

1                                   **STATE OF NEW HAMPSHIRE**

2                                   **SITE EVALUATION COMMITTEE**

3   **January 30, 2015** - 10:06 a.m.

4   Public Utilities Commission

5   21 South Fruit Street

6   Suite 10

7   Concord, New Hampshire

8                           In re:   **SITE EVALUATION COMMITTEE:**  
9                                   **DOCKET NO. 2014-05:  Petition**  
10                               **for Jurisdiction over a Renewable**  
11                               **Energy Facility by Antrim Wind,**  
12                               **LLC, and Others.**  
13                               ***(Prehearing Conference)***

14   **PRESENT:**

15   Michael J. Iacopino, Esq.   Counsel for the Committee  
16                               (Presiding)                               (Brennan Lenehan)

17   Also present:

18   Roger Hawke, Site Evaluation Committee member

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23                   **COURT REPORTER:**   Steven E. Patnaude, LCR No. 52  
24

**APPEARANCES:****Reptg. Antrim Wind, LLC:**

Barry Needleman, Esq. (McLane, Graf...)  
Patrick Taylor, Esq. (McLane, Graf...)  
Jack Kenworthy (Antrim Wind Energy)  
Henry Weitzner (Walden Green Energy)  
John Soininen (Antrim Wind Energy)

**Reptg. Counsel for the Public:**

Mary Maloney, Esq.  
Senior Asst. Atty. General  
N.H. Attorney General's Office

**Reptg. Audubon Society:**

David Howe, Esq.

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

Stephen Froling, Esq.

**Reptg. the Antrim Board of Selectmen:**

Michael Genest, Chairman  
John Robertson, Selectman  
Gordon Webber, Selectman

**Reptg. the Antrim Planning Board:**

Christopher Condon, Chairman

**Reptg. the Schaefer family:**

Mark Schaefer, *pro se*

Patrick Leary, *pro se*

Charles Levesque, *pro se*

Dr. Fred Ward, *pro se*

Annie Law and Robert Cleland, *pro se*

Elsa Voelcker, *pro se*

Janice Duley Longgood, *pro se*

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**APPEARANCES:****(C o n t i n u e d)****Reptg. Loranne Carey Block and  
Richard Block:**Richard Block, *pro se***Reptg. the Windaction Group:**

Lisa Linowes

*Also present:*

Mary Allen

Wes Enman

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

MR. IACOPINO: All right. Good morning, ladies and gentlemen.

FROM THE FLOOR: Good morning.

MR. IACOPINO: We are here today in Docket Number 2014-05, the Petition for Jurisdiction over Renewable Energy Facility filed by Antrim Wind, LLC, and others, including a group of petitioners, as well as the Board of Selectmen for the Town of Antrim. We are here today for a prehearing conference. There are a lot of people here today. I have passed out an agenda of how I would like to proceed. The purpose today is really for scheduling and filling out the record a little bit. To my right is Committee member Roger Hawke. He is here today to observe. He is one of the members of the new Site Evaluation Committee. He is here today to observe the process. Please, no *ex parte* communications with him.

We will proceed as indicated in the agenda. And, the first order of business is to go around and identify everybody on the record who is here. If you have not signed the sign-in sheet, please sign that, because we're going to use that to create or buttress the service list in this case, and to make sure that we have everybody's correct e-mail address. A lot of business of

1 this Committee is -- a lot of the business of the parties  
2 before the Committee is done by e-mail. So, it's very  
3 important that we have accurate e-mail addresses.

4 So, I'm going to start by taking the  
5 appearances of everybody here. What I would like you to  
6 do is to identify yourself, tell us the reason you're  
7 here. I'm not looking for you to tell me, you know, why  
8 you want to be an intervenor or anything. But, if you are  
9 somebody who has filed a petition to intervene, please  
10 just state that. Or, if you're just an interested party,  
11 somebody from the neighborhood or whatever, just state  
12 that as well. And, we'll start with the Applicant at the  
13 front table on my left. And, why don't we begin there.  
14 Mr. Needleman.

15 MR. NEEDLEMAN: Thank you. Barry  
16 Needleman, and to my right is Patrick Taylor, from McLane,  
17 Graf, Raulerson & Middleton, representing the Applicant,  
18 Antrim Wind.

19 MR. IACOPINO: Mr. Kenworthy.

20 MR. KENWORTHY: Jack Kenworthy, from  
21 Antrim Wind Energy, LLC.

22 MR. WEITZNER: Henry Weitzner, from  
23 Walden Green Energy, a partner with Eolian on the Project.

24 MR. IACOPINO: Why don't we go over to

1 Counsel for the Public.

2 MS. MALONEY: Mary Maloney, from the  
3 Department of Justice, for Peter Roth, as Counsel for the  
4 Public.

5 MR. IACOPINO: Mr. Block.

6 MR. BLOCK: Richard Block. I live in  
7 North Branch, Antrim. I petitioned for intervention. I  
8 was an intervenor in the previous proceedings.

9 MR. IACOPINO: Yes, sir.

10 MR. LEARY: Pat Leary, from North  
11 Hancock. I'm here as an -- for intervention.

12 MR. IACOPINO: Thank you. Ma'am.

13 MS. VOELCKER: Elsa Voelcker, from Old  
14 Pound Road. My house is a mile from the proposed site.

15 MR. IACOPINO: Your house is in the Town  
16 of Antrim?

17 MS. VOELCKER: Yes.

18 MR. IACOPINO: Thank you.

19 MS. LAW: Annie Law, North Branch,  
20 Antrim. I'm an intervenor. And, I was an intervenor in  
21 the last one.

22 MR. CLELAND: Robert Cleland, 43  
23 Farmstead Road, Antrim, New Hampshire. Filed as an  
24 intervenor, and I was an intervenor in the last process.



1 MR. IACOPINO: Dr. Ward.

2 MR. WARD: Fred Ward. I'm a  
3 meteorologist. And, I live within two miles of the site  
4 and look at it through my living room window.

5 MR. FROLING: I'm -- sorry -- Stephen  
6 Froling. I'm here representing the Harris Center for  
7 Conservation Education, which is also a proposed  
8 intervenor.

