whether or not there  
21 were any hour limits placed in any of those matters?

22 MR. IACOPINO: I believe there were.

23 And, I'm trying to find a specific section at least in the  
24 Groton order right now.

1                   VICE CHAIRMAN BURACK: Again, what this  
2 Table 2.c seems to indicate is that it's pretty variable,  
3 in terms of the number of hours. And, again, it's a  
4 little hard to know which properties and how close by are  
5 being assessed. But, in the Groton Project, suggests "one  
6 to three hours per year for properties near the turbines"  
7 as the maximum hours of flicker per year. Antrim suggests  
8 "10 to 22 hours per year for properties". Lempster says  
9 "More than 30 hours per year for properties close to the  
10 turbines [and] 10 to 20 hours per year for residential  
11 properties nearby." And, GRP says "Turbines remote - no  
12 shadow flicker", presumably because there just are no --  
13 there are no nearby residences or other properties that it  
14 was felt would or could be affected by a shadow flicker.

15                   CHAIRMAN HONIGBERG: Attorney Iacopino,  
16 you're scrolling through something right now, is that  
17 right?

18                   MR. IACOPINO: Yes. In the Groton Wind  
19 Project, the Committee found that the only -- I guess  
20 there was only one shadow flicker study provided, it was  
21 provided by the applicant.

22                   VICE CHAIRMAN BURACK: I would agree  
23 with that.

24                   MR. IACOPINO: And, in that study, the

1 basic conclusion was that "One percent of the study area  
2 may be affected from one to three hours per year and none  
3 would be affected more than three hours per year." And,  
4 the Committee ultimately found "Neither the intervenors  
5 nor Counsel for the Public offered evidence disputing the  
6 Applicant's shadow flicker analysis." So, there was not a  
7 limit in that particular proceeding. But they did adopt  
8 the shadow flicker report. And, these shadow flicker  
9 reports, you have to understand, they start with a  
10 computer model of what the shadow flicker would be. And,  
11 then, they go to the various receptors, and they -- which  
12 are identified, it may be somebody's home, it may be a  
13 school, it may be a day care. And, they then calculate  
14 the amount of shadow flicker that would be perceived at  
15 that particular receptor over the course of a year, and at  
16 any given time what the maximum amount would be. So,  
17 that's where we get the "30 hours, no more than 30  
18 minutes".

19 That is generally the way the reports  
20 that come to the Committee are structured. You know, they  
21 may come with different calculations, but that's generally  
22 the way that they're structured.

23 So, that was Groton Wind. And, I'm  
24 going to check Lempster for you as well.

1                   CHAIRMAN HONIGBERG: Well, we're going  
2 to be taking one more break. We're going to go through  
3 straight till 1:00, but we need to take one more break for  
4 Mr. Patnaude. So, this might be a good time to break. We  
5 can do a little research on what's in there. And, then  
6 we'd go probably for a little over an hour, to the end of  
7 the day. That make sense?

8                   (No verbal response)

9                   CHAIRMAN HONIGBERG: All right. So,  
10 we're going to break. We're going to break for ten  
11 minutes or so, and come back. Attorney Wiesner, you have  
12 something you need to say or -- all right. So, let's take  
13 a break. Thank you.

14                   (Whereupon a recess was taken at 11:38  
15 a.m. and the meeting resumed at 11:55  
16 a.m.)

17                   CHAIRMAN HONIGBERG: Attorney Iacopino,  
18 I think when we broke, we had asked you to continue your  
19 perusing of prior orders.

20                   MR. IACOPINO: Yes. And, I did check  
21 the Antrim order. They did not reach this particular  
22 issue in the aesthetics portion of that decision. In the  
23 Lempster, there was a similar statement to what I referred  
24 to in the Groton, is simply that "The study provided by

1 the Applicant indicated that there were 10 to 20 hours per  
2 year of shadow flicker, and that that was not an  
3 unreasonable adverse impact, and nobody challenged that  
4 during the course of the proceeding."

5 So, to date, although we are -- have  
6 been provided with numbers like this, we've never actually  
7 put a limitation on the certificate. And, based upon the  
8 substantive decision made by the Committee that there was  
9 not an unreasonable adverse impact.

10 CHAIRMAN HONIGBERG: Commissioner  
11 Burack.

12 VICE CHAIRMAN BURACK: Thank you very  
13 much. That's very helpful. Would I be correct in  
14 understanding that, as currently written, the statute  
15 would provide the Committee with the authority to issue  
16 conditions on a certificate for a wind facility that could  
17 require it to restrict the number of hours in which shadow  
18 flicker would occur, you know, to curtail operations,  
19 whatever else was necessary, to be able to do that? Would  
20 you think that would be a reasonable exercise of the  
21 Committee's powers and authorities?

22 MR. IACOPINO: You mean in an individual  
23 docket?

24 VICE CHAIRMAN BURACK: In an individual

1 docket, yes.

2 MR. IACOPINO: Yes. I believe under the  
3 way the statute is written right now, the Committee could,  
4 either under impacts to public health and safety or under  
5 aesthetic impact, could put limitations on, say, shadow  
6 flicker.

7 VICE CHAIRMAN BURACK: That's very  
8 helpful to understand as well. Thank you.

9 CHAIRMAN HONIGBERG: Commissioner Scott.

10 COMMISSIONER SCOTT: My question here  
11 probably won't help the discussion. But on the -- maybe  
12 for Attorney Wiesner, if you could help me. The proposed  
13 language, which is, I think, Page 17, 301.14(f)(2), I'll  
14 read it out loud. And, basically, the last sentence is my  
15 issue here. "Thirty minutes per day within any occupied  
16 permanent residence or non-participating" -- "of a  
17 non-participating landowner." So, am I reading that  
18 correctly, that would apply only within the structure --  
19 within the structure, not at the structure, not around the  
20 structure, but within the structure?

21 MR. WIESNER: I think that's a good read  
22 of that proposed language. So, you know, if you were out  
23 at the pool or on the patio, and shadow flicker were an  
24 issue, arguably, this limit would not be triggered.

1                   CHAIRMAN HONIGBERG: I think in an  
2 earlier discussion, I think there's a consensus that this  
3 is too narrow.

4                   COMMISSIONER SCOTT: Well, I bring that  
5 up as part of that discussion, so -- to take sure we're  
6 understanding we're widening this very significantly to go  
7 outside. I'm not opposed to that. I think it's probably  
8 the right thing.

9                   And, on the other extreme, and maybe to  
10 the extent we go to a tech session, but when I look at the  
11 Audubon Society's 23rd March comments on this, they wish  
12 it to be included on any -- to include any public or  
13 private conservation lands generally. So, even if there's  
14 no structure. But they don't give any rationale. So, I'm  
15 wondering -- I guess I'm giving the bookends when we  
16 discuss this, those -- I think those are the two extremes,  
17 only within a residence or only -- anywhere on the  
18 property, private or public. I'm not suggesting that I  
19 agree with either one of those.

