

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

July 7, 2015 - 2:05 p.m.

DAY 2

Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

Afternoon Session only

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 Commission

Dir. Eugene Forbes, Designee
Cmsr. Robert R. Scott
Dir. Elizabeth Muzzey
Cmsr. Jeffrey Rose

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

Patricia Weathersby
Roger Hawk

Public Member
Public Member

Counsel to the Committee:

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(Brennan Lenehan)

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

APPEARANCES: Reptg. Antrim Wind, LLC:

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Patrick Taylor, Esq. (McLane, Graf...)
Henry Weitzner (Walden Green Energy)
Jack Kenworthy (Antrim Wind Energy)
David Raphael (LandWorks)

Reptg. Counsel for the Public:

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N.H. Attorney General's Office
Jean Vissering

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Justin Richardson, Esq. (Upton & Hatfield)
Michael Genest, Chairman
John Robertson, Selectman
Gordon Webber, Selectman

Reptg. Audubon Society:

David Howe, Esq.
Carol Foss

**Reptg. Harris Center for Conservation
Education:**

James Newsom

Reptg. the Wind Action Group:

Lisa Linowes

Janice Duley Longgood, *pro se* (Abutters Group)

Reptg. Lorraine C. Block & Richard Block:

Richard Block, *pro se* (Non-Abutters Group)
Lorraine Carey Block, *pro se* (Non-Abutters...)

Charles Levesque, *pro se* (Non-Abutters Group)

Dr. Fred Ward, *pro se* (Non-Abutters Group)

Elsa Voelcker, *pro se* (Non-Abutters Group)

Annie Law, *pro se* (Non-Abutters Group)

Robert Cleland, *pro se* (Non-Abutters Group)

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[WITNESS: Linowes]

P R O C E E D I N G

(Hearing resumed at 2:05 p.m.)

CHAIRMAN HONIGBERG: All right.

Mr. Taylor, you may continue.

BY MR. TAYLOR:

Q. So, just picking up where we were before the break, I guess I'll just restate a question that I asked earlier. Which is, WindAction, which is the group of which you're the Executive Director, is, as a general matter, critical of the wind industry, correct?

A. Correct.

Q. Thank you. And, Ms. Linowes, you're not a resident of Antrim, New Hampshire, correct?

A. I am not.

Q. And, WindAction is also not a resident of Antrim, New Hampshire, correct?

A. That's correct.

Q. And, is it fair to say that you are primarily the sole employee of WindAction?

A. We don't really have employees. I'm a volunteer for the organization.

Q. But, to the extent that WindAction does any sort of work, it's performed by you, correct?

A. Well, I think I shared with you, as part of the

[WITNESS: Linowes]

1 technical session, that we do have a network of people
2 that we work with across the country. So, it's a
3 loosely organized organization of key state leaders
4 that I work with. So, WindAction has a board of
5 directors, and I am the primary spokesperson and front
6 person for the organization.

7 Q. You're a resident of Lyman, New Hampshire, correct?

8 A. Yes.

9 Q. And, that's about two hours away from Antrim, New
10 Hampshire?

11 A. That's correct.

12 Q. And, you don't own any property in Antrim, New
13 Hampshire, correct?

14 A. I do not.

15 Q. You're not here representing any specific Antrim
16 residents in this docket, correct?

17 A. That's correct.

18 Q. And, you're aware that the Antrim Planning Board has
19 filed testimony supporting the SEC taking jurisdiction
20 over this Project, correct?

21 A. I am aware of that.

22 Q. And, similarly, that the Board of Selectmen of the Town
23 of Antrim has filed testimony supporting the SEC taking
24 jurisdiction over this Project?

{SEC 2014-05} [Day 2/Afternoon Session only] {07-07-15}

1 A. Right.

2 Q. And, you're also aware that 100 -- more than 100
3 residents have signed a petition requesting that the
4 SEC take jurisdiction over this Project, correct?

5 A. Yes. I'm aware of that.

6 Q. In your testimony, if you go to Page 3, Lines 13 to 16,
7 you say that your "testimony explores four key elements
8 of the Application in determining whether the proposed
9 Project is sufficiently different to warrant a new
10 review by the Committee." And, those are "Project
11 layout, Aesthetics, Noise, and PILOT and Other
12 Mitigation", correct?

13 A. That's correct.

14 Q. So, going first to "Project layout", and that begins on
15 Page 3. Actually, on Page 4, you've included a chart
16 here.

17 A. Uh-huh.

18 Q. Okay. And, down here, at the bottom of the chart, it
19 says that the source -- well, it gives a Web address,
20 but it's accurate to say that that is the FAA website?

21 A. That's correct.

22 Q. And, this chart is not actually from the FAA website,
23 correct?

24 A. I cut-and-paste the pages, the rows from the FAA.

[WITNESS: Linowes]

1 Q. You created the chart that appears here, correct?

2 A. That's correct.

3 Q. And, the top, we'll say, half of the chart, it says
4 year "2011". That represents the original 10-turbine
5 layout, correct?

6 A. That's correct.

7 Q. And, the bottom represents the 9-turbine layout that
8 we're here discussing today, correct?

9 A. Correct.

10 Q. All right. So, just assuming that the values you have
11 plugged in here are correct, the tenth entry in the
12 2011 -- 2011 portion of the chart, that represents the
13 tenth turbine that has been removed from this Project,
14 correct?

15 A. That's correct.

16 Q. And, when you look under the column "Site Elevation",
17 and you scroll all the way down, the turbine that's
18 been removed was at the highest of the ten elevations,
19 correct?

20 A. That's correct.

21 Q. And, moving onto Section (b), which begins on Page 5,
22 you make some statements regarding the aesthetics.

23 A. (Nodding in the affirmative).

24 Q. And, the effect of the Project on aesthetics. You're

[WITNESS: Linowes]

1 not a landscape architect, correct?

2 A. That's correct.

3 Q. And, you're not trained in the preparation of visual
4 impact assessments?

5 A. That's correct.

6 Q. And, you haven't prepared a visual impact assessment in
7 this case, correct?

8 A. I have not.

9 Q. And, in fact, you don't say anything in your testimony
10 here that hasn't already been addressed in the
11 testimony of Ms. Vissering or Mr. Raphael, isn't that
12 correct?

13 A. That is absolutely correct.

14 Q. I'm sorry?

15 A. That is correct.

16 Q. And, actually, I just want to go back to the "Project
17 layout" section of your testimony. With the removal of
18 the tenth turbine, that has, in fact, reduced the
19 footprint of the Project, has it not?

20 A. Yes, it has.

21 Q. Moving onto Page 7 of your report -- of your testimony,
22 sorry. Down on Line 15, the section on noise begins.

23 A. Uh-huh.

24 Q. You're not a sound or noise control engineer, correct?

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[WITNESS: Linowes]

1 A. That is correct.

2 Q. And, you're not an acoustician?

3 A. That is correct.

4 Q. You have no experience in noise impact evaluation,
5 correct, or sound level measurement?

6 A. Not as an acoustician, no.

7 Q. Do you have any experience at all?

8 A. I have experience -- no. Okay. I'm not going to go
9 into that. I do not have it at the level that you're
10 talking about.

11 Q. At the top of Page 8, Line --

12 A. If I may state, though, the information I'm citing here
13 is -- doesn't require an acoustician to site sound
14 power levels for the turbines.

15 Q. I'm moving onto that. Thanks.

16 A. Okay.

17 Q. So, Lines 1 to 2, you state that "The manufacturer's
18 sound power level for the Siemens SWT-3.2-113 turbine
19 is 107.5 dBA."

20 A. Correct.

21 Q. Now, in the technical session, you learned that the
22 sound power level for the turbines at this site will
23 actually be 106 dBA, correct?

24 A. With a plus or minus 1.5. And, that's what that -- so

[WITNESS: Linowes]

1 that the actual maximum sound power level for the
2 Siemens, according to the information that Mr.
3 Kenworthy brought forward, was that it will 106, with a
4 plus or minus 1.5. So, it would actually be 107.5.
5 The information I found on the Web, since I didn't have
6 access to that information at the time, and there's a
7 citation under Footnote 4, was that same turbine, the
8 Siemens 3.2 with 113 had a sound power level of 107.5,
9 plus or minus one. So, I will take Mr. Kenworthy's
10 statement in fact. But, at the time when this was
11 written, the only information I had was what was
12 available as had been filed in a Minnesota -- State of
13 Minnesota proceeding regarding another project.

14 Q. Right. Another project in 2013, correct?

15 A. Correct.

16 Q. Okay. So, it's fair to say then that your testimony
17 here is not accurate?

18 A. It's accurate. It's just that was what I knew at the
19 time. So, Mr. Kenworthy has stated now that the
20 turbines are 106 -- he has orally stated that the sound
21 power level for the Siemens that he will be using is
22 106 decibels, plus or minus 1.5. I don't -- we
23 relevantly don't have any written documentation. I
24 don't believe the sound assessment has been made part

[WITNESS: Linowes]

1 of the record. Or, I haven't seen it.

2 Q. But, in any event, you don't have any experience,
3 professional or otherwise, as a sound level engineer,
4 correct?

5 A. That's correct.

6 Q. On Page 10 of your testimony, beginning at Line 1, and
7 this is in the "PILOT and Other Mitigation" portion of
8 your testimony, you indicate that "Ms. Vissering's
9 testimony and report made clear that the only way to
10 mitigate the visual impacts was with all of her recom-
11 mendations, which included removing two turbines and
12 making all the rest significantly similar [smaller?]."
13 Is that right?

14 A. Yes. I am citing from Counsel for the Public's filing
15 in this regard.

16 Q. Right. But, in the prior docket, the Committee did not
17 actually adopt Ms. Vissering's report or state that her
18 recommendations would be required for the Project to go
19 forward, correct?

20 A. Yes. I'm citing Ms. Vissering's testimony, not the
21 conclusions of the Committee.

22 Q. And, Ms. Vissering has already testified here today,
23 correct?

24 A. That's correct.

[WITNESS: Linowes]

1 Q. When you -- well, when -- let me ask you this. In the
2 prior docket, you intervened on behalf of Industrial
3 Wind Action Group, correct?

4 A. Correct.

5 Q. And, it's fair to say that Industrial Wind Action Group
6 is the predecessor organization to WindAction?

7 A. It's the same. It just became easier to take the word
8 "Industrial" out.

9 Q. Sure.

10 A. Although, we are officially known -- legally known,
11 rather, as the "Industrial Wind Action Group".

12 Q. And, when you filed a petition to intervene in Docket
13 2012-01, you indicated that "IWA", "IWA" being the
14 acronym for Industrial Wind Action, --

15 A. Uh-huh.

16 Q. -- "IWA subscribers have a strong interest in ensuring
17 wind energy proposals are considered in a deliberate
18 and comprehensive manner, with a keen focus on the
19 impacts and costs of such development", correct?

20 A. That is correct.

21 Q. And, you didn't include that statement in your petition
22 to intervene in this case.

23 A. Right.

24 Q. Is that no longer an imperative for your organization?

[WITNESS: Linowes]

- 1 A. No. No, that is an imperative. And, what happened
2 when I intervened, I don't have that in front of me,
3 but I have intervened multiple times in proceedings
4 before the Site Evaluation Committee, and the Committee
5 has been very gracious in allowing me to participate.
6 Each time, though, when I presented a reason for being
7 part of it, the response back was allowing me to
8 intervene, but "in the interest of justice". So, I
9 didn't think it would be necessary to be redundant in
10 making those statements, since the Committee was not
11 allowing me into the proceedings because I had a direct
12 impact or any of the people that I represent had a
13 direct impact from the project. So, I just simplified
14 my petition.
- 15 Q. Now, you heard yesterday Mr. Richardson, when he was on
16 redirect with the Antrim Planning Board, Mr. Condon
17 from the Planning Board testified that the Town of
18 Antrim has no ordinance in place to address aesthetics,
19 correct?
- 20 A. Correct.
- 21 Q. And, no ordinance in place to address noise, correct?
- 22 A. Correct.
- 23 Q. And, no ordinance in place to address wildlife,
24 correct?

[WITNESS: Linowes]

1 A. That's right.

2 Q. And, under RSA 162-H:16, the Site Evaluation Committee
3 is -- or, cannot issue a certificate unless it has
4 considered whether the site and facility that is
5 subject to an application will have an unreasonable
6 adverse effect on aesthetics, historic sikes --
7 historic sites, air and water quality, the natural
8 environment, and public health and safety, correct?

9 A. That's correct.

10 Q. Okay. And, there are actually a number of other
11 criteria that the SEC has to adhere to when evaluating
12 an application, correct?

13 A. Yes. That is true.

14 Q. So, given that this is -- that this particular docket
15 is limited to jurisdiction, and given that the
16 evaluation of wind projects in a comprehensive and
17 deliberate manner is an imperative to your
18 organization, isn't it fair to say that the Site
19 Evaluation Committee process would provide that
20 deliberate and comprehensive evaluation?

21 A. Okay. There are a lot of ways to answer that.

22 Q. "Yes" or "no" would be great.

23 (Laughter.)

24 **BY THE WITNESS:**

[WITNESS: Linowes]

1 A. Okay. So, the question is, "isn't it fair to say that
2 the Site Evaluation Committee would conduct a more
3 comprehensive" --

4 BY MR. TAYLOR:

5 Q. I didn't say "more comprehensive". I said "a
6 deliberate and comprehensive evaluation".

7 A. The Site Evaluation Committee would conduct such a
8 review. It already has.

9 Q. And, I just want to go back just a moment to your
10 testimony on mitigation, because I want to clarify
11 something. You don't have any professional experience
12 in evaluating appropriate mitigation measures for wind
13 projects, correct?

14 A. For wind projects?

15 Q. Uh-huh.

16 A. In land-use projects, I've been a part of a planning
17 board where, you know, that's always something that's
18 debated when an application comes before it. So, there
19 are -- this is a very big land-use project, that's what
20 it is. And, I also am very experienced in the types of
21 impact associated with the wind energy projects. So, I
22 would not say I'm not experienced with mitigation.

23 Q. Well, you heard Mr. Raphael and Ms. Vissering testify
24 as to mitigation measures, correct?

[WITNESS: Linowes]

1 A. Yes.

2 Q. And, you've already testified that you don't have the
3 level of experience that they have in evaluating these
4 projects, correct?

5 A. That is correct.

6 Q. So, I just want to be clear about this. You're not an
7 Antrim resident. WindAction is not an Antrim resident.

8 A. Correct.

9 Q. You're not a landscape architect. You're not a noise
10 expert. Your organization is critical of wind
11 projects. And, the Site Evaluation Committee can
12 provide a deliberate and comprehensive evaluation of
13 the application. All those statements are correct?

14 A. Yes.

15 MR. TAYLOR: I have no other questions.

16 CHAIRMAN HONIGBERG: Ms. Longgood, I'm
17 going to circle back to you, so you don't lose your train
18 of thought, if you have questions.

19 MS. LONGGOOD: Just one question.

20 BY MS. LONGGOOD:

21 Q. I know, as a experienced person looking at wind energy
22 products -- projects, Ms. Linowes, in your opinion,
23 does this --

24 MR. TAYLOR: I'm going to object to the

[WITNESS: Linowes]

1 question. That's providing an assumption. She's already
2 testified to the contrary.

3 CHAIRMAN HONIGBERG: Well, let's let her
4 get the question out -- Ms. Linowes, hang out, just wait a
5 minute. Let's let the question get asked, and then let's
6 let Mr. Taylor object, and then we'll figure out whether
7 we're going to let you answer.

8 So, I'm sorry, Ms. Longgood. Why don't
9 you complete your question.

10 MS. LONGGOOD: I believe that she has
11 experience on different projects. So, she's not an expert
12 landscaper or --

13 CHAIRMAN HONIGBERG: Ms. Longgood.

14 MS. LONGGOOD: Yes.

15 CHAIRMAN HONIGBERG: Let's hear what the
16 question is.

17 MS. LONGGOOD: Okay.

18 BY MS. LONGGOOD:

19 Q. I know that the Site Evaluation Committee did a
20 thorough evaluation of the prior Project. In your
21 opinion, does this reconfigured Project make a
22 significant difference, in terms of aesthetics, noise,
23 any of those issues?

24 CHAIRMAN HONIGBERG: And, Ms. Linowes,

[WITNESS: Linowes]

1 don't answer anything.

2 WITNESS LINOWES: Okay.

3 CHAIRMAN HONIGBERG: Mr. Taylor.

4 MR. TAYLOR: I don't have any objection
5 to the way that question was asked.

6 CHAIRMAN HONIGBERG: Go ahead, Ms.
7 Linowes.

8 **BY THE WITNESS:**

9 A. Thank you. I believe I testified in my written
10 testimony that there is very little difference. And,
11 my testimony agrees with Ms. Vissering's testimony.

12 WITNESS LINOWES: But, Mr. Chairman, if
13 I may add. I was not asked whether I was an expert on
14 wind energy impacts. If I were asked that, I would say
15 "yes, I am." I was asked questions specifically about
16 noise and aesthetics.

17 CHAIRMAN HONIGBERG: Okay.

18 WITNESS LINOWES: Thank you.

19 CHAIRMAN HONIGBERG: Do you have
20 anything else, Ms. Longgood?

21 MS. LONGGOOD: No. Thank you very much.
22 I appreciate that.

23 CHAIRMAN HONIGBERG: All right. Thank
24 you. Mr. Richardson.

[WITNESS: Linowes]

1 MR. RICHARDSON: Thank you, Mr.
2 Chairman. I don't know how this works in this proceeding,
3 but I'm going to assume that you're going to have an
4 opportunity, the way those witnesses that have come
5 before, to, you know, do the equivalent of a redirect.
6 So, I'm going to try to keep my questions fairly focused.
7 And, if you can answer them for me, as I ask them, to the
8 best of your ability, I'm going to assume you're going to
9 get a chance to come back, if there are anything that
10 needs to be added.

11 BY MR. RICHARDSON:

12 Q. So, what I want to start with is, I've given you the
13 transcripts from the technical session, those are in
14 those two binders right there that are to your left.

15 A. Okay.

16 Q. And, you recall we had a discussion, you don't have to
17 look at them now, --

18 A. Okay.

19 Q. -- that the technical sessions were not depositions.
20 In other words, you weren't under oath. But you may
21 recall I asked you if you understood your obligation to
22 answer the questions fairly and accurately?