9 MR. IACOPINO: Sir, over here on my  
10 right?

11 MR. CONDON: I'm Chris Condon. I'm the  
12 Chairman of the Antrim Planning Board, which has filed a  
13 motion for petition for intervention.

14 MR. IACOPINO: And to his right?

15 MR. HOWE: David Howe.

16 MR. IACOPINO: Or, to his left, I mean?

17 MR. HOWE: David Howe. Counsel for New  
18 Hampshire Audubon, a proposed intervenor. Thank you.

19 MR. IACOPINO: Charles.

20 MR. LEVESQUE: Charles Levesque, Antrim  
21 resident. And, I petitioned to become an intervenor.

22 MR. IACOPINO: Sir?

23 MR. SOININEN: John Soininen, with  
24 Antrim Wind Energy.

1 MS. ALLEN: Mary Allen, Antrim resident  
2 and interested citizen.

3 MR. IACOPINO: Do you have a petition to  
4 intervene this time?

5 MS. ALLEN: No, I don't.

6 MR. IACOPINO: Okay. Janice.

7 MS. LONGGOOD: Janice Duley Longgood.  
8 I'm a direct abutter. And, I was an intervenor in the  
9 prior hearing, and I'm here with a petition to intervene  
10 again.

11 MR. SCHAEFER: Mark Schaefer, petition  
12 to intervene, direct abutter.

13 MR. WEBBER: Gordon Webber, Antrim  
14 Selectman.

15 MS. GENEST: Mike Genest, Antrim  
16 Selectman.

17 MR. ROBERTSON: John Robertson, Antrim  
18 Selectman.

19 MR. ENMAN: Wes Enman, responsible party  
20 for the citizens' request for the SEC to intervene, Antrim  
21 resident.

22 MR. IACOPINO: Lisa, we missed you.

23 MS. LINOWES: Sorry. Lisa Linowes, with  
24 the Windaction Group. I'm here as a -- or, requesting

1 intervenorship.

2 MR. IACOPINO: Is there anybody who  
3 hasn't stated their business?

4 (No verbal response)

5 MR. IACOPINO: Okay. I'm just going to  
6 give a brief explanation of why we're here and what the  
7 process is going to be. And, then, we'll move into  
8 basically -- well, I'll explain what we'll move into.

9 As most of you are aware, because a lot  
10 of you have been here before, this is a petition for  
11 jurisdiction. Under RSA 162-H, the New Hampshire Site  
12 Evaluation Committee has jurisdiction over the siting,  
13 construction and operation of energy facilities of a size  
14 of 30 -- with a capacity of 30 megawatts or more. The  
15 Site Evaluation Committee also has what I call  
16 "discretionary jurisdiction" over energy facilities that  
17 are proposed to be sited, constructed and operated,  
18 renewable energy facilities, that are between 5 megawatts  
19 in capacity and 30 megawatts in capacity. In order for  
20 the Committee to take jurisdiction, the Committee must  
21 make a determination that that is an appropriate thing to  
22 do given the circumstances of any particular petition  
23 filed before the Committee.

24 In this case, Antrim Wind, LLC, has

1 filed a Petition for Jurisdiction for a facility that they  
2 indicate will be approximately 28.8 megawatts. I'm sure  
3 that you have all seen the petition, and that's why you  
4 are here. At this point, the only thing that is before  
5 the Committee is the issue of jurisdiction. This is not a  
6 process that will result in a "yay" or "nay" on the  
7 proposed Project, it's just a process that will result in  
8 a determination to be made by the Committee whether or not  
9 they should exercise their discretionary jurisdiction.

10 Today is a prehearing conference. Today  
11 nothing substantive will be decided by me. I don't have  
12 the authority to decide anything substantive. I am  
13 counsel to the Committee. All of -- everybody who has  
14 filed petitions to intervene, those petitions have been  
15 provided to all of the Committee members and the Chairman.  
16 Under RSA 162-H, in the first instance, the Chairman will  
17 make the decision on each motion to intervene. I expect  
18 that there be an order with respect, I've counted 14  
19 petitions to intervene, I expect that there will be an  
20 order on each of those, not 14 separate orders, but an  
21 order addressing each of those within the next two weeks.  
22 And, however, because we're having the prehearing  
23 conference, what we do is we include everybody who is  
24 petitioning to intervene, so that, when we talk about

1 scheduling and things like that, anybody who might wind up  
2 being a party to this process has had the ability to weigh  
3 in.

4 I'm just going to go through the  
5 petitions for intervention that I believe we've received.  
6 If I have missed anybody, please raise your hand and let  
7 me know. And, I'm trying to go in the order in which they  
8 were filed. The Audubon Society has filed a petition to  
9 intervene; the Harris Center for Conservation Education  
10 has filed a petition; the Schaefer family; Patrick J.  
11 Leary; the Antrim Board of Selectmen, who are also a  
12 petitioner; Charles Levesque; Dr. Fred Ward; Annie Law and  
13 Robert Cleland; Elsa Voelcker; the Windaction Group;  
14 Antrim Planning Board; Clark Craig, Jr.; Janice Duley  
15 Longgood; and Loranne Carey Block and Richard Block.

16 Is anybody aware if there has been a  
17 petition to intervene that I have missed?

18 (No verbal response)

19 MR. IACOPINO: Hearing none. What I  
20 would like to do at this point is, everybody has had the  
21 opportunity on paper to give the reasons why they wish to  
22 intervene. We don't want to be here all day arguing about  
23 whether people should be permitted to intervene or not.  
24 So, what I would like to do is, just in the order in which

1 I have listed the petitions to intervene in the agenda,  
2 what I would like to do is just ask each party, I'm going  
3 to go in the order there, whether or not they have  
4 anything they need to add to their petition for the  
5 purposes of the record. And, like I said, as you've all  
6 had an opportunity to file your petitions, this is not  
7 going to be a big legal argument here. I just want to  
8 know if there is anything that you have to add. So,  
9 please keep that in mind. We don't want to be here all  
10 day.