20                   CHAIRMAN HONIGBERG: Any other thoughts  
21 or comments on shadow flicker at this time?

22                   (No verbal response)

23                   CHAIRMAN HONIGBERG: I do think that  
24 this is definitely an area where a technical session would

1 be beneficial.

2 Should we move onto setbacks?

3 (Short pause for members to review  
4 comments provided.)

5 CHAIRMAN HONIGBERG: I'll note we'll  
6 talk about wind setbacks first. There's a separate  
7 discussion about setbacks for electric transmission lines.  
8 We'll start with wind.

9 (Short pause for members to review  
10 comments provided.)

11 CHAIRMAN HONIGBERG: Anyone have any  
12 thoughts or comments regarding setbacks for wind projects?

13 VICE CHAIRMAN BURACK: Mr. Chairman, I'm  
14 happy to kick off this discussion anyway. I've just been  
15 trying to go back through the discussion in the SB 99  
16 Report on this issue. And, there are -- there are certain  
17 general topics on which there was agreement relating to  
18 safety zones, in terms of these issues. In fact, there's  
19 a list of seven different areas of agreement. And, there  
20 is general agreement that there should be safety zone or  
21 setback distances. Where there was not agreement is what  
22 the size of that setback ought to be or even what the  
23 factors are that necessarily ought to be part of it. I  
24 think this is probably another topic on which, if we do

1 have an opportunity to do a technical session, it could be  
2 helpful for us to do that.

3 It's apparent that there are a number of  
4 different factors involved when it comes to ice and blade  
5 throw, as well as perceptions of what the risks are of  
6 actual turbine collapse.

7 So, I think there are, you know, there  
8 are general concepts here that perhaps go beyond some of  
9 the language that's here in the setback standards itself.  
10 My impression is that the numbers that are in here right  
11 now, that is that distances between a wind turbine tower  
12 and a non-participating landowner's property line right  
13 now reads "shall be no less than 1.1 times the turbine  
14 tower height as measured from the center of the wind base,  
15 and that the setback distance between a wind turbine tower  
16 and the nearest public roads be no less than 1.5 times the  
17 turbine tower height." My sense is that those are --  
18 those numbers are at the absolute sort of low end of the  
19 scale, in terms of what might be considered to be an  
20 adequate protective setback.

21 And, we have other parties, such as New  
22 Hampshire Wind Watch, arguing for a distance of five times  
23 turbine height, and that it ought to be to the property  
24 line, rather than to the -- rather than to an actual

1 structure. And, that it ought to be three times facility  
2 height to nearest roadway. So, we've -- you know, we have  
3 a range of opinion here, in terms of what that setback  
4 distance or safety zone should be.

5 What I was trying to also find here, and  
6 could not readily lay my hands on, is a table showing how  
7 the SEC has actually addressed this in proceedings it has  
8 decided in the past. This reads as it's "Appendix C.3" as  
9 the table, I'm just not finding it. I don't know if  
10 anybody else has found it?

11 DIRECTOR MUZZEY: What's the table  
12 reference?

13 VICE CHAIRMAN BURACK: It says "Table  
14 C.3" -- or "Appendix C.3", I'm sorry. Appendix C.3, and  
15 may be a Table C.3 in Appendix C.3.

16 Attorney Wiesner, are you able to  
17 identify where that is in this document?

18 MR. WIESNER: I am. But there are no  
19 page numbers, so --

20 VICE CHAIRMAN BURACK: Unfortunately.

21 MR. WIESNER: It's the page that has  
22 Footnote "15" at the bottom, if that helps.

23 CHAIRMAN HONIGBERG: It's actually not  
24 that far past where it is in the SB 99 Report. It's only

1 about 12 pages past.

2 VICE CHAIRMAN BURACK: Okay.

3 CHAIRMAN HONIGBERG: It says "Background  
4 Information on Safety Setbacks (Ice/Debris/blade throw)".

5 VICE CHAIRMAN BURACK: Oh. Okay.

6 CHAIRMAN HONIGBERG: Commissioner  
7 Burack.

8 VICE CHAIRMAN BURACK: So, we've all had  
9 a chance to look at this table now. And, essentially,  
10 what it shows is that, with respect to distance to the  
11 property line, in the Lempster and the Groton matters,  
12 that was set at 1.1 times the height. The distance to  
13 occupied buildings was set at three times the height in  
14 both of those matters, that is Lempster and Groton. And,  
15 the distance to public roads set at 1.5 times the height,  
16 again, in Lempster and Groton. And, in the Granite  
17 Reliable Project, there were no such numbers set, but  
18 there was a 1,300-foot safety zone around the turbines  
19 designated from which the public's entrance is  
20 discouraged. Again, that's in a remote location in  
21 northern New Hampshire.

22 But, with respect to both the Lempster  
23 and the Groton matters, those distances were actually  
24 determined by town agreement. There's also a note here

1       indicating that, in the Groton matter, there was a  
2       524-foot safety zone set for the employees of the operator  
3       of that facility.

4                       CHAIRMAN HONIGBERG: Director Muzzey.

5                       DIRECTOR MUZZEY: The other point of  
6       discussion I see here, and it's similar to what we've seen  
7       in other discussions this morning, is the idea of  
8       measuring something to a building that may be occupied  
9       versus property line. So, I think that, in this case,  
10      that issue again will need to be solved. And, whether or  
11      not we consistently decide one way or the other for every  
12      issue, or if it varies by issue, I'm not sure how that  
13      will come down. But we certainly heard a lot of public  
14      comments in regard to from where this should be measured.

15                      CHAIRMAN HONIGBERG: Commissioner Scott.

16                      COMMISSIONER SCOTT: I agree. And,  
17      that's consistent with our earlier discussions. I will  
18      say, my feeling is, as a minimum, we ought to have a  
19      standard for the property line. And, perhaps, again, like  
20      as we've done in other certificates and incorporating the  
21      agreements with the town, we could also potentially have a  
22      different standard to the occupied residence. But I think  
23      the property line makes sense.

24                      I do struggle with, to the extent the

1 safety -- I understand the setback has a safety aspect to  
2 it, but establishing a setback for a non-participating  
3 property owner were probably advisable, I guess I struggle  
4 with, if I'm a property owner and I want to waive my  
5 rights, why are we telling them that "no, you still have  
6 to be X amount away"? Is that -- you know, that strikes  
7 me as strange also.

8 But, having said that, if it's a safety  
9 standard we're trying to establish, I get that, I guess.  
10 Am I reading it the same way? I'm reading the existing  
11 language and the proposed language, which would set a  
12 setback for non-participating landowners also. So, I'm  
13 looking on, again, Page 17. Is that correct, Attorney  
14 Wiesner?

15 MR. WIESNER: I mean, the setback  
16 standards are effectively set for non-participating  
17 landowners. Because, if you're a participating landowner,  
18 you've waived your rights to take advantage of those  
19 setback requirements.

20 COMMISSIONER SCOTT: Okay. So, I've  
21 read this wrong. I thought I read "participating" in here  
22 also. So, thank you.

