

**In Re:**

*SEC DOCKET NO. 2014-15: PETITION FOR JURISDICTION  
OVER A RENEWABLE ENERGY FACILITY BY ANTRIM WIND, LLC*

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*DAY 1 - AFTERNOON SESSION ONLY  
July 6, 2015*

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STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

July 6, 2015 - 1:04 p.m. DAY 1  
Public Utilities Commission AFTERNOON SESSION ONLY  
21 South Fruit Street  
Concord, New Hampshire

IN RE: SITE EVALUATION COMMITTEE:  
DOCKET NO. 2014-05: Petition for  
Jurisdiction Over a Renewable  
Energy Facility by Antrim Wind, LLC  
and Others.

PRESENT:	SITE EVALUATION COMMITTEE:
Chrmn. Martin P. Honigberg (Presiding as Chairman of SEC)	Public Utilities Comm.
Cmsr. Robert R. Scott	Public Utilities Comm.
Dir. Eugene Forbes, Designee	DES - Water Division
Cmsr. Jeffrey Rose	Dept. of Resources & Economic Dev.
Dir. Elizabeth Muzzey	Div. of Historical Resources
Patricia Weathersby	Public Member
Roger Hawk	Public Member

COUNSEL TO THE COMMITTEE: Michael Iacopino, Esq.

COURT REPORTER: Susan J. Robidas, N.H. LCR No. 44

1 APPEARANCES: Reptg. Antrim Wind, LLC:  
2 Barry Needleman, Esq. (McLane, Graf)  
3 Patrick Taylor, Esq. (McLane, Graf)  
4 Jack Kenworthy (Antrim Wind)  
5 Henry Weitzner (Walden Green Energy)  
6 David Raphael (LandWorks)  
7  
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11 N.H. Atty. Gen. Office  
12 Jean Vissering  
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15 Justin Richardson, Esq. (Upton &  
16 Michael Genest, Chairman Hatfield)  
17 John Robertson, Selectman  
18 Gordon Webber, Selectman  
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20 Reptg. Antrim Planning Board:  
21 Christopher Condon, Chairman  
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23 Reptg. Harris Center for Conservation  
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28 David M. Howe, Esq.  
29 Carol Foss  
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31 Reptg. the Wind Action Group:  
32 Lisa Linowes  
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34 Reptg. the Schaefer Family  
35 (Abutters Group):  
36 Brenda Schaefer, pro se  
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38 Reptg. Lorraine C. Block and  
39 Richard Block  
40 (Non-Abutters Group):  
41 Lorraine Carey Block, pro se  
42 Richard Block, pro se  
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44  
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1 APPEARANCES (CONT'D):

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3 Janice Duley Longgood, pro se

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7 Dr. Fred Ward, pro se

8 Elsa Voelcker, pro se

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10 Robert Cleland, pro se

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DAVID RAPHAEL

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## 1 AFTERNOON SESSION

## 2 P R O C E E D I N G S

3  
4 CHAIRMAN HONIGBERG: All right.  
5 I think we're ready to pick back up again, and  
6 Ms. Maloney has the floor.

7 MS. MALONEY: Okay. Thank you.

## 8 CROSS-EXAMINATION

9 BY MS. MALONEY:

10 Q. Good afternoon.

11 A. (Kenworthy/Raphael) Good afternoon.

12 Q. I guess I'm going to start with following up on  
13 Mr. Richardson's questions in referencing the  
14 Committee's Order on pending motions, dated  
15 September 10, 2013, which I guess is AWE4. Do  
16 you have that in front of you? And you  
17 testified that, based on -- and correct me if I  
18 misstate it -- based upon this Order, that you,  
19 rather than take an appeal, you decided to file  
20 a new application using essentially the same  
21 proposal that you proposed at the close of  
22 these proceedings. Is that correct?

23 A. (Kenworthy) I don't think that the proposal  
24 that we're making today is essentially the same  
25 proposal necessarily as the proposal that we

1       made in 2012 for the Motion for Rehearing. I  
2       think there are certainly differences. I  
3       certainly did say that this Order and other  
4       information that we got in the 2012-01 docket  
5       led us to file a new application with changes  
6       that addressed the concerns that were  
7       identified rather than to pursue a lengthy and  
8       expensive and uncertain appeal.

9   Q.   Well, do you believe that you got a full and  
10       fair hearing before the Committee?

11   A.   (Kenworthy) I believe that we had a full  
12       hearing. I think it was -- whether I agree or  
13       disagree with the outcome of it, it was a fair  
14       hearing, and there was certainly a process.  
15       And I don't know, as a legal matter, that I can  
16       answer that question. But I also am aware that  
17       the changes that were proposed here were  
18       specifically to address concerns that were  
19       identified in that docket. And, again, we feel  
20       like it was pretty clearly laid out to us that  
21       changes of that nature were too substantial to  
22       be heard in a rehearing and that they could be  
23       reheard in a de novo application.

24   Q.   Okay. So you do believe you got a full and  
25       fair hearing before the Committee --



1 A. (Kenworthy) For a ten --

2 Q. -- on the 2012 docket.

3 A. (Kenworthy) Excuse me. Yeah, for a 10-turbine  
4 project.

5 Q. You believe you got a full and fair hearing.

6 A. (Kenworthy) I believe so.

7 Q. Okay. And you do believe you had a right to  
8 appeal that determination to the New Hampshire  
9 Supreme Court.

10 A. (Kenworthy) I do believe we had that right.

11 Q. Okay. So, do you understand that this decision  
12 from the SEC is a final decision on the merits?

13 A. (Kenworthy) With respect to the project that we  
14 proposed in 2012?

15 Q. Yes.

16 A. (Kenworthy) Yes, I think that's my  
17 understanding.

18 Q. Okay. Well, let me just ask you some of the  
19 differences between what you proposed then and  
20 what you are proposing now.

21 After the decision issued by the SEC, by  
22 the Committee, you filed your Motion for  
23 Rehearing and to reopen the record; correct?

24 A. (Kenworthy) That's correct.

25 Q. After they issued a decision denying your

1 application; correct?

2 A. (Kenworthy) It was after they deliberated and  
3 voted on that decision, yes. Yup.

4 Q. And at the time you were proposing eliminating  
5 Turbine 10; correct?

6 A. (Kenworthy) That's correct.

7 Q. And you were proposing, I believe it was 900 --  
8 your mitigation plan, I think, included  
9 800 acres of conservation easements?

10 A. (Kenworthy) I'm sorry. Are you asking in our  
11 Motion for Rehearing or when they issued their  
12 denial?

13 Q. The Motion for Rehearing.

14 A. (Kenworthy) In our Motion for Rehearing we had  
15 also proposed to include an additional hundred  
16 acres of permanent conservation land.

17 Q. Which is -- is that the same as you're  
18 proposing today?

19 A. (Kenworthy) Nine hundred and eight acres.

20 Q. And you also raised the additional 40,000 that  
21 you were going to provide to the Town of Antrim  
22 to use at their own discretion; correct?

23 A. (Kenworthy) That's correct.

24 Q. And all the remaining turbines would remain the  
25 same height.

1 A. (Kenworthy) That's correct. In 2012, there  
2 were no changes to Turbines 1 through 9.

3 Q. And in your current proposal, the only changes  
4 in 1 through 9 is a 45-foot reduction in  
5 Turbine 9; correct?

6 A. (Kenworthy) No. No, they are all different  
7 turbines.

8 Q. I understand that. And that's my next  
9 question. When you filed the petition, you  
10 were not using the Siemens turbines; correct?

11 A. (Kenworthy) When we filed the petition, it was  
12 not concluded that we were going to use the  
13 Siemens turbines. So we had a range of  
14 potential heights and a range of potential  
15 capacities back in November when we filed this  
16 Petition.

17 Q. Right. And since the time you filed that  
18 petition, you've decided to go with Siemens  
19 turbines.

20 A. (Kenworthy) Correct.

21 Q. And 1 through 8 is about 3 feet smaller than  
22 what you had previously proposed; correct?

23 A. (Kenworthy) They are about, I think it's right  
24 about 3 feet less tall. They're also smaller  
25 in many other dimensions. They've got a

1           3-meter -- the rotor diameter is 3 meters  
2           shorter, and I think the tower width at the  
3           base and the top is roughly 12 to 13 percent  
4           thinner, I think, and the nacelle is about  
5           20 percent shorter.

6   Q.   Well, but when you were asked during the  
7           technical session, I believe you indicated  
8           that, with regard to 1 through 8, they don't  
9           materially change the impact on aesthetics.

10   A.   (Kenworthy) That's probably true. I think  
11           Turbines 1 through 8 are fairly similar to what  
12           they were in 2012.

13   Q.   Okay. So, going back to the Committee's  
14           decision, you interpreted the Committee's --  
15           the language in that decision saying that the  
16           new proposal that was filed after they had  
17           already deliberated and issued a decision, you  
18           decided that the language said that they would  
19           materially change the original application and  
20           require the Subcommittee to conduct an  
21           extensive re-review of the entire application.  
22           You interpreted that as an invitation to submit  
23           the same proposal in a new application.

24   A.   (Kenworthy) Yes, I think that's correct. That,  
25           and in other instances during the deliberations

1           where it was noted that the Committee thought  
2           that those changes were better suited to a new  
3           application than a Motion for Rehearing.

4    Q.    Now, what -- your application is more than just  
5           the aesthetics reports study; correct?

6    A.    (Kenworthy) Yes.

7    Q.    What other components are part of your  
8           application?

9    A.    (Kenworthy) It's a complete application.  So it  
10           will have numerous volumes that consist of  
11           various expert reports on issues such as sound,  
12           shadow flicker, visual assessment, economic  
13           impacts, property value impacts.  We have  
14           reports on the cultural resources, on both  
15           archeological and architectural resources.  We  
16           have full civil engineering and electrical  
17           design plans for the Project.  It's a  
18           comprehensive, complete application for review  
19           by the Committee.  I don't know if I hit every  
20           single category that's included in our  
21           application.

22   Q.    So the entire application is fairly  
23           comprehensive and fairly extensive.

24   A.    (Kenworthy) Yes.

25   Q.    Did you take a look at the transcript of the

1           deliberations on your Motion for Rehearing and  
2           to reopen the record?

3       A.     (Kenworthy) Yes, I have read that transcript  
4           before.

5       Q.     Okay. So you're not -- did you read Dr.  
6           Boisvert's comments, that when they look at the  
7           change in removing one of the turbines, it  
8           raised in his mind questions about the  
9           financial viability because now we're talking  
10          about a project with 10 percent less generation  
11          capacity? Did you read that comment?

12      A.     (Kenworthy) I did.

13      Q.     And did you read -- so, in terms of -- the  
14          financial capability, I think, is one of the  
15          aspects that remained an open question.

16      A.     (Kenworthy) Yes. And I think shortly after Dr.  
17          Boisvert's comment there's a clarifying comment  
18          by Attorney Iacopino that -- I think a comment  
19          was made with respect to a letter that was  
20          submitted by a bank in support of the financing  
21          of the Project and that that letter was  
22          submitted with respect to a 27-megawatt turbine  
23          project. So it was addressing a nine-turbine  
24          project at the time.

25      Q.     So you're pretty familiar with the

1 deliberations, then.

2 A. (Kenworthy) I'm familiar with that component of  
3 it, yes.

4 Q. I didn't remember that.

5 But my point is that the -- in terms of  
6 what the Committee meant, you've interpreted  
7 that to mean to file the same application  
8 again. The Committee actually was talking  
9 about the entire application -- in other words,  
10 the change that your new proposal would have on  
11 other components of that application. Do you  
12 agree?

13 A. (Kenworthy) Yes. I think -- I guess, if I'm  
14 understanding you correctly, I think I agree.  
15 I think what I mean to say is that our  
16 interpretation was that the changes that we had  
17 proposed to deal -- to address aesthetic  
18 concerns, we heard the Committee to say would  
19 require re-review of other elements of the  
20 Application, such as perhaps financial  
21 capability, and other issues such as noise or  
22 other matters. And so, for those reasons it  
23 was not appropriate to take it up on a Motion  
24 for Rehearing and Reconsideration. So a new  
25 application that addressed all of the ways that

1 other aspects of the Project may be impacted by  
2 those changes should be submitted, and that's  
3 what we have prepared.

4 Q. Okay. And similarly, did you look at the SEC  
5 decision? I'm sure you have. I guess that's  
6 AWE3, the decision denying the Application for  
7 Certificate of Site and Facility on April 25th,  
8 2013.

9 A. (Kenworthy) Yes, I have that here.

10 Q. And take a look at Page 53. And here the  
11 Committee is addressing the proposed mitigation  
12 that you offered. Do you see that bottom  
13 paragraph where it starts with "Similarly"?

14 A. (Kenworthy) Yes.

15 Q. And do you understand that what they were  
16 saying there was, while an offer of 800 acres  
17 of conservation was a generous offer, in this  
18 case the dedication of lands to a conservation  
19 easement in this case would not suitably  
20 mitigate the impact? Do you see that?

21 A. (Kenworthy) I do see that.

22 Q. And while additional conserved lands would be  
23 of value to wildlife and habitat, they would  
24 not mitigate the imposing visual impact that  
25 the facility would have on the valuable



1 viewsheds. Do you see that as well?

2 A. (Kenworthy) I do.

3 Q. So you knew that when you made the new proposal  
4 including the additional hundred acres of  
5 conservation land that this Committee had  
6 already made a determination, a finding that  
7 additional conservation lands does not mitigate  
8 against aesthetic impacts; correct?

9 A. (Kenworthy) I guess I don't know if I would  
10 agree entirely that the Committee has ruled  
11 that land conservation can't be a useful form  
12 of mitigation for aesthetic impacts.

13 Q. Well, it says what it says; does it not?

14 A. (Kenworthy) It says the dedication of lands to  
15 a conservation easement in this case would not  
16 suitably mitigate the impact. And it goes on  
17 to say that additional conservation lands would  
18 be of value --

19 Q. To wildlife habitat.

20 A. (Kenworthy) Yeah.

21 Q. They would not mitigate the imposing visual  
22 impact that the facility would have on valuable  
23 viewsheds.

24 MR. NEEDLEMAN: Mr. Chair, I'll  
25 object. It speaks for itself, and it's also

1 speaking to a 10-turbine project, not to the  
2 proposed project here. So the Committee can  
3 read the language and reach its own conclusion.

4 MS. MALONEY: Well, he testified  
5 that this was a new project, and he testified  
6 that there were changes.

7 CHAIRMAN HONIGBERG: Didn't you  
8 actually get him to agree with you already about  
9 what it says?

10 MS. MALONEY: Yes.

11 CHAIRMAN HONIGBERG: That's what  
12 I thought.

13 MS. MALONEY: Well --

14 CHAIRMAN HONIGBERG: I wasn't  
15 sure how the last question differed from the one  
16 before.

17 MS. MALONEY: Oh, okay. Fine.  
18 I'll just move on.

19 BY MS. MALONEY:

20 Q. Now, the Committee contemplated in this Order  
21 that they had looked at the recommendations  
22 that Ms. Vissering has made, but they were  
23 reluctant because they were concerned about how  
24 it would impact the rest of the Application;  
25 correct?

1 A. (Kenworthy) I believe that's correct.

2 Q. And the Committee also found that the reduction  
3 in scale suggested by Ms. Vissering may  
4 substantially mitigate the unreasonable adverse  
5 impact on aesthetics, but would likely change  
6 the dynamics of the Project to such a degree  
7 that it would be unable to confidently assess  
8 the consequences. Isn't that what they said?

9 A. (Kenworthy) I'm sorry. Where is that?

10 Q. Page 54, at the top.

11 (Witness reviews document.)

12 A. (Kenworthy) Yes, I see that.

13 Q. Okay. And so I think, contrary to what you  
14 testified on direct, the Committee did consider  
15 Ms. Vissering's recommendations as proposed  
16 mitigation, but they were concerned about the  
17 overall impact on the proposal.

18 A. (Kenworthy) I don't think I stated that they  
19 did not consider Ms. Vissering's  
20 recommendations. I think what I stated is they  
21 did not adopt Ms. Vissering's recommendations  
22 wholesale. So there was no prescription -- for  
23 example: I think a question was asked of me by  
24 Attorney Richardson, why we didn't just do  
25 exactly everything Ms. Vissering had

1 recommended, and my comment was in response to  
2 that question. So, certainly we recognize that  
3 they took Ms. Vissering's opinions into  
4 consideration. And obviously, as stated here,  
5 as you point out, those recommendations may  
6 substantially mitigate those effects. They  
7 also recognize that the proposed changes we  
8 made in our Motion for Rehearing were intended  
9 to and would in fact address some of their  
10 concerns, but that they weren't suited to be  
11 taken up in a Motion for Rehearing and should  
12 come in a new application.

13 Q. And why didn't you adopt Ms. Vissering's  
14 recommendations?

15 A. (Kenworthy) Again, I think we have addressed  
16 all of those recommendations in some fashion.  
17 I think there was no -- it's not our belief,  
18 and it didn't appear it was the Committee's  
19 belief, that Ms. Vissering's recommendations  
20 were the definitive recommendations that needed  
21 to be followed in order to make a project  
22 satisfactory to the Committee with respect to  
23 aesthetic impacts.

24 Q. Well, you're already aware that the Committee  
25 doesn't consider conservation easements as

1 mitigation of aesthetic impacts. I mean,  
2 they've said that; correct?

3 MR. NEEDLEMAN: I'm going to  
4 object to that question.

5 MR. RICHARDSON: Same objection.

6 CHAIRMAN HONIGBERG: Sustained.

7 BY MS. MALONEY:

8 Q. You were present in the technical session when  
9 Ms. Vissering testified; correct?

10 A. (Kenworthy) Yes, I was.

11 Q. And you're aware that Ms. Vissering testified  
12 that the impacts that will -- that part of her  
13 recommendation that would have the most impact  
14 are the changes to the turbines themselves;  
15 correct?

16 A. (Kenworthy) I've heard Ms. Vissering testify on  
17 numerous occasions that each of her  
18 recommendations should be taken with equal  
19 weight.

20 Q. I didn't ask you that. I asked you if you  
21 looked at -- if you were here present during  
22 the technical session and you heard her  
23 testimony, and she said the changes to the  
24 turbines themselves would have the most impact.

25 A. (Kenworthy) I don't recall that.

1 Q. You don't. Well, do you think they would?

2 A. (Kenworthy) I'm sorry. Can you repeat the  
3 question?

4 Q. Do you think they would, the changes to the  
5 turbines themselves, do you think they would  
6 have the most impact?