11 So, is there a representative for the  
12 Audubon Society? David.

13 MR. HOWE: Yes. I think that our  
14 petition for intervention is sufficient in itself.

15 MR. IACOPINO: Thank you. Mr. Froling,  
16 from the Harris Center.

17 MR. FROLING: I'll rest with the  
18 petition, but also add that Antrim Wind Energy has  
19 assented to it.

20 MR. IACOPINO: Thank you. The  
21 Schaefers?

22 MR. SCHAEFER: We're fine.

23 MR. IACOPINO: So, you rest on your  
24 petition?

1 MR. SCHAEFER: Yes.

2 MR. IACOPINO: Patrick Leary?

3 MR. LEARY: Yes. I'm fine.

4 MR. IACOPINO: Okay. The Board of  
5 Selectmen?

6 MS. GENEST: Nothing to add.

7 MR. IACOPINO: Okay. Mr. Levesque.

8 MR. LEVESQUE: Fine as it is, Judge.

9 MR. IACOPINO: Thank you. Dr. Ward?

10 MR. WARD: I'm fine.

11 MR. IACOPINO: Okay. Ms. Law or  
12 Mr. Cleland?

13 MS. LAW: We're good.

14 MR. CLELAND: Excellent.

15 MR. IACOPINO: Ms. Voelcker?

16 MS. VOELCKER: I'm fine.

17 MR. IACOPINO: Lisa, for the Windaction  
18 Group?

19 MS. LINOWES: Nothing to add. Thank  
20 you.

21 MR. IACOPINO: I'm sorry?

22 MS. LINOWES: Nothing to add.

23 MR. IACOPINO: Thank you. Antrim  
24 Planning Board?

1 MR. CONDON: Nothing to add.

2 MR. IACOPINO: Thank you. Mr. Craig?

3 Is he here?

4 FROM THE FLOOR: No. He's not here.

5 MR. IACOPINO: Okay. Ms. Duley

6 Longgood?

7 MS. LONGGOOD: Nothing to add.

8 MR. IACOPINO: Okay. And, Mr. and Mrs.

9 Block?

10 MR. BLOCK: Ours stands fine.

11 MR. IACOPINO: Okay. Did the Applicant  
12 wish to address any particular issues with respect to  
13 intervention?

14 MR. TAYLOR: If I may. With respect to  
15 the HCCE petition, I heard Mr. Froling say that we  
16 "assented to it". And, I just wanted to clarify that our  
17 position was that "we didn't object to it." It's up to  
18 the Committee to make a decision as to whether  
19 intervention is appropriate in this case. So, that was  
20 the one issue I had. Otherwise, we've made our statement  
21 on these petitions on our papers.

22 MR. IACOPINO: Mr. Froling, did you want  
23 to respond at all or --

24 MR. FROLING: I stand corrected.



1 MR. IACOPINO: Okay. Okay. As  
2 everybody in this room is aware, we have done this once  
3 before. And, the Committee granted jurisdiction at that  
4 particular time on that petition. That petition was filed  
5 I think in March of 2011, and there was an adjudicatory  
6 hearing held in late June. And, I think that an order on  
7 that Petition for Jurisdiction actually issued in August.

8 One of the things that everybody here is  
9 probably aware is, after the evidence has been taken, the  
10 Site Evaluation Committee deliberates in public and votes  
11 in public. So, you know what the result is generally,  
12 usually, by the end of the adjudicatory proceeding, and  
13 then an order generally follows, a written order generally  
14 follows sometimes 30 to 60 days after that vote has been  
15 taken.

16 So, what I wanted to address is how we  
17 are going to proceed in this particular -- and I wanted to  
18 give each party an opportunity to weigh in as to how we  
19 are going to proceed this time. Last time, we set  
20 deadlines for the filing of witness testimony. We had one  
21 technical session, I believe, and then an adjudicatory  
22 proceeding.

23 So, at this point, I'm going to turn to  
24 the Applicant first. And, I'm going to ask how it is that

1 the Applicant believes is the best way to proceed? And,  
2 also, there was, if I recall, there's no prefiled  
3 testimony filed with the Petition. So, if there are going  
4 to be -- if you intend to offer witness testimony, what's  
5 your proposal for a schedule and things like that?

6 Mr. Needleman.

7 MR. NEEDLEMAN: Thank you, Mr. Iacopino.  
8 While I'm talking, I will ask Mr. Taylor to just hand out  
9 a copy of what we have in mind for a proposed schedule.

10 MR. IACOPINO: Thank you.

11 MR. NEEDLEMAN: I think, from our  
12 perspective, this is relatively straightforward.  
13 Everybody in the room is quite familiar with the Project,  
14 as they have all indicated they have more or less been  
15 through this before. I think the character of the  
16 proceeding this time with respect to jurisdiction is  
17 dramatically different from last time, because we've been  
18 through this. We've been through it both with respect to  
19 a proceeding regarding jurisdiction, and we've also been  
20 through a full siting proceeding.

21 The Committee looked very carefully at  
22 the question of jurisdiction in very, very similar  
23 circumstances, and reached the conclusion that it was  
24 appropriate to exercise jurisdiction. And, as we argued

1 in our papers, we, in fact, think that that jurisdictional  
2 determination still applies here.

3 In the alternative, if the Committee  
4 disagrees and thinks that it needs to reexamine that and  
5 again exercise some determination as to whether there's  
6 jurisdiction, we think that still the prior decision is  
7 guiding, and that unquestionably all of the factors that  
8 favor jurisdiction here, and the same ones that were  
9 present last time, argue for jurisdiction again.

10 That being said, what we've done is put  
11 together a schedule that really reflects those realities.  
12 We didn't file prefiled testimony, and we don't intend to  
13 introduce a witness, because we don't think any of that is  
14 necessary, given what's already happened in the prior  
15 docket. And, so, our view is that the Committee should  
16 decide the intervention motions, and the schedule we  
17 proposed is relatively similar to the deadline that you  
18 mentioned a moment ago, Mr. Iacopino. And, then, once the  
19 status of intervenors are determined, if any of them would  
20 like to file a legal brief, they should certainly be  
21 entitled to do so. We would envision a very short time  
22 for us to respond to that brief, and then the Committee  
23 can make a decision.