23 VICE CHAIRMAN BURACK: So, looking at  
24 this more -- language more closely, then it appears that

1 the distances adopted in this language here are similar to  
2 the distances adopted both in the Lempster and the Groton  
3 certificates. Is that right, Attorney Wiesner?

4 MR. WIESNER: Yes. These standards are  
5 consistent with the past precedent. And, as you noted,  
6 Mr. Vice Chair, in those other two cases, Lempster and  
7 Groton, there were actually town agreements that were  
8 brought to the Committee, and presumably approved by the  
9 Committee as setting reasonable standards of general  
10 applicability.

11 VICE CHAIRMAN BURACK: And, I think the  
12 argument that we're seeing in comments from numerous  
13 parties is a view that these setbacks should be set such  
14 that there is effectively no or zero risk of ice throw or  
15 shadow flicker onto any part of a non-participating  
16 landowner's property. That's the argument being made as  
17 to why these distances would not be adequately protective.

18 And, I don't know whether there is sort  
19 of what -- what level of risk is appropriate or acceptable  
20 under these kinds of circumstances. And, Attorney  
21 Weathersby, I don't want to put you on the spot, but I'm  
22 just curious whether, in the zoning world or the land  
23 planning world, there are any sort of general standards or  
24 guidelines that are looked to to determine what -- what is

1 a level of acceptable risk posed by one use on one  
2 property on an abutting property? Is there any kind of  
3 a -- of a set of guideposts we could look to in that arena  
4 or is there really no such thing?

5 MS. WEATHERSBY: I think, as far as the  
6 effects of a project on a property, it's comes down to  
7 like a reasonableness standard. But there are more  
8 technical setback type requirements for things like cell  
9 towers, where I think usually the standard is like one and  
10 a half times the height of the tower, so that, you know,  
11 for the fall zone. So, there's some transfer to this  
12 concept, but it doesn't take into account the throwing of  
13 ice, which would extend presumably further than the fall  
14 of the tower.

15 CHAIRMAN HONIGBERG: While I'd like to  
16 think a -- while I'd like to think a technical session  
17 might be beneficial here, I have a sneaking suspicion this  
18 is going to be an issue that people are going to be -- are  
19 going to dig in on. But maybe I'm wrong. I think that  
20 there's going to be a sentiment out there that, if there's  
21 any possibility of an ice throw onto any part of any piece  
22 of property, that's going to be unacceptable to some  
23 people. I don't know if that's reasonable. I don't get  
24 the sense that that's been the standard we've applied, and

1 I don't get the sense that that's the standard that's  
2 applied elsewhere. Because it would effectively prohibit  
3 the use of wind turbines at any time when there might be  
4 ice, which is a fair amount of time in this state. But I  
5 don't know. I'm not sure.

6 It seems like the agreements that have  
7 been reached in past dockets, past applications, which  
8 have been the subject of agreements, and then memorialized  
9 in orders, and are reflected in the proposal, that's not a  
10 bad -- it's not a bad place to start. You know, maybe  
11 there's been some change in the technology, if they're  
12 bigger, they can throw further, then you need to revisit  
13 and maybe adjust those numbers. But that structure seems  
14 like an appropriate way to think about the ice throw  
15 issue. And, then, the collapsing issue, and that's the  
16 same as a cell tower or anything else, you've got to have  
17 some appropriate setback for the possibility that the  
18 thing will just collapse, which I assume happens, but not  
19 very often.

20 Anyone have any thoughts? Comments?  
21 Commissioner Burack, you look like you're ready to say  
22 something.

23 VICE CHAIRMAN BURACK: I'll just offer  
24 that I'm going to suggest that we, for the moment, run

1 with the language that we have. And, if there is -- if  
2 there is an opportunity to do a technical session on this,  
3 it may be helpful for us to bring parties together and see  
4 if we get any -- if there's any further consensus at all  
5 with respect to particularly to this ice throw issue, and  
6 what level of risk really applies here. And, it may be  
7 that there are -- there are other ways to address those  
8 risks through management approaches such that it's not so  
9 much a matter of setbacks.

10 But I'm going to offer that we run with  
11 the language that we have. And, again, see if there's  
12 time to have further discussion later.

13 CHAIRMAN HONIGBERG: And, I agree with  
14 that. I mean, the SB 99 Table 3.a, under "Areas of  
15 Agreement" on this, talks largely about operational  
16 issues, and prospective curtailment use, and making sure  
17 everyone's aware of the issues, and keeping a close eye on  
18 ice accretion. Those are operational aspects of one of  
19 these things, not the setback.

20 VICE CHAIRMAN BURACK: I would just ask  
21 the question, would just ask Attorney Wiesner to give --  
22 do you have some thought to whether the areas of agreement  
23 identified there under Table 3.a, whether any of those are  
24 areas that would not otherwise be within the realm of the

1 discretion of the Committee in setting conditions for a  
2 certificate? And, if not, then we should be looking at  
3 ways to incorporate those areas of agreement into our  
4 criteria for consideration in some fashion.

5 MR. WIESNER: I think this is primarily  
6 a list of potential mitigation strategies. And, I think  
7 that the focus of developing the initial proposed rules  
8 was to deal with the setback. And, then, if there were,  
9 you know, perhaps determined to be an unreasonable adverse  
10 effect from potential ice accretion, let's say, that that  
11 could also further be subject to mitigation strategies and  
12 conditions that would be imposed by the certificate, even  
13 if the setback requirement were satisfied.

14 So, in other words, the setback is  
15 not -- setting the setback is essentially a minimum. If  
16 there were good evidence that ice, accretion and ice throw  
17 might occur outside that setback, I think my view is that  
18 it would be reasonable for the Committee in that  
19 circumstance to consider additional mitigation measures  
20 that could be imposed as conditions in the certificate.

21 CHAIRMAN HONIGBERG: Director Muzzey.

22 DIRECTOR MUZZEY: I think that  
23 philosophy could apply to a number of these considerations  
24 we're looking at today. Is that something we need to put

1 into the rules, as almost boilerplate language, that that  
2 type of special consideration may apply? Otherwise, are  
3 we -- is the Committee authorized to do so?

4 CHAIRMAN HONIGBERG: Commissioner  
5 Burack.

6 VICE CHAIRMAN BURACK: I suppose one  
7 thing we could do would be to, if we don't already do this  
8 in the rules, would be to ask the applicants to identify  
9 proposed mitigation strategies to address any areas where  
10 there may be deviations from the criteria that would  
11 otherwise be expected to be met. There may be other ways  
12 to phrase that, but that would be one way to approach  
13 this. So, at least we have the -- we have an expectation  
14 that the applicants can identify mitigation -- potential  
15 mitigation strategies. And, then, that certainly I would  
16 think it would be within the authority of the Committee to  
17 be able to determine what those ultimately appropriate  
18 mitigation strategies are to be included within the  
19 certificate itself. I think that would be pretty  
20 consistent with the way the Committee has operated  
21 historically.