23 A. Yes.

24 Q. And, that means giving answers that are accurate to the

[WITNESS: Linowes]

1 best of your knowledge and belief, right?

2 A. Correct.

3 Q. And, that's the obligation that was effectively no
4 different right now as it was back at the technical
5 session?

6 A. Well, it was different, that I was not under oath at
7 that time. And, I certainly was going to answer
8 questions as honestly as I could.

9 Q. Okay. And, that means also providing complete
10 information, right?

11 A. Yes.

12 Q. Okay. So, I want to start, with that said, on
13 something that Attorney Taylor touched on. And, it's
14 been discussed a lot in the record. And, I know you
15 were involved in the 2012 proceeding as a party, right?

16 A. Uh-huh. Yes, I was.

17 Q. And, you were there for all the deliberations and you
18 read the decision, right?

19 A. I did.

20 Q. Okay. And, because there's been various questions that
21 have addressed whether the Committee's decision allowed
22 or did not allow conservation easements to be used as
23 mitigation. So, I've got with me, I believe this is
24 Antrim Wind Exhibit 3. It's the decision of April 25,

[WITNESS: Linowes]

1 2013. And, could you read this paragraph for me that's
2 on Page 53 of 71.

3 A. That starts "A majority", that part?

4 Q. No, I'm sorry.

5 A. Oh, this part.

6 Q. "Similarly".

7 A. Okay. "Similarly, the Subcommittee finds that the
8 offer of more than 800 acres of conservation easements
9 in and around the proposed Facility is a generous offer
10 by the Applicant." Keep going?

11 Q. Keep going, please.

12 A. "However, the dedication of lands to a conservation
13 easement in this case would not suitably mitigate the
14 impact. While additional [conservation] lands would be
15 a value to wildlife and habitat, they would not
16 mitigate the imposing visual impact of the facility" --
17 "that the facility would have on valuable viewsheds."

18 Q. So, when the Committee said "in this case", they were
19 talking about the evidence, the impacts for that
20 particular Facility as proposed?

21 A. That's correct.

22 Q. And, when they say "the Facility", it's capitalized on
23 that page, right?

24 A. It is.

[WITNESS: Linowes]

1 Q. And, doesn't that suggest that the Committee's decision
2 was to say that the impacts of the 10-turbine facility
3 couldn't be mitigated by conservation. But I don't
4 think there was a more general ruling that conservation
5 land couldn't offset visual impacts from some other
6 facility, right?

7 A. Wow. I couldn't even speculate.

8 Q. Okay. Well, were you aware of anything on that point?
9 I mean, was -- at any point did the Committee member
10 say "no, we're categorically not going to allow
11 conservation"?

12 A. The 800 acres versus, I believe, 600 something acres,
13 came in after the public -- after the proceedings had
14 ended, and in advance of the deliberations.

15 Q. Uh-huh.

16 A. So, I don't know what the Committee -- no one in the
17 public, including any of the intervenors, participated
18 in the discussion of the 800 acres. So, I'm not sure
19 how to evaluate that. And, of course, the Committee,
20 at that time, was not contemplating a proposal for one
21 turbine being removed and another -- at all. That came
22 after the decision. So, I can't -- I would take them
23 on their face value. Okay, they're saying that
24 "conservation easements were not enough to mitigate the

1 impact", and --

2 Q. In that case?

3 A. That was the only case that was there.

4 Q. Okay. Thank you. I believe you stated that your
5 purpose in this proceeding was to, if I recall
6 correctly, "bring the information forward", and I think
7 Attorney Taylor asked you a similar question. And, you
8 said that you, during the technical session, you are
9 "not trying to kill wind energy", merely to "balance
10 the debate". Is that right?

11 A. That is, yes. That is correct.

12 Q. And, --

13 A. If I could add to that, if I may? Every decision,
14 every proceeding, every proposal that is -- that
15 involves a wind energy project around the country
16 impacts the next. So, any time I have an opportunity
17 to participate and advance our perspective and inform
18 the debate, I think that that's important as a public
19 interest group.

20 Q. Uh-huh. And, I believe, when Attorney Taylor asked you
21 during the technical session in April, he asked you
22 whether you "have a philosophical opposition to wind
23 energy?" And, I think you said "I don't put a value
24 judgment on it." And, you said "I don't think that

[WITNESS: Linowes]

1 it's a philosophical question." I got the sense you're
2 saying, "Look, it's just about the numbers, whether
3 wind energy is good or bad."

4 A. Yes.

5 Q. Does that -- okay.

6 A. That is true.

7 MR. RICHARDSON: So, I want to show you
8 a document. And, why don't we mark this as -- your
9 testimony was marked as what?

10 WITNESS LINOWES: "WA 4".

11 MR. RICHARDSON: "WA 4". So, why don't
12 we call this "WA 5". If you could mark that, and I'll
13 hand copies out here.

14 CHAIRMAN HONIGBERG: We might mark it as
15 a Town's exhibit. It depends on what it is.

16 MR. RICHARDSON: Okay. I was using the
17 designation based on the witness, because we started that
18 way. I don't know --

19 CHAIRMAN HONIGBERG: Off the record.

20 (Brief off-the-record discussion
21 ensued.)

22 CHAIRMAN HONIGBERG: We're marking this
23 "Exhibit WA 5". Ms. Linowes, we understand that this is
24 not an exhibit that you are offering. It is just being

[WITNESS: Linowes]

1 shown to you.

2 WITNESS LINOWES: Thank you.

3 (Atty. Richardson distributing
4 documents.)

5 (The document, as described, was
6 herewith marked as **Exhibit WA 5** for
7 identification.)

8 MR. RICHARDSON: Are we ready?

9 BY MR. RICHARDSON:

10 Q. So, you have that document in front of you that's been
11 marked "WA 5"?

12 A. (Nodding in the affirmative). Uh-huh.

13 Q. And, I think, let me read the first paragraph for you.
14 You state "Vote NO on Big Wind". You say "The debate
15 is no longer about" --

16 A. Excuse me. If I could interrupt you? The first
17 paragraph is actually "U.S. voters are unhappy with the
18 direction of the country." That paragraph is actually
19 further down at the last paragraph on that page, but
20 this is not the full editorial.

21 Q. Okay. Well, I'd like to read you that paragraph,
22 whichever number it may be. Where it says "The debate
23 is no longer about the fear of change or aesthetics.
24 It's about preserving the health and safety and welfare

[WITNESS: Linowes]

1 of communities from developers hell-bent on sticking
2 turbines on every free acre with transmission access no
3 matter who's in the way." Now, I guess what I'm having
4 trouble understanding, first of all, you wrote that,
5 right?

6 A. I did write that.

7 Q. How did we go from -- and this is dated October 31st,
8 2014.

9 A. Uh-huh.

10 Q. How was I to understand, when I heard you answer
11 questions at the technical session, saying you "just
12 wanted to get the information out there" and you
13 "weren't categorically against wind projects"? I mean,
14 I don't see any exceptions, qualifications or
15 limitations on this.

16 A. This is an editorial. This is not --

17 Q. But it's your editorial.

18 A. That's true.

19 Q. It's your opinion.

20 A. That's true. And, I am -- there's a lot more that's
21 going in there explaining it. And, you know, I could
22 take every phrase in that paragraph and bring you three
23 articles that point to experiences where that kind of
24 thing is happening. Not necessarily in New Hampshire.

[WITNESS: Linowes]

1 I'm not talking about New Hampshire.

2 Q. But I don't think you understand my question. I'm just
3 asking, which Lisa Linowes are you? Are you the one
4 that only wants to get the information out there or are
5 you the one who is categorically against wind, as this
6 seems to state?

7 A. Attorney Richardson, I think, if you look at my
8 testimony, in any one of the dockets that I've been
9 participating in, if you listen to any of the questions
10 I ask of the witnesses, I don't think you -- you know,
11 to say that I'm "one person versus another" is not a
12 fair characterization. I am -- I don't think that you
13 can point to anything and say I'm just hyperbolic in my
14 perspective on wind energy. This is an editorial.
15 This is meant to be provocative. This is meant to
16 catch people's attention. And, that's all I'll say
17 about it. And, you know, it's -- and I -- I'm speaking
18 from situations that are actually happening around the
19 country. So, you know, that's meant to catch people's
20 attention.

21 I don't think -- well, I'll ask, if you
22 want to answer me. Have you seen me act that way
23 here?

24 Q. I guess what I'm trying to figure out is, is when you

[WITNESS: Linowes]

1 say, in your technical session, that you're "only
2 trying to balance the debate", you're "not trying to
3 kill wind energy", I have trouble reconciling it with
4 that statement. But I prefer that we just move on from
5 this and go onto another subject. So, if -- now, Wind
6 Action Group has a board of directors, right?

7 A. That is correct.

8 Q. And, there's three members?

9 A. That is correct.

10 Q. And, that it was incorporated in 2007, if I recall?

11 A. '06 or '07. I'm sorry, I can't remember.

12 Q. Okay. That's fine. And, the members are your husband,
13 Jonathan Linowes, right?

14 A. That's true.

15 Q. And, yourself?

16 A. Uh-huh.

17 Q. And, you're the Executive Director?

18 A. That's correct.

19 Q. And, Rob Pforzheimer?

20 A. Correct.

21 Q. And, I understand, from our discussions at the
22 technical session, that your husband's primary
23 involvement was setting up the website, and that he's
24 not really involved in editorials or things like that?

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[WITNESS: Linowes]

1 A. Correct.

2 WITNESS LINOWES: And, I have no problem
3 answering those questions. But I do have a question about
4 relevancy, because that really has nothing to do with
5 whether or not the Site Evaluation Committee should assert
6 jurisdiction, in my opinion. So, I do object to the line
7 of questioning.

8 MR. RICHARDSON: Well, I --

9 CHAIRMAN HONIGBERG: We'll hear what the
10 next question is, and maybe you'll raise an objection
11 before answering. Then, we'll know what to do. Okay?

12 WITNESS LINOWES: Okay.

13 CHAIRMAN HONIGBERG: Go ahead,
14 Mr. Richardson.

15 MR. RICHARDSON: Thank you.

16 BY MR. RICHARDSON:

17 Q. So, Mr. Pforzheimer, I believe you stated that you
18 worked with him for a number of years?

19 A. That's true.

20 Q. And, I asked you what his involvement in Wind Action
21 was, and you said that you "discuss the issues with
22 him"?

23 A. Uh-huh. That's correct.

24 Q. And, I also asked you if he had any involvement in

[WITNESS: Linowes]

1 Antrim Wind, and I'll read you your answer on Page 28
2 from the May 4th technical session. I say "Have you
3 discussed Antrim Wind with him?" And, I think your
4 answer was "Only to the extent that Eolian Wind has
5 sought to build a project in Vermont, and
6 Mr. Pforzheimer lives in Vermont."

7 A. That sounds right.

8 Q. Now, is that a complete answer, in terms of what his
9 involvement is with Eolian Wind? Does he have any
10 other involvement?

11 A. I have --

12 CHAIRMAN HONIGBERG: Well, wait, wait
13 wait. You need to rephrase the question. Because the
14 question you read was not the question you just asked,
15 "was that a complete answer to it?" So, do you want to
16 know what is Mr. Pforzheimer's involvement in Eolian Wind,
17 if any? Is that the question you want her to answer?

18 MR. RICHARDSON: No. I wanted to know
19 if she felt that her prior answer at the technical session
20 was a complete one.

21 CHAIRMAN HONIGBERG: And, the question
22 asked in the technical session I believe you said was
23 "have you discussed Antrim Wind with Mr. Pforzheimer?"

24 MR. RICHARDSON: Yes.

[WITNESS: Linowes]

1 BY MR. RICHARDSON:

2 Q. And, you had said "only to the extent that Eolian Wind
3 sought to build a project in Vermont, and
4 Mr. Pforzheimer lives in Vermont."

5 A. Yes. That is correct.

6 Q. Now, in fact, Mr. Pforzheimer has been fairly active,
7 either personally or as a board member of WindAction,
8 opposing Eolian projects, hasn't he?

9 MS. MALONEY: I don't know if she's
10 going to perhaps object, but I'm going to object to this
11 line of questioning. Because I don't think it's proper
12 impeachment, if that's what he's trying to do. The
13 question -- original question was whether or not she
14 discussed Antrim Wind with her, not -- I'm sorry, Mr.
15 Pforz --

16 WITNESS LINOWES: Pforzheimer.

17 MS. MALONEY: -- his involvement with
18 opposition to Eolian in Vermont or anything else.

19 CHAIRMAN HONIGBERG: Mr. Richardson.

20 MR. RICHARDSON: WindAction is actually
21 the party that has been granted intervention. I'm asking
22 about the positions and views of one of its board members.
23 And, there's only two that are actively involved.

24 MS. MALONEY: I'm going to object on

[WITNESS: Linowes]

1 relevance and I'm going to object that it's not proper
2 impeachment.

3 WITNESS LINOWES: And, I can't speak to
4 what Mr. Pforzheimer does --

5 CHAIRMAN HONIGBERG: Wait, wait, wait.
6 Mr. Richardson, anything you want to add? To what is this
7 relevant?

8 MR. RICHARDSON: This is relevant to the
9 bias of Wind Action Group as a corporation and what its
10 views are.

11 CHAIRMAN HONIGBERG: I think it's fairly
12 clear what their position on all of this is. Is there
13 some reason to think that they have a different view on
14 other projects? That this is a stalking-horse for
15 something else? It's obvious that WindAction is opposed
16 to this Project.

17 MR. RICHARDSON: Uh-huh.

18 CHAIRMAN HONIGBERG: And, Ms. Linowes'
19 testimony is geared toward that. Her aggregation of other
20 people's statements is all designed to show that -- her
21 opposition to it.

22 MR. RICHARDSON: Why don't I lay some
23 more foundation then.

24 CHAIRMAN HONIGBERG: Go for it.

[WITNESS: Linowes]

1 BY MR. RICHARDSON:

2 Q. Mr. Pforzheimer lives in Vermont, as you say?

3 A. I cannot speak to what Mr. -- yes, he lives in Vermont.

4 But I don't know what he does in his private -- with
5 his time.

6 Q. Okay. That was just my question right there.

7 A. Okay. He does live in Vermont.

8 Q. So, the next question, he lives in Sutton, Vermont?

9 A. Yes. He does live in Sutton.

10 Q. And, Eolian, in fact, proposed a project that was less
11 than ten miles away from his home?

12 MS. MALONEY: I'm going to renew my
13 objection.

14 CHAIRMAN HONIGBERG: I'm about to
15 sustain this objection. What is -- why does it matter?
16 He's part of WindAction. WindAction is opposed to this.
17 They were opposed to a project in Vermont, too.

18 MR. RICHARDSON: They have been opposed
19 to Eolian projects. And, I'd like to show the personal
20 bias of the organization against Eolian Wind.

21 MS. MALONEY: I'm going to object. I
22 think he has to deal with the witness who is in front of
23 him. And, I think, if he wants to address her personal
24 bias, we've already discussed that WindAction has taken a

[WITNESS: Linowes]

1 position on this. And, I think the Chair, prior to the
2 break for lunch, talked about addressing the issue of
3 whether or not she was critical of wind projects. I don't
4 think it's any mystery to anybody present listening to the
5 testimony what the position of WindAction is. So, I think
6 this is irrelevant testimony at this point.

7 CHAIRMAN HONIGBERG: Mr. Richardson, is
8 Eolian -- is their opposition to Eolian projects unique?
9 Do they just object to Eolian projects?

10 MR. RICHARDSON: I don't know the
11 answer. But I think they have a personal opposition or
12 objection to Eolian Wind as a result of one of its board
13 members. I can make this --

14 WITNESS LINOWES: Mr. Chairman, that's
15 completely not --

16 CHAIRMAN HONIGBERG: Wait. Wait, Ms.
17 Linowes.

18 MR. RICHARDSON: I'd like to be able to
19 get some leeway to ask the question so I can develop these
20 issues. The objections are coming really before I can get
21 to the heart of what the point I'm trying to make is.

22 CHAIRMAN HONIGBERG: It just sounds so
23 irrelevant. So, I got to tell you, and, I mean, you don't
24 actually represent Eolian. I think there is somebody here

[WITNESS: Linowes]

1 who does.

2 But why don't you make an offer of proof
3 about what you think you're going to be able to show.

4 MR. RICHARDSON: Sure. My offer of
5 proof is that a member of Windaction's board of directors
6 has said in various publications, and I'll read you the
7 one that was about 16 days before the technical session,
8 in which Mr. Pforzheimer said "don't let these Eolian
9 trustafarian grifters ruin your town and your neighboring
10 towns with their loud, bird and bat killing, useless 500
11 foot wind turbines. They haven't built any projects
12 anywhere. Don't let Orland be their first."

13 MS. MALONEY: I'm going to renew my
14 objection.

15 CHAIRMAN HONIGBERG: Well, I don't -- I
16 mean --

17 WITNESS LINOWES: I mean, Mr. Chairman,
18 I had nothing to do with that.

19 CHAIRMAN HONIGBERG: I don't think
20 there's any reason for you to go into that with her. If
21 you've got statements from the Company, from WindAction,
22 then you can show them to her.

23 MR. RICHARDSON: Well, this is from its
24 board of -- a member of its board. And, remember, there's

[WITNESS: Linowes]

1 one board member only did the website, and the other one
2 she discusses energy issues with is Robert Pforzheimer.

3 MS. MALONEY: But there's no knowledge
4 that he was acting on the board and there's no evidence
5 that she had any knowledge of this. So, you know, I renew
6 my objection. This is irrelevant.

7 CHAIRMAN HONIGBERG: Sustained.

8 MR. RICHARDSON: Well, it's hard for me
9 to establish a foundation, if I can't, but I'll move on.

10 CHAIRMAN HONIGBERG: You've made your
11 offer of proof. If, at the end of process, you are
12 dissatisfied with the result, maybe you have an issue for
13 appeal.

14 MR. RICHARDSON: Uh-huh. And,
15 understand, just my offer of proof is that the statements
16 go well beyond that. I've just read you the first. But
17 we'll move on.