24 We feel strongly that, given the posture

1 of the case and given everything that's happened up to  
2 this point, there is no basis and no need for any  
3 discovery at this point. The issues are all very well  
4 known and, in fact, many I think have already been  
5 decided.

6 So, that is essentially our position  
7 here. And, I'd certainly be happy to answer any  
8 questions.

9 MR. IACOPINO: No. I think I understand  
10 it. So, I'm going to go to at this point -- let me switch  
11 gears. Let me just go to Counsel for the Public.  
12 Actually, let me ask a question of everybody here.  
13 Counsel for the Public has filed an objection to  
14 jurisdiction. Many of the other intervenors have not  
15 indicated one way or another whether you support the Site  
16 Evaluation Committee taking jurisdiction in this matter or  
17 you are against it, other than obviously those who have  
18 filed a Petition for Jurisdiction.

19 And, I guess what I would like to do is  
20 get a sense of the room is, other than Counsel for the  
21 Public, who has filed a written objection to jurisdiction,  
22 is there any other party that objects to the Site  
23 Evaluation Committee taking jurisdiction? Lisa. Okay.  
24 Well, --

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

2 MR. IACOPINO: You're all so late in  
3 putting your hands up. But, Lisa, you were first.

4 MS. LINOWES: I just want to repeat the  
5 question, though. You're asking whether or not there is  
6 anyone that does object to the SEC asserting jurisdiction,  
7 correct?

8 MR. IACOPINO: Yes.

9 MS. LINOWES: And, yes. I did not put  
10 it in our petition, sort of to leave the -- our thoughts  
11 open. But, at this point, if I were pressed, I would say  
12 I do think the SEC should assert jurisdiction.

13 MR. IACOPINO: And, Mr. Block, I think  
14 your hand was up next.

15 MR. BLOCK: Yes. We object.

16 MR. IACOPINO: Okay.

17 MR. BLOCK: Do you need more details  
18 than that or --

19 MR. IACOPINO: No, I'm just trying to  
20 figure out. And, there were some hands over here?

21 MS. LAW: Yes, we object.

22 MR. CLELAND: We both do.

23 MR. IACOPINO: All right. So, a number  
24 of the intervenors do object.

1 MR. LEARY: Can you do a count, just --

2 MR. IACOPINO: I don't need to do that.

3 MR. LEARY: Okay.

4 MR. IACOPINO: That's fine. I just  
5 wanted to get a sense of the room. That was my view.

6 Okay. So, that having been said, we  
7 understand what the Applicant's position is with respect  
8 to the process. I didn't put Counsel for the Public in my  
9 list, but I'm going to go to her next, and ask Counsel for  
10 the Public, what is your position with respect to the way  
11 the proceeding should proceed?

12 MS. MALONEY: I'm not sure if -- okay.  
13 Just looking at this schedule, we don't believe this is  
14 sufficient. And, we do believe that there is a  
15 requirement for discovery and there's a need for  
16 discovery. As you're aware, the 2012 Application was  
17 denied based on the unreasonable impacts on aesthetics  
18 basis. Based on what was submitted in the Petition for  
19 Jurisdiction, this proposal looks very, very much like the  
20 2012 proposal. And, the issues with regard -- I know that  
21 they filed a response yesterday, and I haven't reviewed it  
22 thoroughly, but, based on what was presented, and  
23 specifically the turbines, and with regard to Ms.  
24 Vissering's recommendations -- or, strike that. Rather,

1 the Council or the Committee relied on the Counsel for the  
2 Public's experts in their decision in denying the  
3 Application. And, the Counsel for the Public's expert  
4 made certain recommendations, if, in fact, a wind project  
5 of any kind was going to go forward. The one that's been  
6 proposed by the Applicant presently differs very little  
7 from the original Application. So, we think that, at a  
8 minimum, there needs to be discovery. If there is a  
9 visual impact study done by the Applicant, we would like  
10 to see that. And, we would like an opportunity to have  
11 our -- an expert of our own review that.

12 In addition, there's some outstanding  
13 issues on the financial capability of the Applicant, that  
14 wasn't determined by the Council, but that remains an open  
15 issue. So, there's, obviously, some discovery with regard  
16 to the financial capability that needs to be done.

17 So, I look at this schedule and I find  
18 it very unrealistic. It doesn't take into consideration  
19 the discovery that needs to be done. And, it doesn't take  
20 into consideration the Counsel for the Public being able  
21 to address any visual impact studies that the Applicant  
22 has. I'm assuming they have some done, and we haven't  
23 seen those. So, while the Applicant doesn't see a need  
24 for discovery, we certainly do. And, we think this is far

1 too streamlined in order to address those discovery  
2 issues.

3 I mean, if this is the same project, I  
4 think that the Committee needs to know. Because it looks  
5 very much like the same project, and with some -- one  
6 modification, removal of one turbine, a slight reduction  
7 in another turbine, and all the remaining turbines are  
8 slightly larger. That does not look like a different  
9 project sufficient to address the aesthetic impacts, the  
10 unreasonable aesthetic impacts that the Committee found in  
11 the 2012 Application.

12 MR. IACOPINO: So, if I understand, your  
13 position is that a factual thing that has to be determined  
14 is, in order to determine jurisdiction, the Committee  
15 needs to determine how much different this proposal is  
16 going to be from the last one? Is that -- because the  
17 issue is jurisdiction. We're not, in this proceeding, in  
18 this docket, the issue of whether or not there's an  
19 unreasonable impact on aesthetics or whether or not the  
20 Applicant has sufficient financial capability is not going  
21 to be decided. That would be decided in a decision on an  
22 Application. The decision -- the only decision that the  
23 Committee is going to make in this case is whether or not  
24 they should assert jurisdiction to review those things.



1 And, if I understand what you're saying correctly, though,  
2 you're saying that there's a factual -- there needs to be  
3 some factual record developed on what's the difference  
4 between what's going to be proposed in this Application  
5 and what was proposed the last time.