7 A. (Kenworthy) Out of all the recommendations that  
8 were made by Ms. Vissering?

9 Q. Yes.

10 A. (Kenworthy) I guess it's hard for me to put a  
11 strict numeric value on it. I think the  
12 recommendations that she included were:  
13 Elimination of Turbines 9 and 10, reduction in  
14 size of those turbines. And certainly I think,  
15 as we've stated, we've tried to make  
16 adjustments to address both of those concerns.  
17 And then we made additional changes that we  
18 think are perhaps in the aggregate as  
19 important. It's hard for me to necessarily  
20 weigh exactly which ones are most important.  
21 But I think clearly with respect to Willard  
22 Pond, Turbines 9 and 10 are the most  
23 significant, and that was clearly identified as  
24 a sensitive resource. And the changes we've  
25 made have clearly eliminated Turbine 10 and

1       visually eliminated Turbine 9 from Willard  
2       Pond's -- from having visibility from Willard  
3       Pond. But there's a whole suite of other  
4       changes I think that taken together also are  
5       very important to consider.

6       Q. But you were aware that the Committee was  
7       concerned about more than just Willard Pond.

8       A. Sure.

9       Q. I mean, they discussed the value of the entire  
10      dePierrefeu Wildlife Sanctuary; correct?

11      A. (Kenworthy) Yes, of which the vast majority has  
12      zero visibility.

13      Q. And they -- okay. And it's not just about  
14      visibility. We'll agree with that; right?

15      A. (Kenworthy) I'm sorry. What's not just about  
16      visibility?

17      Q. Aesthetic impacts.

18      A. (Kenworthy) No, but it needs to be visible in  
19      order for it to have aesthetic impacts.

20      Q. Okay. And the experience of going to a  
21      wildlife sanctuary, just that experience cannot  
22      be measured aesthetically?

23      A. (Kenworthy) I'm not sure I understand the  
24      question.

25      Q. Well, just the experience of going to a

1 wildlife sanctuary, the value of that can't be  
2 measured aesthetically? That has nothing to do  
3 with aesthetic impacts?

4 MR. NEEDLEMAN: I'll object. I  
5 don't understand the question.

6 CHAIRMAN HONIGBERG: The question  
7 is whether the witness understands the question.  
8 Do you understand the question?

9 THE WITNESS: I don't think I  
10 really do.

11 BY MS. MALONEY:

12 Q. Well, you said it was just about visibility.

13 A. (Kenworthy) No. No, I didn't say that. I  
14 think I said when we talk about -- I think  
15 David testified to this earlier, that when  
16 we're evaluating aesthetic impacts, if there is  
17 no visibility from a particular area -- and  
18 David, please correct me if I'm wrong -- it  
19 can't have -- there can't be an aesthetic  
20 impact there because there is no visibility to  
21 start.

22 Q. Okay. And you're saying for most of the  
23 wilderness sanctuary they're not visible.

24 A. (Kenworthy) The vast majority.

25 Q. But they are visible from Goodhue Hill, and



1           they are visible from Bald Mountain; correct?

2    A.   (Kenworthy) Yes, they're visible from Goodhue  
3           Hill and from Bald Mountain at certain  
4           locations.

5    Q.   And the Committee found that they had  
6           significant impacts to those two locations;  
7           correct?

8    A.   (Kenworthy) I don't recall if that's what they  
9           found or not. Is that in here?

10   Q.   Well, why don't you turn to Page 50. Why don't  
11          you start with the first full paragraph.

12   A.   (Kenworthy) Would you like me to read it?

13   Q.   No. Yeah, why don't you go midway down. Do  
14          you see, "There are significant qualitative  
15          impacts" --

16   A.   (Kenworthy) I do see that.

17   Q.   -- "on Willard Pond, Bald Mountain, Goodhue  
18          Hill and Gregg Lake"? Correct? Is that what  
19          it says?

20   A.   (Kenworthy) Yes, it is.

21   Q.   So the Committee found significant impacts on  
22          those areas. And they're part of -- well,  
23          Goodhue Hill and Bald Mountain, that would be  
24          considered part of that sanctuary?

25   A.   (Kenworthy) Yes.

1 Q. Okay. And the Committee also found "moderate"  
2 impacts on additional locations, including Robb  
3 Reservoir, Island Pond, Highland Lake,  
4 Nubanusit Pond, Black Pond, Franklin Pierce  
5 Lake, Meadow Marsh and Pitcher Mountain;  
6 correct?

7 A. Yes, I see that here.

8 Q. And your proposed changes of eliminating  
9 Turbine 10 and 9 really don't address those  
10 additional issues, with the exception, I  
11 believe, of Nubanusit Lake; is that correct?

12 A. (Kenworthy) No, I would not agree with that. I  
13 think, again, that the changes in totality that  
14 we've made to the Project need to be  
15 re-evaluated in the context of that new project  
16 proposal, which is what David and Landworks  
17 have done. And that comes down to, I think, a  
18 substantive discussion on the merits of whether  
19 or not there is still an unreasonable adverse  
20 affect on aesthetics in the eyes of the  
21 Committee. But certainly there are reduced  
22 impacts to all of these resources.

23 Q. But Mr. Raphael found only one property that  
24 had sensitive impacts, that being Willard Pond;  
25 correct? I mean, when he did his whole

1 analysis, it came down to one property. So he  
2 disagreed with the Committee on its findings of  
3 qualitative -- "significant qualitative  
4 impacts" to the properties that the Committee  
5 identified.

6 MR. NEEDLEMAN: I'll object. I  
7 don't think that's a proper characterization of  
8 his testimony. And Mr. Raphael is sitting right  
9 here, so you could ask him, I suppose, rather  
10 than asking Mr. Kenworthy to characterize his  
11 testimony.

12 MS. MALONEY: Well, I'm talking  
13 about his Visual Assessment.

14 BY MS. MALONEY:

15 Q. You're familiar with the Visual Assessment.

16 A. (Kenworthy) I am.

17 Q. And he identified just the one property. After  
18 he did his whole analysis, he came down with  
19 one property, Willard Pond.

20 A. (Kenworthy) What do you mean, "came down to one  
21 property"?

22 Q. Well, he looked at 300 properties and then went  
23 through his analysis. And as he went through  
24 the analysis, the important properties got  
25 reduced, the sensitivity of those properties,

1           the effect on the view, and the one that he  
2           considered for the effect on the viewer was  
3           Willard Pond. Are you -- do you disagree with  
4           that?

5       A.   (Kenworthy) You know, I think I would want to  
6           go back through and read through the entire  
7           methodology on what the findings were relating  
8           to Robb Reservoir, Island Pond, Nubanusit Lake,  
9           all these other resources, or even just the  
10          ones inside the sanctuary, being Goodhue and  
11          Bald, before I'd agree with that statement.

12       Q.   Okay. I'll direct some of those questions to  
13           Mr. Raphael, then, because we don't have time  
14           to have you read through it again.

15                I'm going to ask you some of the same  
16           questions I asked at the technical hearing,  
17           partly because I'm not sure we've gotten full  
18           answers, but also because that wasn't under  
19           oath and wasn't part of the record.

20                I wanted to ask you about the type of --  
21           now, you indicated that the roads that are  
22           going to be built start out at 32 feet wide; is  
23           that correct?

24       A.   (Kenworthy) Thirty-four feet wide for crane  
25           roads and 16 feet wide for access roads. So it

1        would 16 feet wide from the entrance off Route  
2        9 up to Turbine 1 and then 32 feet wide for the  
3        remainder of the access road to the ridge and  
4        along the ridgeline -- sorry -- 34 feet wide  
5        until reduced post-construction back to  
6        16 feet.

7        Q.    So I think one of the things that I asked you  
8        about in the technical hearing was whether or  
9        not there was a catastrophic failure to one of  
10       the turbines, if you would then have to expand  
11       that road that you just reduced. Have you  
12       given any additional consideration to that?  
13       Because I believe at the time of the tech  
14       hearing you said you intended to revegetate it.

15       A.    (Kenworthy) That's right.

16       Q.    And so if you had a catastrophic failure, the  
17       plan is still to go and cut down all that  
18       vegetation again and then bring your crane in  
19       and fix the turbine and...

20       A.    (Kenworthy) Well, I think -- so there's the  
21       first step post-construction is that you will  
22       use a soil that is taken from the site during  
23       excavation of road construction, as well as  
24       chipped stumps and other organic materials  
25       taken from the site and use that as a base to

1 re-establish seeding along the roadside on the  
2 shoulders. And a New Hampshire native seed mix  
3 will be used to re-establish growth on those  
4 shoulders. The road bed will remain intact so  
5 that the actual infrastructure for the road  
6 won't be compromised. And on those shoulders  
7 woody vegetation won't be allowed to grow, for  
8 the most part.

9 Q. Won't be allowed to grow.

10 A. (Kenworthy) Right.

11 Q. You also testified -- well, there was  
12 testimony, and I believe it was Mr. Raphael's.  
13 But I think I need to ask you about this, that  
14 you wouldn't be able to see the roads from --  
15 that roads would have no impact. I believe  
16 that was Mr. Raphael's testimony. And it was  
17 based, I understood, upon a landscape plan that  
18 was being prepared. And I think we requested  
19 it. And we received a landscape plan, but it  
20 was just for the operations facilities. Do you  
21 know anything about any work that's going to be  
22 done on the roads to keep them from being  
23 visible?

24 A. (Kenworthy) Well, yes, I know that what we have  
25 kind of committed to do in our application is

1       that we will essentially be revegetating all of  
2       the road shoulders and cut-fill slopes for the  
3       Project site immediately post-construction,  
4       except for bare rock face cut slopes. They  
5       can't be revegetated. And that that will then,  
6       in many cases, be allowed to continue to  
7       revegetate with natural vegetation, which would  
8       include woody vegetation, except in areas that  
9       we need to maintain clear, for example, along  
10      road shoulders that we may need to clear again  
11      if we have to bring a crane back in, or  
12      directly underneath overhead electrical lines  
13      where we need to make sure we don't have  
14      interference with tree growth under those  
15      electrical lines.

16             So, yes, we have agreed to revegetate all  
17      of the areas that are disturbed  
18      post-construction, except for the actual  
19      footprint of the facilities themselves, and in  
20      that manner.

21   Q.    Okay. And how do you intend to do that?

22   A.    (Kenworthy) How?

23   Q.    Yes.

24   A.    (Kenworthy) That will be part of the scope of  
25      work for our balance-of-plan contractor.

1 Q. So you don't have a -- you're going to wait  
2 until you get that scope of work in to  
3 determine how it's going to be done?

4 A. I don't think it's particularly -- it's not  
5 unique work. I think it involves, as I  
6 mentioned, the utilization of soils from the  
7 site that are stockpiled when the site is  
8 cleared initially for construction, together  
9 with woody material that's cleared and chipped  
10 to create an organic mulch with materials from  
11 the site. And those soils and mulch are to be  
12 spread on the road shoulders and on  
13 cut-and-fill slopes and then seeded with the  
14 native New Hampshire seed mix.

15 Q. Okay. And finally, I think I'd like to ask you  
16 about the payment to the Town of Antrim for the  
17 enhancement of recreation and activities and  
18 aesthetic experience at Gregg Lake. And you  
19 said that -- now, is there any -- is that a  
20 written agreement?

21 A. (Kenworthy) Yes.

22 Q. And you said the Town was to use it at its own  
23 discretion?

24 A. (Kenworthy) That's right.

25 Q. So there's no constraints placed on the use of



1           that money?

2       A.     (Kenworthy) No, other than the letter agreement  
3           that we have between Antrim Wind Energy and the  
4           Town of Antrim that stipulates what the funds  
5           are for. The ultimate use of those funds is at  
6           the discretion of the Town of Antrim.

7       Q.     Okay. Now, the Town disagreed -- I believe  
8           they testified at the technical hearing that  
9           they disagreed with the Committee's decision on  
10          aesthetics. So I'm wondering: So what  
11          safeguards are in place to make sure this money  
12          is used for aesthetic value?

13      A.     Town of Antrim has a very engaged citizenry  
14          that I'm sure will be involved in any decisions  
15          the Town makes on how to disburse those funds.  
16          I think the letter represents what the Town  
17          intends to do with them. I think the specific  
18          process -- I don't know how they would go  
19          through that process to make, you know, a  
20          detailed decision as to what they ultimately  
21          will do.

22      Q.     Isn't this similar to, you know, providing  
23          additional lands for conservation easements?  
24          I'm not sure how money can improve an aesthetic  
25          impact. I mean, you must have contemplated

1           this when you made the offer.

2       A.   (Kenworthy) Well, I think that there are a  
3           number of things that are generally accepted as  
4           mitigation for a variety of different impacts  
5           that may be directly or indirectly related to  
6           what those impacts are in the first place. So  
7           I think there's pretty broad agreement among  
8           conservation organizations that land  
9           conservation is in fact a viable tool to be  
10          used for mitigating aesthetic impacts from a  
11          project. I think many New Hampshire  
12          conservation organizations agree with that  
13          assessment. I think there's also been a  
14          precedent in the past where -- and I'm having  
15          trouble remembering the reference right now,  
16          but it may have been the Groton case -- where  
17          Public Counsel sought payment that would pay  
18          for, I think it was a kiosk, an informational  
19          kiosk to help mitigate aesthetic impacts in  
20          that particular case. So I think that there is  
21          precedent for both land conservation and funds  
22          to be used in ways that are to mitigate for  
23          aesthetic impacts associated with projects.

24       Q.   Okay. But the Committee in this particular  
25           case found that conservation easements don't

1 mitigate against aesthetic impacts.

2 A. (Kenworthy) They did find that in 2012-01.

3 Q. Okay. I guess I just have some questions for  
4 Mr. Raphael.

5 You agree that you submitted testimony in  
6 this case; correct?

7 A. (Raphael) Yes, I did.

8 Q. And would you agree that the testimony that you  
9 gave was not directed towards the entire visual  
10 impact but just the differences between this  
11 project and the 2012?

12 A. (Raphael) Yes.

13 Q. But your testimony was obviously informed by  
14 your Visual Assessment.

15 A. (Raphael) Yes.

16 Q. And the Visual Assessment concluded that this  
17 project would not have an unreasonable adverse  
18 impact on the region.

19 A. (Raphael) That's correct.

20 Q. And you didn't agree with Ms. Vissering's  
21 conclusions that the Project did have an  
22 unreasonable visual impact -- that the 2012  
23 project had an unreasonable adverse impact;  
24 correct?

25 A. (Raphael) Well, again, I did not, you know,

1       conduct a visual analysis of that particular  
2       project. But it would be hard to agree with  
3       her conclusions because the methodology was  
4       incomplete.

5     Q.   And you did say that earlier. And how is it  
6       not complete?

7     A.   (Raphael) Well, first of all, I don't believe  
8       she analyzed or looked at all the resources in  
9       the 10-mile radius. I believe she's on record  
10      as saying she relied on the Applicant's  
11      listing. I don't see any consistent  
12      methodology in her previous analysis that is --  
13      that one is able to follow an if-then type of  
14      process, where she goes through a systematic  
15      assessment of a number of different criterion,  
16      or criteria that is typically used in that kind  
17      of an assessment. I think, you know, the  
18      methodology -- I don't know that she visited  
19      many of the resources. I don't have a clear  
20      sense of where she went and where she didn't.  
21      That's not -- that doesn't come through. So I  
22      don't have a full sense of how, you know,  
23      comprehensive her fieldwork was. She relied on  
24      others for visual simulations, I believe, to  
25      produce -- I believe she had SC Group produce

1 her visual simulations.

2 So I think, you know, there were certain  
3 things that were certainly done differently and  
4 incomplete. And so, therefore, on that basis  
5 alone, I could not concur with those findings  
6 because they lack a certain level of detail  
7 that I believe now really needs to be in a  
8 visual assessment.

9 Q. Well, you would agree that the different  
10 aesthetic experts use different methodologies;  
11 correct?

12 A. (Raphael) Actually, I'm finding that more and  
13 more aesthetic experts are agreeing on a very  
14 similar methodology and deal with the same  
15 questions. Sometimes the language is a bit  
16 different, sometimes the steps are a bit  
17 different, but, you know, I think most of us  
18 would agree that we're all trying to assess the  
19 visual characteristics of the Project and  
20 determine what the effect of those visual  
21 characteristics are, not only on the landscape  
22 but on the different types of users in that  
23 landscape. And so I think there's a process  
24 that's been very consistently used in Vermont.  
25 Ms. Vissering is certainly aware of that.

1       There's a process that's consistently used in  
2       Maine that has many of the same attributes as  
3       the process we used. So I can't agree with  
4       that statement that you made at the outset.

5   Q.   You can't agree that different aesthetic  
6       experts are using different methodologies.

7   A.   (Raphael) Well, it depends on the project. For  
8       example: We used a slightly different  
9       methodology if we're evaluating transmission  
10      lines. We use a different methodology for --

11   Q.   No, no. I understand.

12   A.   You know, so no one visual analysis is going to  
13      be exactly the same. But there is consistent  
14      characteristics and analysis that is conducted,  
15      you know, regardless of who that expert is.

16   Q.   Okay. And I noticed some similarities in your  
17      Visual Assessment to the Bureau of Land  
18      Management's methodology for assessing  
19      aesthetics. Did I get that correct?

20   A.   (Raphael) Yes, we draw from their scenery  
21      classification system.

22   Q.   Okay. But obviously, that was designed for the  
23      western part of the country; correct?

24   A.   (Raphael) Yes, it was.

25   Q.   Where the landscape is quite different.

1     A.     (Raphael) Right. And we've adapted it for the  
2            eastern part of the country. We made some  
3            subtle changes to ensure that it applies.

4     Q.     And I'm not going to get into detail on that  
5            because... but can I just ask you some  
6            questions generally about categories because I  
7            think we're looking at this in a vacuum. I  
8            think it would help inform the Committee a  
9            little bit about your process.

10    A.     (Raphael) Sure. Do my best to answer them.

11    Q.     So, looking at your Visual Assessment --

12                   MS. MALONEY: Was that marked as  
13            an exhibit?

14                   MR. NEEDLEMAN: Not yet. Would  
15            you like us to do that?

16                   MS. MALONEY: Just for  
17            identification.

18                   MR. NEEDLEMAN: Sure. Do you  
19            want to use my copy?

20                   MS. MALONEY: For your witness,  
21            fine. I've got one.

22                   MR. NEEDLEMAN: Do you want  
23            others to have them or not?

24                   MS. MALONEY: It's up to -- I'm  
25            not going into detail. I'm just asking him if

1 I --

2 CHAIRMAN HONIGBERG: It really  
3 depends -- I'll leave it up to you. Do you feel  
4 like the questions you're going to ask, we're  
5 going to look at you dumbly? Then maybe you  
6 need to give us copies.

7 MS. MALONEY: I think so, maybe  
8 just for context. I just think we've been  
9 talking about it here --

10 MR. NEEDLEMAN: I will circulate  
11 them.

12 (Attorney Needleman distributes  
13 document.)