22 Attorney Iacopino, would agree with that  
23 or add anything to that or --

24 MR. IACOPINO: No. I think that's the

1 way the Committee has operated historically. I would just  
2 point out one thing, in number 5, in Table 3.a, is --  
3 requires "a safety zone or setback distance shall be  
4 defined for each turbine". And, that's not typically how  
5 the Committee has ruled on these issues in the past. They  
6 have given the setback that you saw in the table in  
7 Appendix 3.C -- or, C.3. But I just wanted to point that  
8 out to you.

9 But, yes. I think that individual  
10 consideration has been given each time the Committee has  
11 considered setbacks. And, you can tell that from just the  
12 table, because, with the Lempster and Groton projects, you  
13 have this concern with the neighboring properties, whereas  
14 in the Granite Reliable, they had just a general safety  
15 zone, which indicates that the Committee looked at them  
16 differently, and believed that they required a different  
17 approach to setbacks, because of the geography, the  
18 layout, the density of the population, and things like  
19 that.

20 So, it would be appropriate to have some  
21 ability for the Committee to use a different standard.

22 VICE CHAIRMAN BURACK: So, you're  
23 suggesting that we may want to consider, in addition to  
24 the language that's in here about setback standards, to

1 include some additional language that would account for  
2 other situations where the geography, the topography, the  
3 density of nearby development, *etcetera*, --

4 MR. IACOPINO: Right.

5 VICE CHAIRMAN BURACK: -- may  
6 necessitate or may make a different approach appropriate?

7 MR. IACOPINO: Yes. Or, a different  
8 value here. I mean, what we have in here is 1.1, 1.5, and  
9 3. It may be that a particular project comes before the  
10 Committee that you say "that's not enough", or "that's  
11 more than enough and should be less", I think there should  
12 be some ability for you to use that flexibility, given the  
13 nature of the project before you.

14 CHAIRMAN HONIGBERG: Mr. Hawk.

15 MR. HAWK: I think I'm pretty  
16 comfortable with the physical catastrophic setback,  
17 whether it's one or two, doesn't matter. But I think,  
18 number one, the likelihood of that happening is very low.  
19 Having the blade fly off the turbine tower is another  
20 thing, and having the turbine tower physically break  
21 apart, as we used to worry about with cell towers. It was  
22 just one or two times the tower height. And, so, that's  
23 easy.

24 The thing that is not easy for me is the

1 ice blade throw. I think that's -- I'm sure there's some  
2 engineer that could figure that out. But I think that's  
3 going to be a much, much larger distance. So, I'm  
4 wondering if we ought to focus on that, and not worry  
5 about the physical failure of the structure.

6 MR. IACOPINO: One thing that I  
7 neglected to mention, in terms of the thing that the  
8 Committee might want to consider. In addition, for an  
9 individual project, if you set a limit, and then allow  
10 some flexibility for yourself, is that many of these  
11 turbines now are equipped with what they call "cold  
12 weather packages", which are designed to mitigate the  
13 accumulation of ice on the -- on the blades. So, one of  
14 the substantive things that a Committee -- the  
15 Subcommittee or Committee could do in assessing a  
16 particular application is determine whether or not that  
17 type of technology affects your decision at all. It's  
18 just another factor to go along with things like  
19 population density, geography, and things like that.

20 VICE CHAIRMAN BURACK: Could you help us  
21 understand a little better what a "cold weather package"  
22 might consist of? What are the technologies that are --  
23 is this heating units built into the blades? Is this that  
24 kind of thing?

1                   MR. IACOPINO: Basically. I'm sure --  
2 I'm sure this is very simplistic. But the way I look at  
3 it is, basically, it generates heat in the blades, so that  
4 the ice does not accumulate on the blades or on the rotor.  
5 And, I suspect that the engineers that sell these turbines  
6 will say it's much more implicated than that. But,  
7 generally, it is -- that's what I look at it as. And,  
8 generally, they are controlled both from a base unit at  
9 the individual plant, but also at a control center  
10 somewhere, these -- most of these manufacturers have a  
11 central control center, whether it be in Washington state  
12 or in Germany or in Spain, where they can actually tell  
13 you how much, you know, what the weight differential is on  
14 the blades, and whether or not there's an ice accretion  
15 problem. So, they can -- my understanding is that they  
16 can do that, at least the major manufacturers, both from  
17 the site and from the central control, central command and  
18 control. And, of course, I believe that there is one of  
19 these requirements is they have to have operational staff  
20 who can actually go out and look as well, which is in the  
21 agreed-upon table.

22                   CHAIRMAN HONIGBERG: Any other thoughts  
23 or comments on this section?

24                   VICE CHAIRMAN BURACK: Just that I think

1 that the suggestions that we've heard from Attorney  
2 Iacopino, based on our experiences here, we ought to ask  
3 Attorney Wiesner to try to work into some revised language  
4 here.

5 MR. IACOPINO: Sorry.

6 VICE CHAIRMAN BURACK: We're just piling  
7 on.

8 CHAIRMAN HONIGBERG: Attorney Wiesner  
9 now wants to know what you just said.

10 DIRECTOR MUZZEY: What he said.

11 MR. WIESNER: And, actually, what I was  
12 going to raise as a potential issue is, you know, the  
13 setback may not be the perfect way to solve ice throw.  
14 And, it sounds like we heard about technological options  
15 that may limit the risk of ice throw. What we have not  
16 done so far in these rules, and I'm not necessarily  
17 proposing, I'm just throwing this out, is requiring some  
18 sort of a study to be done, as to, you know, in a given  
19 location, given the turbine height, and expected  
20 atmospheric/meteorological conditions, what is the risk of  
21 ice throw? What is the -- this is almost like a sound  
22 study, except it's ice throw. How far might the ice fall?  
23 How can that be mitigated?

24 CHAIRMAN HONIGBERG: I actually was

1 thinking the same thing. That this is becoming a  
2 different discussion. That the setback applies to the  
3 failure of the equipment and the falling down or the  
4 breaking apart of the equipment. But the ice throw is a  
5 separate issue. It has a distance component to it. But  
6 it's going to potentially be different in every single  
7 application and every turbine within every wind  
8 application.

9 MR. IACOPINO: There is, I would point  
10 out to you, in the Lempster Wind decision, there was  
11 substantial discussion during that case, and there's some  
12 discussion in the decision about a study by Mr. Matilsky,  
13 I believe, or Dr. Matilsky. And, actually, in the  
14 Lempster decision, the Committee that heard that  
15 particular case down -- I shouldn't say "downplayed", but  
16 didn't accept those studies, because they were purely  
17 theoretical. I shouldn't say "didn't except it". I think  
18 they accepted it for the theoretical purposes, but  
19 recognized that there were certain practical factors that  
20 weren't included in those studies. And, that's in the --  
21 where there was extensive litigation about ice throw in  
22 the Lempster -- Lempster decision. And, in that  
23 particular case, if you wanted to go through the  
24 transcripts, there are, in fact, I forget the gentleman's

1 name, but there was an MIT professor who was a intervenor  
2 in that case, and presented substantial evidence with  
3 respect to various studies about ice throw.