6 MS. MALONEY: Well --

7 MR. IACOPINO: Or, so that the Committee  
8 can determine whether to assert jurisdiction.

9 MS. MALONEY: Well, certainly. And,  
10 that they -- that's part of it. I mean, jurisdiction, in  
11 this, for this proposal, is discretionary. And, I mean,  
12 as Counsel for the Public, it would be -- we'd be  
13 shortsighted if we didn't address the issue of whether or  
14 not this is the same project. Because an awful lot of  
15 time and effort and expert testimony and witnesses  
16 participated in the first project. And, it's a huge --  
17 it's a huge resource that the state has to address. If  
18 this is exactly the same project, I mean, then why are we  
19 doing that? And, I think it would behoove the Committee  
20 to pay attention to that at this stage. We need to know a  
21 little bit more about this project now. Is it -- it looks  
22 like, essentially, substantially the same project. Should  
23 we keep filing these applications and having year-long  
24 hearings, and calling, you know, dozens of witnesses and

1       havings days and days of testimony for the same project?  
2       And, I think it's an appropriate time to consider those  
3       issues prior to taking jurisdiction, because, as you  
4       pointed out, it is discretionary at this point.

5                   MR. IACOPINO:   And, I just want to point  
6       out, as stark as I can, the -- as starkly as I can, the  
7       Applicant has proposed essentially no factual record being  
8       made, essentially legal argument.   That's what's contained  
9       on their proposed procedural schedule.   And, if I  
10      understand your position correctly, you believe that a  
11      factual record must be developed with regard to whether or  
12      not this is the same project or substantially the same  
13      project as was already denied by the Committee, in order  
14      to appropriately exercise its -- appropriately determine  
15      whether to exercise its jurisdiction?

16                  MS. MALONEY:   Well, we do.   And, they  
17      haven't submitted exhibits or testimony.   But, in the  
18      Petition itself, they have described the basics of the  
19      proposal.

20                  MR. IACOPINO:   And, what you're seeking  
21      is a greater factual record.   So, you're saying there  
22      should be witnesses, testimony, discovery, obviously, due  
23      process, in that regard?

24                  MS. MALONEY:   Yes.

1 MR. IACOPINO: All right. I understand  
2 that position. Audubon Society, any proposal for the  
3 process?

4 MR. HOWE: Not at this time.

5 MR. IACOPINO: Thank you. Mr. Froling,  
6 for the Harris Center?

7 MR. FROLING: No comment.

8 MR. IACOPINO: Mr. Schaefer?

9 MR. SCHAEFER: No comment.

10 MR. IACOPINO: Okay. Mr. Leary?

11 MR. LEARY: No comment.

12 MR. IACOPINO: Okay. The Board of  
13 Selectmen?

14 MS. GENEST: No comment.

15 MR. IACOPINO: Okay. Mr. Levesque?

16 MR. LEVESQUE: Nothing.

17 MR. IACOPINO: Dr. Ward?

18 MR. WARD: I have two problems, and are  
19 both mentioned in my petition. The first is that, because  
20 the county line, this thing is a few inches over the  
21 county line, Stoddard is not considered part of the  
22 problem. As I pointed out, Stoddard's center is closer to  
23 this development than Antrim's center is. Now, there's  
24 apparently some legal problems, because very little

1 information crosses the county line. That's one problem.

2 The second problem is that, and I've  
3 also outlined this in my petition, is that the meteorology  
4 has not been handled. Period. I didn't get into this  
5 last one, because I went -- I had gone to the Antrim  
6 Planning Board, and then the thing kind of died out, I  
7 never heard about it. By the time I heard about it, it  
8 was too late. So, there was no meteorology put into it.  
9 And, as I've outlined, the meteorology affects the looks  
10 of it, the sound, the accumulation and throw-off of ice,  
11 and the shadow flicker. These have not been handled.  
12 And, if there's going to be anything, then we need to have  
13 the discovery to, or however we're going to do it, to  
14 settle these issues. And, they have not been presented by  
15 the --

16 MR. IACOPINO: Dr. Ward, before you sit  
17 down, if you could just tell us how those things affect --  
18 how you believe those things affect the decision that has  
19 to be made in this docket, which is whether or not the  
20 Committee should exercise its jurisdiction?

21 MR. WARD: Well, you said that there was  
22 a question about discovery, and that was the door that you  
23 left open and I charged through it. Now, if discovery is  
24 not an issue, if all discovery is done, then I have no

1 more to say.

2 MR. IACOPINO: Just so you're aware,  
3 what I'm talking about is discovery with respect to the  
4 issue of whether the Committee should exercise  
5 jurisdiction. I'm talking about a factual record as to  
6 whether the Committee should exercise jurisdiction. The  
7 things that you spoke about are things that are, and we  
8 probably have a disagreement, I believe they were  
9 addressed in the prior proceeding, but those are generally  
10 things that go to whether the Committee should issue a  
11 certificate or not issue a certificate.

12 At this juncture, the only question  
13 before the Committee is whether the Committee should act  
14 at all? Because they don't have to. They could leave it  
15 in the laps of the local community.

16 MR. WARD: No, I agree with you  
17 completely. But you did mention about the question of  
18 discovery, and I just wanted to get that in.

19 MR. IACOPINO: Okay.

20 MR. WARD: If the Committee is going to  
21 think about that.

22 MR. IACOPINO: Now, let me address  
23 another issue with you. The issue of notice, okay,  
24 because I didn't go into that before, and I should have at

1 the beginning of this. Notice was published in this case  
2 for this proceeding, and in every proceeding that we've  
3 had regarding the Antrim case, in the Union Leader, which  
4 is a statewide newspaper, and also in the county in which  
5 the facility is proposed to be located, because that is  
6 what the statute requires. So, I'm pretty sure they get  
7 the Union Leader in Cheshire County. But, just so  
8 everybody knows, in almost every case that comes before  
9 the Committee, when there is a requirement of publication,  
10 it will go in a statewide paper. And, it will always be  
11 on the Site Evaluation Committee's website as well, so you  
12 should keep your eyes on that as well.

13 MR. WARD: But in the thing it says, in  
14 the rules somehow, that there has be a hearing in the town  
15 of the facility. We are closer to the facility than the  
16 Town of Antrim. So, --

17 MR. IACOPINO: So, you can get there  
18 better.

19 MR. WARD: We don't cross the county  
20 line.

21 MR. IACOPINO: No. But, Dr. Ward, I  
22 guess what I'm saying is that these things are published,  
23 and they are on the website. So, just to, you know, just  
24 to caution everybody, watch the website, okay?