14 (Discussion off the record)

15 (Exhibit AWE 6 for identification.)

16 BY MS. MALONEY:

17 Q. So, just generally speaking, the entire report  
18 consists of an executive summary; correct?

19 A. (Raphael) Yes.

20 Q. And then there's a description of your  
21 methodology?

22 A. (Raphael) That's correct.

23 Q. And then you discuss the background of the area  
24 for a few pages; correct?

25 A. (Raphael) Yes, I do.



1 Q. And then the project area landscape for a few  
2 pages?

3 A. (Raphael) Yes.

4 Q. And then we actually get into, I think at Page  
5 47, the actual Visual Assessment?

6 A. (Raphael) Correct.

7 Q. And that's somewhere between 47 and 89. And  
8 then you have your conclusion; correct?

9 A. (Raphael) Correct.

10 Q. And I think it's your first step in the  
11 process, you do an inventory of the project  
12 area. I mean, you spoke about that.

13 A. (Raphael) Yes.

14 Q. And this is where you identified 290 properties  
15 that --

16 A. (Raphael) Resources.

17 Q. -- resources that are public resources and not  
18 private resources; correct?

19 A. (Raphael) Well, they may be private, nonprofit  
20 resources or conserved lands, which are often  
21 private.

22 Q. And they deal with scenic and recreational  
23 areas and locations. I think that's what you  
24 indicated.

25 A. (Raphael) Yes.

1 Q. And then --

2 A. (Raphael) Excuse me. I'm sorry. And cultural  
3 as well.

4 Q. Okay. So that's -- I'm not sure if that's your  
5 first step or if that's part of your first  
6 step. But then you determine whether there is  
7 visibility from that particular resource;  
8 correct?

9 A. (Raphael) Correct. We start with the viewshed  
10 analysis to determine which resources might  
11 have visibility and which don't.

12 Q. Okay. So you started out somewhere in the  
13 neighborhood of 290; correct?

14 A. (Raphael) Yes.

15 Q. And then you determined, after your analysis,  
16 that about 30 had potential visibility?

17 A. (Raphael) That's right.

18 Q. And then your next step, I guess, is  
19 identification of sensitive scenic resources?

20 A. (Raphael) Yes.

21 Q. And that's where you get into cultural  
22 designation --

23 A. (Raphael) And scenic qualities.

24 Q. Right. You rate these "low," "moderate,"  
25 "high"; is that correct?

1 A. Correct. Yes.

2 Q. And so your cutoff, I guess, is "moderate to  
3 high" of potential sensitivity; correct?

4 A. (Raphael) Right. "Moderate to high," or  
5 "high."

6 Q. Right. So if it doesn't hit that "moderate,"  
7 then it doesn't move on to the next stage;  
8 correct?

9 A. (Raphael) Typically, no.

10 Q. Okay. And the next stage is determining -- and  
11 each of these stages, how important are they to  
12 your methodology?

13 A. (Raphael) They're all integral.

14 Q. So they're all equally important?

15 A. (Raphael) I wouldn't necessarily say they're  
16 all equally important. They're all equally  
17 valuable in assessing -- in conducting the  
18 process.

19 Q. Okay. So can you skip over any of these  
20 stages?

21 A. (Raphael) No. They're part of the  
22 comprehensive methodology.

23 Q. All right. And the next step, then, I guess is  
24 determination of visual effect from a sensitive  
25 scenic resource.

1 A. (Raphael) Correct.

2 Q. And with respect to that, you looked at just 10  
3 properties. So I guess from the identification  
4 of sensitive scenic resources, only 10  
5 resources made the cut.

6 A. (Raphael) Because of the combination of  
7 analyses, in terms of scenic quality and  
8 cultural designation. If they didn't rise to a  
9 "high" level of sensitivity in those two  
10 criteria, then we did not move forward with the  
11 analysis.

12 Q. Okay. So, for the fourth step of determining  
13 visual effect, you looked at 10 resources;  
14 correct?

15 A. (Raphael) Correct.

16 Q. And then you used a number of criteria to  
17 whittle that down further.

18 A. (Raphael) Well, we used two steps. Again, we  
19 used six criteria for assessing visual effect,  
20 and then we have four criteria for identifying  
21 what the effect will be on the viewer or user  
22 of the resource.

23 Q. Okay. It seems sort of common sense, but is it  
24 essential to determine whether a resource has  
25 potential sensitivity? Is that essential to

1           your analysis?

2       A.     (Raphael) Well, if a resource doesn't have any  
3           sensitivity in a number of different areas,  
4           whether it's cultural or scenic sensitivity,  
5           then typically it can accommodate visual  
6           change.

7       Q.     So it's essential to you -- is it essential to  
8           your analysis?

9       A.     (Raphael) It's, yeah, part of our analysis.  
10          Absolutely.

11      Q.     And then if -- again I think the rating is  
12          "low," "moderate" or "high" again at this  
13          stage?

14      A.     (Raphael) Yes, we try to, you know, use basic,  
15          understandable ratings and criterion that we  
16          can all understand.

17      Q.     And then the next stage is you determined what  
18          the effect on the viewer will be.

19      A.     (Raphael) Correct.

20      Q.     And here I think you tried to get a reasonable  
21          person in the mix you said?

22      A.     (Raphael) Yes.

23      Q.     I think you testified to that.

24      A.     (Raphael) Yes.

25      Q.     And the combination of steps leads to the

1 conclusion as to whether the potential overall  
2 visual effect on the resource.

3 A. (Raphael) Yes. I mean, there is one final step  
4 after going through these criteria, which is to  
5 kind of -- you know, kind of a cumulative  
6 assessment where I go back and really revisit  
7 all the elements of the analysis and kind of,  
8 you know, do a check and then factor in any  
9 number of other considerations as to whether  
10 the project would have an unreasonable  
11 versus -- an unreasonable adverse effect versus  
12 just an adverse effect.

13 Q. That was part of your Conclusion section,  
14 wasn't it?

15 A. (Raphael) Yes.

16 Q. As a result of going through this analysis, and  
17 on this fifth step, you determined that just  
18 Willard Pond had a "moderate" impact; is that  
19 correct?

20 A. (Raphael) We found Willard Pond to rise to a  
21 level of sensitivity that warranted a complete,  
22 full analysis through all steps of the process.

23 Q. And why did you separate Willard Pond out from  
24 the rest of the sanctuary?

25 A. (Raphael) Because impacts were different

1       depending -- or effects were different  
2       depending on where in the sanctuary you were.  
3       I mean, as Mr. Kenworthy pointed out, there are  
4       places in the sanctuary where you won't ever  
5       see the Project. It won't affect your use or  
6       your understanding of the landscape at all.  
7       There are also resources where you can see the  
8       Project, such as Bald Mountain, as I referred  
9       to earlier, where, again, the effect on the  
10      viewer is not one that rises to a level of  
11      being "high" for, again, the reasons that I  
12      cited on the record.

13   Q.    Okay.

14   A.    (Raphael) So we looked at individual resources  
15       within the sanctuary as a whole, but also spent  
16       some time as we hiked the trail system up to  
17       Goodhue Hill and walked around the area that we  
18       did get a sense of the sanctuary as a landscape  
19       and as a conserved area.

20   Q.    Isn't that -- I mean, you're going through all  
21       this trouble with all this methodology and  
22       rating systems. Isn't that sort of a  
23       subjective decision to isolate Willard Pond  
24       from the rest of the sanctuary?

25   A.    (Raphael) Not at all. I mean, again, it's sort

1 of discounting or disregarding the process that  
2 we just -- that you painstakingly took me  
3 through that really is a systemic way of trying  
4 to understand how you get to the point where  
5 only Willard Pond emerges as a final resource  
6 to analyze in great detail.

7 Q. But couldn't you have looked at the entire  
8 sanctuary as a resource with multiple  
9 components?

10 A. (Raphael) You mean -- are you asking -- I don't  
11 quite understand what the question is.

12 Q. Couldn't you have looked at the entire  
13 sanctuary as one resource with multiple  
14 components? The water component --

15 A. (Raphael) We did.

16 Q. But then you isolated it.

17 A. (Raphael) Well, we isolated the components  
18 where there would be a potential visual effect.

19 Q. Okay. Not going to get too much in the weeds  
20 here, but I just want to go and look at the 10  
21 projects that you identified as having a visual  
22 effect from a sense of significant resource.  
23 You looked at Pitcher Mountain?

24 A. (Raphael) Yes, I did.

25 Q. And Pitcher is one of those sites that already



1           has a view of the Lempster wind farm; correct?

2    A.   (Raphael) Correct.

3    Q.   But you determined it didn't create a  
4           cumulative impact because the two projects are  
5           not in the same viewing arc?

6    A.   (Raphael) There are a number of reasons why it  
7           didn't create a cumulative impact. That might  
8           be one of them. In other words, you didn't see  
9           the projects together in one view. One is in a  
10          northerly direction and the other is in an  
11          easterly direction. The scale of the projects  
12          from Pitcher Mountain is diminished  
13          substantially by distance. There's an  
14          incredible amount of things to look at from  
15          that view because it's 360. And so there are  
16          many other factors which diminished the  
17          potential, if not eliminated the potential for  
18          cumulative impact.

19   Q.   Well, did you review the SEC decision?

20   A.   (Raphael) I did.

21   Q.   Okay. So you're aware that the SEC already had  
22          determined that Pitcher Mountain -- they were  
23          concerned about the cumulative impacts at  
24          Pitcher Mountain.

25   A.   (Raphael) I was aware of that, in fact.

1 Q. Goodhue Hill, that was one of the other areas;  
2 correct?

3 A. (Raphael) Yes.

4 Q. And you indicated that --

5 A. (Raphael) Excuse me. Back up. One of the  
6 other areas that what? I'm sorry. Before I  
7 answer that so quickly --

8 Q. It was one of your top 10 --

9 A. (Raphael) Oh, okay. I'm sorry. Yes. Forgive  
10 me.

11 Q. And you determined that a typical hiker would  
12 be surprised as to how inconsequential the  
13 Goodhue Hill experience is; correct?

14 A. (Raphael) Yes.

15 Q. You found that the hike or the view wasn't  
16 terribly impressive?

17 A. (Raphael) Well, a couple things. One is when I  
18 got to the -- first I visited the sanctuary and  
19 wanted to find Goodhue Hill, there were trail  
20 maps in a little kiosk by the parking area.  
21 Goodhue Hill Trail wasn't even on the trail  
22 map, No. 1. No. 2, I couldn't find the  
23 trailhead initially, finally, going up sort of  
24 the wrong way initially around Woods Road and  
25 to -- and started the hike that way, eventually

1 coming back to the trailhead, that I guess was  
2 the correct trailhead. But I was quite  
3 surprised, actually, that the hike up Goodhue  
4 Hill was not only underwhelming, but I was  
5 really surprised to see the logging and the  
6 condition of the roads in a so-called  
7 sanctuary. So that experience right away led  
8 me to believe that the sanctuary, at least that  
9 area around Goodhue Hill, A, wasn't precious;  
10 B, was not intact; and C, scenically was  
11 diminished by the logging and management  
12 activities that is ongoing there.

13 Finally, getting to the top, I think  
14 anyone who's an avid hiker and hikes these  
15 areas, you know, there's a pleasing view. Is  
16 it the most dramatic view in the region? No  
17 way. Is it, you know, a place that you would  
18 want to linger? There's no place to really sit  
19 down unless you want to sit on the ground. The  
20 trees are growing up. You know, I mean,  
21 there's no log or rock outcrop or natural place  
22 to kind of end your hike and have a picnic, if  
23 you will. I also noticed that the woods and  
24 the clearing, which I understand was created  
25 for wildlife management and not for scenic

1       purposes, indeed will have to be cut again  
2       because it's growing up to block the view. So  
3       there weren't a lot of places you could get a  
4       good view. The most pleasing part of the hike,  
5       actually, was before I got to the summit, where  
6       there's sort of a nice little kind of wooded  
7       area just before you come to the open area.

8       Q.    Okay. You do -- you are aware, however, that  
9       the Committee did find that there were  
10       significant qualitative impacts --

11       A.   (Raphael) Well, I wonder how the Committee --

12       Q.    -- to Goodhue Hill.

13       A.   (Raphael) I mean, it left me wondering whether  
14       the Committee had hiked to Goodhue Hill and had  
15       that similar experience that I had had, and had  
16       the same information that was available to me.  
17       So, yes, I was aware of that. Based on my  
18       experience in the field and our analysis, I  
19       came to a different conclusion.

20       Q.    So clearly you disagree.

21               Similarly, Bald Mountain, you indicated  
22       that -- this is where you discussed you had to  
23       creep down the ledge to see --

24       A.   (Raphael) Yeah.

25       Q.    -- to get a view of the turbines.

1 A. (Raphael) Yeah.

2 Q. But likewise, you're also aware that the  
3 Committee did determine there was significant  
4 impacts to Bald Hill.

5 A. (Raphael) Yes, I guess. But, again, the same  
6 answer applies, that from my experience when I  
7 went up to Bald Mountain, again, when you're  
8 looking at visual effect or viewer effect, you  
9 can hike that trail, you can go to the summit,  
10 you can have a wonderful day and never even  
11 know the wind project is there unless someone's  
12 told you to go down that ridge and look for it.  
13 And so those are things that weigh into, you  
14 know, our analysis and which led me to the  
15 conclusion that, you know, the view from Bald  
16 Mountain did not rise to the level of being  
17 unreasonable.

18 Q. And I guess Gregg Lake was on that list as  
19 well. You disagreed with the Committee and  
20 their determination that there was significant  
21 qualitative impact.

22 A. (Raphael) I came to my conclusions again based  
23 on fieldwork analysis, time spent on the lake,  
24 you know, reviewing all the information that  
25 was available about the resource itself, the

1 development of the resource. You know, again a  
2 number -- and then obviously walking through  
3 the methodology that you outlined previously.

4 Q. Those properties I just talked about -- Goodhue  
5 Hill, Bald Mountain, Gregg Lake -- they didn't  
6 even make your Top 10 List here. So was that a  
7 determination of visual effect?

8 A. (Raphael) I'd have to look at the list. I  
9 think --

10 Q. Bald Mountain did, I guess.

11 A. (Raphael) Yeah, I was going to say Bald  
12 Mountain is on the list.

13 MR. IACOPINO: What page is that?

14 MS. MALONEY: I think Page 71 of  
15 his...

16 BY MS. MALONEY:

17 Q. That's where the analysis starts; is that  
18 right?

19 A. (Raphael) Goodhue Hill did not make that list.  
20 Right.

21 Q. Right. Okay. Yeah, the pictures are there,  
22 and I think the list... so, okay. Moving on.  
23 I guess we'll get to Willard Pond. Rather, let  
24 me go back.

25 The SEC also determined that there are

1 "moderate" impacts to other locations,  
2 including Robb Reservoir, Island Pond, Highland  
3 Lake, Nubanusit Pond, Black Pond, Franklin  
4 Pierce Lake, Meadow Marsh and Pitcher Mountain.  
5 We've already discussed Pitcher Mountain. You  
6 disagreed with their determination that there  
7 were "moderate" impacts to those --

8 A. (Raphael) Well, I guess it depends how you  
9 define "moderate." You know, if there's  
10 visibility, then, you know, there'll be a  
11 change in visual effect. And it varies from  
12 resource to resource. But the ones that you  
13 listed, the -- again, I evaluated a  
14 nine-turbine project. And based on my  
15 conclusions of that project, the effect did not  
16 rise to the level of being "moderate to high,"  
17 or "high."

18 Q. Okay. You only included one where your overall  
19 rating system found that only Willard Pond  
20 merited a viewer-effect impact rating; correct?

21 A. (Raphael) Correct.

22 Q. Okay. I just want to go over -- since you said  
23 that you reviewed their decision, I just  
24 wanted -- I wanted to know what your impression  
25 was of their determination, of what the

1 Committee determined about Willard Pond.

2 The Committee stated that the Audubon's  
3 wildlife sanctuary is an area to which the  
4 state and federal funds have been designated.  
5 Regardless of the definition used to identify  
6 an area as being, quote, of statewide  
7 significance, it's clear the facility would  
8 have a significant impact on the areas that are  
9 of significant value for their viewshed in the  
10 Town of Antrim and surrounding region. Do you  
11 disagree with that?

12 A. (Raphael) You know, I don't really don't want  
13 to comment on that. That was a decision made  
14 in a different docket that I was not involved  
15 in, and I really -- you know, I can't --  
16 because I was not present during the hearings  
17 and did not witness all the presentations or  
18 the testimony, I think I do not feel  
19 comfortable answering what the Committee was  
20 thinking at the time and how they arrived at  
21 their decision.

22 CHAIRMAN HONIGBERG: Don't say  
23 anything, Ms. Maloney.

24 That wasn't the question. The  
25 question was: Do you agree with that



1 statement?

2 THE WITNESS: You know, again, I  
3 can't agree with it or disagree with it out of  
4 the context that it's being provided to me.

5 BY MS. MALONEY:

6 Q. But I believe you testified this morning that  
7 this analysis is not based upon a change in  
8 turbines. I think that was your testimony this  
9 morning. You said you looked at -- whether it  
10 was 10 or 9, the value that you placed on the  
11 properties was not based upon the change in  
12 turbines. I believe that was your testimony  
13 this morning.

14 A. (Raphael) I don't believe that's quite right.  
15 I think that the value of the properties and  
16 the resources and their sensitivity is  
17 certainly independent of whether it's a 9- or  
18 10-turbine project.

19 Q. You said it's not about the changes in the  
20 turbines, but the values of the property  
21 itself. So I was asking if you disagreed with  
22 that. And you -- I believe your answer said it  
23 had to do with a different docket.

24 A. (Raphael) Well, because, again, as I stated  
25 this morning, I probably would have come to a

1 different decision or conclusion, if you will,  
2 on my own accord in my analysis in the first  
3 docket. But I did not go through a  
4 comprehensive analysis of that project.

5 This is a different project. This is what  
6 we analyzed. And you have before you, you  
7 know, our thinking and our conclusions in that  
8 regard.

9 Q. You analyzed the properties, though. You  
10 didn't --

11 A. (Raphael) Yes, that's true. We analyzed all  
12 the same properties we most likely, I'm sure,  
13 would have analyzed in a previous docket for  
14 this project.

15 MR. RICHARDSON: Let me raise an  
16 objection as to relevance. And the reason I ask  
17 is I just don't see the connection between  
18 whether he would have reached the same decision  
19 in the prior proceeding when he wasn't there,  
20 when the issue before the Committee is whether  
21 or not these changes are material or substantial  
22 or different by whatever standard this Committee  
23 chooses to apply and whether to establish  
24 jurisdiction. I don't see the connection to his  
25 review of what might have happened in the prior

1 proceeding.