18 CHAIRMAN HONIGBERG: Oh. Oh, do you
19 want to make a longer offer of proof?

20 MR. RICHARDSON: I would.

21 CHAIRMAN HONIGBERG: I tell you what.
22 Why don't you ask your other lines of questions. And,
23 then, at the end, you can put on the record what your
24 offer of proof will be, so we'll have it all in one place.

[WITNESS: Linowes]

1 MR. RICHARDSON: Why don't I do this. I
2 can make the exhibit, mark it for identification, then the
3 statements are in the record and they are what they are.
4 And, then, we can move on, given the Chair's already ruled
5 against me on this. I don't want to belabor the point in
6 the hearing.

7 CHAIRMAN HONIGBERG: I just want to make
8 sure you have an opportunity to make the record you want
9 to make, understanding that we've sustained the objection.
10 But I want to make sure that you've made the record that
11 you want to make.

12 MR. RICHARDSON: Absolutely. And, I
13 think the best way to do that is to mark the exhibit for
14 identification, and then proceed from there.

15 CHAIRMAN HONIGBERG: Okay. Go ahead.

16 WITNESS LINOWES: And, in that moment, I
17 think that I could tell you that Mr. Pforzheimer -- if
18 Mr. Pforzheimer's public statements are going to be used
19 against me, then we will remove him as board of director
20 and get someone else, if this is what we have to do.
21 Thank you.

22 (Atty. Richardson distributing
23 documents.)

24 (The document, as described, was

[WITNESS: Linowes]

1 herewith marked as **Exhibit WA 6** for
2 identification.)

3 MR. RICHARDSON: So, this is "6"?

4 MR. PATNAUDE: Yes.

5 BY MR. RICHARDSON:

6 Q. So, just to lay the foundation for this. You see on
7 the first page, Ms. Linowes, where it says that --

8 MS. MALONEY: This is the offer of
9 proof, correct?

10 CHAIRMAN HONIGBERG: Yes, this is an
11 offer of proof. You're not asking the witness any
12 questions right now.

13 MR. RICHARDSON: Well, as Ms. Linowes
14 has confirmed, this Rob Pforzheimer is from Sutton,
15 Vermont. He has a picture there that says, you have
16 trouble reading it here, but I'll represent to you it says
17 "Save our Ridgelines Learn the Facts". And, his comments
18 all involving Eolian Wind are highlighted in this
19 document. And, I think that they show an extreme
20 prejudice against this organization. That he calls them
21 "trustafarians", "flatlanders", "wannabe carpetbaggers".
22 And, as Ms. Linowes has had discussions with this specific
23 gentleman since he's been on the board in 2006 or '07, I
24 think it shows bias.

[WITNESS: Linowes]

1 CHAIRMAN HONIGBERG: Okay. You've made
2 your offer. You may proceed.

3 BY MR. RICHARDSON:

4 Q. Now, you testified that the Committee is "absolutely
5 capable", excuse me, you said at the technical session,
6 "of considering wind energy proposals", and I believe
7 the language you used is "in a deliberative and
8 comprehensive manner, with a keen focus on the impacts
9 and costs of such development". Does that sound
10 correct?

11 A. I don't remember that part about "keen focus". Is that
12 actually in the transcript?

13 Q. Well, do you agree with that statement?

14 A. Is that what I said?

15 Q. If you would like to turn to Page 250, Line 14, that's
16 where I found that.

17 A. Which date?

18 Q. I believe the first date in -- it's April, excuse me,
19 23rd. But let me ask you this, before you go there, do
20 you agree or disagree with that statement?

21 A. I have never had an issue with the Site Evaluation
22 Committee's ability to review these projects. That's
23 not the question here.

24 Q. No, no. The question is whether you agreed with the

[WITNESS: Linowes]

1 statement that I just read?

2 A. And, I think I just said, I do not have an issue with
3 the Site Evaluation Committee's ability to review these
4 projects. That is not the question here.

5 Q. Okay. All right. Now, your belief then is is that the
6 Town is also capable, right?

7 A. Yes.

8 Q. Do you recall at the technical session my asking you
9 what standards the Town has for noise, wildlife, and
10 aesthetics?

11 A. I don't -- I honestly don't remember the specific
12 questions.

13 Q. Well, let me help you then. Do you remember --

14 A. Are we talking about May 4th now?

15 Q. Yes. When I asked you on May 4th. Do you remember
16 saying that you thought it was the preamble that was
17 the source of authority that the Town would have to
18 review projects under the Zoning Ordinance?

19 A. Okay. You are -- what I said, and I would like to look
20 at the transcript, if you tell me where that is. Can
21 you tell me where in the transcript?

22 Q. Well, I'm asking --

23 A. I know you're asking me, and I'm not going to answer
24 the question until I know exactly what I said, and with

[WITNESS: Linowes]

1 the predecessor statements on that.

2 Q. Okay. I'll help you out, if, when I ask you "do you
3 remember or not?", you can say "yes, I remember" or
4 "no, I don't". If you say "no, I don't", I'll help
5 you.

6 CHAIRMAN HONIGBERG: I think that's
7 right, Ms. Linowes. I think your position is "you don't
8 remember specifically what you said". And, I think, at
9 that point, Mr. Richardson is going to ask -- is going to
10 direct you to a portion of the transcript that says -- has
11 the question and answer.

12 WITNESS LINOWES: Okay. Thank you. I
13 don't remember what I said.

14 BY MR. RICHARDSON:

15 Q. Okay. So, why don't we look then at Page 36, Line 10,
16 of the May 4th testimony?

17 A. I'm sorry, 36, Line 10?

18 Q. Yes.

19 A. Okay.

20 Q. And, you see here I say "Okay. I have a copy here.
21 I'll put it -- well, let me ask you this. Do you
22 remember what the standing" -- "the standard is for
23 protection of aesthetics in the Zoning Ordinance?"
24 And, you see your answer there. You say "Okay. I

[WITNESS: Linowes]

1 don't remember what the standard was on aesthetics."

2 And, then you say "I don't" -- "It does not have a
3 large scale wind energy ordinance built into it."

4 Okay?

5 A. Okay.

6 Q. And, then, we had another discussion immediately
7 following that about noise. And, you said that you
8 didn't know what the noise standard was.

9 A. Yes. And, I -- if you go down further, to the next
10 page actually, Page 37, Line 14, I was speaking to the
11 fact that every ordinance that has been adopted in
12 communities I would expect, I was going from memory
13 here, I would expect that any ordinance would have a
14 purpose statement that it's -- that had to do with
15 public health and safety in its preamble. And, that
16 was what I was referring to. I think I stated that
17 multiple times. And, throughout that session, you
18 asked me multiple times "what is the state law?", and I
19 thought I had said "I couldn't remember the exact law."

20 Q. But you formed your opinion of whether the Town was
21 capable, without knowing what the standards for
22 protection of wildlife, noise, and aesthetics would be,
23 is that right?

24 A. I have sat on a planning board long enough and have

[WITNESS: Linowes]

1 gone through land-use regulations enough that I know
2 that there are protections in there, or at least that a
3 sitting planning board, under site plan review, has
4 some latitude in terms of reviewing a project like
5 this.

6 Q. Okay. Let me back up. Those are important
7 considerations. Things like noise, wildlife, those are
8 things that we should want to protect.

9 A. Right.

10 Q. And, would you agree with me that the best way to
11 protect them is to have an ordinance that establishes a
12 standard or requirement?

13 A. That's a really good question. I think that the way
14 the situation is right now, and let's talk specifically
15 about this project, --

16 Q. Well, I --

17 A. No, I want to talk about this project, and bring it
18 back to where things stand.

19 Q. I understand. But I don't want to get into a long
20 argument. So, let's just focus on in general. And, if
21 you can answer "yes" or "no", then just let me. But do
22 you agree with the general proposition that, if you
23 want to protect for noise, for aesthetics, and for
24 wildlife, it's better to have a standard than to not

[WITNESS: Linowes]

1 have one?

2 A. This particular Project has been designed with the
3 expectation that the Site Evaluation Committee would
4 approve it. Because of the way it's -- with that
5 expectation on the part of Eolian, they have built into
6 it, into the design of this Project, standards that
7 will probably be -- that, in my opinion, will be
8 protective in Antrim, if the Antrim Planning Board
9 reviewed it with no standards at all. They have
10 already designed it to a 40-decibel limit. They have
11 already designed it with the setbacks that are in
12 place. They have already designed it with review from
13 DES on this, and the wildlife reviews. So, it's
14 already had a very thorough review.

15 CHAIRMAN HONIGBERG: But, Ms. Linowes --
16 wait, Mr. Richardson. Ms. Linowes, do you remember the
17 question?

18 WITNESS LINOWES: The question was
19 "would it be better to" -- yes, I do remember.

20 CHAIRMAN HONIGBERG: "As a general
21 matter", "a general matter, would it be better?" That
22 sounds an awful lot like a "yes" or "no" question. And,
23 the first time Mr. Richardson asked it, you said "That's a
24 good question." I think we agree, that's a good question.

[WITNESS: Linowes]

1 WITNESS LINOWES: Okay.

2 CHAIRMAN HONIGBERG: Do you have an
3 opinion on that? Do you think, as a general matter, it
4 would be better for towns to have provisions like that?
5 Or, you may have no opinion on it.

6 WITNESS LINOWES: Okay. I really don't
7 have an opinion on that then. I'm focused on this
8 Project.

9 BY MR. RICHARDSON:

10 Q. But that, you understand, that's the key issue, whether
11 review goes before the Planning Board or the Site
12 Evaluation Committee?

13 A. I know. But the thing is, Mr. Richardson, you keep
14 focusing on the fact that the Town doesn't have an
15 ordinance. What you're ignoring is the fact that site
16 plan review -- the regulations under site plan review
17 can be adopted by the Planning Board after one public
18 hearing. There's no reason why the Planning Board can
19 not engage on this and put its own standards in place,
20 right now. To fall back and say "well, we haven't been
21 able to get a zoning ordinance passed. Three times we
22 tried and it failed each time."

23 You're ignoring the fact that the
24 Planning Board has the full power to put in the site

[WITNESS: Linowes]

1 plan regulations that would provide for the harmonious
2 and aesthetically pleasing development of a
3 municipality, that will provide for open space and
4 green spaces, and what would be -- what would produce
5 an undesirable -- will prevent undesirable and
6 preventable elements of pollution, such as noise.

7 The Planning Board has the ability to do
8 what it needs to do right now, in the timeframe before
9 an application is submitted. And, you're focused on
10 the fact that it can't do it, and I'm not buying that.

11 Q. So, let me ask you then, from a philosophical level,
12 it's your view then that a standard for the protection
13 of the public welfare can bypass a vote by the town's
14 legislative body at a town meeting, and simply the
15 planning board, a board of five members, or alternates
16 who happen to be there, they can decide what's wrong or
17 right for that community?

18 A. I think the Board of Selectmen -- the Board of
19 Selectmen in the Town of Antrim has already done that
20 multiple times, acted without a Town vote. That being
21 said, there is a lot of debate within planning boards,
22 and I think, if you went to OEP, Office of Energy &
23 Planning, and talked to them about what should be in
24 site plan regulations and what should be in zoning, a

[WITNESS: Linowes]

1 lot of people would say "you're better off putting
2 regulations into site plans, so you have the
3 flexibility to change and adapt to new development." I
4 mean, I think you're aware of that.

5 Q. So, when I asked you these very questions, and why
6 don't we turn to Page 37 of the May technical session,
7 Line 11, and I say to you: "So, how would the public
8 be protected if this Committee did not take
9 jurisdiction on noise, aesthetics, and wildlife?" And,
10 as I recall your testimony, it wasn't that the Town
11 could simply leapfrog its Zoning Ordinance and put
12 these in the site plan regulations, but you said, and
13 I'll read it to: "Well, the Town of Antrim would be
14 able to assert that. Under the public health and
15 safety, the ordinance, the preamble, I don't remember
16 the exact wording". So, now, you're saying that they
17 don't even have to look at the preamble, and they could
18 just do it?

19 A. No, I don't think I'm saying that. The preamble is
20 already built into the site plan. It's already
21 something that's defined as part of state law, when it
22 enabled, as the enabling law giving powers to the
23 planning board. I am -- I did not come to the
24 technical session prepared to put a plan together on

[WITNESS: Linowes]

1 how the Town of Antrim can assert -- can review this
2 Project. I knew generally that the powers existed.
3 And, I was making those statements up against a
4 community that refused to acknowledge that, and kept
5 saying "You have to go to the State, because we don't
6 have the ability." And, I'm just arguing back that the
7 ability is there.

8 Q. So, you didn't know that when you did your testimony,
9 and you didn't know it when I asked you at the
10 technical session then is what you're saying, but now
11 you do. Is that kind of where we are?

12 A. I didn't make that part of my focus of my testimony,
13 because the testimony was about whether or not the
14 Project was substantially different from the one that
15 was reviewed in 2012. And, at the technical session, I
16 walked into the technical session, I was not aware that
17 I will get questions along those lines. So, yes. I
18 was not prepared to answer your questions. And, I
19 think it is reflected in the transcript.

20 Q. I understand you have --

21 A. No. Excuse me. That is -- those technical sessions
22 are designed to be informal and an opportunity to get
23 information back and forth. They turned into a
24 deposition, and it became --

[WITNESS: Linowes]

1 Q. Okay. Let's --

2 A. -- confrontational. Go ahead. I'm sorry.

3 Q. Let me ask you this. I understand from the technical
4 session that your experience was one term in office on
5 a planning board in Windham, is that right? You have
6 that experience?

7 A. I sat as a planning board member for one term. But to
8 say that that is my only experience with land-use
9 regulations in the State of New Hampshire would be
10 completely inaccurate.

11 Q. I'll follow up then. Because you then said you "may
12 have been an alternate in Lyman", but you didn't know?

13 A. That's true. I can't remember if I was an alternate,
14 but I did attend many of the meetings. And, I sat as a
15 member of the Conservation Commission, and, in a town
16 like Windham, New Hampshire, that's a lot like being on
17 a planning board, in terms of having to know the
18 regulations.

19 CHAIRMAN HONIGBERG: Mr. Richardson, I
20 have a thought.

21 MR. RICHARDSON: Uh-huh.

22 CHAIRMAN HONIGBERG: When you actually
23 read the prefilled testimony from Ms. Linowes, it really is
24 about the nature of the two different proposals. It is,

[WITNESS: Linowes]

1 in large measure, I think as Mr. Taylor helped
2 demonstrate, an aggregation of other people's information.
3 But that's what the subject is.

4 The subject isn't what the Town of
5 Antrim can do. That wasn't part of her testimony, it's
6 not what she put under oath. It is apparently something
7 that came up during your technical session. And, it is
8 something clearly, as an advocate, sitting out at the
9 tables with the other advocates, Ms. Linowes has made a
10 number of arguments about and taken positions about what
11 the Town might be able to do, in the event that the SEC
12 does not take jurisdiction.

13 I'm wondering how much more
14 cross-examination of issues that she hasn't -- that she
15 never put under oath --

16 MR. RICHARDSON: Uh-huh.

17 CHAIRMAN HONIGBERG: -- you really want
18 to go into here, because it's really not the focus of her
19 testimony?

20 MR. RICHARDSON: Sure. And, I think
21 I'll take that advice to heart and try to wrap up this
22 line of questioning and move onto that issue of what the
23 differences are and that particular standard.

24 Before I do that, I do want to say --

[WITNESS: Linowes]

1 actually, I'm just going to leave that completely, and
2 we'll go into the differences.

3 BY MR. RICHARDSON:

4 Q. So, Ms. Linowes, you know, I understand your basic
5 position to be that this Project is basically the same,
6 and I think there are four categories of criteria that
7 you discuss. One is that the towers are in the same
8 location. The other being -- why don't you tell me
9 briefly what the other three are?

10 A. Okay, the aesthetics, as the Chairman has stated, is
11 largely reciting back what my understanding of the
12 Committee's perspective was on the Project, on --

13 Q. I'm just looking for the bullet points. You know, it's
14 tower locations, --

15 A. Aesthetics, noise, and the PILOT and other mitigation.

16 Q. Now, you filed a response to the Town's memorandum, and
17 that discussed whether the Project was different or
18 not, right?

19 A. Yes.

20 Q. And, was that your work or did you collaborate with
21 others on that?

22 A. That was my work.

23 Q. Okay. You recall discussing the case of *Morgenstern*
24 *versus Rye*, and I think you had an issue about whether

[WITNESS: Linowes]

1 the town had invited the applicant to re-submit, and
2 you thought that was important?

3 A. Yes.

4 MR. RICHARDSON: Okay. Well, I want to
5 show you a copy of that. And, I've got copies here for
6 the Committee as well.

7 (Atty. Richardson distributing
8 documents.)

9 (The document, as described, was
10 herewith marked as **Exhibit WA 7** for
11 identification.)

12 BY MR. RICHARDSON:

13 Q. Do you have the document in front of you?

14 MR. RICHARDSON: Steve, are you ready?
15 Okay.

16 BY MR. RICHARDSON:

17 Q. So, you understand that this case involved a house lot,
18 right?

19 A. Yes.

20 Q. And, I want to turn your attention to Page 6 of the
21 exhibit.

22 A. Okay.

23 Q. And, you see there's a narrow, indented paragraph
24 there?

[WITNESS: Linowes]

1 A. I see that.

2 Q. And, you see where it says "The changes include a new
3 driveway design"?

4 A. Yes, I do. I see that.

5 Q. A "footprint design which no longer required a
6 retaining wall"?

7 A. Uh-huh.

8 Q. And, then, it says here "there were no changes in the
9 neighborhood or upon the plaintiff's property between
10 the first and second applications which would
11 constitute a material change."

12 MS. MALONEY: I'm going to object on the
13 relevance here. And, appreciating that Ms. Linowes is not
14 an attorney, I'm wondering if you're going to try to
15 elicit a legal opinion?

16 MR. RICHARDSON: I want to ask her, I
17 want to compare the standard applied to the standard that
18 she applied in her testimony.

19 MS. MALONEY: I'm going to object. What
20 standard in her testimony?

21 MR. RICHARDSON: Well, her --

22 CHAIRMAN HONIGBERG: Wait. Is there a
23 standard stated in her testimony?

24 MR. RICHARDSON: Well, there's a

[WITNESS: Linowes]

1 conclusion stated that she believes the projects are not
2 different.