1                   Okay. I was -- actually, I was trying  
2 to go by the thing here and I got out of line by taking  
3 Dr. Ward. Let me go to the Schaefers. Did I already  
4 address the Schaefers?

5                   MR. SCHAEFER: Yes.

6                   FROM THE FLOOR: Yes.

7                   MR. IACOPINO: Okay. And, I addressed  
8 Mr. Leary. Okay, maybe I was down to Dr. Ward then. How  
9 about Ms. Law, Mr. Cleland?

10                  MS. LAW: No comment.

11                  MR. CLELAND: Nothing at this time.

12                  MR. IACOPINO: Ms. Voelcker?

13                  MS. VOELCKER: No comment.

14                  MR. IACOPINO: Lisa?

15                  MS. LINOWES: Yes, Mr. Chairman. I just  
16 want to comment on what Counsel for the Public is saying  
17 and add to that. But I think the question before the  
18 Committee is not just whether they should assert  
19 jurisdiction, but the first question would be "whether the  
20 newly configured project is substantially identical to the  
21 previous project that it would ultimately arrive at the  
22 same conclusion?" We shouldn't be -- you know, if this is  
23 a game of "well, we have a new SEC. We have new players.  
24 Let's try it again." And, I think that should be

1 monitored. And, there's a warning there that the  
2 Committee should not walk into the -- walk through that  
3 door. And, rather, we should have a better understanding  
4 of how different this project is, make that somewhat of a  
5 determination, and then decide to move here.

6 This was the longest proceeding, at  
7 least for a wind project, before the SEC. It was  
8 grueling. And, I think it would be longer next go-around.  
9 Thank you.

10 MR. IACOPINO: Do you think the  
11 jurisdictional part is going to be longer?

12 MS. LINOWES: Oh, no. I'm sorry. If  
13 you were to assert jurisdiction, and then it went through  
14 the process of reviewing the project, there were issues  
15 that were not fully adjudicated, in my opinion, that would  
16 come back next go-around.

17 MR. IACOPINO: So, if I understand your  
18 position correctly, you agree with Counsel for the Public  
19 that a factual record must be developed, in order to  
20 determine if this project is the same or different from  
21 the project that was previously denied. And, that that's  
22 a determination that the Committee should make as part of  
23 its determination of whether to exercise jurisdiction?

24 MS. LINOWES: Correct. And, decide



1       whether or not it's going to arrive at the same  
2       conclusion.

3                   MR. IACOPINO:   The Antrim Planning  
4       Board?

5                   MR. CONDON:   I would just --

6                   MR. IACOPINO:   Oh, I'm sorry.   Let me  
7       just back up for a minute.   Did you have a proposal for  
8       how to proceed towards that, towards your goal?

9                   MS. LINOWES:   Yes.   I do agree that  
10       there should be a visual impact statement that is prepared  
11       based on the new project.   And, I don't know to what  
12       extent noise is going to be different based on this  
13       project.   But, once you start changing turbines, their  
14       configurations, and then you do have changes in sound  
15       emissions as well.   So, I think we need to get some sense  
16       of how different.   If the project is -- if they're going  
17       to move things around, let's know where those changes are,  
18       how that's going to fall out.

19                   MR. IACOPINO:   Okay.   And, do you have a  
20       proposal as to how the parties should create the record so  
21       that the Committee can --

22                   MS. LINOWES:   Yes.   I do think that  
23       there should be prefiled testimony by the Applicant on  
24       that, with those -- at least with those reports.   And,

1       then -- so, it is not -- nowhere near, I mean, we're not  
2       evaluating whether or not noise is going to be a problem,  
3       visual impact is going to be a problem. We're evaluating  
4       whether or not this -- we're going to look at whether or  
5       not it's substantially the same as what the previous  
6       project looked like.

7                   MR. IACOPINO: Understood. Planning  
8       Board?

9                   MR. CONDON: I would just like to say  
10       that on three prior occasions the wind ordinances have  
11       come before the Town of Antrim and have been voted down by  
12       the voters. At this point, I personally do not have  
13       confidence that the Planning Board could craft a ordinance  
14       that would be satisfactory to the voters.

15                  MR. IACOPINO: Okay. Do you have a  
16       proposal as to the process that the Site Evaluation  
17       Committee should use with regard to determining whether to  
18       exercise its jurisdiction?

19                  MR. CONDON: I do --

20                  MR. IACOPINO: Other than, obviously,  
21       you want them to exercise jurisdiction, I take it?

22                  MR. CONDON: I do not. No.

23                  MR. IACOPINO: You do not?

24                  MR. CONDON: No.

1 MR. IACOPINO: Oh. Okay. Mr. Craig is  
2 not here. Ms. Longgood? Ms. Duley Longgood?

3 MS. LONGGOOD: I would also like to see  
4 some discovery. Being one of the closest residents to  
5 this --

6 (Court reporter interruption.)

7 MS. LONGGOOD: Hi. I'm in favor of  
8 discovery as well, in terms of how different this would be  
9 from the other, in terms of the jurisdiction. I'm  
10 particularly concerned about the noise. And, I understand  
11 these turbines to be different than the ones that were  
12 previously talked about.

13 MR. IACOPINO: And, do you have any  
14 proposal for the process, as to how --

15 MS. LONGGOOD: No.

16 MR. IACOPINO: And, Mr. and Mrs. Block?

17 MR. BLOCK: Yes. I think the  
18 question -- the germane question here is -- before the SEC  
19 is "why should the SEC take jurisdiction?" Because, as it  
20 stands now, they would not take jurisdiction, am I  
21 correct? I mean, since it's an under 30-megawatt. And,  
22 they will only take jurisdiction if an applicant comes to  
23 them and then they decide they are going to do that.