2 MS. MALONEY: I want to find out  
3 whether he disagrees or agrees with the SEC,  
4 partly because I believe that they're bound by  
5 these factual determinations that SEC has made  
6 in the prior docket.

7 CHAIRMAN HONIGBERG: Is the --  
8 does it matter whether he agrees or disagrees?  
9 Does that define whether we're bound by prior  
10 findings?

11 MS. MALONEY: I'm not sure if he  
12 does agree or disagree with some of the  
13 evaluations. So I just wanted to go over the  
14 wildlife sanctuary, how the Committee addressed  
15 the wildlife sanctuary, because if he agrees,  
16 then fine; if he doesn't agree, then it's  
17 something I'll be discussing in our memorandum.

18 MR. RICHARDSON: I hope it's  
19 clear to the Committee, though, based on the  
20 memorandum we filed, which I think is the  
21 correct reading of the law and the cases, if  
22 he's testifying, as he has, that the changes are  
23 substantial and material, then the prior  
24 reading, the prior determination is effectively  
25 gone, and this becomes a new project that's

1           entitled to review.

2                   CHAIRMAN HONIGBERG:   It's very  
3           clear that there's going to be a disagreement  
4           about what the law requires and doesn't require.  
5           I think that's abundantly clear.   I'm still -- I  
6           guess I'm not sure I understand what it is you  
7           want to get from the witnesses that will help  
8           you in that argument.

9                   MS. MALONEY:   Just simply if he  
10          agreed or disagreed with what the Committee  
11          determined the value of the wildlife sanctuary  
12          is.

13                   MR. NEEDLEMAN:   And I want to  
14          object to that characterization because I don't  
15          believe the Committee made the same sorts of  
16          determinations about the value of the sanctuary  
17          that Mr. Raphael does.   The Committee certainly  
18          said in its Order that certain of these  
19          resources had an importance to them.   And the  
20          record speaks for itself on the importance that  
21          the Committee stated.   I think that's very  
22          different from the way in which Mr. Raphael is  
23          employing his characterization and his  
24          methodology.   And I think to conflate the two  
25          really mischaracterizes what he's doing here.

1           You know, we're not questioning what the  
2           Committee decided in a prior docket.

3                       MS. MALONEY: I disagree to a  
4           certain extent, but I think I'm entitled to ask  
5           him since he did an evaluation of the wildlife  
6           sanctuary. I just wanted to go over the various  
7           findings that they made and ask him if he agreed  
8           or disagreed.

9                       CHAIRMAN HONIGBERG: And I think  
10          you can ask him that. I think you need to focus  
11          on what they found and ask him if he agrees.  
12          And if he has -- if he doesn't or he feels like  
13          he can't, he'll explain. He's very capable of  
14          explaining his answers. But I think you can ask  
15          him if he agrees with findings of the Committee,  
16          but focus on that.

17                      MS. MALONEY: That's what I was  
18          trying to do. And I will move on.

19   BY MS. MALONEY:

20   Q.   Do you agree with the finding by the Committee  
21          that the Willard Pond and the wildlife  
22          sanctuary are popular locations that are  
23          enjoyed by numerous visitors; environmental  
24          education programs, fishing, bird and wildlife  
25          viewing, the solitude, all appear to generate

1 visitors to the pond and wildlife sanctuary?

2 A. (Raphael) Yes.

3 Q. Do you agree with the finding of the Committee  
4 that the pond and wildlife sanctuary are part  
5 of a larger tract of concerned land consisting  
6 of approximately 30,000 acres and known as the  
7 "Super Sanctuary"? Do you agree with that  
8 finding?

9 A. Yes.

10 Q. Do you agree with the finding by the Committee  
11 that public funds have been dedicated to the  
12 dePierrefeu Wildlife Sanctuary and surrounding  
13 conservation lands through a conservation  
14 program known as the Forest Legacy Program?  
15 The federal government has invested 3.5 million  
16 to conserve lands within and directly adjacent  
17 to the wildlife sanctuary. Do you agree with  
18 that finding?

19 A. (Raphael) Yes.

20 Q. Okay. Understanding that you determined that  
21 only Willard Pond had ultimately -- and correct  
22 me if I'm using the wrong terminology -- but a  
23 "moderate" effect on the viewer, correct, not  
24 just one single resource? Is that --

25 A. (Raphael) I'd have to go check that.

1 Q. Well, your fifth step, what the effect of the  
2 viewer would be, you determined that Willard  
3 Pond was the only property that fit that  
4 category --

5 A. (Raphael) "Moderate to high." There was some  
6 "high."

7 Q. There was one "high," but you said "moderate."

8 A. Yup.

9 Q. I mean, understanding that was your  
10 determination, I'm trying to get a sense of  
11 what you would determine to be an unreasonable  
12 adverse impact. If you had determined that, as  
13 the Committee did, that there were significant  
14 adverse impacts to Willard Pond, the  
15 dePierrefeu Sanctuary, Goodhue Hill, Bald  
16 Mountain, Gregg Lake, and "moderate" impacts to  
17 Robb Reservoir, Island Pond, Highland Lake,  
18 Nubanusit Pond, Black Pond, Franklin Pierce  
19 Lake, Meadow Marsh and Pitcher Mountain, would  
20 that rise to the level of unreasonable adverse  
21 impact?

22 MR. NEEDLEMAN: I'll object. I  
23 think it's asking the witness to speculate.

24 MS. MALONEY: It's a  
25 hypothetical. He's an expert.

1                   CHAIRMAN HONIGBERG: He can  
2                   answer the question.

3       A.       (Raphael) Again, I don't have enough  
4                   information to answer that question because I  
5                   don't know what that "moderate" decision or  
6                   characteristic was based on because, again, as  
7                   I explained, I really shy away from addressing  
8                   those kinds of hypotheticals because --

9                   CHAIRMAN HONIGBERG: Mr. Raphael,  
10                  I want you to assume for a minute that, after  
11                  having gone through your process, your criteria,  
12                  your assessments, that you identified the items  
13                  that Ms. --

14                 MS. MALONEY: Maloney.

15                 CHAIRMAN HONIGBERG: -- Ms.  
16                  Maloney -- sorry -- just listed for you, and  
17                  identified all of them with "moderate" impacts.

18                 Is that how you put it?

19                 MS. MALONEY: There were several  
20                  with "high."

21                 CHAIRMAN HONIGBERG: And several  
22                  with "high."

23                 MS. MALONEY: Willard Pond, the  
24                  dePierrefeu Sanctuary, Goodhue Hill, Bald  
25                  Mountain and Gregg Lake.



1                   CHAIRMAN HONIGBERG: And assuming  
2 everything else is just as you had it, if at the  
3 end of your process you had concluded that all  
4 of those things were "moderate" or "high," what  
5 would your overall conclusion have been?

6                   THE WITNESS: Well, again, in the  
7 analysis we did conclude that there was some  
8 "moderate" and "moderate to high," and in the  
9 case of Willard Pond, a "moderate high"  
10 determination. But as I stated earlier, then we  
11 take another step to really try to get our arms  
12 around what that means in an overall context  
13 when you look at some of the other factors.  
14 Yes, there might be an impact that's "moderate"  
15 or there might be an impact that's potentially  
16 "high." Has mitigating factors been put into  
17 place which might bring that back from that  
18 threshold? You know, were there other  
19 determinations about its overall context that  
20 might have not led to unreasonable conclusion?

21                   So, again, forgive me, and with  
22 all due respect, I really am reluctant to come  
23 to a conclusion because I don't understand --  
24 as I said, I'm not trying to cop out on this.  
25 But I was not here for the discussion and what

1           was presented and the cross and all of that to  
2           have a sense for how the Committee reached its  
3           decision with regard to "moderate to high."  
4           So, to ask me to speculate or make a  
5           hypothetical decision based on that is  
6           something I'm very uncomfortable doing.

7   BY MS. MALONEY:

8   Q.   Well, let's just say you did -- your assessment  
9           came out and said this is -- these are -- "I  
10          did the Visual Assessment." Because I sort of  
11          wonder what's the point of doing a visual  
12          assessment if you're telling me now that you  
13          can go to your Conclusion section, where you  
14          don't have any methodology, and you can  
15          under -- undo it. So what is the point of  
16          doing a visual assessment if you can't rely on  
17          it?

18                           MR. NEEDLEMAN: I'll object to  
19          the question.

20                           CHAIRMAN HONIGBERG: Sustained.

21                           MS. MALONEY: I'm sorry. That's  
22          argumentative.

23   BY MS. MALONEY:

24   Q.   What factors did you use in your conclusion?  
25          That's what you're talking about; right?

1     A.     (Raphael) All the work and all the analysis and  
2           all the fieldwork, all the research, all the  
3           visual analysis using simulations and 3D  
4           modeling that led us through this process and  
5           brought us to the end. So it wasn't that we  
6           tossed away everything else and then just got  
7           to Willard Pond. Willard Pond emerged after a  
8           very comprehensive and systematic and detailed  
9           evaluation and understanding of these  
10          resources, how they're being used, and how this  
11          project would change the user's impression and  
12          desire to use that resource, how this resource  
13          would change the visual quality of that  
14          resource. And that's what informed our  
15          decision-making process. It's not, you know,  
16          tossing that all away at the end. It's  
17          cumulative, and it builds. And all the work  
18          we've done over the last year leads to our  
19          conclusion, not one single analysis, not one  
20          single criteria.

21     Q.     So your testimony then is, even if you found  
22           that the effect on the viewer would have a  
23           "high" effect on the viewer for all those  
24           properties -- Willard Pond, dePierrefeu  
25           Sanctuary, Bald Hill, Goodhue Hill, Gregg

1 Lake -- and "moderate" impacts on all the other  
2 properties -- Robb Reservoir, Island Pond,  
3 Highland Lake, Nubanusit Pond, Black Pond,  
4 Franklin Pierce Lake, Meadow Marsh and Pitcher  
5 Mountain -- that you still might conclude that  
6 there was not an unreasonable adverse impact.

7 A. (Raphael) You know, again, you're asking me to  
8 speculate. And again, I don't have -- every  
9 project that I take on, that our office  
10 analyzes, is different. And there's subtleties  
11 and, you know, circumstances and conditions  
12 that inform our overall sense of the Project,  
13 as well as, you know, the effect on individual  
14 resources. So I'm really reluctant to, you  
15 know, agree to that sort of sweeping statement  
16 in isolation.

17 Q. But my question was that you could still come  
18 to those conclusions and conclude --

19 A. (Raphael) Maybe I can help you. I am sure  
20 there are projects that we could find have an  
21 unreasonable adverse impact on scenic  
22 resources, depending on the characteristics  
23 that are present in the landscape. One thing  
24 we do before I get involved in a project is  
25 determine what my conclusions might be for the

1 project, just in initial stages, so that I have  
2 an understanding of what the parameters of that  
3 project might be.

4 Q. So you've never testified in any case or  
5 offered an opinion in any case, public opinion,  
6 that the wind farm would have an unreasonable  
7 adverse impact on aesthetics.

8 A. (Raphael) Oh, yes, I have.

9 Q. Which case?

10 A. (Raphael) On several cases. I think in  
11 Searsburg we had concerns until, you know,  
12 mitigation measures were put in place and  
13 satisfied. I was at -- some of those projects  
14 never get past my desk. I was asked to  
15 analyze, I think, a project in Lincoln,  
16 Vermont, that Ms. Vissering might have been  
17 involved in, actually. And I think I was asked  
18 by the attorney for the applicants who wanted  
19 to build the wind turbine to assist them in the  
20 case, and I took a look at the case and said I  
21 can't help you.

22 Q. But that wasn't testimony.

23 A. (Raphael) That wasn't testimony.

24 Q. And this, the methodology you used in this  
25 case, you've used before.

1     A.     (Raphael) The general methodology, yes, we  
2            have. We have spent the last couple of years  
3            refining it in a sort of very detailed manner,  
4            just in terms of language. But this approach  
5            we've been using for probably five or six  
6            years, anyway, because it is based, in part, on  
7            the Maine Wind Energy Act. It has many of the  
8            same attributes as that act. It's different,  
9            certainly, in the way we've set it up and how  
10           we've evolved it. And that has been an  
11           iterative process in Maine, both with our  
12           clients and -- also, I've worked for the state  
13           as well, and discussed with other experts that  
14           process. So, over the time that I've been  
15           working on the Maine project and now this,  
16           there have been subtle refinements in framework  
17           that we have continued to work on.

18                   CHAIRMAN HONIGBERG: Ms. Maloney,  
19           how much more do you have for this witness?

20                   MS. MALONEY: I don't have  
21           anything more of this witness.

22                   MR. RICHARDSON: May I ask  
23           procedural question? Based upon that recent  
24           response, there was a reference to a project in  
25           Vermont and then discussion about an attorney

1       who requested an opinion. And I immediately  
2       thought: Jeez, that sounds an awful lot like a  
3       work-product privilege that that attorney's  
4       client may hold. But we've kind of let the cat  
5       out of the bag without that person knowing, when  
6       they might ordinarily have wanted to assert  
7       that. Is there -- I don't know what to do in  
8       this situation.

9                   CHAIRMAN HONIGBERG: My immediate  
10       reaction is: It's neither my cat nor my bag.  
11       [Laughter] I think that Mr. Raphael has an  
12       understanding of what his obligations are to his  
13       clients. He's an experienced businessman and  
14       knows what he can and can't say about his work.  
15       If there's something else that needs to be  
16       brought to our attention regarding the testimony  
17       that he's given, we'll deal with it.

18               Do Committee members have questions for  
19       the witnesses? I know Commissioner Scott has  
20       questions. Mr. Scott.

21       INTERROGATORIES BY CMSR. SCOTT:

22       Q.     Good afternoon.

23       A.     (Kenworthy/Raphael) Good afternoon.

24       Q.     Again -- well, not again. I've never said this  
25       to you all. But whoever feels best to answer,

1 or both, is fine.

2 (Court Reporter interrupts.)

3 CMSR. SCOTT: I merely advised  
4 the panel, whoever is best to answer the  
5 question may do so.

6 BY CMSR. SCOTT:

7 Q. So to the extent that the SEC taking  
8 jurisdiction is predicated on this potential --  
9 this Application being different than the last,  
10 we obviously have an outline, if you will, of  
11 what will be different. Do you expect the  
12 Application, when it comes in, if it comes in,  
13 would be markedly different? Is it going to be  
14 exactly the same? Can you give me some idea of  
15 what the Application will look like compared to  
16 what was submitted?

17 A. (Kenworthy) Sure. I'd be happy to answer that  
18 question. I think the changes that we've  
19 characterized at a "high" level in the  
20 Petition, and more accurately in my testimony,  
21 are going to be reflected accurately in a new  
22 application. So, in other words, the kind of  
23 substantive changes to the physical components  
24 of the Project are as we represented: Turbine  
25 10 will be gone; Turbine 9 will be 45 feet or



1       so lower; Turbines 1 through 8 will have a  
2       slightly smaller rotor, be slightly shorter,  
3       different manufacturer, different turbine  
4       dimensions. The kind of characteristics of  
5       those turbines is obviously all new information  
6       in the Application. These are manufactured by  
7       Siemens rather than by Acciona. So all of the  
8       information about the manufacturer's  
9       experience, the operational life of that  
10      turbine, its sound level performance, Siemens  
11      also, as the turbine O&M, will be responsible  
12      for providing service and maintenance to those  
13      turbines. So they'll be providing testimony to  
14      this Committee which is new and different.  
15      Previously we had Acciona as the turbine  
16      manufacturer doing that.

17           We have updated noise and flicker and  
18      visual reports that are essentially de novo.  
19      Those are kind of done from scratch, even  
20      though some of the underlying elements are  
21      similar. We've started from scratch to produce  
22      them new with this information that we have  
23      that's different. The environmental work  
24      that's been done on the Project is largely the  
25      same. So we had kind of a documented agency

1 consultant consultation process back in 2010  
2 and '11 that led to a series of on-site studies  
3 that were done in those years. We've kind of  
4 sought to get additional input from relevant  
5 agencies, both federal and here in the state of  
6 New Hampshire, to kind of update any of the  
7 representations that we're making in our  
8 application along the lines of environmental  
9 impacts. But for the most part, those studies  
10 are all the same.

11 Obviously, things like construction  
12 schedule is different. There's new ownership  
13 associated with the Project now, so there's a  
14 lot of things like that that are very different  
15 as well.

16 Q. So, again, on the physical characteristics of  
17 the Project, as outlined in your filing, at a  
18 minimum those things -- more of a better word  
19 would be "locked in". For instance, towers  
20 would not be any taller. That type of  
21 characteristic won't change; is that correct?

22 A. (Kenworthy) Yeah, that's correct. Our  
23 application is essentially complete, and we're  
24 nearly ready to file it if the Committee  
25 decides to accept jurisdiction.

1           So the turbines are the turbines. Their  
2           locations are there, their heights are there.  
3           We've gotten the site certified by Siemens for  
4           those turbine heights. So those changes are  
5           there.

6           I think I may have referenced earlier that  
7           the new civil design plan includes a landscape  
8           plan that was performed by LandWorks for  
9           screening of the substation facility, which is  
10          different than what we had last time. And then  
11          there's some additional, kind of non-physical  
12          components as well. But I think in terms of  
13          the physical components, yes, those things are  
14          locked in.

15   Q.   And the locations are the same as the original  
16          project?

17   A.   (Kenworthy) For Turbines 1 through 9, yes.

18   Q.   Thank you. What happens if the Committee does  
19          not decide to take jurisdiction in this case?  
20          Will you be proceeding with the Town?

21   A.   (Kenworthy) I don't have a definitive answer  
22          for that. I think these are -- you know, we've  
23          been working hard on this project for a long  
24          time. I think we have -- we believe that we  
25          have addressed the concerns that this Committee

1 identified the first time around. So we hope  
2 we have an opportunity to be heard here. I  
3 think if for some reason the Committee does not  
4 decide to take jurisdiction, we'll have to  
5 evaluate at that time what our options are and  
6 make a decision then about what the best course  
7 of action will be.

8 Q. Thank you. That's all I have for now.

9 CHAIRMAN HONIGBERG: Do other  
10 members of the Committee have questions? Yes,  
11 Director Muzzey.

12 INTERROGATORIES BY DIR. MUZZEY:

13 Q. I have a question for each of you, beginning  
14 with Mr. Kenworthy.

15 You just mentioned that there's some  
16 non-physical aspects to the Project that may be  
17 different with a potential new filing. Could  
18 you describe what those would be?