3 MS. MALONEY: I'm going to object.

4 CHAIRMAN HONIGBERG: Sustained. Do you
5 want to make an offer?

6 MR. RICHARDSON: I'd like to offer that
7 the courts have found that even small changes, like moving
8 a driveway, can be considered "material". And, I want to
9 ask her "whether these changes are comparable in scope or
10 whether they're greater?"

11 CHAIRMAN HONIGBERG: That sounds like
12 a -- well, the first part of it sounds like a pure legal
13 argument. You are having a legal disagreement with
14 another party in this proceeding about the standard to
15 apply. Now, as a witness, you might ask her "assume the
16 standard is X, would that change your opinion about
17 whether these are the same or different?" "Assume the
18 standard is Y, would that change your opinion about
19 whether these are the same or different?" That's the kind
20 of thing I would expect you to ask a witness.

21 I'm not sure I would expect you to ask a
22 witness to change her view of a position she took as an
23 advocate about case law. So, I mean, it's unusual, I
24 know, to have an advocate testifying. But we have *pro se*

[WITNESS: Linowes]

1 litigants all the time in this forum, and, so, we're used
2 to it.

3 But I think you're going to have to
4 focus what it is you want this witness to actually do.
5 And, I don't think she's going to change her legal
6 opinion. You might ask her, "if the standard were
7 something that you think it is, would that change your
8 view whether it's the same or different?"

9 MR. RICHARDSON: Precisely.

10 MS. MALONEY: Well, I guess I would also
11 object as to the premise. Using changes to a house lot,
12 compared to changes to a wind farm, would be an
13 inappropriate way to go about it.

14 CHAIRMAN HONIGBERG: And, that is a
15 great point. I think that's why an exhibit like this is
16 highly unusual. I will expect an objection, if someone
17 wants to make this a full exhibit. It hasn't happened
18 yet. So, this may be all hypothetical at this point. But
19 there are certain standards articulated, in this case and
20 others, about what's different, and Parties can argue
21 about what the applicable standard is.

22 But you can certainly ask a witness
23 who's taken a position about whether something is the same
24 or different. "Assume a standard. Tell me if you think

[WITNESS: Linowes]

1 this is the same or different under that standard."

2 MR. RICHARDSON: That's precisely where
3 I'm trying to ask questions, but I haven't really been
4 allowed the opportunity to do so.

5 CHAIRMAN HONIGBERG: Well, why don't you
6 -- why don't you just articulate the standard, rather than
7 trotting out a case that's subject to differing
8 interpretations, and pretty strong arguments about why it
9 may or may not apply in this situation. Maybe it does,
10 maybe it doesn't. I think you're going to find
11 disagreement across the other side of the room. But, if
12 there's definitely a standard here, and I'm sure there is,
13 you can articulate that standard to her without referring
14 to the case itself.

15 BY MR. RICHARDSON:

16 Q. So, Ms. Linowes, is it your view that "different" in
17 your testimony, when you say "this Project isn't
18 different", do you think that means it's not different
19 because the changes aren't substantial?

20 A. That's a different standard than the standard that the
21 court took in *Morgenstern*.

22 CHAIRMAN HONIGBERG: Well, Ms. Linowes,
23 I was trying to help you here.

24 (Laughter.)

[WITNESS: Linowes]

1 CHAIRMAN HONIGBERG: And, if you're
2 going to start citing *Morgenstern*, you're going to get
3 into an argument with him.

4 WITNESS LINOWES: Sorry.

5 CHAIRMAN HONIGBERG: And, you know, is
6 that --

7 **BY THE WITNESS:**

8 A. How about if I answer, that I do not think the changes
9 are substantial.

10 BY MR. RICHARDSON:

11 Q. But do you think they have to be substantial, in order
12 for the Project to be different?

13 A. I think the effect of the changes have to -- has to be
14 substantial. And, the effect of the change --

15 Q. Okay.

16 A. -- changes are not substantial.

17 Q. Okay. So, in your view, in order to be different, the
18 changes -- or, the effect of the changes has to be
19 substantial?

20 A. Again, --

21 Q. Isn't that what you just said?

22 A. I did say that. But, again, I submitted a response to
23 the Town's memo. And, I'm hoping the Committee reads
24 it, because your explanation of what the Court found is

[WITNESS: Linowes]

1 not -- is different from just being substantially
2 different.

3 CHAIRMAN HONIGBERG: I'm going to cut
4 that off.

5 WITNESS LINOWES: Sorry.

6 CHAIRMAN HONIGBERG: Because that, you
7 two are having a legal argument with each other, which
8 we're not interested in at this point. You're up there as
9 a witness. If he asks -- I think he asked you about the
10 standard you applied. Can you answer that question? What
11 standard did you apply in determining whether it was
12 different or not?

13 **BY THE WITNESS:**

14 A. The effect of the changes were not substantial.

15 BY MR. RICHARDSON:

16 Q. So, but here's my question. I want you to assume
17 hypothetically that, in *Morgenstern*, moving a
18 driveway --

19 MS. MALONEY: I'm going to object. I'm
20 going to object.

21 CHAIRMAN HONIGBERG: Sustained. "Assume
22 a different standard."

23 MR. RICHARDSON: Okay.

24 BY MR. RICHARDSON:

[WITNESS: Linowes]

1 Q. Let me ask you this. Isn't pulling out one of ten
2 turbines a pretty substantial change?

3 A. Well, Mr. Scott -- Commissioner Scott said that will be
4 a 10 percent change in the turbine -- in the Project
5 layout.

6 Q. Sure.

7 A. But the effect on scenic resources is not substantial.
8 We heard the testimony, and I'll leave the testimony
9 out there as what it is.

10 Q. So, but I presume that you couldn't add a turbine.
11 Because, if you were to add a turbine, to go from ten
12 to eleven, and you had -- Antrim Wind had their permit,
13 let's say they got it for ten, or let's say they got it
14 for nine, they certainly couldn't add a turbine without
15 going back to the Committee, and people would say
16 "that's a new application", isn't it?

17 A. Yes. Well, it would be substantially -- I think the
18 law says they cannot change it substantially without
19 going back to the Committee.

20 Q. That's right.

21 A. An applicant can't.

22 Q. And, certainly, adding or removing a turbine would be a
23 substantial change, under that standard?

24 A. To be honest with you, that standard under the law,

[WITNESS: Linowes]

1 under 162-H, has not been challenged. So, the
2 Committee may let it go. I don't know.

3 Q. You understand that Mr. Raphael testified that the
4 changes that Antrim Wind has proposed, relative to what
5 was proposed before, have reduced the impacts or the
6 visual area from which the Project could be seen by
7 12 percent. Let me ask you this. I mean, if Antrim
8 Wind couldn't change the Project to increase it by
9 12 percent, because that would be a substantial,
10 material change, they'd have to come back before the
11 Committee, right?

12 MS. MALONEY: I'm going to object to
13 that. It's an entirely different standard for a wind
14 manufacturer to increase a turbine. It's an entirely
15 different set of comparisons. I'm not -- it's not fair to
16 ask the question about reducing a turbine, as opposed to
17 adding one. There's simply no way you can add a turbine
18 without getting approval at the SEC.

19 MR. RICHARDSON: That's right,
20 because --

21 **BY THE WITNESS:**

22 A. And, I don't know what -- right now the --

23 CHAIRMAN HONIGBERG: I think I'm going
24 to let her answer, which she started doing anyway. But,

[WITNESS: Linowes]

1 yes, I'm going to let her answer the question.

2 **CONTINUED BY THE WITNESS:**

3 A. I don't remember the exact provision under 162-H, but I
4 don't know how "significantly changed" is defined.

5 Because it does state "if the permit is significant" --
6 or, "the project is significantly changed, it has to go
7 back to the SEC". I don't know how that's interpreted.

8 Q. Sure. And, let me tell you what I think it is, and
9 doesn't 162-H say, and I think that the Groton case
10 deals with this, and I know you're involved in that,
11 that a revised certificate is required for "sizable
12 additions"? Isn't that what you're --

13 A. "Sizable additions". "Sizable additions" or "changes"?

14 Q. Maybe it's "sizable changes". But the key operative
15 word is "sizable", right?

16 A. "Sizable", that's correct. That's right.

17 Q. And, is elimination of a turbine would be a sizable
18 change, in your view?

19 A. I don't know.

20 Q. Well, would you agree with that description? I mean,
21 I'm not asking you for the legal conclusion. But you
22 agree that taking a turbine out is "sizable"?

23 A. It's -- I don't know.

24 Q. Okay.

[WITNESS: Linowes]

1 A. I don't know how to answer that question.

2 MR. RICHARDSON: All right. I have no
3 further questions.

4 CHAIRMAN HONIGBERG: Do any members of
5 the Committee have questions for Ms. Linowes? Director
6 Muzzey.

7 DIRECTOR MUZZEY: Thank you very much.

8 BY DIRECTOR MUZZEY:

9 Q. Going back to your prefiled testimony, on Page 4 of 11,
10 you have the chart taken from the FAA website, the 2011
11 turbine locations, and then 2014 locations. I notice,
12 in looking at those numbers, for two of those turbines,
13 there's a small difference in site elevation.

14 A. Yes.

15 Q. And, I'm wondering, do you have any knowledge, you
16 know, given other information on the website, as to
17 what that means or why that appears that way?

18 A. Thank you for that question. When Attorney Taylor was
19 asking the question about that table, I noticed that
20 for the first time just then. I don't know what that
21 change is. The testimony from Mr. Kenworthy has been
22 that the turbines are in exactly the same location.
23 And, I think the lat/longs validate that point. But,
24 up here, I haven't had a chance to actually look at

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 that. I don't know why there's a difference in
2 elevation.

3 Q. Could I ask whether you -- did you cut-and-paste those
4 tables or did you retype those numbers? I'm wondering,
5 could it be a typographical error?

6 A. I cut-and-paste them --

7 Q. Okay.

8 A. -- directly from the website.

9 DIRECTOR MUZZEY: All right. Thank you
10 very much. That's it.

11 CHAIRMAN HONIGBERG: Are there other
12 questions for Ms. Linowes from members of the Committee?

13 (No verbal response)

14 CHAIRMAN HONIGBERG: Seeing none, do you
15 have anything you want to add in the nature of redirect?

16 WITNESS LINOWES: No. No, sir.

17 CHAIRMAN HONIGBERG: Okay.

18 WITNESS LINOWES: Thank you.

19 CHAIRMAN HONIGBERG: Thank you. You can
20 return to your seat then.

21 We're going to take a short break. I
22 think the last witnesses are all from the Non-Abutting
23 Intervenors. And, there are five names, three
24 submissions. Let's go off the record for a minute.

{SEC 2014-05} [Day 2/Afternoon Session only] {07-07-15}

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 (Brief off-the-record discussion ensued,
2 and then a recess was taken at 3:20
3 p.m., and the hearing resumed at 3:37
4 p.m.)

5 CHAIRMAN HONIGBERG: We're on the
6 record. We will not be deliberating today. We're going
7 to end too late in the day to do that. We're going to,
8 when we're done here today, we're going to reconvene on
9 Friday, July 24th, at 9:00 a.m. That is literally the
10 first time that the members of the Subcommittee can get
11 together again.

12 So, I understand that we have the Blocks
13 and Ms. Voelcker up at the witness table. So, why don't
14 we swear them in.

15 (Whereupon **Loranne Carey Block,**
16 **Richard Block,** and **Elsa Voelcker** were
17 duly sworn by the Court Reporter.)

18 **LORANNE CAREY BLOCK, SWORN**

19 **RICHARD BLOCK, SWORN**

20 **ELSA VOELCKER, SWORN**

21 CHAIRMAN HONIGBERG: I don't think
22 anybody is really in the position to lead you through
23 this. But, Mr. and Mrs. Block, you submitted joint
24 testimony, correct?

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 WITNESS CAREY BLOCK: We did.

2 WITNESS BLOCK: Correct.

3 CHAIRMAN HONIGBERG: Do you adopt that
4 testimony as if you were giving it live under oath today?

5 WITNESS BLOCK: We do.

6 WITNESS CAREY BLOCK: I do.

7 CHAIRMAN HONIGBERG: Are there any
8 changes you need to make?

9 WITNESS CAREY BLOCK: No, there is not.

10 WITNESS BLOCK: (Block) No.

11 CHAIRMAN HONIGBERG: And, Ms. Voelcker,
12 you submitted something in writing. Are there any changes
13 you want to make to that?

14 WITNESS VOELCKER: No.

15 CHAIRMAN HONIGBERG: So, you adopt that
16 as if you were giving it live under oath today?

17 WITNESS VOELCKER: Yes, I do.

18 CHAIRMAN HONIGBERG: All right. Does
19 anyone have any questions for Ms. Voelcker?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: Do any of the
22 members of the Committee have questions for Ms. Voelcker?

23 (No verbal response)

24 CHAIRMAN HONIGBERG: All right. Seeing

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 none. Do any of the Parties have questions for the
2 Blocks, either Mr. or Mrs. Block? Yes, Ms. Linowes.

3 MS. LINOWES: Thank you, Mr. Chairman.

4 **CROSS-EXAMINATION**

5 BY MS. LINOWES:

6 Q. Mr. Block, you had given a little bit about your
7 background yesterday, and I just wanted to -- it was --
8 the Chair had said you would have an opportunity to say
9 what your background was. Can you just tell us a
10 little bit about your experience, in terms of graphic
11 communications?

12 A. (Block) Yes. I am Professor of Graphic Communications
13 and Visual Arts at Franklin Pierce University. I have
14 been there since the mid 1980s. I'm head of the
15 department there. I have a Master of Fine Arts in
16 Intermedia and Commuter Graphics. I have undergraduate
17 degrees in both Art and Theater. I have worked as a
18 designer for many years. I have worked as a
19 cartographer. And, I have worked as an art director,
20 and have also taught for many years courses in digital
21 photography, Photoshop, and various things of that
22 sort.

23 Q. Thank you. So, it would be fair to say that you're
24 familiar with the same tools that Ms. Vissering and

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 Mr. Raphael use, and you've used the same tools?

2 A. (Block) Primarily. Not necessarily all of the same
3 programs. But, certainly, the imaging tools, yes.

4 Q. Okay. Now, you've looked at Mr. Raphael's testimony?

5 A. (Block) Yes.

6 Q. Okay. And, did you look at Exhibit 4 of his testimony,
7 of the viewshed map?

8 A. (Block) Yes, I did.

9 Q. Okay. If you could direct your attention to that then.

10 A. (Block) All right. I don't have it in front of me.

11 Q. Oh.

12 A. (Block) But, yes, I do remember it.

13 MS. LINOWES: Mr. Chairman, I believe
14 it's part of -- if we could get the exhibit, that would be
15 AW 2.

16 WITNESS BLOCK: I have a copy. I have
17 my copy on my table.

18 MS. LINOWES: Oh. Actually, I'm sorry.
19 I have it right here. The Visual Assessment.

20 CHAIRMAN HONIGBERG: Okay. Why don't
21 you bring it over to him. Go ahead.

22 (Ms. Linowes handing document to Witness
23 Block.)

24 WITNESS BLOCK: Thank you.

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 MS. LINOWES: And, I'm sorry. I did say
2 that that was part of his testimony. It was the Visual
3 Assessment that he conducted, Exhibit 4.

4 BY MS. LINOWES:

5 Q. Now, this is the exhibit that primarily reflects his
6 understanding or the outcome of his modeling for the
7 viewshed impact, is that correct?

8 A. (Block) That is my understanding. I believe I read in
9 his assessment that this was the culmination of his
10 assessment as to what the view would be in the general
11 area.

12 Q. And, did you have some concerns about that?

13 A. (Block) I have a lot of concerns about it. Mostly
14 based on my own field experience and knowing the
15 terrain. The first thing that I questioned when I
16 looked at this is, on this map, he's got color-coding
17 charts there, where he's got areas in certain colors
18 for how many turbines would be seen from one to nine,
19 and where there's no color would be zero turbines
20 visible. The entire region over Tuttle Hill/Willard
21 Mountain, under the turbines, around the turbines, in
22 the woods and everything is listed as "zero turbines"
23 being visible. I have a hard time understanding how
24 that works. There are several other --

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 Q. Excuse me. If I could just interrupt?

2 A. (Block) Sure.

3 Q. I believe you stated yesterday that, if you were
4 standing on the -- you're saying that, if you're
5 standing on the road, access road to the turbines, it's
6 obvious that you will be in the vicinity of the
7 turbines. Is that the area that you're talking about?

8 MR. TAYLOR: I'm going to object to the
9 question. She is characterizing testimony out of context
10 and without reference to a transcript. So, I don't know
11 that it's accurate.

12 MS. LINOWES: I apologize. Yes, I
13 just --

14 BY MS. LINOWES:

15 Q. Then, if I could ask you, are you talking about the
16 area on the access roads or are you talking about
17 someplace else?

18 A. (Block) I'm talking about the area on the access roads,
19 and all of the area around it for hundreds and hundreds
20 of yards. I have been on top of that ridge. I have
21 hiked along there. I've hiked there when the met tower
22 was up there. And, when the met tower was up there, I
23 knew and actually photographed a number of places where
24 the met tower could be easily viewed. There are many

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 other areas on this map where I know I could see the
2 met tower when it was there. The met tower is
3 approximately at the site where Turbine Number 2, I
4 believe, will be located. And, the met tower -- the
5 Turbine Number 2 would be two and a half times the
6 height of the met tower. So, my logic is that, if I
7 can see the met tower from this place, this place, and
8 this place, it should be clear to me that I could be
9 able to see at least Turbine Number 2 from there, and
10 many of those areas, and areas where his map says "zero
11 turbines would be visible".

12 Q. Okay. Thank you. Now, I'd like to draw your attention
13 to Mr. Raphael's testimony. This will be AWE 2. And,
14 I don't know if you have that in front of you?

15 (Ms. Linowes handing document to Witness
16 Block.)

17 WITNESS BLOCK: Thank you.

18 BY MS. LINOWES:

19 Q. And, in particular, if you could look at the
20 simulations in the back. These would be marked
21 "DR-3(a)", "3(b)", and "3(c)".