24 So -- but my feeling is that, if the SEC

1 is going to make a decision that "yes, they should take  
2 jurisdiction in this case", there has to be reasons. And,  
3 one of the reasons or one of the things, if I were on the  
4 SEC, I would want to know "what am I taking jurisdiction  
5 over?" I would want more information about the proposed  
6 project. And, particularly, if it, as the Counsel for the  
7 Public said, if this is a project that essentially is  
8 something that the Committee has already reviewed, or very  
9 close to that, I'd want to know that before I committed a  
10 lot of time and money and a lot of people to doing this.

11 So, I feel there needs to be, maybe  
12 limited, but some more information and factual gathering  
13 about the nature of what this proposal is going to be, in  
14 order to enable the SEC to make a considered judgment as  
15 to whether or not this is a project worthy of  
16 jurisdiction. And, I'm not speaking to the value of the  
17 project itself, just should the SEC spend the time and  
18 commit the time on doing this. And, I would feel that we  
19 need to know is this essentially a different, a new  
20 project? Is there enough material here that it's worth  
21 going over in the future? And, that would be my question.

22 I have no idea, personally, the best way  
23 to go about that. I would think I would not like to see,  
24 personally, a long, extended discovery period and all

1       that, because I think that's more the appropriate domain  
2       of an actual permitting hearing. But, before deciding on  
3       jurisdiction, I think there needs to be some amount of  
4       discussion or information gathering to find out how this  
5       project that's going to be proposed, which hasn't yet, how  
6       it will differ from the previous application.

7                       MR. IACOPINO: Thank you.

8       Mr. Needleman, based upon the responses, it sounds as  
9       though there is a number of parties who believe that a  
10      determination of how this project is different than the  
11      project that had previously failed at the Committee, that  
12      needs to be factually developed in the record. Do you  
13      have a response to that particular argument, and then any  
14      other general response that you have to what's been said?

15                      MR. NEEDLEMAN: I do. Thank you. I  
16      have several comments. First of all, I think we  
17      articulated fairly clearly in our Petition how this  
18      project is different. And, I can assure you and the  
19      Committee and everybody in this room that there is nobody  
20      who has more of an interest in avoiding a waste of time  
21      and resources than the Applicant here. And, we would  
22      absolutely not be coming to the Committee if we were not  
23      very confident that we had a different project that  
24      specifically and materially addressed the concerns that

1       caused the Committee to reject the last application.

2               With respect to the arguments that there  
3       needs to be discovery, they have come in a number of  
4       different flavors here. But Ms. Ward said -- or, I'm  
5       sorry, Ms. Linowes said that "it's necessary to figure out  
6       what the Committee would ultimately determine here." I  
7       would respectfully say that that's not the test at all.  
8       If we are going to go down the road now of trying to  
9       figure out what the Committee would ultimately determine,  
10      we should just go ahead and file our Application and let  
11      the process begin.

12              This is a question of jurisdiction.  
13      It's a legal question. It's not a factual question. It's  
14      a question that has largely been determined already.  
15      Counsel for the Public has said that they want to see our  
16      visual impact assessment. They want information about  
17      financial capability. They want witnesses who can speak  
18      to those things. That all goes to the substance of the  
19      Application. It goes to what would happen in a proceeding  
20      if we were to go down that road. And, if we go down that  
21      road today, there's no material difference between this  
22      jurisdictional discussion and the actual proceeding. And,  
23      I would suggest that, if we do that, there's nothing left  
24      for the actual proceeding, and we would have covered all

1 of the issues that people are suggesting remain open.

2 And, Ms. Linowes said, in fact, there are issues that were  
3 not fully adjudicated last time. Well, we agree. And,  
4 that's exactly why we think the Committee should be taking  
5 jurisdiction here.

6 So, my concern is we are about to open a  
7 can of worms here and spend a lot of time delving into  
8 factual issues at a time when we need to be focusing on a  
9 very narrow legal issue, which is "whether or not the  
10 Committee should take jurisdiction of this?" And, if  
11 there is an inclination to start getting into all those  
12 factual issues at this point, I would respectfully suggest  
13 maybe we should all just agree that we simultaneously file  
14 the Application and get going on all of this right now,  
15 and not waste anyone's time.

16 MR. IACOPINO: Did you have anything  
17 else to add?

18 MR. NEEDLEMAN: I don't think so. Thank  
19 you.

20 MR. IACOPINO: I saw a hand go up over  
21 there. Lisa.

22 MS. LINOWES: Yes, Mr. Chairman. I just  
23 wanted to comment. The Application, the way it was  
24 submitted -- Jurisdictional Application that was submitted

1 relies heavily on the fact that the project was -- went  
2 through the adjudicative process, and the Committee  
3 largely had a complaint about one thing, the aesthetics.  
4 And, that's what they're raising, is that they have  
5 changed that, they're arguing they have corrected that,  
6 and now they're coming forward and asking for jurisdiction  
7 so they can move forward presumably with the Application  
8 itself.

9 Now the Applicant is saying that it's  
10 different, that we can't -- that there's much more to it,  
11 and why we should just file the Application and go through  
12 the process. They can not have it both ways. If the  
13 project is substantially different than the original  
14 project, then that should have been stated in the  
15 Application, and then -- and we'd move on. But I don't --  
16 I'm hearing two different presentations from the  
17 Applicant, one in the filing and one today.

18 MR. IACOPINO: Mr. Needleman, if the  
19 Committee were to -- if the Committee were to determine  
20 that it needed a better record, factual record, to  
21 determine whether or not asserting jurisdiction would be  
22 consistent with the findings and purposes of RSA 162-H:1,  
23 do you know who -- well, first of all, would you present  
24 witnesses, and do you know how many, and what the -- what



1       you would envision the subjects of their testimony to be?

2                       MR. NEEDLEMAN: We will do whatever the  
3       Committee wants us to do in order for it to be able to do  
4       its work. If you tell me that you would like additional  
5       information in order to make this determination, tell us  
6       that and we'll make an offer of proof. We'll do it in  
7       whatever way would be helpful to you in whatever way is  
8       most efficient. I do not believe for one minute that  
9       exchanging of our visual impact assessments at this point  
10      and conducting lengthy discovery and presenting witnesses  
11      would be the most efficient way to get that information to  
12      the Committee.