4 CHAIRMAN HONIGBERG: Director Muzzey,  
5 then Mr. Hawk, then Commissioner Scott.

6 DIRECTOR MUZZEY: In our Initial  
7 Proposed Rules, on Page 11, Item (4), toward the top, we  
8 do ask for "an assessment", within the application  
9 materials, "of the risks of ice throw, blade shear, and  
10 tower collapse on public safety, including a description  
11 of the best practical measures taken or planned to avoid  
12 or minimize these occurrences, if necessary." So,  
13 probably some additional language in that Number (4)  
14 would -- could be used for more of a report on that.

15 CHAIRMAN HONIGBERG: Mr. Hawk.

16 MR. HAWK: If there is mitigating  
17 technology that can be used on windmills, why wouldn't we  
18 just ask some of the suppliers what they have got, how it  
19 works. And, if we are satisfied, we can just dispense  
20 with this one. I mean, I can visualize the engineering  
21 analysis of, you know, the windmill going around so fast,  
22 and so much ice flies off and so forth. But, if there was  
23 mitigating measures that can be put on the windmill in the  
24 first place, maybe that ought to be our standard.

1                   CHAIRMAN HONIGBERG: I'm guessing that,  
2 if that existed, the industry would have suggested that to  
3 us in their comments on this topic.

4                   MR. HAWK: Okay.

5                   CHAIRMAN HONIGBERG: But it's possible.  
6 Commissioner Scott.

7                   COMMISSIONER SCOTT: I was basically  
8 going to make the same point, and I will, as Director  
9 Muzzey. I think, if you looked at 301.08(a)(4), on Page  
10 11, regarding the assessment, I think, if we expanded  
11 that, so it's clear just not an assessment of the risk of  
12 ice throw, meaning it's X percent chance that it will  
13 happen, if we expanded upon that to include an  
14 understanding of expectations for how far, etcetera, I  
15 think that would help that discussion. And, if had to  
16 modify the certificate accordingly, that would help tease  
17 that out, I think, and help inform the Committee.

18                   CHAIRMAN HONIGBERG: Commissioner  
19 Burack, then Mr. Oldenburg.

20                   VICE CHAIRMAN BURACK: Just listening to  
21 this discussion, it's apparent that, as with so many of  
22 these areas, this is an area in which both understanding,  
23 as well as technology, are evolving. And, I would hope we  
24 could find a way to craft a rule and a set of standards

1 that recognizes that. That, you know, it sounds like the  
2 industry is being responsive overall to this concern  
3 that's out there about ice throw. And, I'd like to think  
4 we could find a way to write a standard that would  
5 recognize -- that could set some specific setbacks now, or  
6 otherwise take steps based on current knowledge, current  
7 understanding, current technologies to be able to be  
8 protective, but also provide an opportunity for waivers or  
9 other approaches, if new technologies or approaches can  
10 demonstrate that the risks are otherwise being mitigated  
11 or controlled in some fashion.

12 CHAIRMAN HONIGBERG: Mr. Oldenburg.

13 MR. OLDENBURG: Well said. I'll say  
14 something less poetic. But, in C.3, there's statements in  
15 there that GE Wind states they have done studies. And,  
16 then, in the next section, it talks about "Component  
17 Failure", and Vestas Turbines has done a study about  
18 debris throw. I got to believe that the industry has this  
19 type of information. And, I don't know if we could --  
20 while we could put setback requirements on it, it's almost  
21 like we would have to have a waiver process or at least a  
22 mitigation process or some way for the applicant to come  
23 in and say "but, with this turbine, we can do this, either  
24 to mitigate or have studies that show ice throw isn't

1 going to be that far because of this technology or this  
2 information." Because I have to believe, like anything,  
3 it depends on the manufacturer, the information they have.  
4 And, I have to believe that the different manufacturers  
5 have done studies. Just in the little information that  
6 I've seen, it seems like pinning down a number, a rigid  
7 number, would be difficult.

8 CHAIRMAN HONIGBERG: I agree with that.  
9 And, I'll note off the record -- off the record.

10 (Off the record.)

11 CHAIRMAN HONIGBERG: Is there any other  
12 comments on this topic?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: I mean, there's  
15 clearly a little bit more work to be done here, but I do  
16 think we have an approach in mind to separate these two  
17 aspects of the distance, the distance from something, and  
18 maybe come up with a slightly different structure for  
19 that.

20 So, let's move on to setbacks for  
21 electric transmission. All those people who are here  
22 solely to hear about electric transmission, and were just  
23 torturing themselves by listening to wind, and now perk up  
24 and we'll talk about electric transmission. The language

1 in the proposed rules on Page 11, and it's letter (b),  
2 it's 301.08(b).

3 (Short pause for members to review  
4 comments provided.)

5 CHAIRMAN HONIGBERG: Commissioner Scott.

6 COMMISSIONER SCOTT: I guess I'll start  
7 with Attorney Wiesner again. He's the one we pick on the  
8 most here, I think. So, help me. So, that existing  
9 language doesn't specify any setback, *per se*, for electric  
10 facilities, correct? It just outlines an assessment of --  
11 well, basically, an assessment or analysis of electric and  
12 magnetic fields, and some sound assessment also, correct?

13 MR. WIESNER: That's correct. There's  
14 no setbacks specified for transmission lines. And, you  
15 know, several commenters have suggested that there should  
16 be. There's the EMF issue, but there's also a reference  
17 here, as you see, to "FERC and HUD standards". The FERC  
18 standards are primarily concerned with trees falling on  
19 transmission lines and is there a reliability concern?  
20 So, it's really specified in terms of the height of the --  
21 or, the expected potential height of vegetation outside of  
22 the right-of-way that might fall onto the lines within the  
23 right-of-way. And, the HUD standards, to the extent I  
24 understand them, is really concerned with the fall zone,

1 and the potential that transmission or distribution line  
2 set of towers/poles might fall onto buildings which have  
3 uninsured mortgages on them.

4 COMMISSIONER SCOTT: So, my question in  
5 my mind is, is it reasonable -- let me back up. Are all  
6 transmission lines the same, right? So, I've seen some  
7 transmission corridors with multiple lines, I've seen some  
8 with a lot less. If the desire is to look at magnetic and  
9 electric fields, and the sounds, which I assume is a  
10 buzzing from the activity on the lines, is there a  
11 reasonable expectation we would set a one-size-fits-all  
12 for something like that?

13 MR. WIESNER: Again, if there were to be  
14 a setback requirement, it might be stated in terms of some  
15 factor of the height of the towers. And, if there were  
16 multiple towers in the same right-of-way, it might be  
17 specified in terms of "the distance between the closest  
18 tower to the edge of the right-of-way", something along  
19 those lines. But my understanding is that the higher  
20 voltage transmission lines are going to generate greater  
21 electromagnetic fields.

22 One of the questions is, is there really  
23 a health impact to that? And, I think the OEP Report was  
24 inconclusive on that point. But, as you note here,

1 there's a reference to what's called the "precautionary  
2 principle", which is essentially we don't, even though it  
3 may not have been demonstrated that there is a significant  
4 health impact, we should proceed with precaution, because  
5 perhaps there may be.