22 A. (Block) Yes.

23 Q. And, I believe these are representations of a no-build
24 condition, a 10-turbine condition, and a 9-turbine

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 condition?

2 A. (Block) Correct.

3 Q. And, in what area is that?

4 MR. RICHARDSON: Mr. Chairman?

5 CHAIRMAN HONIGBERG: Yes.

6 MR. RICHARDSON: I'd like to object,
7 because we're just going over what his direct testimony
8 already says.

9 MS. LINOWES: I just have one question
10 regarding it. I'm not going over his direct testimony.
11 Whose direct testimony? Mr. Raphael's?

12 MR. RICHARDSON: It sounded to me like
13 we're effectively bypassing the procedure to have --
14 excuse me. Where, if we're just going to restate what's
15 already in his direct testimony about the photographs, I
16 think we've all read that. I don't think it's appropriate
17 to just bring it out again on direct.

18 CHAIRMAN HONIGBERG: I think he's --

19 MS. LINOWES: Okay.

20 CHAIRMAN HONIGBERG: I think, weren't
21 you asking about Mr. Raphael's testimony?

22 MS. LINOWES: Yes, I am.

23 CHAIRMAN HONIGBERG: She's asking him a
24 question about something in Mr. Raphael's testimony.

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 MR. RICHARDSON: Okay. I understood
2 that we were just going back over what his direct
3 testimony already says about those same exhibits.

4 MS. LINOWES: It doesn't. I don't
5 believe that's the case, but --

6 MR. RICHARDSON: Then, I'll withdraw my
7 objection.

8 CHAIRMAN HONIGBERG: All right. Thank
9 you. Why don't you ask the question, Ms. Linowes.

10 BY MS. LINOWES:

11 Q. The question I had was, with regard to DR-3(b), that is
12 Saratoga Associates' representation, the simulation of
13 the turbines, correct?

14 A. (Block) No. Actually, I think DR-3(b) is -- DR-3(b) is
15 the proposed 9-turbine layout.

16 Q. Okay. My apologies. I'm sorry.

17 A. (Block) This simulation was created by Mr. Raphael.

18 Q. And, (c) is Saratoga Associates?

19 A. (Block) Yes.

20 Q. Okay. And, I just wanted to ask you what you notice is
21 a difference there? I mean, obviously, Turbine 10 is
22 gone and 9 is lower, but is there anything else that's
23 different?

24 A. (Block) Well, I notice that the base photo is the same,

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 as Mr. Raphael said. But the first thing I noticed is
2 that the remaining turbines, 8 on down, in theory,
3 should be, looked at this distance, should look exactly
4 the same as they were before. But, in DR-3(b), which
5 is the photograph of the 9-turbine layout, they are
6 not. They are much, much faded out from the original
7 picture. If I look at the original picture, right in
8 the center there are two turbines, which I assume are
9 Numbers 7 and 8. And, I looked at those same two
10 turbines in the 9-turbine layout, and they're almost
11 invisible. There's -- for some reason, the contrast
12 level on all those turbines has been brought way down.
13 There's a -- three-quarters of a way to the right
14 there's a clear view of the permanent met tower in
15 DR-3, the 10-turbine layout -- DR-3(c), the 10-turbine
16 layout. In the 9-turbine layout, that has been grayed
17 out considerably and is hardly visible.

18 Q. Okay. We don't know if those two images were printed
19 at the same time. So, is it possible that that --

20 A. (Block) Well, the two pictures that I'm holding here,
21 this actually is my copy that I printed at work, this
22 was printed at one time on the same printer.

23 Q. Okay. Now, the blades are also pointing up on 3(c),
24 where -- or, at least in a V configuration, but they're

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 downward on this?

2 A. (Block) Actually, in the 9-turbine layout, I'm having a
3 hard time seeing where the blades are, because it's --
4 the turbines have been made almost invisible, I feel.

5 Q. Okay. Now, I also would like to draw your attention to
6 the two, AWE 20 and 19 that was submitted. Do you have
7 copies of those before you?

8 CHAIRMAN HONIGBERG: Ms. Linowes, does
9 this relate in some way to Mr. Block's testimony?

10 MS. LINOWES: Well, it does, in that he,
11 and perhaps I should have him, on Page 3 [Page 6?], the
12 last sentence of paragraph two, he makes a statement about
13 "Photographic manipulations that minimize the visual
14 effect of the same turbines in a reworked simulation do
15 not constitute a change or improved aesthetic impact."
16 And, I was asking -- perhaps I should have asked him that,
17 to read that statement first.

18 CHAIRMAN HONIGBERG: No, that's fine.
19 But now I'm interested in the notion that we're going to
20 look at the comparison photographs. But, go ahead, ask
21 your question.

22 MS. LINOWES: Thank you. And, it's just
23 one question on these. Do you have them?

24 WITNESS BLOCK: I don't have them in

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 front of me, but I do recall them.

2 (Ms. Linowes handing document to Mr.
3 Block.)

4 WITNESS BLOCK: Thank you.

5 BY MS. LINOWES:

6 Q. Now, these exhibits were given to Ms. Vissering earlier
7 today. And, at the top is a simulation of Antrim, and
8 at the bottom is an actual photograph of Lempster. Is
9 there -- the turbine sizes, can you speak to the
10 turbine sizes there?

11 MR. TAYLOR: I'm going to object. This
12 is outside the scope of Mr. Block's testimony.

13 CHAIRMAN HONIGBERG: It was clearly not
14 part of his testimony. What is it you want to ask him?

15 MS. LINOWES: The sizes of the turbines
16 as they were simulated on Antrim, are they the correct
17 scale relative to a 400-foot turbine in Lempster? That's
18 the only question.

19 MR. TAYLOR: I renew my objection. It's
20 outside the scope of his testimony, and he hasn't been
21 offered as a witness on this.

22 CHAIRMAN HONIGBERG: And, what would you
23 want him -- what would you expect he would say, if you
24 asked him that question?

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 MS. LINOWES: That the turbines on the
2 Antrim simulation should have been 1. -- 25 percent
3 taller.

4 CHAIRMAN HONIGBERG: All right. The
5 objection is sustained. And, you've made the record
6 that -- what you think he would say, --

7 MS. LINOWES: Okay.

8 CHAIRMAN HONIGBERG: -- if you were
9 allowed to ask the question.

10 MS. LINOWES: Thank you, Mr. Chairman.

11 BY MS. LINOWES:

12 Q. Okay. Then, Ms. Block, I just have one question for
13 you. You have stated, in the prior proceeding, and I
14 believe in this time, too, that Willard Pond is a
15 special place to you. As a resident of Antrim -- is
16 that because you're a resident of Antrim or is there
17 something about Willard Pond that -- why you think it
18 should continue to be free of turbines?

19 A. (Carey Block) Willard Pond is a fairly spectacular
20 resource. To me, it's probably the best thing about
21 living in Antrim. I have, over the years, hiked
22 throughout the Northeast, and backpacked to every
23 remote location. I worked in outdoor education for
24 years. And, what's special about Willard, I think,

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 especially at this age for me, is that I can drive
2 there, and I don't have a long walk, and I can still
3 have a remote experience. It's as remote as hiking to,
4 say, Nancy Pond in the White Mountains. I mean, it's
5 just -- it's really, really special. And, yes, that is
6 why I would like to see it stay the way it is.

7 MS. LINOWES: Thank you, Mr. Chairman.
8 I'm all set.

9 CHAIRMAN HONIGBERG: Do any of the other
10 Parties have questions for any of these three witnesses --
11 I'm sorry, for the Blocks? We already dealt with
12 Ms. Voelcker. Yes, Mr. Taylor.

13 BY MR. TAYLOR:

14 Q. Mr. Block, you gave an opinion earlier on an exhibit or
15 an attachment to Mr. Raphael's Visual Impact
16 Assessment, correct?

17 A. (Block) Correct.

18 Q. Okay. You're not a landscape architect, are you?

19 A. (Block) No, I'm not.

20 Q. You're not trained in preparing visual impact
21 assessments, are you?

22 A. (Block) Not in visual impact assessments.

23 Q. You're not trained in reviewing visual impact
24 assessments, are you?

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 A. (Block) No.

2 Q. And, you haven't prepared a VIA in this case, have you?

3 A. (Block) I have not.

4 Q. In fact, you've never prepared a visual impact
5 assessment, have you?

6 A. (Block) I have not.

7 Q. Mr. Block, on Page 6 of your testimony, you make
8 reference to some exhibits to Mr. Raphael's testimony.

9 A. (Block) Yes.

10 Q. And, you say that the "turbine layout has been
11 modified", is that correct?

12 A. (Block) Yes.

13 Q. And, further down, you say that the LandWorks photos
14 are "deceitful"? Correct?

15 A. (Block) Yes, I do.

16 Q. And, then, further down, you say that -- you reference
17 "photographic manipulations", correct?

18 A. (Block) Correct.

19 Q. You have no evidence whatsoever that Mr. Raphael
20 manipulated or modified his photos, do you?

21 A. (Block) No, I object to that. Because a photograph
22 that shows on the turbines that do not exist in reality
23 has to, by definition, have been manipulated. There is
24 no way that those turbines would be there if he didn't

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 manipulate that photo and insert those into them.

2 Q. That's not the answer to my question. My question to
3 you was, you have no evidence at all that Mr. Raphael
4 manipulated or modified the photos, correct?

5 A. (Block) I have no evidence that Mr. Raphael did, but
6 somebody manipulated those photos to insert the
7 turbines --

8 Q. You have no evidence that anyone manipulated those
9 photos, do you?

10 A. (Block) I have the photos that have been submitted.

11 Q. Okay. So, you have speculated that the photographs
12 have been manipulated, correct?

13 A. (Block) I know Tuttle Hill. I know there are no
14 turbines up there. I know that those photos had to
15 have been manipulated in order to make them look like
16 there are turbines up there.

17 Q. I'll restate my question. You have speculated that
18 these photographs have been manipulated or modified,
19 correct?

20 A. (Block) No.

21 A. (Carey Block) No.

22 Q. Is it your opinion that the simulations have been
23 modified because the turbines have been placed into the
24 picture?

{SEC 2014-05} [Day 2/Afternoon Session only] {07-07-15}

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 A. (Block) No. That's not what I was saying. The photos
2 have been modified in order to put the turbines in it.
3 That is to be expected. That's what a photographic
4 simulation does. I am saying that the -- when I was
5 talking about "modifying" is the difference between the
6 10-turbine photograph -- or, simulation, rather, and
7 the 9-turbine simulation appear different. They appear
8 that some modifications have been made from one to the
9 other, so that the photographs do not exactly represent
10 the same appearance.

11 Q. You heard Mr. Raphael testify yesterday, under oath,
12 that that was not the case, did you not?

13 A. (Block) Yes, I did.

14 Q. Is it your position that Mr. Raphael lied to this
15 Committee under oath?

16 A. (Block) I don't know what Mr. Raphael -- whether he
17 lied or not. I reprinted those photographs this
18 morning on my printer, one right after the other. They
19 come out looking different, with different color
20 structures. There is no way that this can accidentally
21 happen. Somehow the photographs, from (b) to (c), have
22 changed. There are differences in the photographic
23 files. There's no other explanation for it.

24 Q. So, I'll go back to my original question. You have no

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 evidence, outside --

2 CHAIRMAN HONIGBERG: Mr. --

3 MR. TAYLOR: I just want him to state it
4 on the record, because he has impugned the credibility of
5 a witness under his own sworn testimony. And, I want to
6 find out if he has evidence of it or not.

7 **BY THE WITNESS:**

8 A. (Block) Okay. I do not have evidence as to who did
9 this. I have evidence that the photographic files,
10 from one to the other, are different.

11 BY MR. TAYLOR:

12 Q. And, your evidence is your observation, is that
13 correct?

14 A. (Block) The evidence would be clear, in the case of the
15 two I printed this morning, clear to anybody. Not
16 just -- it would not take an expert opinion to see the
17 difference.

18 MR. TAYLOR: I have no further questions
19 for Mr. Block.

20 CHAIRMAN HONIGBERG: Do any of the other
21 Parties have questions for the Blocks? Ms. Maloney.

22 MS. MALONEY: I just have a question.

23 BY MS. MALONEY:

24 Q. With regard to Mr. Raphael's prefiled testimony, and I

[WITNESS PANEL: Block~Carey Block~Voelcker]

1 don't know the number of that exhibit.

2 MR. NEEDLEMAN: It is "Antrim 2".

3 BY MS. MALONEY:

4 Q. Antrim 2. Do you have that in front of you?

5 A. (Block) Yes. Yes, I do.

6 Q. I just wanted to direct your attention again to just
7 the photos. I understand, I think, what you said in
8 your prefiled testimony. And, I just want to direct
9 your attention to Attachments DR-4(a), 4(b), and 4(c).
10 Now, it looks like, in this simulation, Mr. Raphael
11 used, for DR-4(a) and DR-4(b), his own photographs,
12 correct?

13 A. (Block) That is my understanding.

14 Q. But, for DR-4(c), he used Saratoga's simulation?

15 A. That is how it's identified, yes.

16 Q. Now, do you think that perhaps it might have been a
17 more fair representation if he had shown the previously
18 proposed 10-turbine layout using his own photograph,
19 instead of using Saratoga's, somebody else's
20 simulation?

21 A. (Block) I don't know. I mean, it -- that is one of
22 those subjective things. He might have done it, and it
23 might have shown it better, maybe not. It depends on
24 what the final result would have been.

[WITNESS PANEL: Law~Cleland]

1 Q. Okay. But you agree that he did use somebody else's
2 simulation here, --

3 A. (Block) Yes.

4 Q. -- to show the previous photograph frame?

5 MS. MALONEY: Okay. Thank you.

6 CHAIRMAN HONIGBERG: Any of the other
7 Parties have questions for the Blocks?

8 (No verbal response)

9 CHAIRMAN HONIGBERG: Do any members of
10 the Committee have questions for Ms. Voelcker or for the
11 Blocks?

12 (No verbal response)

13 CHAIRMAN HONIGBERG: Seeing none. Thank
14 you very much. You can return to your seats.

15 WITNESS BLOCK: Thank you.

16 CHAIRMAN HONIGBERG: That leaves just
17 Ms. Law and Mr. Cleland.

18 So, for the record, we're going to mark
19 the Blocks' testimony and Ms. Voelcker's submissions as
20 appropriate for this hearing. NAI 3 and NAI 4,
21 respectively.

22 (The documents, as described, were
23 herewith marked as **Exhibit NAI 3** and
24 **Exhibit NAI 4**, respectively, for

[WITNESS PANEL: Law~Cleland]

1 identification.)

2 (Whereupon **Annie Law** and **Robert Cleland**
3 were duly sworn by the Court Reporter.)

4 **ANNE LAW, SWORN**

5 **ROBERT CLELAND, SWORN**

6 CHAIRMAN HONIGBERG: Mr. and Mrs. -- or,
7 I'm sorry, Ms. Law and Mr. Cleland, you submitted prefiled
8 testimony in this proceeding, correct?

9 WITNESS LAW: Yes.

10 WITNESS CLELAND: Yes.

11 CHAIRMAN HONIGBERG: Do you need to make
12 any changes to it?

13 WITNESS CLELAND: No.

14 WITNESS LAW: No.

15 CHAIRMAN HONIGBERG: So, if you were
16 asked the same questions today, you'd give the same
17 answers under oath?

18 WITNESS LAW: Yes.

19 WITNESS CLELAND: Yes.

20 CHAIRMAN HONIGBERG: All right.

21 WITNESS CLELAND: That's correct.

22 (The document, as described, was
23 herewith marked as **Exhibit NAI 5** for
24 identification.)

1 CHAIRMAN HONIGBERG: Do any of the
2 Parties have questions for Ms. Law or Mr. Cleland? Ms.
3 Linowes.

4 MS. LINOWES: Thank you, Mr. Chairman.
5 I do have one exhibit that I'd like to enter.

6 CHAIRMAN HONIGBERG: So, this is
7 "WindAction 8".

8 (The document, as described, was
9 herewith marked as **Exhibit WA 8** for
10 identification.)

11 MS. LINOWES: Thank you. I just have a
12 few questions.

13 **CROSS-EXAMINATION**

14 BY MS. LINOWES:

15 Q. Mr. Cleland, Ms. Law, you were here yesterday?

16 A. (Law) Yes.

17 A. (Cleland) Correct.

18 Q. And, you did hear the cross-examination?

19 A. (Law) Uh-huh.

20 Q. And, did you hear the description of the view of the
21 turbines from Bald Mountain, or at least access to the
22 view?

23 A. (Cleland) That's correct.

24 A. (Law) Yes.

[WITNESS PANEL: Law~Cleland]

1 Q. And, what did you hear?

2 A. (Cleland) I heard that Mr. Raphael, from that area, to
3 get pictures, had to climb down a cliff, because the
4 view, it wasn't open enough, the view wasn't there. He
5 said "to get the pictures, he had to climb down the
6 cliff."

7 Q. Climb down the cliff?

8 A. (Cleland) Correct.

9 Q. Now, there's a -- I handed out an exhibit. Do you know
10 what this is a picture of?

11 A. (Cleland) Yes. That's one of the vistas on Bald
12 Mountain, looking at Willard Pond.

13 Q. That is Willard Pond?

14 A. (Cleland) Yes.

15 Q. Okay. And, where would the turbine array be in that?

16 MR. TAYLOR: I'm going to object to this
17 question. It's outside the scope of the Cleland
18 testimony.

19 MS. LINOWES: Mr. Chairman, I believe --

20 CHAIRMAN HONIGBERG: I'm going to let
21 him answer the question.

22 **BY THE WITNESS:**

23 A. (Cleland) It's on left of the picture.

24 BY MS. LINOWES:

[WITNESS PANEL: Law~Cleland]

1 Q. Behind the gentleman that's standing there?

2 A. (Cleland) That's correct.

3 Q. Now, this is, from what you heard yesterday, is -- or,
4 from what you know of the area, is this the only -- the
5 primary view of where the turbines would be located?