19 A. (Kenworthy) Sure. I mentioned a couple of them  
20 in passing. But I guess I'd group them into a  
21 couple of categories: The ones that pertain to  
22 aesthetics and then those that don't. So I  
23 think part of what we sought to address in our  
24 new application with respect to changes to the  
25 Project to deal with aesthetic concerns were

1       both physical and non-physical. The physical  
2       changes we've described in an effort to reduce  
3       aesthetic impacts, and then we've kind of  
4       increased mitigation on the mitigation side.  
5       So those elements include, I guess just to kind  
6       of categorize them all, because these were not  
7       part of what the Committee had in front of them  
8       when they ruled in the 2012 docket in February  
9       of 2013, but the agreement with the Town of  
10      Antrim for funds to enhance the kind of  
11      recreational and aesthetic experience around  
12      Gregg Lake; the additional 100 acres of  
13      conservation land on the ridgeline which now  
14      preserves 100 percent of the Project ridgeline.  
15      This was something that we heard in Ms.  
16      Vissering's testimony in 2012 was important,  
17      that 100 percent of the Project ridgeline be  
18      addressed by conservation. We were able to  
19      accommodate that by adding two new easements  
20      from when we originally filed in January 2012.  
21      So we now have 100 percent of the ridgeline  
22      permanently conserved; so that's 908 acres.

23               We also added a -- we entered into an  
24      agreement, a land conservation funding  
25      agreement with the New England Forestry

1           Foundation, where Antrim Wind has committed to  
2           fund \$100,000 to NEFF. That would be used for  
3           acquiring additional conservation lands in  
4           Southern New Hampshire. That agreement we will  
5           be providing together with our application. It  
6           essentially sets forth the terms. But among  
7           them are the requirement that we would fund  
8           that payment within, I believe, 30 days of  
9           operations and that they would be allowed to  
10          use them either co-mingled with other funds or  
11          on their own to acquire new conservation lands  
12          which would need to be permanent, would need to  
13          extinguish all development rights, but would  
14          allow for sustainable forestry moving forward,  
15          and would prioritize lands with additional  
16          aesthetic and recreational values in the  
17          general vicinity of the Project. So that NEFF  
18          land conservation funding agreement is another  
19          one.

20                 We have entered into a recent scholarship  
21                 funding agreement with the Town of Antrim as  
22                 well. I don't think that's something that  
23                 we're considering as mitigation for aesthetic  
24                 impacts, but it's something new that we'll be  
25                 presenting in this Application, where the

1 Project will fund a \$5000-a-year contribution  
2 to the Antrim Scholarship Committee.

3 Other non-physical changes to the  
4 Application are going to be more things like I  
5 mentioned. We have new ownership in the  
6 Project. That will be described in the  
7 Application as it relates to the Applicant's  
8 financial, technical, managerial capability.  
9 The new turbine manufacturer has some physical  
10 and some non-physical components that are  
11 related to it. I think that captures most of  
12 them.

13 Q. Okay. Thank you.

14 A. (Kenworthy) Thank you.

15 Q. And a question on the visual analysis product  
16 that we just have started to take a look at.  
17 One of the final steps in your methodology is  
18 to determine the effect on the viewer from  
19 sensitive scenic resources. And within that,  
20 with my quick read, it seems like there are  
21 four criteria.

22 A. (Raphael) Yes.

23 Q. Activities, extent of view, duration of view  
24 and remoteness.

25 A. (Raphael) Correct.

1 Q. Could you explain why you picked those to apply  
2 to scenic or cultural resources?

3 A. (Raphael) Again, those types of considerations  
4 are plugged in to several other evaluation  
5 structures for wind energy. Again, most  
6 notably, the Maine Wind Energy Act asks for the  
7 extent of the view, duration of the view, even  
8 includes language such as "willingness to  
9 return" and "use of resource  
10 post-construction." So, trying to understand  
11 what the actual effect will be on the typical  
12 user is achieved by taking those kinds of  
13 analytical steps.

14 Q. My question in particular is this concept of  
15 remoteness.

16 A. (Raphael) Yes.

17 Q. Because certainly there are many parts of Maine  
18 where remoteness would be a very obvious,  
19 important part of the landscape. We're in  
20 Southern New Hampshire with this project.

21 A. (Raphael) Right.

22 Q. Did you find that to be something that you  
23 needed to, say, tweak, given expectations of  
24 public use of some of the properties within the  
25 10-mile area of potential effect?



1     A.     (Raphael) You know, certainly what would be  
2           considered remote in Southern New Hampshire  
3           might be slightly different from what would be  
4           considered remote in Maine, as you point out.  
5           So that's somewhat what I was alluding to as  
6           well in sort of the overall evaluation process  
7           is those types of considerations in the Project  
8           context: What does the region look like? Does  
9           the region in fact have, you know, remote  
10          experience? Well, there are a couple places  
11          that might be considered more remote than  
12          others and less encumbered by, you know, human  
13          interaction or human impact, even in Southern  
14          New Hampshire. I think, you know, one or two  
15          places where that might be the case. Would  
16          they be as far from a road or as truly remote,  
17          you know, as they might be in a northern Maine  
18          situation? No. So I think, you know, we might  
19          evaluate remoteness. And again, there's some  
20          discussion of how we do that in that section,  
21          you know, based on a number of factors that go  
22          into that relative remoteness. Similar to, you  
23          know, scarcity and uniqueness, you know, a pond  
24          like Willard might be unique in some other part  
25          of the world, but in New Hampshire there are

1           many ponds that are similar in size and affect  
2           to Willard Pond, that have a boat launch on  
3           them and are in conserved properties or  
4           wildlife sanctuaries. So there is a  
5           determination of the context that does have an  
6           influence on the analysis.

7    Q.    Thank you.

8                           CHAIRMAN HONIGBERG: Are there  
9           other Committee members with questions?  
10          Mr. Scott.

11   INTERROGATORIES BY CMSR. SCOTT:

12   Q.    Thank you. Mr. Kenworthy, we talked a moment  
13           ago about a potential application. You  
14           indicated, if I remember correctly, that it was  
15           basically done, or almost done. If we were as  
16           a Committee to grant -- take jurisdiction, can  
17           you give me a rough time frame when we could  
18           expect to see an application?

19   A.    (Kenworthy) Sure. I think it's within a couple  
20           weeks. I mean, I think the earliest possible  
21           could be end of this week, frankly. We're  
22           basically just dotting Is and crossing Ts. So  
23           I think it's about printing it and producing it  
24           and getting it delivered. But if this process  
25           were to conclude this week, I think we would be

1 prepared, you know, within a couple weeks  
2 certainly to file a complete application.

3 Q. Slightly different circumstances. If my memory  
4 serves, when we originally took jurisdiction,  
5 we did not have an application in front of us  
6 either at that point, and we put a time frame.  
7 So we took jurisdiction as long as the  
8 Application was received by X point. Does that  
9 sound familiar?

10 A. (Kenworthy) Yes, it does.

11 Q. Thank you.

12 CHAIRMAN HONIGBERG: Any other  
13 questions from Committee members? Attorney  
14 Iacopino.

15 INTERROGATORIES BY ATTORNEY IACOPINO:

16 Q. Thank you. First, one thing I want to clear  
17 up, Mr. Kenworthy. You mentioned when you were  
18 talking about the road widths that they were  
19 going to be 16 feet wide up until the -- I  
20 don't know if it's Turbine 1 or -- but the  
21 first turbine?

22 A. (Kenworthy) Right.

23 Q. Is that even during construction, or is that --  
24 don't cranes have to go up that initial part of  
25 the road as well?

1     A.     (Kenworthy) No, they'll be delivered by truck.  
2           They'll actually be delivered by truck to  
3           Turbine 9, where it will be assembled and will  
4           crawl back to Turbine 1 and be disassembled.

5     Q.     Okay. Mr. Raphael, you indicated during your  
6           testimony today that the rotor -- the visual  
7           impact of the rotors on the turbines tend to be  
8           diminished in relationship to the balance of  
9           the structure of the tower.

10    A.     (Raphael) Yes.

11    Q.     And I think that Mr. Block almost asked you the  
12           question I wanted to ask, so I'm going to ask.  
13           We hear in these hearings a lot that movement  
14           is what attracts the eye. And I guess I just  
15           want to give you an opportunity to address the  
16           fact that with Turbine 9, as proposed in this  
17           new configuration, will the rotor movement  
18           above the tree line be seen from the Willard  
19           Pond area?

20    A.     (Raphael) From portions of Willard Pond, yes.

21    Q.     And what is your opinion as to what the effect  
22           on the viewer would be from that?

23    A.     (Raphael) You know, having seen the various  
24           similar circumstances with built projects,  
25           including Lempster from the water, there's no

1 question. I will not deny the fact that a  
2 moving object, as Mr. Block inferred, does draw  
3 the eye, will attract the attention. But I  
4 think any object above the tree line will tend  
5 to draw the user's eye. You know, there's no  
6 disguising a wind turbine certainly in that  
7 circumstance.

8 What I found, interestingly enough, and  
9 actually, it was a surprise to me as well,  
10 because I've taken the time to evaluate  
11 projects after construction, whether I've been  
12 hiking or paddling or the like, and if you're  
13 out on a pond and you're paddling, for example,  
14 yes, your eye will be drawn to a moving object.  
15 But there are lots of other things that are  
16 moving around you, most notably the water. And  
17 once you understand that those are there, that  
18 there's a turbine or turbines that are moving  
19 in the distance, and depending on the wind, you  
20 know, those turbines are not moving, you know,  
21 crazily fast, they're moving in a very  
22 systematic, sort of measured manner, you get  
23 used to them, and they begin to become part of  
24 the overall whole. And in fact, as with the  
25 turbines themselves, the task -- or the

1 activity at hand often will supplant your focus  
2 on those turbines. So, like if you're paddling  
3 on Willard Pond, you can't paddle -- I don't  
4 know if you're a paddler or not, but maybe you  
5 would concur with this: You can't paddle for  
6 great distances with your eye fixed on one  
7 element. You know, your eye's drawn to the  
8 immediate water, to the shoreline, to other  
9 things. So the effect of that moving element  
10 in the landscape begins to diminish with that  
11 experience and with time in the resource.

12 Q. I guess what I hear you saying is that people  
13 who use Willard Pond will get used to this  
14 movement.

15 A. (Raphael) I think, you know, there's some  
16 people who will never get used to that  
17 movement. And my finding also is that, if you  
18 understand wind energy, and perhaps you  
19 understand why we are designing and building  
20 wind energy projects, you will tend to have a  
21 more benign view and a less disturbing  
22 sensibility from seeing it.

23 Q. I understand the psychology issues. But I'm  
24 just trying to talk from your perspective,  
25 being somebody who does a visual assessment,

1           what's the impact on the viewer. And I guess  
2           you like to use paddling. What if you're bird  
3           watching?

4    A.    (Raphael) Well, I mean, it depends where you're  
5           bird watching, I guess.

6    Q.    From the Willard Pond area. So you're looking  
7           for hawks.

8    A.    (Raphael) Okay. Well, one of the places I did  
9           that was at the end of Willard Pond, near to  
10          where the loons were nesting. And, you know,  
11          there certainly was bird life. And I was able  
12          to appreciate that and observe that in a manner  
13          that would never have involved a view of the  
14          wind turbines. So there are plenty of places  
15          on that pond if you're bird watcher and don't  
16          want to be distracted by a turbine or seeing a  
17          turbine where you can have that same  
18          experience.

19   Q.    So the answer, then, is you can move.

20   A.    (Raphael) You can move.

21                But I want to go back to your question a  
22                moment ago. Yes, I think people do get used to  
23                it. And I heard that several times with regard  
24                to Lempster. I visited Lempster and the state  
25                park, and I asked the state park ranger. I

1       said, "Do people, you know, make mention of the  
2       project, or are they concerned? Do you have  
3       people come and make comments?"

4               And she said, "No, we don't get any  
5       comments because people are used to it."

6       Q.    You've read the decision from 2012; correct?

7       A.    (Raphael) Sometime ago now, yes.

8       Q.    In that decision, one of the things that the  
9       Subcommittee at the time indicated was that the  
10      relationship between the size of the towers and  
11      the elevation of the ridgeline, at least to the  
12      Committee at that time, appeared to be out of  
13      scale; is that correct?

14      A.    (Raphael) Yes.

15      Q.    In the present configuration of the Project,  
16      you have diminished the height of some of --  
17      well, of the eight turbines, leaving No. 9 out  
18      of the scenario for the time being. Will those  
19      turbines still be 25 to 35 percent of the  
20      overall elevation?

21      A.    (Raphael) It varies with the turbine. We  
22      actually did an analysis of that and the scale  
23      relationship of those turbines to Willard Pond,  
24      and the viewpoint from Willard Pond is very  
25      similar to the same relationship you see in



1 Lempster. So there's no --

2 Q. I guess that's not my question.

3 A. (Raphael) Yeah.

4 Q. My question was: It's still between 25 and  
5 35 percent as found by the Subcommittee that  
6 heard the original Application?

7 A. (Raphael) Forgive me. Twenty-five to  
8 35 percent?

9 Q. Of the elevation. At Page 50 of the  
10 original -- I'm sorry -- Page 49, I guess it is  
11 of the original decision, the Subcommittee laid  
12 out the elevation of each wind turbine and then  
13 determined that it didn't do it for each, but  
14 said overall these turbines will be between  
15 25 percent and 35 percent of the elevation of  
16 the ridgeline.

17 And I guess my question is: With this  
18 change you're proposing, is that fact still  
19 true, at least for Turbines 1 through 8?

20 A. (Raphael) It very well may be. Again,  
21 depending -- is this from Willard Pond that  
22 that analysis was made?

23 Q. No, this is just an analysis, as I understand  
24 it, about the size of the turbines, height of  
25 the turbines, compared to the elevation of the

1           ridgeline where they're located.

2       A.     (Raphael) That sounds still valid.

3       Q.     Mr. Kenworthy, you've talked a little bit about  
4           a change in some of the financial  
5           circumstances. I'm sure you recall that the  
6           Committee did not really reach a conclusion one  
7           way or another in the prior project with  
8           respect to financials. Is there a PPA at this  
9           point in time?

10      A.     (Kenworthy) No.

11      Q.     You did mention new ownership. I assume that  
12           affects the financing of the Project, which was  
13           a concern to the Committee last time. Can you  
14           please give us more detail on what that  
15           involves?

16      A.     (Kenworthy) Sure. So in 2012, Antrim Wind  
17           Energy was a project LLC that was owned by  
18           Eolian Renewable Energy and Westerly Wind.  
19           Westerly at the time was a portfolio company of  
20           U.S. Renewables Group. Westerly sold their  
21           membership interest to Eolian in 2014. And  
22           earlier this year, after about a year of work  
23           together, prior to entering into a definitive  
24           agreement, we sold a controlling membership  
25           interest in the Project to Walden Green Energy,

1       which is a privately held, global development  
2       firm out of New York.  Walden is, in turn,  
3       backed by RWE, which we get into more detail in  
4       our application.  But the principal investment  
5       arm of RWE is a German utility company, one of  
6       Europe's top five electricity and gas  
7       utilities.

8    Q.   And will the business model for the Project --  
9       if you get to file an application, will the  
10       business model you're going to present be  
11       dependent upon a Power Purchase Agreement?

12   A.   (Kenworthy) Certainly we would expect that the  
13       Project will require either a PPA or some other  
14       form of revenue certainty, like a hedge as we  
15       discussed last time, in order to enable debt  
16       financing to come in for the Project.  I think  
17       what the Application will show is that we have  
18       financial backing for the Project equity, and  
19       we have clearly demonstrated letters of  
20       interest from commercial banks to provide the  
21       debt for the Project.

22       But, yes, I think it is our expectation  
23       that the Project will require some form of  
24       revenue certainty, like a PPA.

25   Q.   I guess the ultimate question with respect to

1           the financial management portion of the  
2           Application is how is it strong -- I assume  
3           you're saying you're stronger this time around  
4           financially. Am I correct in that?

5   A.   (Kenworthy) Yes, I believe so.

6   Q.   How? Is it simply by the new equity?

7   A.   (Kenworthy) New equity.

8   Q.   And that equity is richer, so to speak.

9   A.   (Kenworthy) Yes. And U.S. Renewables Group was  
10       never stating they would put the construction  
11       equity into the Project. They were providing  
12       development equity, and then the management  
13       team would have sought to raise tax equity  
14       and/or debt as necessary.

15   Q.   And that's changed now.

16   A.   (Kenworthy) Right. Exactly. We have a  
17       different circumstance with a financial backer  
18       who has the equity available for the Project,  
19       obviously subject to all the conditions  
20       precedent that are necessary for releasing all  
21       that equity and debt into the Project.

22   Q.   All right. Nobody's asked this question, but  
23       I'm going to ask it, and I'm just going to ask  
24       it generally because -- and I hope you'll be  
25       honest with us, in terms of you've come here

1 and told us, okay, we now have made these  
2 changes, and we want -- obviously, you must  
3 consider it to be a better project, one that is  
4 more apt to get approval from the Committee.  
5 That must be why you're here.

6 Is there anything that changed for the  
7 worse? And when I say that, I mean in terms of  
8 the considerations that the Site Evaluation  
9 Committee has: Your financial, technical,  
10 managerial experience; whether there will be an  
11 undue impact on the regional development;  
12 whether there's unreasonable adverse impacts on  
13 aesthetic, historic sites, air and water  
14 quality, natural environment or public health  
15 and safety.

16 A. (Kenworthy) No, I don't think so. I think,  
17 really, all of the impacts associated with the  
18 Project have been reduced, and I think that the  
19 benefits have only increased. I think we've  
20 been able to find a somewhat smaller, and in  
21 the Turbine 9 case, lower and quieter turbine  
22 that is manufactured by one of the top turbine  
23 manufacturers and kind of industrial  
24 conglomerates in the world, who will provide  
25 service and maintenance for this facility for

1       us with a great degree of competence and  
2       experience. We have added additional  
3       mitigation to the Project, additional benefits  
4       from the Project. Even though we've eliminated  
5       10 percent of the turbines, we haven't lost a  
6       corresponding 10 percent of generation. These  
7       turbines are rated at 3.2 megawatts instead of  
8       3.0 megawatts. We'll be able to take advantage  
9       of that. So, no, I don't think anything has  
10      gotten worse. I think this is improvements.

11    Q.    Thank you.

12                   CHAIRMAN HONIGBERG: Any other  
13      questions from this end of the room?

14                   (No verbal response)

15                   CHAIRMAN HONIGBERG: Mr. Scott.

16    INTERROGATORIES BY CMSR. SCOTT:

17    Q.    Quickly following up on Attorney Iacopino's  
18      questioning line just now, how about the  
19      production tax credit federally? Has that  
20      changed the dynamic at all compared to your  
21      earlier submission?