6 CHAIRMAN HONIGBERG: Thoughts?  
7 Questions? Comments? Mr. Hawk.

8 MR. HAWK: I think this suggests to me  
9 that there's a dual setback thinking we have to talk  
10 about, too, as we just did with wind farms. That there's  
11 the physical failure of the towers, you know, maybe  
12 there's a break in the cable and it goes off-site or  
13 something like that. So, there's a physical aspect. And,  
14 then, there's the EMF issue that I agree is still very  
15 much out there, in terms of whether it's real or not. But  
16 I think we ought to be protecting the public, if that  
17 proves in ten or twenty years to be the case. So, I would  
18 look at two different standards here, physical damage and  
19 EMF concerns.

20 DIRECTOR MUZZEY: Regarding --

21 CHAIRMAN HONIGBERG: Director Muzzey.  
22 Sorry.

23 DIRECTOR MUZZEY: Regarding the existing  
24 drafted language, I'm also curious as to the sound levels

1 noted under Item (2). Sound that "might reasonably be  
2 expected to increase sound by 10 dBA or more over ambient  
3 levels". When we were discussing sound just a little  
4 while ago, it was a "5 dBA or more over ambient levels".  
5 And, my question is, is this type of sound different, and  
6 so a different standard is appropriate? Or, should we  
7 have the same standard of so many dBA or more over ambient  
8 levels for all energy facilities?

9 My suspicion is that we should be fairly  
10 consistent with our sound measurements. But I do wonder  
11 if there is something special about transmission sounds  
12 that it's different here. And, I just don't know the  
13 answer to that.

14 CHAIRMAN HONIGBERG: Attorney Wiesner.

15 MR. WIESNER: I was going to jump in and  
16 say, I think the greater difference here is where it's  
17 measured, not the standard.

18 DIRECTOR MUZZEY: So, it's different in  
19 several ways then.

20 MR. WIESNER: Well, it's measured at the  
21 edge of the right-of-way.

22 DIRECTOR MUZZEY: Okay.

23 MR. WIESNER: And, I think there's an  
24 assumption there that people are not going to have their

1 houses right at the edge of the right-of-way, although  
2 that's possible. And, it depends on the location.

3 But I think that's the basis for the  
4 differential. It's sort of similar to the Berlin BioPower  
5 sound standards, which are measured at the edge of the  
6 facility boundary, and may seem high as a result. Of  
7 course, that's in an urban location as well.

8 CHAIRMAN HONIGBERG: Commissioner Scott.

9 COMMISSIONER SCOTT: And, Director  
10 Muzzey, I agree the concept, I mean, noise is noise, and  
11 there should be a limit. I will say, on its face, I think  
12 wind -- to answer your question, I do see a difference, if  
13 you will, in the type of noise generation from a potential  
14 for wind, in that you set up this pulsating, for want of a  
15 better word, scenario, where I believe, and I'm less  
16 familiar with what's envisioned for noise coming from  
17 power lines. But I think you're thinking, at least my  
18 view, is it's more consistent of a hum or, --

19 DIRECTOR MUZZEY: Uh-huh.

20 COMMISSIONER SCOTT: -- you know, so  
21 that's -- it's more consistent. So, I'm not suggesting  
22 that's better or worse. Though, I think some would  
23 suggest the pulsating is actually worse. But, again, I'm  
24 not suggesting any noise is good. So, I think there is a

1 difference, but -- if that helps.

2 DIRECTOR MUZZEY: Thank you. It does.

3 CHAIRMAN HONIGBERG: Other thoughts?  
4 Comments? Commissioner Burack.

5 VICE CHAIRMAN BURACK: I'll just offer  
6 the observation that, at least as worded, this first item  
7 here "include an assessment of electric and magnetic  
8 fields and the potential impacts of such fields on public  
9 health and safety" is quite vague, and maybe that's what  
10 we want. And, I simply will raise the question as to  
11 whether or not we would want to be more specific about  
12 what we're asking for? And, I don't have a strong opinion  
13 on this one way or the other. I just know that there  
14 are -- there are recommendations in here, again, these are  
15 alternative proposals for areas without agreement. This  
16 is Table 4.a, in which there are, particularly Items 5 and  
17 6 anyway, that seem to speak to sort of what needs to be  
18 considered in doing such an assessment.

19 Again, I don't know how important this  
20 is. I am mindful of the fact that this is an area in  
21 which there is -- does not appear to be any real  
22 scientific consensus as to what the true risks are. And,  
23 just trying to make sure that, whatever we do with this,  
24 to the extent that we're going to ask people to study it,

1 we understand what we expect to get, and others understand  
2 what they -- what they can expect to see or what they're  
3 going to have to produce.

4 CHAIRMAN HONIGBERG: Isn't this the  
5 classic issue that's going to get litigated in every  
6 transmission case? There's going to be people who come in  
7 with studies that say whatever they want the studies to  
8 say. And, there will have to be an assessment as to  
9 whether that's -- whether, in that instance, if it's close  
10 enough, far enough, whether the risk is significant enough  
11 or not?

12 I don't see this being capable of a  
13 black or white/yes or no answer. So, I'm not sure how  
14 much more specific we're going to be able to get, in terms  
15 of -- I mean, I certainly don't think we're going to be  
16 able to turn this into a criteria.

17 VICE CHAIRMAN BURACK: I agree with  
18 that. And, it may be that we're best just to leave this  
19 language as it is, and give the applicant an opportunity  
20 to bring their assessment in. And, if there are others  
21 who wish to challenge that or wish to bring in data  
22 suggesting some different -- some different analysis,  
23 certainly parties could do that as well.

24 CHAIRMAN HONIGBERG: Director Muzzey.

1                   DIRECTOR MUZZEY: My only suggestion  
2 might be to add language that said something "the  
3 assessment should be based on current scientific  
4 understanding of this issue", so that we encourage  
5 applicants to base their assessment on, and most, of  
6 course, would do this, but on the most recent findings on  
7 this, as opposed to something that may have come out years  
8 ago. And, so, recognizing that technology and scientific  
9 understanding may be evolving on this, that, you know, our  
10 expectation is it's based on the current understanding.

11                   CHAIRMAN HONIGBERG: Commissioner  
12 Burack.

13                   VICE CHAIRMAN BURACK: Well, I'm just  
14 looking at this language here again, and comparing it with  
15 (b)(2), which is the issue of the operational sounds,  
16 where there's a reference to the "proposed facility"  
17 itself. It's not clear, from the way (b)(1) is drafted,  
18 whether that is to be sort of an academic exercise and  
19 analysis of the basic theoretical potential for electric  
20 and magnetic fields and potential impacts, or whether it's  
21 to be in the context of the actual proposed facility.

22                   CHAIRMAN HONIGBERG: I think it might be  
23 appropriate to include some context in that first item, so  
24 that it's clear we're talking about this project. It will

1 obviously have the theoretical underpinnings. But, you  
2 know, if there's a distance aspect to the effect of  
3 electromagnetic fields, that would be captured, I think,  
4 if we provide some location-specific context in the first  
5 item. I agree with that.