6 MR. TAYLOR: I'm going to renew my
7 objection. It's outside the scope of the Cleland
8 testimony.

9 CHAIRMAN HONIGBERG: We're going to let
10 him continue. Your objection is noted for this line of
11 questioning.

12 WITNESS CLELAND: Excuse me, could you
13 ask the question again?

14 MS. LINOWES: Yes.

15 BY MS. LINOWES:

16 Q. From knowing this area, would this -- would this be the
17 area that one would stand to see the turbines?

18 A. (Cleland) Yes, it would.

19 Q. Is this part of the trailhead, the trail itself, or is
20 it off-trail?

21 A. (Cleland) It's basically the trail goes across that
22 granite.

23 Q. Did this individual have to climb down a cliff to get
24 to that point?

[WITNESS PANEL: Law~Cleland]

1 A. (Cleland) No. It's basically flat there.

2 Q. And, just one last question, Mr. Cleland. You have
3 hiked this area?

4 A. (Cleland) Many times.

5 Q. So, you know the area?

6 A. (Cleland) Yes, I do.

7 Q. And, you hike it in the daytime and nighttime?

8 A. (Cleland) Yes, I do. Year-round.

9 Q. I'm sorry?

10 A. (Cleland) Year-round.

11 Q. So, in the wintertime?

12 A. (Cleland) Yes, I do.

13 MS. LINOWES: Okay. Thank you very
14 much. Thank you, Mr. Chairman. I'm all set.

15 CHAIRMAN HONIGBERG: Do others have
16 questions for Ms. Law or Mr. Cleland?

17 MR. RICHARDSON: Yes, Mr. Chairman.

18 CHAIRMAN HONIGBERG: Let's let Ms.
19 Longgood go, and then you, Mr. Richardson. Ms. Longgood.

20 MS. LONGGOOD: Thank you.

21 BY MS. LONGGOOD:

22 Q. Ms. Law, would you please explain to us where you live
23 and where your home is, --

24 A. (Law) Yes.

[WITNESS PANEL: Law~Cleland]

1 Q. -- in relationship of the proposed Project.

2 A. (Law) Yes. We live on Windsor Mountain, 43 Farmstead
3 Road, which is directly across the valley from Tuttle
4 Hill and the full range where the wind towers will go.

5 Q. You'd be able to see the entire range, is that what
6 you're saying?

7 A. (Law) We can see from Tuttle Hill, which is right in
8 front of our house, across the valley, all the way to
9 Bald Mountain. So, I would say, pretty much we would
10 see the whole thing.

11 Q. And, how long have you lived there?

12 A. (Law) Twenty-seven years. We built our dream home on
13 that mountain for the serenity and the peace of the
14 place, and the Rural Conservation District.

15 MS. LONGGOOD: Thank you.

16 CHAIRMAN HONIGBERG: Mr. Richardson.

17 MR. RICHARDSON: Thank you. I'd like to
18 mark as an exhibit a document -- actually, I don't think
19 we need to, but it's -- let me show you this.

20 (Atty. Richardson handing document to
21 Witness Cleland.)

22 BY MR. RICHARDSON:

23 Q. This is from Mr. Raphael's testimony. And, it's
24 labeled on the top "Exhibit 6: Existing conditions

1 from Bald Mountain, Antrim (Sheet 1 of 2)". And, on
2 the top, it also says "Attachment DR-4(a): Existing
3 Conditions". And, this is the 4(a), 4(b), (c), what
4 the Committee members may recall, when I asked
5 Mr. Raphael if these were the "deceitful" images that
6 had been manipulated. And, Mr. Law *[sic]*, since I
7 think you answered the question, and I've only got one
8 copy, I'll just stand here while you look at it. Does
9 that look to you like the photographs that Mr. Raphael
10 was talking about? Those are the Bald Mountain
11 photographs.

12 A. (Cleland) Yes.

13 Q. Okay. So, could you, for a moment, look, and you said
14 your photograph here is taken from the summit, is that
15 right?

16 A. (Cleland) No. It's from a vista, about two-thirds of
17 the way up.

18 Q. Okay. But, as you can see, you're looking out towards
19 the lake in your exhibit. And, then, if you look at
20 the topo map, you can see where Mr. Raphael's location
21 is. Do you see that little arrow mark?

22 A. (Cleland) Uh-huh. Yes.

23 Q. And, that appears to be fairly far down the ridge, and
24 also appears to be looking further to the north. It's

1 not looking towards the lake at all.

2 A. (Cleland) This is the first vista that you can get a
3 view from.

4 Q. Okay. But this one is looking in a completely
5 different direction. It's not looking in the same
6 direction. You can't see the lake in this picture at
7 all, right?

8 A. (Cleland) No.

9 Q. Okay. So, how do I know where this picture is taken?

10 A. (Cleland) This picture?

11 Q. Where your picture is taken, yes.

12 A. (Cleland) It's -- I did not take the picture.

13 Q. Okay. Well, who -- you were there. So, who is that a
14 picture of?

15 A. (Cleland) No. This is someone else.

16 Q. Okay. Were you hiking with them?

17 A. (Cleland) No.

18 Q. Okay. So, you don't know exactly where they are or you
19 do?

20 A. (Cleland) I do know where they are.

21 Q. Okay.

22 A. (Cleland) And, I know the location.

23 Q. Okay. So, you're familiar with that spot?

24 A. (Cleland) Very familiar.

[WITNESS PANEL: Law~Cleland]

1 Q. But -- and, are you saying that, if you were to look
2 from that spot, instead of out straight, I guess, west,
3 towards the lake and look north, are you saying you
4 wouldn't see this?

5 A. (Cleland) You still --

6 (Court reporter interruption.)

7 **BY THE WITNESS:**

8 A. (Cleland) You still should be able to see this, the
9 Project.

10 BY MR. RICHARDSON:

11 Q. Right. But the Project, if you're looking across the
12 lake, if you see the picture here, the lake is almost
13 straight -- or, Willard Pond, I should say, is almost
14 straight east, right? And, is it -- as it's shown on
15 Exhibit 6, you have to look straight east? I mean,
16 we --

17 A. (Law) This is Tuttle Hill right here *[indicating]*.

18 A. (Cleland) That's correct.

19 A. (Law) Right here *[indicating]*. That's where the
20 turbines are going.

21 Q. Okay.

22 A. (Cleland) You can hike over to here, too. But, to go
23 down that cliff, it's scrub oak. I don't see how he
24 would have gotten down there to take that picture.

[WITNESS PANEL: Law~Cleland]

1 Q. Well, didn't he say it was very difficult to get there?

2 A. (Cleland) I don't remember that.

3 MR. RICHARDSON: Okay.

4 CHAIRMAN HONIGBERG: Do you have
5 anything else? Mr. Richardson, do you have anything else?

6 MR. RICHARDSON: Oh. Oh, I'm sorry.

7 No. No further questions.

8 CHAIRMAN HONIGBERG: Do any of the other
9 Parties have questions for -- Ms. Maloney, you do?

10 MS. MALONEY: Just a quick question.

11 BY MS. MALONEY:

12 Q. You said you lived on, is it "Windsor Mountain"?

13 A. (Law) Windsor Mountain.

14 Q. So, how far away do you live from where Tuttle Hill is?

15 A. (Law) It's directly, maybe a mile and a half across, as
16 a crow flies, from Tuttle Hill. We're right across the
17 valley.

18 MS. MALONEY: Okay. Thanks.

19 **CONTINUED BY THE WITNESS:**

20 A. (Law) It's directly in our viewshed.

21 MS. MALONEY: Thank you.

22 CHAIRMAN HONIGBERG: Ms. Linowes, --

23 MS. LINOWES: Mr. Chairman, --

24 CHAIRMAN HONIGBERG: -- what can I do

1 for you?

2 MS. LINOWES: I'm confused, because some
3 the communication between Mr. Richardson and Ms. Law and
4 Mr. Cleland was hard to hear. I don't know what -- can we
5 get some understanding of what was -- what you pointed out
6 to them?

7 CHAIRMAN HONIGBERG: You know, I think
8 the answer to that is "the record will speak for itself"
9 as to what just happened up there.

10 MS. LINOWES: Okay.

11 CHAIRMAN HONIGBERG: So, it may or may
12 not be useful to anybody at this point. But that's --
13 we're not going to go back and rehash that.

14 MS. LINOWES: Okay.

15 CHAIRMAN HONIGBERG: Do any members of
16 the Committee have questions for Ms. Law or Mr. Cleland?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Seeing none, thank
19 you very much. You can return to your seats.

20 WITNESS LAW: Thank you.

21 CHAIRMAN HONIGBERG: That concludes all
22 of the witnesses we're aware of. I'm assuming there's no
23 one else here who was planning on testifying?

24 (No verbal response)

1 CHAIRMAN HONIGBERG: Good. We have a
2 bunch of exhibits that have been marked for
3 identification. Are there objections to making any of
4 them full exhibits?

5 MR. NEEDLEMAN: Mr. Chair, if I may?

6 CHAIRMAN HONIGBERG: We'll start here.
7 I know there's going to be more. So, why don't we start
8 with you, Mr. Needleman.

9 MR. NEEDLEMAN: I think I just have one
10 objection, and I think it's to the WindAction Exhibit 3
11 [WindAction Exhibit 1?], which were the three photos that
12 Ms. Linowes introduced, and that we never actually spoke
13 about anyway.

14 CHAIRMAN HONIGBERG: Ms. Linowes.

15 MS. LINOWES: Mr. Chairman, I have no
16 problem with those not being part of the record.

17 CHAIRMAN HONIGBERG: Good enough. We
18 will not make those a full exhibit.

19 (**Exhibit WA 1** not made a full exhibit,
20 and to remain **marked for identification**
21 **ONLY.**)

22 CHAIRMAN HONIGBERG: Any other
23 objections to exhibits? Ms. Maloney had her hand up
24 first, Mr. Richardson, and we'll go with her next.

1 MS. MALONEY: Yes. We would object to
2 AWE 13, 17, 19, and 20.

3 CHAIRMAN HONIGBERG: And, let's get
4 those up. I've got two of them. Why don't you -- why
5 don't you describe your objection.

6 MS. MALONEY: Well, starting with
7 Exhibit 19 -- well, all of these, I believe, were prepared
8 by Mr. Raphael, but not submitted to anyone prior to this
9 hearing. And, there's been virtually no -- they were just
10 presented to Ms. Vissering and asked to make comments
11 about it. But, obviously, we haven't had a chance to
12 review them. There was no authentication. There was no
13 foundation laid. There was no information as to how he
14 prepared them or anything else. These should have been
15 presented to Mr. Raphael first, and he should have asked
16 how he prepared these exhibits.

17 So, you know, as noted, there were some
18 question about mistakes in them. There was some questions
19 about the measurements. And, to ambush a witness with
20 stuff like this, when nobody has had chance to investigate
21 or look at, I think that Antrim Wind should have brought
22 these up with Mr. Raphael, laid the proper foundation, and
23 we could have then cross-examined as to how he prepared
24 them.

1 Barring that, I mean, there --

2 CHAIRMAN HONIGBERG: I think we
3 understand.

4 MS. MALONEY: Okay.

5 CHAIRMAN HONIGBERG: Mr. Needleman.

6 MR. NEEDLEMAN: Yes. I'll start with
7 Exhibit 13, which is the Meadow Marsh 3D. The Committee
8 may recall that, before I even started questioning Ms.
9 Vissering about that, I asked her whether 3D models are
10 used by her, and she said "yes". I asked her if 3D models
11 are typically used by people in the profession, and she
12 said "yes".

13 And, so, I think that that type of
14 exhibit is exactly the type of thing that an expert like
15 Ms. Vissering would typically use, and, in fact,
16 specifically said later on that she uses 3D models
17 herself. So, it's difficult for me to see how that could
18 in any way be considered an "ambush". It's something
19 that's traditionally used by people in the profession.

20 With respect to Number 17, that's just a
21 chart that summarizes the visual changes. That was
22 prepared by LandWorks, after we saw Ms. Vissering's
23 testimony, and after we saw the statements in her
24 testimony on Page 14 that did not accurately depict

1 changes, that made the misstatements, which we pointed
2 out, about Project visibility and so forth. And, the
3 purpose of the exhibit was to specifically illustrate
4 various changes that have occurred to critical resources
5 here, from an aesthetic perspective, as it relates to the
6 changed Project.

7 And, so, again, Ms. Vissering, I think,
8 was specifically given an opportunity by the Committee,
9 and we even offered to take a break and let her do what
10 she needed to do to look at it, and she said "No", she was
11 fine, "I'm happy to continue." So, it's difficult to
12 understand how that could be objectionable.

13 And, then, I think the other two were
14 Exhibits 19 and 20. And, Ms. Vissering, I think, as an
15 expert, did a perfectly adequate job of raising concerns
16 that she had about those exhibits at the time. And, the
17 Committee is certainly capable of weighing the concerns
18 that she raised and the hesitations she had against the
19 pictures speaking for themselves in the questions that I
20 asked her.

21 So, I think, in all four cases, they
22 should be admitted as exhibits.

23 MS. MALONEY: Just one more, actually.

24 MR. RICHARDSON: May I also respond?

1 MS. MALONEY: Well, just one more, so
2 that Attorney Needleman can address it. And, I guess I
3 misnumbered it. It's this chart here *[indicating]*.

4 CHAIRMAN HONIGBERG: No, you -- that's
5 right.

6 MR. NEEDLEMAN: That was Exhibit 17.
7 That's what I was talking about.

8 CHAIRMAN HONIGBERG: That's 17.

9 MS. MALONEY: Oh, well, then --

10 CHAIRMAN HONIGBERG: Do you have another
11 one?

12 MS. MALONEY: I guess it's this one that
13 I got wrong.

14 MR. NEEDLEMAN: Oh. So, you're adding?

15 CHAIRMAN HONIGBERG: Yes.

16 MS. MALONEY: Yes. I had them both as
17 "Exhibit 17". I'm sorry.

18 MR. NEEDLEMAN: Okay. So, that was
19 "Exhibit 18". That was the --

20 CHAIRMAN HONIGBERG: Eighteen?

21 MR. NEEDLEMAN: Yes. That was the trend
22 chart. I think, if we're adding another one, what I would
23 say about that one is, again, the Chair asked
24 Ms. Vissering "was she personally familiar with these

1 things?" And, before I even questioned her about that, I
2 think she was providing information about turbine heights
3 of some of those projects.

4 And, so, that was simply a chart of
5 factual information that I believe Ms. Vissering herself
6 acknowledged she was aware of before I presented the
7 chart. And, I was simply using it as a reference to help
8 her to compare the Lempster project, which she has
9 certainly focused on quite a bit here, with the proposed
10 Project.

11 CHAIRMAN HONIGBERG: Mr. Richardson, you
12 have some comments on these five exhibits or some of them?

13 MR. RICHARDSON: Yes. Yes. I mean, we
14 would like -- the Town would like to see them in. They
15 were all authenticated by the witness. There was no point
16 where she says "I can't use this exhibit" or "this is not
17 anything that I could consider or discuss in my testimony
18 or recognize it." She discussed the substance of what was
19 shown on all of them. And, to excise it from the record
20 would be to, you know, pretend that her responses, you
21 know, don't exist. She had substantive -- substantive
22 responses on each of those. And, I don't recall her ever
23 saying, you know, "this is not a reliable evidence" or "a
24 reliable exhibit".

1 And, so, I think it has to come in at
2 this point.

3 CHAIRMAN HONIGBERG: Well, two --

4 MR. RICHARDSON: It goes to the weight.

5 CHAIRMAN HONIGBERG: Well, I don't know
6 about that, Mr. Richardson. And, also, to be clear, I
7 think she very much had concerns about 19 and 20 at the
8 end of the process. So, for you to say "she never said "I
9 can't use this for the purpose"," she certainly did say
10 that with respect to 19 and 20. But I get your point.

11 MR. RICHARDSON: I'm just trying to say,
12 she had discrepancies in it, but she didn't wholly reject
13 it. She talked about what was there. I mean, it all goes
14 to the weight, essentially.

15 MS. MALONEY: Well, and if I can
16 address, in particular, I -- and Ms. Vissering is a very
17 agreeable witness, and she's very nice and very agreeable.
18 And, Counsel had no chance to look at these ahead of time.

19 But, with regard to Exhibit 17, this was
20 not authenticated. This was a representation of areas of
21 visibility decreased, the visible -- that were not part of
22 the Visual Assessment, this was not part of the Visual
23 Assessment study. And, it was -- it's a hearsay
24 representation, because Mr. Raphael didn't testify about

1 it. He didn't testify how he prepared this chart. So,
2 when you present a witness with that, and say "oh, look,
3 this is" -- "do you agree that it says her under the chart
4 that the product" -- or, "the project is no longer
5 visible"?" I mean, she's not going to call him a liar to
6 his face. But this was not authenticated. Why didn't
7 counsel ask Mr. Raphael about this and how he prepared
8 this?

9 MR. NEEDLEMAN: If I may? Mr. Raphael's
10 Visual Assessment was produced in the end of April, at the
11 request of Public Counsel, two months before we had this
12 hearing. That Visual Assessment, in Exhibits 1 through 4
13 of that document, contains a detailed viewshed analysis,
14 which specifically contains information about the types of
15 things on there, including portions of the Project that
16 are no longer visible in certain areas and including a
17 reduction in view of numbers of turbines and so forth.

18 They had full access to this
19 information. They could have asked us follow-up
20 questions. Ms. Vissering could have sought to submit
21 supplemental testimony over the two months that she had to
22 review the Visual Assessment.

23 CHAIRMAN HONIGBERG: But that's not what
24 we're talking about here. Is 17 basically just a

1 compilation of information that's in his assessment? It's
2 like a chalk, isn't it? It's like a demonstration piece
3 that sort of summarizes things that are in his assessment,
4 isn't it?

5 MR. NEEDLEMAN: That's my understanding.
6 That's what I asked him to prepare, after seeing her
7 testimony.

8 CHAIRMAN HONIGBERG: Why didn't you ask
9 him to -- why didn't you show this to him when he was on
10 the stand and have him do that?

11 MR. NEEDLEMAN: Well, because -- I
12 didn't do anything with Mr. Raphael, except introduce him
13 and make him available for cross-examination. I didn't --
14 I wasn't going to start a new direct with him. And, I
15 specifically prepared it to use as cross-examination with
16 this witness to rebut what she was saying in her
17 testimony.