22    A.    (Kenworthy) You know, interestingly, I think we  
23      were in a similar position at that time with  
24      the production tax credit. So, no, I don't  
25      think it really changes our position. It's an

1 incentive that, if available, we will take  
2 advantage of, and if not available, we believe  
3 the Project can ultimately be built, you know,  
4 in any event. And I think we'll get into more  
5 details about kind of our views as to how that  
6 works in our application. But, you know,  
7 again, we were in a similar type of position  
8 the last time we filed, in terms of being  
9 around a certain period for the PTC work.  
10 There again, now, rather than speculate about  
11 whether we think it will be around or not, I  
12 would just say if it's there, we would take  
13 advantage of it, and if it's not, we would  
14 build the Project another way.

15 Q. Thank you.

16 CHAIRMAN HONIGBERG: Mr.  
17 Needleman, do you have questions for your  
18 witnesses?

19 MR. NEEDLEMAN: No redirect.

20 CHAIRMAN HONIGBERG: All right.  
21 I think you gentlemen are done. Thank you very  
22 much.

23 MR. KENWORTHY: Thank you.

24 CHAIRMAN HONIGBERG: This will be  
25 a good chance for a break. When we come back,

1 we'll be picking up with the Town's witnesses.  
2 So we'll take 15 minutes, come back at ten after  
3 three.

4 (Whereupon a recess was taken at 2:51  
5 p.m. and the hearing resumed at 3:12  
6 p.m.)

7 CHAIRMAN HONIGBERG: All right.  
8 We are back. Mr. Richardson, I believe these  
9 are your witnesses.

10 MR. RICHARDSON: Yes. Thank you,  
11 Mr. Chairman.

12 CHAIRMAN HONIGBERG: Would you  
13 like to have them sworn in?

14 MR. RICHARDSON: Please.

15 (WHEREUPON, CHRISTOPHER CONDON, GORDON  
16 WEBBER, JOHN ROBERTSON AND MICHAEL GENEST  
17 were duly sworn and cautioned by the  
18 Court Reporter.)

19 DIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q. Good afternoon. Please, each of you, state  
22 your names and your positions for the record.

23 A. (Condon) Chris Condon, Antrim Planning Board  
24 Chairman.

25 A. (Webber) Gordon Webber, Antrim Board of



1           Selectmen Chair.

2       A.     (Robertson) John Robertson, Antrim Selectman.

3       A.     (Genest) Mike Genest, Antrim Selectman.

4       Q.     Mr. Condon, I'll start with you since you're  
5           closest. Do you have a document that is your  
6           testimony in front of you?

7       A.     (Condon) Yes, I do.

8       Q.     And we just premarked that as Antrim Exhibit 2.  
9           Is that your testimony in this proceeding?

10      A.     (Condon) Yes, it is.

11      Q.     And is that true and accurate to the best of  
12           your knowledge and belief?

13      A.     (Condon) Yes, it is.

14      Q.     Are there any changes or updates to your  
15           testimony?

16      A.     (Condon) No.

17      Q.     And do you adopt that as your testimony in this  
18           proceeding?

19      A.     (Condon) Yes.

20      Q.     And Mr. Webber, Chairman Webber, same  
21           questions. Do you have a document that is  
22           marked Antrim Exhibit 1 in front of you?

23      A.     (Webber) I do.

24      Q.     And what is that?

25      A.     (Webber) The testimony for the Town of Antrim

1 Board of Selectmen.

2 Q. And do each of you adopt that as your testimony  
3 in this proceeding? Each of the selectmen.

4 Excuse me.

5 A. (Webber) I do.

6 A. (Robertson) I do.

7 A. (Genest) I do.

8 Q. And to each of you again, are there any changes  
9 or updates that are required for your  
10 testimony?

11 A. (Webber) There are not.

12 A. (Robertson) No.

13 A. (Genest) No.

14 Q. And you adopt this as your testimony in this  
15 proceeding?

16 A. (Webber) Yes.

17 Q. Thank you.

18 CHAIRMAN HONIGBERG: So, for  
19 cross-examination, we're going to do a similar  
20 order. We're going to, I guess -- make sure we  
21 get this right. We're going to start with  
22 Antrim Wind, then Harris Center, WindAction,  
23 Audubon, the abutting landowners, then the  
24 non-abutting landowners and then Counsel for the  
25 Public. In terms of scheduling, let's target

1 4:15. When we get to a breaking point at or  
2 around 4:15, up until about 4:30, then we'll  
3 break for the day and come back tomorrow.

4 So, who's going to be  
5 questioning. Mr. Needleman?

6 MR. NEEDLEMAN: Sure, I can speak  
7 on behalf of Antrim Wind. Thank you. We have  
8 no questions of this panel.

9 CHAIRMAN HONIGBERG: Mr. Newsom.

10 MR. NEWSOM: No questions.

11 CHAIRMAN HONIGBERG: Ms. Linowes.

12 MS. LINOWES: Thank you, Mr.  
13 Chairman. I have two exhibits that I would like  
14 to use today.

15 (Exhibits WA 2 and WA 3 marked for  
16 identification.)

17 CROSS-EXAMINATION

18 BY MS. LINOWES:

19 Q. Good afternoon. I wanted to start first by  
20 understanding the Town of Antrim's government  
21 and what you have in terms of land use  
22 regulations.

23 The Applicant, or Antrim Wind, and the  
24 Town, both of you, have stated you don't really  
25 have the technical ability or perhaps the

1           necessary ordinances in place to get this  
2           project reviewed at the town level. So I would  
3           like to just ask you quick questions and get a  
4           "Yes" or "No" answer.

5           Okay. First one is, do you have a board  
6           of selectmen?

7   A.    (Webber) Yes.

8   Q.    Do you have an elected planning board?

9   A.    (Condon) Yes.

10   Q.   Do you have a conservation commission?

11   A.    (Webber) yes.

12   Q.   Do you have a zoning board of adjustment?

13   A.    (Webber) Yes.

14   Q.   Do you have site plan review?

15   A.    (Condon) Yes.

16   Q.   Do you have a zoning ordinance?

17   A.    (Condon) Yes.

18   Q.   And your zoning ordinance does have a small  
19       wind provision?

20   A.    (Condon) A small wind provision, yes.

21   Q.   And do you have a master plan?

22   A.    (Condon) Yes.

23   Q.   And the information I have -- and please  
24       correct me -- I have that the Master Plan is  
25       current as of June 2010. Has it been updated

1           since that time?

2       A.     (Condon) No. We're in the process.

3       Q.     And is there anything else --

4       A.     (Condon) No.

5       Q.     -- that I might be missing? Okay.

6           So in the other question I had for you  
7       with regard to that, earlier today I'd asked  
8       Mr. Kenworthy if he was aware that planning  
9       boards are by statute under fairly strict  
10      schedules for approving applications that come  
11      before them. Are you aware of that?

12      A.     (Condon) Yes.

13      Q.     Okay. So you're not -- if I were to go down  
14      the list, once an application has been received  
15      by the Planning Board for site plan review and  
16      accepted by the Planning Board as complete,  
17      you're aware that you have to act on that  
18      within 65 days?

19      A.     (Condon) Yes.

20      Q.     And you're aware that you could ask for a  
21      30-day extension from the Board of Selectmen?

22      A.     (Condon) Yes.

23      Q.     And having not acted on that -- or if you  
24      failed to act within that 30-day period, within  
25      40 days the Board of Selectmen could certify

1           that application as approved?

2    A.    (Condon) Yes.

3    Q.    You're aware of that.   Okay.

4                   So when I added the numbers -- when I  
5           added up the dates, including the time that the  
6           Applicant has to get an application to the  
7           Planning Board, we're looking at about -- we're  
8           looking at 150 days --

9    A.    (Condon) Yes.

10   Q.    -- from start to finish.   Okay.   So that does  
11           not surprise you at all.

12   A.    (Condon) No.

13   Q.    Okay.   Now, do you know how many times within,  
14           say, the last year, or maybe two years, that  
15           the Town of Antrim's Zoning Board of Adjustment  
16           has been asked to approve a variance?

17   A.    (Condon) Not off the top of my head, except for  
18           the most recent one for a cell tower.   But  
19           that's the only one I'm aware of, off the top  
20           of my head.

21   Q.    So it does happen?

22   A.    (Condon) Yes.

23   Q.    The Zoning Board of Adjustment --

24   A.    Yes.

25   Q.    At least it knows how to go through the

1 process; right?

2 A. (Condon) Yes.

3 Q. How many times in the course of a year have you  
4 been through a site plan review?

5 A. (Condon) Depending on the year, I mean, two,  
6 three, four a year.

7 Q. Okay. And how often do you meet?

8 A. (Condon) Twice a month.

9 Q. Okay. Now, I just wanted to make sure the --  
10 actually, Antrim Wind has gone for a  
11 subdivision before the Planning Board as well;  
12 correct?

13 A. (Condon) Yes.

14 Q. When was that?

15 A. (Condon) That was, I believe, in November.

16 Q. And that had to do with the substation?

17 A. (Condon) Presumably, yes.

18 Q. But they didn't tell you?

19 A. (Webber) It was just a subdivision.

20 A. (Mr. Condon) It was just subdivision. I mean,  
21 there had been mention of it. But for the  
22 purposes of the subdivision, we didn't  
23 really -- it wasn't relevant to what the use  
24 was.

25 Q. Okay. So it was a fairly quick decision?

1 A. (Condon) Yes.

2 Q. Now, during the technical session, I had asked  
3 Mr. Webber -- and I believe any one of you can  
4 answer this -- but how many agreements were in  
5 place between Antrim Wind and the Town. And at  
6 the time, Mr. Webber, you had stated the  
7 planning -- excuse me -- the PILOT agreement,  
8 the letter of intent for the conservation  
9 lands -- and I believe that would be for the  
10 hundred acres on the ridgeline -- the letter of  
11 intent for \$40,000 for visual impacts at Gregg  
12 Lake and the operating agreement; is that  
13 correct?

14 A. (Webber) I believe so.

15 Q. Are there any that I'm missing?

16 A. (Webber) Did you mention the PILOT?

17 Q. Yes.

18 A. (Webber) Okay.

19 Q. So the PILOT, the letter of intent for the 100  
20 acres of conservation land, letter of intent of  
21 \$40,000 and the visual impact at Gregg Lake and  
22 the operating agreement?

23 A. (Webber) I believe that's correct.

24 Q. Okay. And in the case of the letter of intent  
25 for the conservation lands, I believe you had



1       said, but perhaps you could explain it better,  
2       this was for the Town to act as the second  
3       easement holder on that property, or the  
4       first -- maybe the primary?

5     A.   (Webber) I believe it's the primary.

6     Q.   Okay. Now, and in those two cases, in terms of  
7       the letter of intent with the conservation land  
8       and the letter of intent of \$40,000, does that  
9       also have to go before a town vote, or is the  
10      Board of Selectmen in a position to authorize  
11      both of those?

12    A.   (Webber) We held public hearings and then voted  
13      on it.

14    Q.   So they're in place?

15    A.   (Webber) Yes.

16    Q.   Okay. So you have spent a fair amount of time  
17      as a Board of Selectmen evaluating -- working  
18      with Antrim Wind.

19    A.   (Webber) Whatever "a fair amount" means, yes.

20    Q.   Over the last five years, six years?

21    A.   (Webber) Well, we've been dealing with them for  
22      probably six years.

23    Q.   Okay. So the first met tower was erected, I  
24      think we said earlier, in November of 2009; is  
25      that correct?

1 A. (Webber) That sounds about right.

2 Q. Okay. Okay. So, also -- bear with me for a  
3 second.

4 Okay. During the technical session, also,  
5 I had asked you if any of the agreements that  
6 were signed between Antrim Wind and the Select  
7 board required you to publicly -- required the  
8 Select board to publicly support the Project,  
9 and you said "Yes." Is that correct?

10 A. (Webber) I believe -- I'll have to check. It  
11 could be the operating contract.

12 Q. Yes, that is a copy of that operating agreement  
13 that's in front of you. That would be WA2.

14 A. (Genest) Yeah. When you say "publicly support  
15 the Project," what do you mean? I mean, we're  
16 signing the agreements with them.

17 Q. Thank you for that question. That's how I -- I  
18 will read from the transcript. And perhaps  
19 maybe that question is better answered by Mr.  
20 Webber. What I had -- what the transcript  
21 says, and this is on Page 223 -- and I could  
22 bring this to you in a second -- "Do any of  
23 these agreements that have been signed between  
24 the Board of Selectmen and Antrim Wind require  
25 or encourage the Board of Selectmen to publicly

1 support the Project?"

2 And Mr. Webber said, "Yes."

3 I asked, "Can you tell me which one?"

4 He said, "I want to say the contract."

5 And I asked if that was a public document,  
6 and he said "Yes." I believe he was referring  
7 to the operating agreement. Let me bring this  
8 transcript to you.

9 A. (Webber) Yup.

10 Q. Okay. So is that answer still "Yes"?

11 A. (Webber) It is.

12 Q. Okay. Mr. Webber, what would happen if you  
13 didn't support the Project, if you went against  
14 that? Do you know?

15 A. (Webber) No.

16 Q. Have you asked your attorney? You don't have  
17 to tell me what he said. I'm just asking if  
18 you asked your attorney.

19 A. (Webber) No.

20 Q. Would it occur to you to not support the  
21 Project?

22 A. (Webber) No.

23 Q. And just so I'm clear on that, Mr. Webber, are  
24 you the ex officio member of the Board of  
25 Selectmen that sits on the Planning Board?

1 A. (Webber) I am not anymore. I was until March  
2 of this year. I was last year. Mr. Genest is  
3 now.

4 Q. Okay. So is Mr. Genest also obligated -- it's  
5 the entire Board of Selectmen that's obligated  
6 to that commitment?

7 A. (Webber) Correct.

8 Q. And is it your sense that that obligation makes  
9 it difficult for you to be impartial while you  
10 sit on the Planning Board?

11 A. (Webber) Who are you asking?

12 Q. Well, since Mr. Genest is sitting on the  
13 Planning Board, I'm asking him.

14 A. (Genest) No.

15 Q. You can be -- if you're obligated to publicly  
16 support the Project, you can still be impartial  
17 about the Project?

18 A. (Genest) I can still ask questions that concern  
19 me and concern the board.

20 Q. Can you vote?

21 A. (Genest) Yes.

22 Q. Okay.

23 CHAIRMAN HONIGBERG: Can we go  
24 off the record for just one second?

25 (Discussion off the record)

1 CHAIRMAN HONIGBERG: We can go  
2 back on the record.

3 MS. LINOWES: Thank you.

4 BY MS. LINOWES:

5 Q. Okay. And then, just to complete that line of  
6 questions, Mr. Webber, did you vote on the  
7 Planning Board regarding anything pertaining to  
8 the wind project?

9 A. (Webber) Yes, I voted to support seeking  
10 jurisdiction from the SEC.

11 Q. Now, one of the other points that has been made  
12 is clearly made in Mr. Condon's testimony, and  
13 it's been made, I believe, in your testimony.  
14 I won't repeat verbatim. But the concern is  
15 that the Town does not have an ordinance that  
16 pertains to large wind. Is that true?

17 A. (Condon) Yes.

18 Q. And I had asked Mr. Kenworthy earlier today  
19 if -- you know, I'll preface it by saying, if  
20 the Site Evaluation Committee does not assert  
21 jurisdiction, there is still an avenue for a  
22 project to go through the approval process in  
23 the Town, regardless of whether or not there's  
24 a wind, a large wind ordinance?

25 A. (Condon) Yes.

1 Q. And he had said at that time that a couple of  
2 variances may be required in site plan review.  
3 Were you here when he stated that?

4 A. (Condon) Yes, that sounds correct.

5 Q. Okay. And again we've established that you  
6 have all of the mechanisms in place: The CVA,  
7 the Planning Board, a process for those to  
8 happen; correct?

9 A. (Condon) Yes.

10 Q. And when all is said and done, Antrim Wind will  
11 get that project approved in 150 days, at least  
12 for site plan review; is that correct?

13 A. (Condon) I guess that depends on how they would  
14 actually send in that application. I don't  
15 know if each tower site, for example, would  
16 need individual site plan review; in which  
17 case, I think you're talking about a number of  
18 meetings, because it certainly takes us a whole  
19 meeting to go through one site plan review. So  
20 you could imagine potentially 10 meetings for  
21 10 sites or 9, I guess, in this particular  
22 case. I don't know if they would do that as  
23 one or as a bunch of separate ones, because  
24 they are separate sites.

25 Q. Under the current statute governing the Site

1           Evaluation Committee, 365 days I believe is the  
2           limit for the Committee. So, certainly longer  
3           under the Committee.

4   A.    (Condon) Yes.

5   Q.    Okay. Now, the other concern was that you did  
6           not really have anything governing noise,  
7           setbacks or the kinds of issues that arise when  
8           a wind project is considered. Is that -- so I  
9           wanted to draw your attention to the operating  
10          agreement that was signed between Antrim Wind  
11          and the Town. And this is WA2.

12   A.    (Condon) Okay.

13   Q.    And I would like you to look at, I believe it  
14          is No. 11. This would be on Page 10 of 15.

15                 (Witness reviews document.)

16   A.    (Condon) I see that.

17   Q.    So you've established at least an agreement  
18          with Antrim Wind as to how to handle noise.  
19          Would you agree with that, that there is a  
20          noise limit?

21   A.    (Condon) Well, there's an agreement with the  
22          Select board. But that's not an ordinance,  
23          so... I mean, I don't know if the Planning  
24          Board is bound by that or not.

25   Q.    I understand that. But what I'm saying is that

1           the Town, at least the Board of Selectmen, when  
2           it negotiated this agreement, established what  
3           would be reasonable standards --

4   A.    (Condon) Yes.

5   Q.    -- for approving a project.  So, under site  
6           plan review --

7                           MR. RICHARDSON:  Objection.  
8           That's a mischaracterization of what the  
9           agreement says.  It doesn't obligate the Town to  
10          any standard for review by the Planning Board.  
11          This, I believe, governs the Site Evaluation  
12          Committee process.

13                          MS. LINOWES:  Well, and I  
14           appreciate that comment.

15  BY MS. LINOWES:

16  Q.    But the fact is this is a starting point that  
17          the Planning Board could use in the absence of  
18          actually fixed zoning pertaining to siting a  
19          wind project.  Is that not reasonable?

20  A.    (Condon) I suppose, except that really when it  
21          comes to site plan review, and I try to make  
22          this very clear at the start of our hearings,  
23          is that we are pretty much bound by our  
24          ordinances, and anything else is entirely  
25          subjective.  And we try not to consider



1 anything that is not in the ordinances because  
2 that just opens us up to appeals and lawsuits.