6 There's a disagreement within the  
7 commenters about the fall zone issue. Is one needed? Do  
8 we need to consider that? Electric transmission lines  
9 exist in rights-of-way that tend to be somewhat large.  
10 There's usually a space around significant transmission  
11 lines. I don't know. National Grid didn't think so. HUD  
12 is concerned about its mortgages. Actually, we should all  
13 be concerned about HUD mortgages.

14 VICE CHAIRMAN BURACK: Could I just ask  
15 Attorney Wiesner a question on that? Are we aware of any  
16 other states or jurisdictions that have adopted fallback  
17 zone standards based upon the HUD standard?

18 MR. WIESNER: For a large scale  
19 transmission siting, I'm not aware of it. That doesn't  
20 mean that it doesn't exist. I'm not aware of any. I  
21 think the thrust of the National Grid comments was more  
22 probabilistic. That, you know, this is so unlikely to  
23 occur, and there are certainly situations in more  
24 developed areas where you may have a 100-foot transmission

1 tower within a 50-foot right-of-way, just to throw out  
2 some numbers. And, you know, theoretically, there is a  
3 risk of fall. But the risk is so minimal, versus the  
4 other benefits of the development, that it should be  
5 permitted.

6 VICE CHAIRMAN BURACK: I do recall that  
7 we saw some photographs submitted in some of the -- some  
8 of the comments at some point, but they were -- my  
9 recollection, they were unlabeled, unmarked, and they  
10 seemed to show some falling towers. But it wasn't --  
11 there was no description, no explanation of what they  
12 were, where they were, what the factors were that actually  
13 contributed. And, so, it does sound to me like, as you're  
14 saying, it's not a completely theoretical risk, but it's a  
15 relatively low risk.

16 CHAIRMAN HONIGBERG: Director Muzzey.

17 DIRECTOR MUZZEY: My concern with  
18 stating some sort of fall zone could be the unintended  
19 consequence of actually expanding the footprint of a  
20 facility. And, if it's not a risk that we need to worry  
21 about on a regular basis, do we really want to encourage a  
22 larger footprint of these facilities, particularly through  
23 developed areas?

24 CHAIRMAN HONIGBERG: Any other comments

1 or thoughts?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: Seeing none, we are  
4 approaching one o'clock. I think the next couple of  
5 issues in this packet, this table, are going to take a  
6 little while. But there are -- there is at least one  
7 issue we can pick up and deal with quickly. If you'll  
8 flip a few pages back to item numbered "17", which is  
9 "Public Information Sessions". It relates to Rules 201.01  
10 and 201.02. And, if you have the rules packet, it's not  
11 the same rules packet we've been looking at, it's the  
12 other one.

13 DIRECTOR MUZZEY: Oh, I know what you  
14 mean.

15 CHAIRMAN HONIGBERG: Off the record.

16 (Off the record.)

17 CHAIRMAN HONIGBERG: We're back on the  
18 record. So, these relate to "Public Information  
19 Sessions". And, I'll let people read.

20 (Short pause for members to review  
21 comments provided.)

22 CHAIRMAN HONIGBERG: The pre-filing  
23 public information sessions are new, the result of the  
24 passage of SB 245 last year. The public information

1 sessions after applications are consistent with, I think,  
2 the old statute. So, there's another layer, another level  
3 of public information being provided by applicants under  
4 the new law.

5 I think the issues come down to the -- I  
6 think the statute requires sessions in each county, at  
7 least one session in each county. And, the rules are  
8 consistent with that, a session in each county in which  
9 the facility is located.

10 There are comments, commenters, or at  
11 least one commenter, who believes that there should be  
12 sessions in each town, or municipality, city or town.  
13 There's a suggestion that the public information session  
14 should be video taped with "clear and discernible audio".  
15 There's a suggestion that the applicant, how to put this,  
16 "the applicant answer every question asked", I think  
17 that's how -- essentially how the request would go.  
18 There's certain greater notice requested.

19 Those are, I think, the major issues  
20 that commenters have raised. Commissioner Burack.

21 VICE CHAIRMAN BURACK: Thank you. I  
22 think this is an area in which some of the things that are  
23 being asked for are beyond what the statute calls for.  
24 And, I think, therefore, we probably would, although I

1 would certainly defer to counsel on this, I think we  
2 probably would not have the legal authority to require a  
3 greater number of public information sessions than the  
4 statute specifically calls for. So, for example, I  
5 don't -- I could be wrong about this, but I'm not sure we  
6 would have the legal authority to require public  
7 information sessions in each town that might be affected  
8 by a facility. So, I -- and, for very practical reasons,  
9 I'm not sure that's something that would make sense to do  
10 in any event, just because you could have some projects  
11 that affect, and particularly whether they're pipelines or  
12 transmission lines, could affect many, many towns. And,  
13 those towns may or may not even have facilities that could  
14 accommodate a group, although, they may. But, again, I  
15 think that's beyond probably our statutory authority.

16 "Public notice to a service list", I  
17 would be comfortable with that, if there is, in fact, a  
18 service list in place at that time in the proceeding.  
19 But, if we are effectively having pre -- basically,  
20 pre-application sessions, there may not be any kind of a  
21 service list. Certainly, the point that a service list  
22 exists because an application has been filed with the SEC,  
23 then notice to the service list as well as to communities  
24 of public meetings I think would make sense.

1                   This issue of answering questions,  
2           again, I just want to make sure that we're not -- we  
3           wouldn't be exceeding our statutory authority here. But,  
4           provided we're not, I don't think it's unreasonable to ask  
5           that an applicant do their best to answer questions. But  
6           I'm going to imagine that there may be instances in which  
7           the applicants will not have answers to questions. The  
8           response may be "Thank you for that question. We haven't  
9           thought about that before. We've got to go back and  
10          consider that further", and that's one of the reasons why  
11          you want to have these kinds of particularly, essentially,  
12          pre-application public information sessions. So, it may  
13          be that language that talks about asking them to "respond  
14          to all questions" would be helpful here.

15                   And, then, this last issue of a video  
16          tape being made, I guess I'm -- I'm assuming that the only  
17          way that that becomes of any value is, if there is also a  
18          requirement that that then be posted on the Web or  
19          otherwise made available for public viewing. So, unless  
20          we're also prepared to impose that expectational  
21          requirement or include it as part of the application  
22          materials, and then it gets posted somehow, YouTube or  
23          otherwise, to a website, I don't know -- I don't know what  
24          the value would be of doing that, unless we're prepared

1 to, as I say, prepared to require to have it posted and  
2 available.

3 So, those are just some thoughts on each  
4 of those issues.

5 CHAIRMAN HONIGBERG: Anyone else have  
6 thoughts or comments? Director Muzzey. You're next,  
7 Attorney Iacopino.

8 DIRECTOR MUZZEY: Would you like to go  
9 first?

10 MR. IACOPINO: I was just going to  
11 answer Vice Chairman Burack's --

12 CHAIRMAN HONIGBERG: All right.  
13 Attorney Iacopino.

14 MR. IACOPINO: The statute at RSA  
15 162-H:10, I, does specify what is supposed to occur at the  
16 pre-application information meeting. It says that "the  
17 applicant" -- "At such session, the applicant shall  
18 present information regarding the project and receive  
19 comments from the public. Not less than ten days before  
20 such session, the applicant shall provide a copy of the  
21 public notice to the chairperson of the Committee. The  
22 applicant shall arrange for a transcript of such session  
23 to be prepared and shall include the transcript in its  
24 application for a certificate."