18 MS. MALONEY: I guess I just might also
19 point out that Mr. Raphael said he "didn't do a visual
20 impact assessment of the 10-turbine array". And, yet,
21 he's indicating "decreasing" and "increasing". So, he's
22 made a judgment call here. I know that Ms. Vissering was
23 criticized -- or, cross-examined, rather, by counsel about
24 not doing her own visual assessment. And, so, I guess I

1 would say that, you know, it's somewhat been problematic
2 from the beginning of this case that we didn't get all the
3 information up front when we needed it. And, this is sort
4 of another example of that.

5 MR. NEEDLEMAN: Well, I want to object
6 to Ms. Maloney's --

7 CHAIRMAN HONIGBERG: Well, I'm going
8 to -- I'm going to overrule the objections to the
9 exhibits, and tell you to argue the weight regarding how
10 useful they are or should be to the Committee.

11 Other documents that people want to
12 object to becoming full exhibits? Mr. Richardson.

13 MR. RICHARDSON: Thank you, Mr.
14 Chairman. There was a document, and it's labeled on my
15 copy "WA 3". And, it says "Antrim Zoning Ordinance Votes
16 on Large-Scale Wind Ordinances." And, it was offered for
17 an exhibit. And, no witness was asked any questions about
18 it. No one's had a response to it. I'll confess I
19 haven't even read it. But, since it's not even in any way
20 reflected in the record, and the Selectmen have the votes
21 that they have taken in their testimony, which they
22 adopted, they weren't cross-examined on it.

23 I don't know what this is. But people
24 can use what's in the record, as opposed to what wasn't.

1 CHAIRMAN HONIGBERG: I think he's right.
2 Ms. Linowes, he's right, isn't he?

3 MS. LINOWES: Yes. I did change my mind
4 during cross-examination and decided not to reference it.
5 So, I have no problem with it not being part of the
6 record.

7 CHAIRMAN HONIGBERG: All right. So,
8 that one will be pulled out.

9 (Exhibit WA 3 not made a full exhibit,
10 and to remain **marked for identification**
11 **ONLY.**)

12 CHAIRMAN HONIGBERG: Ms. Maloney, I'm a
13 little surprised you haven't objected to WA 7, which is --

14 MS. MALONEY: The legal case?

15 CHAIRMAN HONIGBERG: -- the case?

16 MS. MALONEY: Well, I thought I did
17 objection to that? Okay. I'll go again.

18 CHAIRMAN HONIGBERG: Well, but we're now
19 at the point where we've got to deal with it. So, you're
20 renewing your objection --

21 MS. MALONEY: I renew my objection --

22 CHAIRMAN HONIGBERG: -- to it becoming a
23 full exhibit.

24 MS. MALONEY: -- based on my --

1 CHAIRMAN HONIGBERG: Mr. Richardson?

2 MR. RICHARDSON: Well, I'm in a position
3 where I have to say "I want it in", because I wanted it
4 in. I recognize that there were very few questions on it.
5 It's a legal decision. And, your counsel is going to
6 advise you on the law. So, I'd like to have it in. I
7 don't think it prejudices any parties. The questions were
8 asked. I don't doubt that this Committee is going to
9 defer to its counsel's interpretation of the law. But I
10 think it's part of the record. So, --

11 CHAIRMAN HONIGBERG: Well, it is part of
12 the big record, but it's not going to become a full
13 exhibit in this case. You were also allowed to make an
14 offer of proof regarding what you would -- what you wanted
15 to do with it, as I recall. And, you were able to ask the
16 witness questions, without necessarily referring to the
17 case itself.

18 (Exhibit WA 7 not made a full exhibit,
19 and to remain **marked for identification**
20 **ONLY.**)

21 CHAIRMAN HONIGBERG: Are there any other
22 exhibits that people want to flag that should not become
23 full exhibits? Yes, Ms. Linowes.

24 MS. LINOWES: Thank you, Mr. Chairman.

1 I was not sure if this document that -- is critical or
2 comments on Mr. Pforzheimer's statements is -- I don't
3 know if that became an exhibit. If it did, I would object
4 to that.

5 CHAIRMAN HONIGBERG: It was marked for
6 identification. It is appropriate to object to it
7 becoming a full exhibit, and that objection is sustained.
8 So, it will not become a full exhibit. But it is part of
9 the larger record in the case.

10 MR. RICHARDSON: That's right. That's
11 my understanding as well.

12 CHAIRMAN HONIGBERG: Yes.

13 MR. RICHARDSON: It was offered. It was
14 not allowed. So, it's in the record, but it's not in
15 evidence.

16 CHAIRMAN HONIGBERG: Right.

17 MS. LINOWES: Thank you.

18 (**Exhibit WA 6** not made a full exhibit,
19 and to remain **marked for identification**
20 **ONLY.**)

21 CHAIRMAN HONIGBERG: Any others?

22 (No verbal response)

23 CHAIRMAN HONIGBERG: Then, all of the
24 others will become full exhibits.

1 I think the last thing we need to do is
2 offer an opportunity for people to sum up, if they'd like.
3 And, we'd finish with the Petitioners. We'll finish with
4 Mr. Richardson and Mr. Needleman. Do any of the
5 Intervenors or Public Counsel want to make any summation?

6 MS. MALONEY: I can. But I also
7 indicated that I was prepared to file a memorandum, if you
8 prefer we do it that way.

9 CHAIRMAN HONIGBERG: I think we -- I
10 think we received a memorandum from your office sometime
11 while we were sitting here this afternoon.

12 MS. MALONEY: Well, I didn't get to edit
13 it then. There's probably a few mistakes in it. Sorry.

14 MR. NEEDLEMAN: Whoops.

15 MS. MALONEY: Well, there will be some
16 redundancy in that memo. Sure.

17 In sum, I would say that what was
18 obvious from the two days of hearings was not that there
19 was a substantial change in the facility that was --
20 that's current under -- currently being proposed. And,
21 when we say "substantial change", we're talking about in
22 reference to the impact of the facility. And, that being
23 the unreasonable adverse impact on aesthetics.

24 Ms. Vissering testified that she

1 reviewed the proposal in the context of both her prior
2 report, the prior facility, looking again at Mr. Raphael's
3 Visual Impact Assessment, and informed by the Decision of
4 the Committee, the prior Decision of the Committee.

5 And, in truth, what really is the
6 substantial change here was Mr. Raphael's opinion. And,
7 Mr. Raphael's opinion that actually weighted the resources
8 differently than the Committee had weighted. And, in that
9 regard, he found really only one major impact, that being
10 to Willard Pond.

11 As you know, and I've repeated
12 throughout these proceedings, this Committee has already
13 made a decision. And, they made a decision that there was
14 significant impacts to Willard Mountain, to -- Willard
15 Pond, rather, the DePierrefeu Sanctuary, Bald Mountain,
16 Goodhue Hill, and Gregg Lake. They also found moderate
17 impacts on additional locations, including, but not
18 limited to, and that's what they said, Robb Reservoir,
19 Island Pond, Highland Lake, Nubanusit Pond, Black Pond,
20 Franklin Pierce Lake, Meadow Marsh, Pitcher Mountain.

21 We've maintained it's the Petitioners'
22 burden to establish that this is not the same or
23 materially the same, whatever standard the Committee uses.
24 I think "material" is useful, because it relates to

1 adverse impact. That's the context of the change that you
2 have to -- that's the context of what we have to look at
3 this change.

4 Where this Committee has already made a
5 decision that those are significant impacts and moderate
6 impacts, to substitute Mr. Raphael's opinion at this point
7 is purely a re-litigation of those issues, which we would
8 ask the Committee to resist.

9 I mean, in addition, the Committee made
10 some additional findings specific to Willard Pond, and
11 they discussed the experience of being in a wildlife
12 sanctuary as an aesthetic experience. And, Mr. Raphael
13 agreed with some of those findings. But he chose to split
14 up the sanctuary into three pieces and then analyze it
15 that way. We think that was -- that was a subjective
16 choice on his part, and there's, obviously, a lot of
17 subjectivity. And, Mr. Raphael may come to the table and
18 say "I have a better methodology. Had the Committee had
19 the benefit of my opinion, it would have resulted" --
20 "there would have been a different result." Well, that is
21 precisely what doctrines like *res judicata* and collateral
22 estoppel are designed to protect against.

23 And, where this Committee has already
24 spent a considerable amount of time, effort, and resources

1 in reviewing this, these opinions have to -- the
2 determination by the Committee should be respected.

3 Ms. Vissering testified that the primary
4 differences is that Turbine 10 would be removed, Turbine 9
5 would be slightly less visible to its height. But its
6 height will still be 50 feet taller than the Lempster
7 turbines. While lowering the height obscures the nacelle
8 from some vantage points, it will still be quite intrusive
9 when observed from other turbines.

10 She also recommended that all of the
11 remaining turbines, 1 through 8, be significantly reduced.
12 She talked about "20 percent", and I noticed she wasn't
13 asked about that on cross-examination.

14 When we get to the issues of *res*
15 *judicata*, we believe that all of these -- the factors have
16 been met. And, I don't have headings in my notes, so
17 that's why I'm shuffling the papers here.

18 Obviously, we would maintain that the
19 same parties, the same parties in this proceeding as in
20 the prior proceeding, and that's one of the factors, that
21 is the same issue being litigated. And, we believe that
22 the same issue is being litigated, because this proposed
23 Project is substantially the same, from the point of view
24 of aesthetic impacts, as the prior proposal. And, we also

1 believe that there has been a final hearing on the merits,
2 because no appeal was taken. Those are the factors that
3 you need to apply with regard to *res judicata*, and they
4 apply to administrative proceedings as well.

5 There is also another factor we'd ask
6 the Committee to consider, and that's collateral estoppel.
7 And, that's when issues have been litigated, and that's
8 when issues are not to be re-litigated in the future.
9 And, those issues, we would maintain, are precisely the
10 issues -- the decision that this Committee came to
11 regarding the factual findings it made as to the value of
12 these properties and the impact on these properties. And,
13 that would be the significant impacts on the properties,
14 including Willard Pond, the DePierrefeu Wildlife
15 Sanctuary, Goodhue Hill, Bald Mountain, Gregg Lake, and
16 the moderate impacts to Robb Reservoir, Island Pond,
17 Highland Pond, Nubanusit Pond, Black Pond, Franklin
18 Pond -- Pierce Lake, Meadow Marsh, Pitcher Mountain.

19 The Committee also found the size of the
20 wind turbines were out-of-scale for the Tuttle
21 Hill/Willard Mountain ridgeline, and they would appear
22 out-of-context and -- out-of-scale and out-of-context with
23 the region. They also clearly determined that the
24 conservation land might be sufficient to mitigate wildlife

1 or habitat impacts, but not -- not aesthetic impacts.

2 These are factual findings that we
3 maintain that the Committee is bound by as a matter of law
4 under the doctrine of collateral estoppel. And, in that
5 regard, there are three -- there are factors that we would
6 have to establish, and we believe they're met. The same
7 party is litigating those issues again, and that's Antrim
8 Wind. That Committee -- that party has had a full and
9 fair opportunity to litigate that issue. That also
10 there's a final hearing on the merits.

11 So, we would maintain that, given that,
12 the major difference we believe that these hearings have
13 established is that the most significant change is
14 Mr. Raphael's opinion. We believe that, given the prior
15 findings of this Committee, they should resist what is
16 clearly just an attempt to re-litigate the same issues.
17 And, you know, some of those comments were made by the
18 Committee in their deliberations, when, after the hearing
19 was -- after a decision was made in the 2012 docket, they
20 were concerned that here was somebody who's trying to
21 re-litigate these issues. Well, practically all of the
22 same recommendations were before the Committee at that
23 time. And, they said "no" at that time, they were not
24 going to reopen the record.

1 I am not going -- I'm not going to
2 address Mr. Richardson's -- or, Attorney Richardson's
3 arguments orally. I have addressed that in my pleadings.
4 And, we'd actually ask the Committee that they decline
5 jurisdiction because this matter has already been
6 litigated by before this Committee.

7 Should the Committee decide to accept
8 jurisdiction, we would then ask you to summarily deny the
9 application on the basis of *res judicata* and collateral
10 estoppel. That alternative relief that we're requesting,
11 we believe that the Applicant has already had a full and
12 fair hearing in the first instance.

13 So, we would ask you to deny
14 jurisdiction, and we believe that it's within the
15 discretion of the Committee to do so. Thank you.

16 CHAIRMAN HONIGBERG: Thank you,
17 Ms. Maloney. For those who are going to follow Ms.
18 Maloney, if you like what she said, and you don't have
19 anything new to say, then I would encourage you to just
20 tell us that.

21 Mr. Newsom, do you want to sum up in any
22 way?

23 MR. NEWSOM: No.

24 CHAIRMAN HONIGBERG: Mr. Howe?

1 MR. HOWE: What she said.

2 CHAIRMAN HONIGBERG: Ms. Longgood?

3 MS. LONGGOOD: I concur with
4 Ms. Maloney.

5 CHAIRMAN HONIGBERG: Mr. Block?

6 MR. BLOCK: Since I can think much
7 better with a pen or keyboard in my hand, I was wondering
8 if there's an opportunity to put some final thoughts in
9 writing, instead of orally? And, if so, what would the
10 timetable on that be?

11 CHAIRMAN HONIGBERG: I'll come back to
12 you. Ms. Linowes?

13 MS. LINOWES: Thank you, Mr. Chairman.
14 I would just -- I agree with everything that Ms. Maloney
15 stated. But I would like to comment on the Town's ability
16 to review this Project, if I may. The Site Evaluation
17 Committee did review this Project in 2012-2013, and I do
18 not believe any of the members sitting on the Committee
19 today were party to that process. And, Mr. Iacopino was
20 there. It was a long, grueling, intense, thorough review
21 of a project, more than I had experienced with Lempster,
22 GR -- Granite Reliable, or even Groton Wind.

23 So, to turn back now and say, as
24 Mr. Raphael is saying, that the Committee did not have the

1 information, if they had different information, it would
2 have arrived at a different conclusion, it is speaking to
3 20-20 -- hindsight being 20-20.

4 I would argue that, while the Town has
5 expressed a concern that it does not have the technical
6 expertise or the statutory -- the laws in place, the
7 regulations under site plan to review this Project, I
8 believe that that is not the case. I think that it has
9 the power to adopt the correct -- the regulations that it
10 so chooses, and they could certainly move forward with
11 that. And, it has the authority under its own site plan
12 regulations given to it by the State to hire experts to
13 help, at the expense of the applicant, to proceed with the
14 Project. So, to argue that the only opportunity for this
15 Project to be reviewed would be by this -- the only
16 appropriate way would be through the Site Evaluation
17 Committee is simply not correct.

18 So, I would encourage you not to assert
19 jurisdiction. You've already been through this process.
20 It is now the Town's responsibility. You don't kick it up
21 to -- don't kick it up to the State and shirk your
22 responsibility, in terms of site plan -- in terms of
23 land-use applications, I would encourage the Town to step
24 up and do the job. Thank you.

1 CHAIRMAN HONIGBERG: Before,
2 Mr. Needleman and Mr. Richardson, before I give you the
3 floor for closings, does either of you have an objection
4 to giving Mr. Block until the end of the week to submit a
5 short closing statement?

6 MR. NEEDLEMAN: Well, I'd like to speak
7 to that. I had a very brief opportunity to look at what
8 Mary filed today. And, what I thought I was going to see
9 was an objection to what the Town filed ten days ago.
10 Instead what I see is a detailed memorandum summarizing
11 her position in the case. And, I would argue that that's
12 not timely. But, to the extent that the Committee wants
13 to accept it, we should certainly have an opportunity to
14 respond to that.

15 CHAIRMAN HONIGBERG: That is a good
16 point. We're not going to be getting together until the
17 24th. So, it may well make sense to give everyone an
18 opportunity to submit something in writing that I would
19 encourage you to be brief with. Mr. Block, you can
20 certainly do it in the nature of a closing statement, a
21 summary.

22 I'm going to give both of you the
23 opportunity to say something orally. But I do think,
24 given the way the filings have come in, and, in all

1 honesty, I'm just aware that it came in. I don't even
2 know how long what Ms. Maloney filed is. I don't even
3 have any idea. But --

4 MS. MALONEY: It would have been
5 shorter, if I had had a chance to edit it further.

6 CHAIRMAN HONIGBERG: That is always the
7 case. The shorter the document, the more editing time
8 required.

9 So, I'm not adverse to giving the
10 Parties an opportunity to file something in writing, end
11 of the week or the beginning of the next week, if you want
12 to make me an offer? Mr. Richardson.

13 MR. RICHARDSON: I just want to point
14 out that, I mean, I'd like to be able to do this in one
15 round. But that raises the issue that, obviously, the
16 record's open. Counsel for the Public has submitted her
17 memorandum. I haven't seen it. I don't know that it's
18 filed, but I've heard that it is. What I'm concerned
19 about is is that, if we file -- or, the memos that get
20 filed from here on in should respond to what's already in
21 the record, a new legally argument, if we're all going to
22 come in on the same day, it should be too late to raise
23 that.

24 I mean, I don't want to find out that

1 there's some new body of law that comes in on the same day
2 I submit my memorandum. That's why the Town did what it
3 did, to give everyone a chance to know what our view of
4 the law was beforehand.

5 Understand, I just don't want to have to
6 come into deliberations having not responded to a legal
7 argument that has not been raised to date.

8 CHAIRMAN HONIGBERG: I think, if you see
9 a new legal argument, you know what to do. You will file
10 a motion for leave to respond in some way. But I think
11 we're going to set one deadline for people to respond. If
12 someone comes in with something new, you'll respond
13 appropriately, I suspect.

14 So, let's find a date that makes sense
15 for people to get there filings in. Today is Tuesday. A
16 week from today?

17 MR. NEEDLEMAN: Well, I'm wondering if
18 we'll have an opportunity to have the transcript before we
19 submit that?

20 CHAIRMAN HONIGBERG: Not that soon.

21 (Brief off-the-record discussion ensued
22 with the court reporter.)

23 CHAIRMAN HONIGBERG: I think it's
24 unlikely. I really think what we're talking about is

1 something in the nature of a legal memorandum on issues
2 you think are important or a summations of what you think
3 the issues are.