3 Q. And I appreciate that. But the statute gives a  
4 planning board a fair amount of latitude, I  
5 should say --

6 MR. RICHARDSON: Objection. I'm  
7 not aware of any statute. I'd like the witness  
8 to see one, if there is one.

9 MS. LINOWES: Okay.

10 CHAIRMAN HONIGBERG: Ms. Linowes?

11 MS. LINOWES: Yes, I will cite  
12 that. It would be 674:44. RSA 674:44.

13 A. (Condon) If you could read that?

14 Q. I don't have it, but I can show you. But I  
15 could read from it. But it does allow the --

16 CHAIRMAN HONIGBERG: Ms. Linowes,  
17 rather than -- since it looks like you're going  
18 to try to look it up on your phone, why don't  
19 you focus on one thing at a time.

20 MS. LINOWES: Okay.

21 CHAIRMAN HONIGBERG: No, you can  
22 do that, just --

23 MS. LINOWES: Actually, it  
24 provides for -- the latitude I'm talking about,  
25 the statute looks to provide for the safe and

1 attractive development of change and guard  
2 against such conditions as would involve danger  
3 or injury to the health, safety or prosperity.

4 MR. RICHARDSON: And I'd like to  
5 maybe clarify, now that we know which statute  
6 we're referring to, why this line of questioning  
7 is I think leading us nowhere. 677:44 is called  
8 "Site Plan Review Regulations," and it's the  
9 state-enabling statute that says what the  
10 regulations have to say. If the regulations  
11 don't say it, then the law is pretty clear --  
12 and we cite it in our memorandum -- that the  
13 board can't do it. In other words, it says the  
14 site plan review regulations which the Planning  
15 Board adopts -- this is Section 2 -- say "may."  
16 When you go down to Section 3, there's specific  
17 things that are required, and it says they  
18 "shall." And 3A says, "provide the procedures  
19 which the board shall follow." 3B, "define the  
20 purpose of site plan review." And 3C, and this  
21 is critical, "specify the general standards and  
22 requirements." So, under New Hampshire law --  
23 and if you ask, any municipal attorney will tell  
24 you this -- you have to put your standards in  
25 your rules; otherwise, you don't have standards.

1 And you can't apply standards that you don't  
2 have.

3 MS. LINOWES: Okay. Thank you  
4 for that.

5 MS. MALONEY: Can we find out if  
6 the witnesses can answer the question? Because  
7 I sort of feel like we're in the middle of a  
8 question and then we got testimony from counsel,  
9 and it influences their answer. And I just want  
10 to know their awareness of their own laws and  
11 authority.

12 MR. RICHARDSON: And I believe  
13 the witness already answered that he could only  
14 follow those rules or they'd get sued.

15 MS. LINOWES: You did say --

16 CHAIRMAN HONIGBERG: Hang on, Ms.  
17 Linowes. Rather than argue with Mr. Richardson  
18 through his witnesses, ask them questions about  
19 what they know. That might help.

20 MS. LINOWES: Thank you.

21 BY MS. LINOWES:

22 Q. So you do have site plan review, however;  
23 correct?

24 A. (Condon) Yes.

25 Q. And you have -- do you know what the purpose of

1 site plan review is?

2 A. (Condon) I mean, the purpose of site plan  
3 review is to ensure that projects coming into  
4 the town adhere to the ordinances that we've  
5 passed concerning zoning, siting and so on.

6 Q. And presumably you have some guidelines in  
7 there as to setbacks?

8 A. (Condon) Yes.

9 Q. And do you have -- does it also state somewhere  
10 in the purpose of your site plan review  
11 something having to do with "provide for the  
12 safe and attractive development or change and  
13 general" -- excuse me -- "guard against such  
14 conditions as will invoke danger or injury to  
15 health, safety and prosperity"? Is there  
16 something in your --

17 A. (Condon) Off the top of my head, I couldn't  
18 tell you without looking at the regulations.

19 Q. Would that be typical, though, for your  
20 regulations, to have a purpose in there and an  
21 explanation of its purpose?

22 A. (Condon) That would be typical.

23 Q. So the main reason I'm asking these questions  
24 has to do with understanding what Antrim has in  
25 place. You may not want to do the wind

1 project. You may prefer the State assert  
2 jurisdiction. But you do have the mechanisms  
3 to review this project; isn't that true?

4 A. (Condon) We have -- yes.

5 Q. Okay. Thank you. You have also stated -- or  
6 at least it was stated a number of times that  
7 there's support for the Project in the  
8 community; is that correct?

9 A. (Condon) It's been indicated, yes.

10 Q. And I would like to read from the -- this would  
11 be the Committee's Order when it disapproved  
12 the Project, and this is on Page 41. It's just  
13 one sentence, bottom of the page. It says,  
14 "While the Applicant, the various boards and  
15 other intervenors vehemently disagree about how  
16 the votes at town meetings should be  
17 interpreted, it was clear to the Subcommittee  
18 that those votes generally indicated that the  
19 townspeople who voted generally supported the  
20 development of the proposed facility." Is that  
21 your sense as well?

22 A. (Condon) Yes.

23 Q. So they would -- so you have mechanisms in  
24 place. You have support within the community.  
25 You have the ability to assert -- have your own

1 jurisdiction over this project; isn't that  
2 true?

3 A. (Condon) We have the mechanisms in place. I  
4 don't... my concern in the site plan review  
5 process, without a large-scale wind ordinance,  
6 is that anything we do is going to open us up  
7 to appeals and lawsuits because we can't,  
8 without any level of specificity, regulate  
9 those things.

10 Q. And I think that's been stated multiple times,  
11 that concern. I think Mr. Kenworthy raised it  
12 as well; although, I think from his  
13 perspective, it's more about delay of the  
14 Project. From your perspective, it's not that?

15 A. (Condon) It's more about the Town being sued  
16 and the expense and time associated with that.

17

18 Q. Now, you've also said that the Town doesn't  
19 have the technical expertise to take on this  
20 project. Is that an accurate statement, or is  
21 that not the case?

22 A. (Condon) I'd say that's an accurate statement.

23 Q. Now, are you aware that there is a statute --  
24 let me just get the site.

25 MS. LINOWES: Excuse me, Mr.

1 Chairman.

2 BY MS. LINOWES:

3 Q. There is a statute. This would be RSA 676:4-V  
4 that does allow the Planning Board to hire  
5 experts for consultation at the expense of the  
6 Applicant.

7 A. (Condon) I'll take that as given, yes.

8 Q. So you have not taken advantage of that  
9 opportunity.

10 A. (Condon) We do use a consultant for various  
11 things.

12 Q. You do?

13 A. (Condon) Yes.

14 Q. Okay. Paid for by the Applicant, but under  
15 your control?

16 A. (Condon) No, we pay them.

17 Q. Okay. So, is it part of the Application fees,  
18 then, that you pay them?

19 A. (Condon) No, it's part of our budget.

20 Q. They're not hired for the specific application.  
21 They are --

22 A. (Condon) Yes.

23 Q. So you do -- so you can -- you acknowledge that  
24 you can hire someone or someones that could  
25 assist you through the process in reviewing it.

1 A. (Condon) Yes.

2 Q. Now, Mr. Condon, you had stated in your  
3 testimony, this is one page, that the Planning  
4 Board for the Town of Antrim does not have the  
5 technical expertise or resources to address a  
6 project of this magnitude, nor has a site plan  
7 review list been updated to accommodate it.

8 Now, that site plan review list that  
9 you're talking about, that's really just an  
10 administrative checklist, isn't it?

11 A. (Condon) Yes.

12 Q. Okay. So it's not something that would take,  
13 since you already have an operating agreement  
14 that identifies quite a few things, would not  
15 take much to update it?

16 A. (Condon) Well, I don't know that. The site  
17 plan review list, depending on the sort of  
18 project proposed, if I recall properly, not  
19 only goes through, for example, whether the  
20 Application itself is complete, but whether  
21 various setback requirements and other things  
22 in our ordinances have also been adhered to;  
23 and if not, is there an exception or waiver  
24 associated with it.

25 So, in regards to that statement, there's



1 nothing in there, in that checklist, that has  
2 to do with wind energy.

3 Q. Okay.

4 A. (Genest) I'd like to add that the agreement is  
5 between the Board of Selectmen and Antrim Wind,  
6 not the Planning Board and Antrim Wind. I  
7 think you're referring to the agreement?

8 Q. That's true. I am using that as a guide for  
9 producing the checklist.

10 A. (Condon) We can't use that as a guide for the  
11 checklist because it's not an ordinance.

12 Q. Just in terms of identifying topics is what I'm  
13 saying.

14 A. (Condon) It's not in the checklist, again.

15 Q. Okay. Now, when you talk about all the delays  
16 and the legal challenges that you're concerned  
17 about, is it your sense that -- I mean, how  
18 many lawsuits have there been?

19 A. (Condon) I don't know the history prior to my  
20 being on the Planning Board.

21 Q. So, then, perhaps Mr. Webber can answer this  
22 question. Is it your sense that those lawsuits  
23 were frivolous?

24 A. (Webber) I don't know if I would call them  
25 "frivolous." I guess that's for someone else

1 to decide. We've had two lawsuits so far that  
2 were in relation to the wind project.

3 Q. Can you explain what those were?

4 A. (Webber) One was the ruling on the met tower,  
5 and another one was meetings with the Town and  
6 Antrim Wind drafting the original PILOT  
7 agreement.

8 Q. Okay. So when you say "rulings on the met  
9 tower," you're saying there was a challenge to  
10 ZBA or the Planning Board?

11 A. (Webber) Yes, it was appealed, and the ZBA, you  
12 know --

13 A. (Genest) Denied it.

14 A. (Webber) -- denied the appeal, and then it was  
15 taken to court.

16 Q. Okay. And then the other was a Right-To-Know  
17 case?

18 A. (Webber) Yes.

19 Q. And how was that ruled?

20 A. (Webber) The judge ruled that the Town  
21 violated -- the Town followed counsel's advice.  
22 But the judge ruled that Town counsel's advice  
23 was wrong and that the selectmen did not  
24 knowingly violate it, but they in fact had. So  
25 he voided the original PILOT.

1 Q. So the lawsuit -- okay. So lawsuit, in one  
2 case there was residents presumably that had  
3 objected to how the ZBA had -- the approval of  
4 the met tower?

5 A. (Webber) Correct.

6 Q. And then in the second case it was concern that  
7 the Select board was holding meetings in  
8 violation of the Right-To-Know Law?

9 A. (Webber) Correct.

10 Q. Okay. So, because of those two cases, is your  
11 concern that the future holds nothing but  
12 lawsuits? Is that...

13 A. (Webber) I didn't say that.

14 Q. Okay. Well, I know you didn't use those words.  
15 But you did --

16 CHAIRMAN HONIGBERG: All the  
17 lawyers in the room chuckled, Ms. Linowes.

18 BY MS. LINOWES:

19 Q. You suggested that that's going to be a problem  
20 in the future?

21 A. (Webber) It had that potential.

22 Q. So it's a worry, but it's not -- you don't  
23 really know.

24 A. (Webber) I don't really know.

25 Q. Okay. Now, has Antrim Wind bothered to obtain

1 a variance for the Project?

2 A. (Webber) No --

3 Q. Has it --

4 A. (Webber) -- They haven't. I don't know if --  
5 when you say if they "bothered to," I don't  
6 know if that's really the appropriate phrase to  
7 use.

8 Q. I'm sorry. I'm being very casual there.

9 Has Antrim Wind submitted at any time an  
10 application to the Zoning Board of Adjustment  
11 for a variance, either a use variance or a  
12 height variance?

13 A. (Webber) No.

14 Q. Has Antrim Wind, at any point, submitted a site  
15 plan application for the Project before the  
16 Planning Board?

17 A. (Condon) No.

18 MS. LINOWES: If you could bear  
19 with me for one second, I think that covers my  
20 questions. And I did not reference WA3. I was  
21 going to, and I decided not to do that. Thank  
22 you, Mr. Chairman.

23 CMSR. HONIGBERG: Okay. Mr.  
24 Howe.

25 MR. HOWE: I have no questions.

1 CHAIRMAN HONIGBERG: Ms.

2 Longgood, welcome.

3 MS. LONGGOOD: Thank you.

4 CHAIRMAN HONIGBERG: Do you have  
5 any questions for these witnesses?

6 MS. LONGGOOD: I have one.

7 CHAIRMAN HONIGBERG: Do you have  
8 a microphone near you that is on?

9 MS. LONGGOOD: It is on now, I  
10 believe.

11 CROSS-EXAMINATION

12 BY MS. LONGGOOD:

13 Q. I'm just wanting clarification, if any one of  
14 the witnesses up there can clarify.

15 Did the Planning Board, in 2011, submit a  
16 large-scale wind ordinance for the public to  
17 vote on, or did they work on developing one of  
18 those, to your knowledge?

19 A. (Webber) 2011?

20 A. (Condon) Yes. That's actually in Wind Action  
21 Group's exhibit that is no longer being used.

22 Q. So the Planning Board, in 2011, felt they were  
23 able to come up with some rules and regulations  
24 that would --

25 A. (Genest) They brought one forward to the Town,

1           and it did not pass.

2   Q.    It did not pass.  Okay.  Thank you.

3                   CHAIRMAN HONIGBERG:  Is that it,  
4   Ms. Longgood?

5                   MS. LONGGOOD:  That's it.  Thank  
6   you.

7                   CHAIRMAN HONIGBERG:  I think  
8   Mr. Block -- yes, Mr. Block.  Do you have any  
9   questions for these witnesses?

10                  MR. BLOCK:  Yes, just a few.

11                   CROSS-EXAMINATION

12   BY MR. BLOCK:

13   Q.    First of all, I don't remember the details, but  
14   my recollection -- and I don't know if anybody  
15   recalls -- but there was a third lawsuit  
16   against the Town, and that one was brought by  
17   Antrim Wind.  Does anybody recall that?

18   A.    (Webber) No.  Could you refresh our memory?

19   Q.    I do remember -- unfortunately, off the top of  
20   head, I don't remember the details.  I just  
21   thought I'd ask --

22   A.    (Genest) I vaguely remember something to that  
23   effect back in 2011, because the two lawsuits  
24   that came were the complete opposite of each  
25   other --

1 Q. Exactly.

2 A. (Genest) -- which made it kind of interesting.

3 Q. Exactly. That much I remember.

4 In 2011, there was a docket here in the  
5 SEC for jurisdiction back when Antrim Wind  
6 first came to town asking the SEC to take  
7 jurisdiction on what was originally a smaller  
8 project. I believe at that time the Antrim  
9 Planning Board was actually advocating that the  
10 SEC not take jurisdiction, and they were --  
11 their position at that time, the Planning Board  
12 said they did have -- they felt they had the  
13 expertise to handle such a case if it came  
14 before the Town. Does anybody remember that?

15 A. (Genest) Yes, I do. I believe since then we've  
16 gone through three ordinances that have all  
17 failed.

18 Q. So, besides that, is there anything else that  
19 has changed? There was no ordinance then. Is  
20 there anything that you can see has changed  
21 since 2011 to lead the Planning Board now to  
22 not believe that you could handle it?

23 A. (Condon) I believe the membership of the board  
24 has changed significantly over that time.

25 Q. There's a -- looking at the Board of

1       Selectmen's prefiled testimony, on Page 4, the  
2       very, very top, the Conclusion, "Significantly,  
3       Antrim Wind, LLC's project is not an allowed  
4       use in the rural conservation district. It is,  
5       therefore, uncertain whether wind energy  
6       project would be allowed, even if it meets all  
7       the Town's site plan requirements, despite the  
8       fact that a majority of the town residents  
9       support the Project."

10           My question is: Is it your position,  
11       therefore, that even before reviewing any  
12       details of a potential application, that you  
13       feel that no matter what that application was,  
14       you feel a project should automatically be  
15       approved?

16   A.   (Webber) Can you repeat that?

17   Q.   My question is: Even before -- it sounds to me  
18       like even before reviewing any project, which  
19       at this point is hypothetical, came to the  
20       town, it seems to me that your question here  
21       is -- maybe this would be -- maybe Mike would  
22       be more appropriate to answer this because he's  
23       been around the time this came up here.

24           But it seems to me that this is implying  
25       that you feel that a project that came to town



1 must be approved, regardless of what the  
2 details were.

3 A. (Genest) Let me read that.

4 Q. (Webber) I'm not sure where you're getting  
5 that?

6 A. (Genest) Well, repeat what you were reading  
7 from. Page 4?

8 (Witness reviews document.)

9 Q. Page 4, the very top, starting at Line No. 1.  
10 "Significantly, Antrim Wind, LLC's project is  
11 not an allowed use in the rural conservation  
12 district. It is, therefore, uncertain whether  
13 wind energy project would be allowed even if it  
14 meets all of the town site plan requirements."

15 So the question I have is: Is there  
16 something -- I guess, rephrasing it, is there  
17 something inherently wrong with the Town  
18 actually turning down a project if it is  
19 inappropriate, or must a project be approved?

20 A. (Webber) No, certainly not. But our site plan  
21 requirements are not suited for this project.  
22 They don't address this type of project.  
23 They're more suited for, like, a excavation pit  
24 or a subdivision, something of that nature. So  
25 we don't feel that the site plan requirements

1           are adequate to address a project like this.

2       Q.     But it is not -- is it out of the question that  
3           a major project could come to town, and the  
4           Town would be able to find a way to deal with  
5           it?

6       A.     (Genest) I guess anything's possible.

7       Q.     Okay. Are you -- anybody up there, I guess.  
8           Are any of you aware of any law, any New  
9           Hampshire law or regulation that would require  
10          a town to have a development-specific ordinance  
11          to permit a project, a large project to be  
12          heard?

13      A.     (Condon) No.

14      A.     (Webber) No.

15      Q.     Okay. Let me go back to your prefiled  
16          testimony now on the bottom of Page 6, starting  
17          on Line 18. Under the heading "Promotion of  
18          State and Local Renewable Goals," "Both the  
19          state and the Town of Antrim in its Master Plan  
20          have adopted renewable energy goals that  
21          include the construction of new energy  
22          facilities. Review by the Committee allows for  
23          consideration of the Town and the state  
24          renewable energy goals to be considered. It is  
25          not clear how these goals would be considered

1       if the Project were reviewed outside of RSA  
2       162-H."

3               So my question is: Does our Master Plan  
4       specify that our goal for new energy must be  
5       wind?

6   A.   (Webber) No.

7   Q.   Are there any other forms that would be -- that  
8       would help satisfy that goal?

9   A.   (Webber) I imagine there are.

10  A.   (Genest) I believe it talks about "renewable"  
11       in general. I don't have the document in front  
12       of me. But I believe from memory -- no, I'm  
13       talking about the Master Plan. Right? That's  
14       what you're referring to; right?

15  Q.   Is the Town currently involved in a solar  
16       project?

17  A.   (Webber) We're leasing property that a private  
18       entity is coming in and constructing a solar  
19       farm. So, to the extent we are involved in it,  
20       we are leasing property, and then we don't have  
21       anything else to do with it.