1                   So, there is some requirement of  
2     documenting the session. And, there is some indication of  
3     what should occur at the pre-application session. That is  
4     in the statute as it exists.

5                   MR. WIESNER: And, I'll just add, the  
6     proposed rules language track the statute very carefully.  
7     And, I think I share the Vice Chair's concerns that it may  
8     be problematic to go far beyond that, either in terms of  
9     the number and locations of sections or how they're to be  
10    conducted or how they're to be recorded.

11                  CHAIRMAN HONIGBERG: Not having the  
12    statute in front of me, how duplicative of the statute are  
13    these rules? Are rules like this even necessary? Or, is  
14    the statute clear enough on its face to lay all this out?

15                  MR. WIESNER: I think these are  
16    substantially duplicative of the statutory language. And,  
17    if there's a benefit to including it here, it may just be  
18    one-stop shopping, in terms of knowing what your  
19    requirements are.

20                  CHAIRMAN HONIGBERG: Commissioner  
21    Burack.

22                  VICE CHAIRMAN BURACK: Thank you. And,  
23    if I'm not mistaken, the drafting rules that we get  
24    from -- through this process mandate that, if we're going

1 to use the statutory language, we have to use it exactly.  
2 We can't -- my recollection is we can't really modify or  
3 deviate from it. I could be mistaken about that. But, I  
4 mean, certainly, we can't, in our rules, we can't add to  
5 or detract from or in any way modify statutory law. And,  
6 I think practically all of these elements that we talked  
7 about here could be doing that.

8 CHAIRMAN HONIGBERG: Anybody else have  
9 any other thoughts or comments? Yes, Attorney Weathersby.

10 MS. WEATHERSBY: I think we're all in  
11 favor of the public either attending or having access to  
12 what went on at the meetings. And, I don't think that  
13 there would be any impediment to a member of the public  
14 who is attending or the municipality that is hosting the  
15 meeting from Webcasting or filming it and posting it  
16 themselves. And, would hope that that would occur, if we  
17 can't mandate it, somehow could suggest that.

18 CHAIRMAN HONIGBERG: In this day and  
19 age, it would surprise me if a project of any notoriety  
20 weren't the subject of audio and video tapes at every  
21 public event.

22 Any other thoughts or comments? Yes,  
23 Mr. Hawk.

24 MR. HAWK: Just the comment about having

1 a hearing either in the county or some adjacent county, I  
2 think that's something we -- somebody ought to make a  
3 judgment call. If it's close enough, if a project is near  
4 a boundary line, why not have another hearing?

5 CHAIRMAN HONIGBERG: I think the statute  
6 is the issue potentially. That there are certain  
7 requirements that the statute lays out. There may be  
8 circumstances when a board or commission or committee can  
9 exceed the requirements, or perhaps not. Attorney  
10 Iacopino.

11 MR. IACOPINO: Well, I don't know about  
12 with respect to county-by-county. But I do know that, if  
13 a project abuts another town, and it may have an impact on  
14 the other town, if it happens to be another county, under  
15 the Administrative Procedures Act, RSA 541-A, there is a  
16 requirement that notification be given to that affected  
17 municipality. So that it may not be the whole county that  
18 would get notification, but for -- actually, for things  
19 that the Committee sends out, they would go to the  
20 abutting town as well.

21 Although, I'm not sure that this  
22 particular requirement, which is the requirement of the  
23 applicant, and not the Committee, would be covered under  
24 that, because the APA, the Administrative Procedures Act,

1 applies to the actions of this Committee.

2 But this does have a public information  
3 and notice requirement, requiring that there be notice in  
4 a paper of regular circulation in a county in which the  
5 session to be held, not less than 14 days before the  
6 session.

7 CHAIRMAN HONIGBERG: Yes, Mr. Oldenburg.

8 MR. OLDENBURG: I have a question. I  
9 thought I read it once before, but I can't seem to find it  
10 right now. The informational meetings that take place,  
11 the proponent would offer their -- offer what the project  
12 is, but they're not obligated to answer questions  
13 currently, correct?

14 MR. IACOPINO: The statute says they're  
15 "to present information" and "receive comments".

16 MR. OLDENBURG: But they're under no  
17 obligation to answer questions.

18 MR. IACOPINO: It's does not  
19 specifically say "answer questions".

20 MR. OLDENBURG: That just strikes me  
21 as -- I spent 30 years getting beat up in public meetings  
22 about roadway projects. And, I find it funny that you can  
23 present a project and not answer questions about it.

24 So, --

1                   CHAIRMAN HONIGBERG: You figure you got  
2 beat up, you should allow everybody else to get beat up,  
3 too?

4                   VICE CHAIRMAN BURACK: Could I just  
5 offer the observation that, and certainly one would like  
6 to believe that best practice on the part of the parties  
7 who are presenting these would be that they would  
8 understand that that kind of communication is essential to  
9 being able to move these kinds of projects into a realm of  
10 understanding.

11                  MR. OLDENBURG: Right.

12                  VICE CHAIRMAN BURACK: And, that  
13 probably everybody's best interests would be served by  
14 doing that, even if the statute doesn't explicitly require  
15 it.

16                  MR. OLDENBURG: I would agree.

17                  CHAIRMAN HONIGBERG: All right. We're  
18 going to need to wrap things up, because we have people  
19 who have to go to other meetings.

20                         What we're going to do going forward, we  
21 still have a deadline that we need to meet. That may  
22 change sometime in the next few weeks, but it hasn't  
23 changed yet. So, we'll be sending out, probably using the  
24 magic of *Google.com*, some proposed dates and times for

1 another meeting. If we get news from the Legislature that  
2 the deadline is going to be extended, we may convert that  
3 into something else. There may be value to continuing to  
4 do it anyway, even if we do try to arrange for a technical  
5 session for everyone who has interest to come and discuss  
6 things, maybe find some common ground on some language on  
7 some specific issues.

8 Does anybody have anything else we need  
9 to deal with right now before we break?

10 CHAIRMAN HONIGBERG: Seeing none, I'll  
11 entertain a motion to adjourn?

12 COMMISSIONER SCOTT: So moved.

13 VICE CHAIRMAN BURACK: So moved.

14 DIRECTOR MUZZEY: Second.

15 CHAIRMAN HONIGBERG: Moved and seconded  
16 a couple of times. All in favor say "aye"?

17 (Multiple members indicating "aye".)

18 CHAIRMAN HONIGBERG: Any opposed?

19 (No verbal response)

20 CHAIRMAN HONIGBERG: Thank you all very  
21 much.

22 **(Whereupon the meeting was adjourned at**  
23 **1:07 p.m.)**