4 MR. NEEDLEMAN: Ten days?

5 CHAIRMAN HONIGBERG: That would put us
6 the end of next week, the 17th? Today's the 7th. I can
7 do that math in my head.

8 MR. NEEDLEMAN: Sure.

9 CHAIRMAN HONIGBERG: Does that work for
10 people?

11

12 MS. MALONEY: Yes.

13 CHAIRMAN HONIGBERG: Friday, the 17th.
14 All right. So, we're going to give you a chance to do
15 your oral summations anyway. Mr. Richardson, why don't
16 you go first.

17 MR. RICHARDSON: Thank you. There's one
18 issue that no one's talked about, but I think is important
19 and is underlying everything in this case. And, that's
20 that an applicant has a right to file an application for a
21 project. What we're dealing with is really a very simple
22 question, which is "is this the same application that's
23 been submitted or is it a different one?" I think, once
24 we conclude that this Project is different, which I think

1 the evidence shows it is, you know, all this becomes very
2 simple.

3 This Committee already determined years
4 ago the reasons why Antrim is unable to review this
5 Project at the local level. Really, none of those things
6 have changed. Obviously, we would like the Town to have
7 more capability than it does, but it doesn't, and it would
8 all lead to uncertainty and litigation.

9 The memorandum of law, and, obviously,
10 you will rely on the advice of your own counsel, but I
11 think it's clear that it's not what the Parties said,
12 which is in their testimony, or the witnesses. It's not
13 whether or not the changes are "substantial". It's
14 whether or not they're "material". So, what does that
15 mean? And, how do we evaluate that in this context?

16 You know, we know, as Mr. Raphael said,
17 the visibility has gone down by 12 percent within a
18 10-mile radius. There have been significant changes on
19 Willard Pond, which is, obviously, a very important issue,
20 I think it consumed over half of the Committee's
21 discussions of aesthetics in the last case. So, is that
22 material or not? That's the question, all of these
23 changes.

24 And, I think, you know, as Commissioner

1 Scott said, you know, some of the changes are 10 percent.
2 Removing one turbine out of ten, that's 10 percent. But
3 there's a whole series of them. And, almost you have to
4 look at this and say "well, are those changes, you know,
5 you only get to 10 percent, because that's a single
6 change, or 12 percent?" I think they all add up.
7 Because, when you combine all of the different substantive
8 changes, you get a Project that is really, really much
9 greater than it was.

10 The mitigation has gone up from 800 to
11 900 acres, 908. And, the turbines are -- one of them is
12 gone, that's 10 percent. Another one is reduced, so that,
13 at Willard Pond, the closest turbines, the towers are
14 basically gone, the closest to, 9 and 10. You can see
15 part of the blades. There's conflicting testimony about
16 whether those blades are visible or not or whether that's
17 significant or not. You know, does the fact that it's
18 moving minimize it or maximize it? Well, that's precisely
19 the type of thing that the law is intended to allow to be
20 evaluated in an application.

21 I think the better judgment is is that
22 Mr. Raphael has done a very comprehensive analysis. Ms.
23 Vissering did a review of the prior application. And, I
24 can't claim to have read that report in detail. But, from

1 what I understood from the evidence before the Committee,
2 she only did her analysis within 5 miles of the Project.
3 When it was expanded, she didn't go back and do her visual
4 impact analysis again. Only Mr. Raphael has really gone
5 and looked at the full panoply. And, I thought his
6 testimony was very credible. I mean, I think he found
7 that some impacts in some areas were high sensitivity,
8 other ones weren't. His testimony, when you read his
9 report and his testimony, we've manufactured in this case
10 through some of the evidence, and I can understand why we
11 did, you know, that he was reaching a different
12 conclusion. But that's not really what his core testimony
13 was when you read it.

14 What he was saying was is "here are the
15 Project changes, and I think they're very different." He
16 thought they were substantially, when I asked him, he said
17 they were also "material". So, what does "material" mean?
18 I think it means either "significant" or you can look at
19 it in terms of maybe what it's opposite is. If someone is
20 "not material", it's "immaterial". Well, clearly, these
21 changes are significant, clearly, they are material.

22 I mean, these are not the type of things
23 where you could just go back to an agency and say "well,
24 agency, I want to lower this turbine over here." "I want

1 to change the turbine manufacturers." "I want to change
2 the blade size." I mean, if that were to happen, if an
3 applicant were to do that on a project, we would all say
4 "Wait a minute, that's very different." We'd be bringing
5 them back before this Committee, we'd be bringing them
6 back before a court. The reason? Those changes are, in
7 fact, material.

8 Now, the other thing that I think this
9 Committee ought to look at, and, again, consult with your
10 attorney, get good advice on this, but I think the good
11 advice is in our memorandum of law. And, that is, you
12 heard Jack Kenworthy testifying that he had to make a
13 decision, and that was to either appeal the Decision,
14 which said "well, we haven't met your burden on aesthetic
15 impacts, but this is not to say that an application for
16 this area in the Town of Antrim -- that no application
17 could ever be submitted." The Committee could have made
18 that determination. They could have said "gosh, you know,
19 what is here is just so precious and so valuable that
20 we'll never allow a project here." They clearly did the
21 exact opposite of that, and they said we could do
22 something else.

23 They could have said "well, a project
24 like this would be approvable, if you did all of Jean

1 Vissering's changes", and they rejected that. And, no one
2 appealed either of those determinations. So, when Counsel
3 for the Public suggests that we ought to apply collateral
4 estoppel or *res judicata* to the Decision, they're asking
5 you to apply a standard that's greater than is in the
6 actual Decision. The Decision said it "did not preclude a
7 future application". The order on rehearing and to expand
8 the record said it would be entitled to "*de novo* review".

9 I never asked Jack how much money he had
10 spent or his company had spent to go through this process.
11 But, at the end of the day, the applicant has a right to
12 submit an application. This Project is different. I
13 think, if you look at this and you say "are these changes
14 material or not material?" I think you have to say
15 they're "material".

16 The million dollar question is, is "are
17 they entitled to review?" Well, that's precisely what
18 we're asking this Committee to investigate and find. And,
19 I think it would be unfair to the Town, it would be unfair
20 to the parties who have invested what they have to simply
21 refuse to hear that, because, well, this is kind of
22 similar, but, you know, that's -- that would be a mistake.
23 And, I think, if you look at the decisions that we cited,
24 all of them, after the *Fisher v. Dover* case, every single

1 case that I was able to look at said that the changes made
2 were "substantial". And, I think the law is very
3 permissive. Because, in every single case, what you're
4 really doing is we have a statute to review energy
5 projects. We're asking you to do that. That's what this
6 Committee is for, is to evaluate projects like this. This
7 Committee has said "you can come back." And, I think
8 that's the right thing to do.

9 MR. IACOPINO: Mr. Richardson, can I ask
10 you a question about that argument?

11 MR. RICHARDSON: Yes. Absolutely.

12 MR. IACOPINO: First of all, you -- my
13 recollection of the prior hearing that we had, the "long
14 and grueling one" that's been referred to, was a hearing
15 that the Committee had to undertake because the Project at
16 that time was 30 megawatts or more. Do you agree with
17 that?

18 MR. RICHARDSON: Well, and because this
19 Committee had accepted jurisdiction, yes.

20 MR. IACOPINO: Okay. But we would have
21 had to -- if that application had been filed, we would
22 have had to have heard it, correct?

23 MR. RICHARDSON: Uh-huh. And, at the
24 end of the day, the Committee issued an order saying

1 "well, we're not going to approve this configuration.
2 However, we would", this was based on the record in the
3 case, "and we would consider a different one." So, I
4 think that --

5 MR. IACOPINO: But the Committee is not
6 required to -- not required to consider an application
7 that comes in less than 30 megawatts, correct?

8 MR. RICHARDSON: That's absolutely
9 correct. And, in fact -- but I don't believe that there's
10 really any evidence that would overturn the prior finding
11 as to why --

12 MR. IACOPINO: Well, -- go ahead, I'm
13 sorry.

14 MR. RICHARDSON: -- the factors under
15 162-H:1 have -- or, indicate that this Committee should
16 take jurisdiction. There's no zoning ordinance. There's
17 no --

18 MR. IACOPINO: But, in the cases that
19 you cited, --

20 MR. RICHARDSON: Uh-huh.

21 MR. IACOPINO: -- those are all planning
22 board cases at the town level, correct?

23 MR. RICHARDSON: No. No. *Appeal of*
24 *Parkland, Appeal of the Nottingham Environmental Services*

1 case, and there was one other that were State agency
2 cases. And, in fact, in looking at the *Fisher v. Dover*
3 rule, I tried to find all of the cases involving State
4 agency decisions, because I thought those would be the
5 most applicable.

6 MR. IACOPINO: But those are all cases
7 where there is mandatory jurisdiction of the agency,
8 correct?

9 MR. RICHARDSON: Yes.

10 MR. IACOPINO: In other words, there's
11 no place else for the applicant to go?

12 MR. RICHARDSON: No, that's absolutely
13 true. And, so, where that leads us is to the 162-H:1
14 criteria. And, I think, in this Committee's notice, --

15 MR. IACOPINO: Which nobody has
16 addressed yet?

17 MR. RICHARDSON: Well, the Selectmen
18 addressed that in their testimony. Because, when we got
19 the notice of the hearing and the request for testimony,
20 it, in fact, said "well, we'd really like you to seek to
21 submit testimony on whether the project's different." The
22 jurisdiction was, I think, presumed, based on the
23 Committee's prior finding, and the fact that everyone had,
24 I think, assumed that those criteria still continue to

1 favor it.

2 To be conservative, I had the Antrim
3 Selectmen go through and explain why those criteria still
4 apply. And, the only thing that I've heard to suggest
5 otherwise is is that "well, the Town doesn't have
6 standards." They might try to adopt them, but they're not
7 in their Zoning Ordinance. And, we've explained, I think,
8 very clearly in our memorandum, which we filed over ten
9 days ago, why they have to be in the Zoning Ordinance. We
10 can't use site plan regulations as a backdoor zoning
11 ordinance, because --

12 MR. IACOPINO: I understand. I
13 understand that part. One final question. There's been a
14 change in the law since jurisdiction was granted the last
15 time. Are you familiar with that, effective July 1, 2014?

16 MR. RICHARDSON: Absolutely. And, --

17 MR. IACOPINO: Then, please explain, if
18 you can, whether or not you believe that change in the
19 law, specifically in the "Purposes" section of the
20 statute, makes any difference for this Committee's
21 decision?

22 MR. RICHARDSON: Sure. And, the case
23 you'll want to look at is *Somersworth Development versus*
24 *Granite* cited in our memorandum of law. And, what it

1 actually says in that case, it was a zoning case, is is
2 that, because the law concerning variance criteria had
3 changed, a zoning board could actually reconsider the same
4 proposal, because now we look at the -- the law is
5 different.

6 So, where is the law different? Well,
7 the standards have changed in RSA 162-H:16, and also in
8 RSA 162-H:1. I thought about, you know, maybe arguing
9 that 162-H:16, you know, those substantive criteria have
10 changed. But I'm not really sure. I mean, it's still
11 "unreasonable adverse effect" is the criteria. So, I
12 don't think that affected this.

13 162-H:1, there are some different
14 factors. But, at the end of the day, those changes to the
15 law don't really create different circumstances that would
16 cause this Committee's decision on jurisdiction to be
17 reversed. They don't affect the decision on the merits.
18 So, I think it comes back to, you know, "is this Project
19 different?" And, the correct criteria are "is it material
20 or is it not material?"

21 MR. IACOPINO: Do you take the position
22 that the change in the law counsels the Committee to take
23 jurisdiction?

24 MR. RICHARDSON: No, I --

1 MR. IACOPINO: In other words, the
2 changes in the "Purposes" section of the statute, do you
3 believe that those changes counsel this Committee to
4 exercise its jurisdiction?

5 MR. RICHARDSON: You know, I didn't see
6 it really as going strongly one way or the other. The
7 Committee already had determined there was jurisdiction in
8 the 2011 case. And, I didn't see any of the changes as
9 being grounds for flipping that. I mean, I know that, if
10 this Town were to review the Project before its Planning
11 Board or before the ZBA, it would get sued. And, if the
12 Planning Board were to apply a standard for noise, if they
13 applied 40 or if they applied 34, one side would say "too
14 high", one side would say "too low". They both, depending
15 on who one, you know, one or the other would sue. And, I
16 would have to say to the court "well, your Honor, they
17 just made it up. It's not in their regulations or their
18 ordinance." So, --

19 MR. IACOPINO: And, when you say "sue",
20 you mean an appeal would be taken to the superior court?

21 MR. RICHARDSON: That is correct. A
22 lawsuit would be brought, and it would go, under the law,
23 a planning board appeal is appealed to the superior court,
24 unless it involves an interpretation of the zoning

1 ordinance, in which case it can go both to the ZBA, and
2 then from the ZBA to the superior court. Once a planning
3 board appeal is taken, under RSA 677:15, that stays the
4 whole process, and we have this triangular mess. I mean,
5 the same mess that is before this Committee in SEA-3.
6 And, I'm not here to talk about that. But that's, you
7 know, that's what the process is, and I'm sure you'll see
8 all of those issues play out there.

9 We're trying to avoid that situation
10 where there's no standard in the regulations, no standard
11 in the Zoning Ordinance. They have tried three times to
12 adopt a standard, and they failed.

13 So, I think, if this Committee finds
14 that the changes are material, and I don't see how
15 eliminating a turbine isn't material, changing the height
16 of another turbine, reducing the visibility by 12 percent
17 within 10 miles, by the specific scenic resources that
18 Raphael evaluated, that that's material in my mind.

19 And, I apologize for taking so long to
20 go through this, but I think that's the right way to go.

21 CHAIRMAN HONIGBERG: Mr. Needleman.

22 MR. NEEDLEMAN: Thank you. Mr.

23 Chairman, members of the Committee, Antrim Wind
24 appreciates the time that you've put into this. Thank you

1 for that.

2 Let me start where Mr. Iacopino was a
3 moment ago. I think that the changes to the "Purpose"
4 section of the statute actually do counsel in favor of
5 taking jurisdiction here. And, the reason I say that is,
6 working strictly from memory, the "Purpose" provisions of
7 the statute were changed and expanded such that the
8 Legislature asked the Committee to consider a greater
9 range of things as it evaluated projects that came before
10 it.

11 And, I think that that speaks directly
12 to some of the things we've heard here over the last
13 couple of days. Which is, what is the capability of this
14 Committee to evaluate aspects of this Project, versus the
15 capability of the Town? And, I think that you've all
16 heard that there are things here which you are uniquely
17 suited to handle. And, in fact, the vast majority of what
18 we have talked about here over the last two days has been
19 something that really only you can handle, which is
20 aesthetic impacts. That is plainly within your purview
21 under the statute, and it is not something that the Town
22 has authority or seems capability of handling it. So, I
23 certainly think that the "Purpose" provision changes do
24 counsel taking jurisdiction.

1 I don't want to speak about the law,
2 we've talked enough about that. What I want to do is talk
3 about the specific order you issue here, and the focus on
4 substantial changes that have occurred. And, I think that
5 it's quite plain, based on the testimony that you've
6 heard, especially the testimony of Mr. Raphael and Ms.
7 Vissering, that there are a myriad of very important
8 changes here. And, I mean that both changes in terms of
9 physical changes to the Project, and, as a consequence, a
10 wide range of changes in impact that should be the real
11 focal point of your analysis.

12 I deliberately took Ms. Vissering
13 through her seven recommendations, knowing that the
14 Committee didn't adopt those in the last proceeding, but
15 knowing that they, in part, informed your decision-making.
16 And, I think that the record will show that Antrim Wind
17 worked very hard to accommodate as many of those changes
18 as possible. And, in fact, of those seven
19 recommendations, they wholesale adopted a number of them.
20 And, the ones that they didn't adopt completely, they
21 adopted, for the most part, in a material manner. And, I
22 think, as you work your way through those and look at
23 those, and you look at that cross-examination, you will
24 see that, by in large, they have followed much of what Ms.

1 Vissering recommended.

2 I think equally important is that, when
3 the Committee looks at the consequences of the changes
4 that were made, and you focus on the resources that you,
5 yourself, said were the resources of greatest concern to
6 you, on Page 50 of that last Decision, what you are going
7 to find is that the record unequivocally demonstrates
8 that, with respect to each one of those resources, there
9 have been improvements in the aesthetic impacts of those
10 resources.

11 And, the experts can argue about what
12 the range of improvements have been. But I don't think
13 there's any factual dispute that, at every one of those
14 resources, the impacts have improved, they have
15 diminished, as a consequence of the changes that have been
16 made here.

17 And, so, as you deliberate and you think
18 to yourselves "are these changes substantial and do they
19 merit another analysis here?", I think that there's no
20 question that the changes and the impacts, especially with
21 respect to those critical resources, not to mention a host
22 of other resources, which we've now talked about and put
23 into the record, have changed.

24 And, it's not a surprise that they have

1 changed, because Antrim Wind took that last Decision to
2 heart. They worked very hard over the last couple of
3 years to redesign this Project and to do everything they
4 could to accommodate the concerns that the Committee
5 raised within reason. And, I think they have accomplished
6 that.

7 And, I think that, when you look at this
8 record, it's really going to unequivocally show that, from
9 a physical standpoint, from the standpoint of some of
10 other changes that Mr. Kenworthy discussed, and really,
11 most importantly, with respect to impacts at important
12 resources, this is a very different project, and one that
13 we absolutely think merits your review. Thank you.

14 CHAIRMAN HONIGBERG: Thank you all. We
15 will adjourn for now and we reconvene on Friday, July
16 24th, at 9:00 a.m. And, we will receive whatever written
17 submissions you make by the end of next week, July 17th.
18 Thank you all very much.

19 ***(Whereupon the hearing regarding SEC***
20 ***2014-15 was adjourned at 4:58 p.m., and***
21 ***the Deliberations to commence at 9:00***
22 ***a.m. on July 24, 2015.)***
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C E R T I F I C A T E

I, Steven. E. Patnaude, a Licensed Court Reporter, 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 attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Steven E. Patnaude, LCR
Licensed Court Reporter
N.H. LCR No. 52
(RSA 310-A:173)