22  Q.   Is the Town benefiting from that?

23  A.   (Webber) Yes.

24  Q.   In what way?

25  A.   (Webber) We're getting lease payments and

1 credits on electric rates.

2 Q. Okay. I have an article in The Ledger  
3 Transcript that described this. And I believe  
4 this went to a town vote to agree with it at  
5 this year's town meeting; is that correct?

6 A. (Webber) Correct.

7 Q. Okay. And the article says that the array  
8 would produce 492 kilowatts of energy annually.  
9 The Town would be using the majority of that.  
10 And that's a quote from Mike.

11 Doesn't that go a long way towards helping  
12 the Town achieve its goal of renewable energy?

13 A. (Webber) It goes toward the goal.

14 Q. Do we know how -- hypothetical question: Does  
15 anybody know how many other towns have other  
16 projects that are doing that?

17 A. (Webber) Actually quite a few now. In the past  
18 few years there's been a lot of them. But I'm  
19 not going to -- I can't run them through my --

20 Q. Okay. I guess the question I have is why you  
21 would state it's not clear how these goals  
22 would be considered if the Project were  
23 reviewed outside of 162-H. Seems like we do --  
24 are making a good effort at achieving those  
25 goals.

1           The last -- no, two other things. One  
2           other thing I want to ask about is part of this  
3           new application is -- and I have the letter in  
4           front of me -- there was a proposal to donate  
5           \$40,000 to the town --

6    A.    (Webber) Yes.

7    Q.    -- to assist at Gregg Lake. On the question I  
8           have, the letter says, "The Board of Selectmen  
9           are willing to accept for the Town of Antrim  
10          funds from Antrim Wind Energy of a one-time  
11          payment of \$40,000 as acceptable compensation  
12          for the perceived visual impacts to the Gregg  
13          Lake area."

14               Is there anybody there who can address how  
15               you decided that \$40,000 was acceptable and  
16               sufficient?

17   A.    (Webber) As you know, the Town was already in  
18           support of this project and was negotiating  
19           with Antrim Wind to further this project. So  
20           when we were offered an additional \$40,000, we  
21           thought that was an acceptable offer.

22   Q.    Do you have any idea at this point of what  
23           could be done with that amount of money to  
24           actually do something towards compensating for  
25           visual impact?

1 A. (Webber) Well, I believe it's "perceived visual  
2 impact" in the letter. It's undetermined how  
3 that money will be spent at this point.

4 Q. So you don't really know if that \$40,000 might  
5 make a difference or not. I understand it's  
6 free money, but --

7 A. (Genest) Well, I think one of the things that  
8 was discussed was a kiosk like they have up in  
9 Lempster to educate people more about wind  
10 energy.

11 Q. And you think that would change the perception  
12 of the visual impact?

13 A. (Webber) Well, we came up with some other  
14 ideas, too. Improving the boat launch, fixing  
15 up the boat house --

16 A. (Robertson) bath house.

17 A. (Webber) -- the bath house. The picnic tables  
18 and barbecue area are in poor shape. But we're  
19 not limited to any of those. We threw out some  
20 ideas. But at this point we're not limited to  
21 any of them.

22 Q. Okay. The last thing is I would like to ask  
23 you about the conservation easement and the  
24 letter of intent with the additional 100-acre  
25 Bean property.

1 A. (Webber) Yup.

2 Q. Now, have the selectmen signed on that letter?

3 A. (Genest) Letter of intent, I believe.

4 A. (Webber) The letter of intent, yes, but not the  
5 easement itself.

6 A. (Genest) I think during the public hearings --  
7 I don't think. There was a petition presented  
8 to the selectmen, and it requested that the  
9 vote be for the actual taking of it or not  
10 would be done at a town meeting.

11 Q. That is correct. And as far as I know, it was  
12 scheduled for this past spring's town meeting.  
13 Did it come up for a vote then?

14 A. (Genest) No.

15 A. (Webber) It did not. But I don't know that it  
16 was scheduled.

17 Q. Well, I know it was talked about.

18 A. (Webber) It was talked about.

19 Q. It's in the minutes of the Select board saying  
20 it would be brought up. But I don't remember  
21 seeing it on a warrant article. Do you know  
22 what the status of that is now and what the  
23 plans are?

24 A. (Genest) I would assume that if the SEC accepts  
25 jurisdiction, and hypothetically if the Project

1           was to move forward, at that point we would  
2           bring it to a town meeting vote. I think that  
3           was kind of where we were headed. There wasn't  
4           much sense in voting on it if the Project was  
5           never going to happen.

6    Q.    Thank you. No more questions.

7                           CHAIRMAN HONIGBERG: Ms. Maloney.

8                           MS. MALONEY: I really don't have  
9           any questions. Oh, actually, just one.

10                           CROSS-EXAMINATION

11   BY MS. MALONEY:

12   Q.    Steel Pond Hydro, that's located in Antrim;  
13           correct?

14   A.    (Webber) Yes.

15   Q.    And that was lying dormant for a lot of years,  
16           wasn't it?

17   A.    (Webber) A few, yes.

18   Q.    And just this past year got re -- got a new  
19           owner and started operating again?

20   A.    (Webber) Yes.

21   Q.    Does the Town of Antrim benefit from that at  
22           all?

23   A.    (Webber) It will. We are in the very early  
24           stages of negotiating a PILOT agreement with  
25           them.



1 Q. So does that add to your renewable energy  
2 portfolio?

3 A. (Webber) Sure.

4 Q. I don't have anything further.

5 CHAIRMAN HONIGBERG: Do members  
6 of the Committee have questions for these  
7 witnesses? Commissioner Scott.

8 CMSR. SCOTT: Thank you.

9 INTERROGATORIES BY CMSR. SCOTT:

10 Q. I want to build upon a couple of the questions  
11 that Mr. Block asked, I believe.

12 So, for the Planning Board members. I  
13 guess, Mr. Condon, maybe you can help me  
14 recollect. Again, I was here for the original  
15 decision from the Committee to take  
16 jurisdiction. And what I remember at the time  
17 is the Board of Selectmen said please take  
18 jurisdiction, and the Planning Board -- and  
19 here's what I need help with. My recollection  
20 was the Planning Board said don't take  
21 jurisdiction. Give us some time. We'll get  
22 some rules in place or an ordinance in place  
23 that we can address this with. Do you have any  
24 recollection of that?

25 A. (Condon) I've only been a member of the

1 Planning Board since 2013. But I believe  
2 you're historically correct, yes.

3 Q. Okay. And again, maybe for the Board of  
4 Selectmen, you could -- you've already touched  
5 on this, but maybe you could help me a little  
6 bit more.

7 On your prefiled testimony on Page 5, on  
8 Line 19, under the title of "Potential Benefits  
9 That May Be Lost," you have a statement, "If  
10 the SEC does not take jurisdiction, Antrim Wind  
11 may be unable to obtain a use variance." Can  
12 you elaborate on that a little bit? Wouldn't  
13 that be under the control of the Town itself  
14 whether that variance happens?

15 A. (Webber) Well, it would be under the ZBA, which  
16 is out of the control of the Board of  
17 Selectmen.

18 Q. So can you elaborate? Is there a -- so is  
19 there a general concern of how they would act?  
20 I'm just trying to understand the dynamic here.

21 A. (Webber) I don't know. I wouldn't want to  
22 predict how any judicial board is going to  
23 rule.

24 Q. Fair enough. Thank you.

25 CHAIRMAN HONIGBERG: Do other

1 members of the Subcommittee have questions for  
2 these witnesses? Yes, Ms. Weathersby.

3 MS. WEATHERSBY: Just real quick.

4 INTERROGATORIES BY MS. WEATHERSBY:

5 Q. Is there any large-scale wind ordinance being  
6 worked on now by the Town?

7 A. (Condon) No.

8 CHAIRMAN HONIGBERG: Any other  
9 questions? Attorney Iacopino.

10 MR. IACOPINO: Thank you.

11 INTERROGATORIES BY MR. IACOPINO:

12 Q. Mr. Condon, most of these questions are going  
13 to be for you. I'll try to go very quickly.

14 If somebody applies for a variance in  
15 Antrim, and they or another party to their  
16 request is dissatisfied and they take an  
17 appeal, that appeal goes -- does it go directly  
18 to the superior court?

19 A. (Condon) I believe, and I'm not entirely  
20 familiar, I believe they send that appeal back  
21 to the ZBA, and the ZBA will accept or reject  
22 it. If they reject it, then I think they have  
23 the option to then send it to superior court.

24 Q. So you have a layer of appeal within your town  
25 then.

1 A. (Condon) Yes.

2 Q. And then, if they or any party is dissatisfied  
3 with the superior court decision, they of  
4 course can appeal to the Supreme Court.

5 A. (Condon) Yes.

6 Q. And does it work the same way with the site  
7 plan review in Antrim?

8 A. (Condon) I honestly don't know.

9 Q. Okay. So have you ever had somebody appeal  
10 your ruling on site plan review, at least while  
11 you've been in office?

12 A. (Condon) Not while I've been, no.

13 Q. All right. Does your Planning Board have the  
14 ability to defer an application? You mentioned  
15 during your cross-examination that it might  
16 be -- I don't know, however many turbines there  
17 are -- might be 10 individual site plans that  
18 are submitted for review. Do you have anything  
19 within your regulations that permit you to  
20 delay when there are too many matters pending  
21 before your board?

22 A. (Condon) Off the top of my head, I don't know.

23 Q. Okay. And how about for a variance? Do you  
24 know?

25 A. (Condon) A variance would be the ZBA, so I

1           wouldn't be involved in that.

2       Q.     But you don't know if they have any ability --

3       A.     (Condon) I don't.

4       Q.     And I guess any of you can answer this  
5           question.  What do your -- what does your  
6           zoning ordinance or your site plan review  
7           regulations say about who pays for the  
8           consultant?  Have you written into your  
9           ordinance or your site plan review regulation  
10          the ability to bill the consultant's work to  
11          the Applicant?

12      A.     (Condon) Yes, we have.

13      Q.     Okay.  No further questions.

14                               CHAIRMAN HONIGBERG:  Director  
15           Muzzey.

16   INTERROGATORIES BY DIR. MUZZEY:

17      Q.     This is continuing the line of questioning and  
18           discussion on the site plan review process.  
19           Within your ordinance, do you have a waiver  
20           process for applicants at the Planning Board to  
21           use?

22      A.     (Condon) I believe so, yes.  Or at least  
23           individual regulations can be waived.  We  
24           agreed to that.

25      Q.     Since your time on the board, do you have any

1 examples where that has happened?

2 A. (Condon) Not off the top of my head. I'm sure  
3 it's come up, but I couldn't cite them from  
4 memory.

5 Q. Okay. Thank you.

6 CHAIRMAN HONIGBERG: Any other  
7 questions from members of the Subcommittee?

8 (No verbal response)

9 CHAIRMAN HONIGBERG: Seeing none,  
10 Attorney Richardson, do you have any further  
11 questions for your witnesses?

12 MR. RICHARDSON: Brief ones.

13 REDIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q. Mr. Condon, you were asked about the 150- or  
16 155-day period for review. But to be clear,  
17 what is the effect of the fact that -- well, is  
18 Antrim Wind's facility an allowed use?

19 A. (Condon) No, it is not.

20 Q. So what does that mean the Planning Board is  
21 required to do in the absence of a variance?

22 A. (Condon) That would be a full site plan review.

23 Q. But I mean, is a site plan review approvable  
24 for a use that's not allowed by the zoning  
25 ordinance, do you know?

1 A. (Condon) I don't know.

2 Q. Well, let's say someone wanted to build a  
3 cement processing factory in the rural  
4 conservation district. Could you approve that?

5 A. (Condon) No.

6 Q. No.

7 A. (Condon) And it's not an approved use.

8 Q. So now I want to show you a provision, and I  
9 believe this was discussed. I don't have  
10 copies for an exhibit, so I'll just ask you to  
11 read RSA 676:4-I(b). Could you read me the  
12 highlighted provision there.

13 A. (Condon) Okay. "The Planning Board shall  
14 specify by regulation what constitutes a  
15 completed application sufficient to invoke  
16 jurisdiction to obtain approval."

17 Q. Okay. And am I correct in thinking that your  
18 site plan review checklist matches the studies  
19 that are required in your regulations?

20 A. (Condon) Correct. Yes.

21 Q. So you go through the checklist, and you check  
22 off which of the studies required by rule is in  
23 the Application.

24 A. (Condon) Yes.

25 Q. And what do your site plan regulations require

1           for evaluation of wildlife impacts? What  
2           studies have to be in an application?

3    A.    (Condon) We don't have them.

4    Q.    What about noise impacts?

5    A.    (Condon) We don't have any.

6    Q.    What about aesthetics?

7    A.    (Condon) Nothing.

8    Q.    Okay. So, could you refuse an application that  
9           didn't have those studies in it?

10   A.    (Condon) No.

11   Q.    And what standards do your regulations contain  
12           regarding each of those matters?

13   A.    (Condon) Nothing.

14   Q.    So what would you do if one landowner were to  
15           recommend a standard of 40 dBA and another  
16           recommend 30?

17   A.    (Condon) Really, we couldn't rule on that  
18           because it's not in our regulations, not in our  
19           ordinances.

20   Q.    What are the front-yard setbacks under your  
21           zoning ordinance?

22                   CHAIRMAN HONIGBERG: Mr.  
23           Richardson, you asked questions about that.

24                   MR. RICHARDSON: I have setbacks  
25           written down. I believe it was Ms. Linowes,



1           based on where that is in my notes. She was  
2           asking about setbacks.

3   BY MR. RICHARDSON:

4   Q.    So what are your setbacks?

5   A.    (Condon) Off the top of my head, honestly, I'd  
6           have to look them up.

7                   MS. LINOWES: Excuse me, Mr.  
8           Chairman. I simply referenced the fact that the  
9           agreement that was signed between the Board of  
10          Selectmen and Antrim Wind had noted setbacks,  
11          noise and other things. I did not get into  
12          specifics.

13                   MR. RICHARDSON: And my point is  
14          that the --

15                   CHAIRMAN HONIGBERG: That's all  
16          right. The question's been asked and answered.  
17          We're good.

18   A.    (Condon) I know it varies by district.

19   BY MR. RICHARDSON:

20   Q.    Okay. But could you just give me a typical  
21          one? And I'm sorry. I forgot what your answer  
22          was.

23   A.    (Condon) For example: I think in some areas  
24          it's 25 feet. I think it is less in, for  
25          example, the lakefront district because the

1           houses are very close together. I think it's  
2           quite a bit less.

3       Q.     And to what do your setbacks apply? Is that  
4           for buildings, structures, or both?

5       A.     (Condon) For buildings and structures, yes.

6       Q.     Has the Antrim Planning Board ever applied a  
7           different structure without an agreement from  
8           the landowner?

9       A.     (Condon) No.

10      Q.     I want to follow up, and I believe this was in  
11           the Board of Selectmen's testimony about the  
12           Town's renewable energy goals. But I guess  
13           I'll ask this to you, Mr. Webber. You've been  
14           on the Planning Board before; right?

15      A.     (Webber) I have.

16      Q.     How many years total?

17      A.     (Webber) Two. No, three. Three.

18      Q.     How does the Town's zoning ordinance take into  
19           account the benefits of a wind energy project?  
20           Is there any way to balance the benefits with  
21           the impacts under the Town's ordinance?

22      A.     (Webber) No.

23      Q.     Okay. And Mr. Condon, would you agree with  
24           that?

25      A.     (Condon) Yes, I would agree.

1 Q. In fact, how are energy benefits addressed in  
2 Antrim Wind's ordinance?

3 A. (Condon) There is no Antrim Wind ordinance.

4 Q. I'm sorry. In the Antrim zoning ordinance.

5 A. (Condon) It's not.

6 Q. I'd like to ask this question that was not  
7 asked on direct but came up earlier in the  
8 hearing. So I'll ask the question. If people  
9 want to object, I'll ask the witnesses to wait  
10 first.

11 CHAIRMAN HONIGBERG: They all  
12 appreciate the warning. Go ahead.

13 BY MR. RICHARDSON:

14 Q. You heard testimony earlier today about whether  
15 Antrim Wind would make the \$40,000 donation and  
16 whether the Town could use that on anything it  
17 wanted. What's your understanding of what the  
18 requirements are?

19 CHAIRMAN HONIGBERG: You can  
20 answer. Go ahead.

21 A. (Webber) Okay. There are no stipulations as to  
22 how the money would be spent.

23 Q. But is it your understanding that a town  
24 meeting has authorized the Board of Selectmen  
25 to accept gifts up to a certain amount after a

1 public hearing?

2 A. (Webber) Yes.

3 Q. And is the Town obligated to spend those gifts  
4 in accordance with their purposes?

5 A. (Webber) Yes.

6 Q. And I'll refer you to RSA 31:19. Is that the  
7 statute you believe governs?

8 A. (Webber) Yes.

9 Q. Thank you. No further questions.

10 CHAIRMAN HONIGBERG: Ms. Linowes,  
11 what can I do for you?

12 MS. LINOWES: Mr. Chairman, I  
13 just had one quick follow-up question that  
14 related. Would that be okay?

15 CHAIRMAN HONIGBERG: Probably  
16 not. What's the question?

17 MS. LINOWES: The question is  
18 Attorney Richardson is raising the issue of no  
19 zoning standards for aesthetics, noise, et  
20 cetera. And my question is: Why does there  
21 have to be any ordinance in order to review the  
22 Project?

23 CHAIRMAN HONIGBERG: I think  
24 that's a legal question that the lawyers will  
25 probably be writing up extensively. You

1           probably will be as well.

2                       MS. LINOWES:   Okay.   Thank you.

3                       CHAIRMAN HONIGBERG:   Is there  
4           anything else?

5                       MR. RICHARDSON:   It's my hope I  
6           don't have to write that again.

7                       CHAIRMAN HONIGBERG:   All right.  
8           Witnesses, thank you for your testimony.   You  
9           can just stay where you are because we're pretty  
10          much going to be done at this point.

11                      (Whereupon the Witness Panel was  
12           excused.)

13                      CHAIRMAN HONIGBERG:   We are at  
14          4:20, so we're going to break momentarily.  
15          Let's go off the record for a few minutes.

16                      (Discussion off the record)

17                      CHAIRMAN HONIGBERG:   So, let's go  
18          back on the record.   We will adjourn now and  
19          come back for 9:00 tomorrow morning, and Ms.  
20          Vissering will be testifying at that time.  
21          Thank you all very much.

22                      (Whereupon the AFTERNOON SESSION was  
23           adjourned at 4:20 p.m.)

24

25

## C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of these proceedings taken at the  
place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

I further certify that I am neither  
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employed by any of the parties to the  
action; and further, that I am not a  
relative or employee of any attorney or  
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financially interested in this action.

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Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)

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