13                     But, if there is specific information  
14      the Committee needs, by all means, please tell us what it  
15      is, and we will make an offer of proof, so that you have  
16      what you need to make a determination.

17                     MR. IACOPINO: Okay. Well, my question  
18      though is the Committee may not be that specific with you.  
19      I'm looking to see what you would anticipate presenting,  
20      if what you -- if what the Committee determined to do was  
21      to essentially say "We need a better factual record. We  
22      need to take testimony, or have some evidence presented in  
23      an adjudicatory process that demonstrates that taking  
24      jurisdiction is consistent or inconsistent with the

1 purposes of RSA 162-H:1", which is the standard that the  
2 Committee must apply. And, so, I guess my question to you  
3 is, have you thought about that and do you know, for  
4 instance, the number or types of witnesses that you might  
5 present or types of evidence?

6 MR. NEEDLEMAN: We honestly haven't  
7 given it much thought.

8 MR. IACOPINO: Okay.

9 MR. NEEDLEMAN: We didn't think it was  
10 necessary. If the Committee indicates -- I'm sorry,  
11 excuse me -- that it would like that sort of information,  
12 we will consider the best way to provide it and let you  
13 know.

14 MR. IACOPINO: Did anybody -- I'm sorry.  
15 Ms. Maloney.

16 MS. LINOWES: I'm sorry, Mr. Chairman.  
17 I just had a question for you. I heard from the Planning  
18 Board that they said that they didn't have an ordinance in  
19 place in Antrim in order to take on this project at this  
20 time. So, my question to you is whether the Committee is  
21 going to take this -- take a decision that, since there's  
22 no place else for this project to go until Antrim, the  
23 Town, responds with an ordinance to allow the project to  
24 come through, then therefore it's going to assert

1 jurisdiction? Is that something that --

2 MR. IACOPINO: I can't tell you what the  
3 Committee is going to do, Lisa. Obviously, they will  
4 consider the record, however that record is made in this  
5 particular petition, and they will make their decision. I  
6 can't tell you what they're going to do.

7 I would recommend that you read the  
8 prior decisions on jurisdiction that the Committee has  
9 issued in past cases, and that may give you some idea of  
10 arguments that can be made. But I can't tell you what  
11 they will do, because there is or isn't an ordinance in a  
12 particular town, or because the ordinance failed three  
13 time, as the Planning Board representative indicated. I  
14 don't -- I can't tell you what they will do. Or, how they  
15 will even consider that evidence, how much weight they  
16 would put on that evidence, that's up to the individual  
17 Committee members to make that determination, first, in  
18 their own minds, and then as a Committee together.

19 MS. LINOWES: Okay. Fine. Thank you.

20 MR. IACOPINO: So, I'm sorry that I  
21 can't answer that. Was there anybody else -- Ms. Maloney,  
22 you had had your hand raised, I'm sorry.

23 MS. MALONEY: No, that's quite all  
24 right. Just once again, I do think that, since the -- the

1 issues that we raised in our objection were primarily the  
2 aesthetics issue, because that is what the Committee  
3 denied the Application for in the last time. And, I  
4 haven't raised this technical term here yet, but we don't  
5 know at this point whether it's *res judicata*. Have we  
6 already done -- have we already reviewed this? And,  
7 that's why we think the factual record needs to be  
8 developed more with regard to aesthetics, and I also added  
9 the financial capability, because that was an outstanding  
10 issue.

11 The Applicant has indicated it intends  
12 to stand on the remaining evidence as it was in the 2012  
13 petition. The only changes it has -- is recommending is  
14 the aesthetic changes, the changes to the turbines. And,  
15 based on that, it looks like the same petition. Even  
16 though this is a jurisdictional issue, we think it is  
17 important for the Committee to take that into  
18 consideration at this time as a preliminary matter.  
19 Because if an application is filed, then we are into a  
20 full-blown hearing. And, as Ms. Linowes said, this was an  
21 extraordinarily long process previously.

22 We think that there clearly must be a  
23 visual impact study already done by the Applicant. So, I  
24 don't understand what -- why there is a problem in

1 exchanging that with -- or, filing that as prefiled  
2 testimony, exchanging that with Counsel for the Public,  
3 giving us an opportunity to have our own expert weigh in  
4 on that, and, in a limited way, address those issues right  
5 at the beginning. Because, if it is the same project, we  
6 don't believe the SEC should take jurisdiction of this at  
7 this time.

8 In terms of a timeline, I don't have --  
9 I've not gone through this process before. I'd be happy  
10 to submit something after this hearing, that would be  
11 appropriate and that would not drag things out too long.  
12 But just giving everybody a chance, for transparency sake,  
13 to see what the Applicant -- or, what changes the  
14 Applicant has made specifically with regard to visual  
15 impacts, what the Applicant has to add with regard to  
16 financial capacity to operate the plant, and then go from  
17 there, and give the Counsel for the Public and the public  
18 a chance to respond to that, and then file memoranda, and  
19 let the Committee decide. But a timeline I'm not prepared  
20 to suggest right now.

21 MR. IACOPINO: Okay. Anybody else want  
22 to address any of these issues? Any response from the  
23 Applicant?

24 (No verbal response)

1                   MR. IACOPINO:   Hearing none, the Chair  
2   will make a decision on how the process is going to go  
3   forward.   It may adopt the process proposed by the  
4   Applicant.   It may not.   The Committee -- the Chair may  
5   require a more robust factual record for the Committee's  
6   purposes.   That will be a decision, the arguments that  
7   you've laid out here today will be considered by the Chair  
8   in developing a procedural schedule for this docket.

9                   My next question though, and I'm going  
10  to go around the room again, starting with the Applicant,  
11  then going to Public Counsel, then going through the list  
12  of proposed intervenors, is assuming that there will be an  
13  adjudicatory hearing of some sort, and I'm going to just  
14  use the timeframe that it took the last time, between now  
15  and the beginning of April, okay, and there's no guarantee  
16  that's going to happen then, but I'm just using that  
17  timeframe, does anybody have any major scheduling problems  
18  during that period of time?   And, I'll start with the  
19  Applicant.   Vacations or times that you know that you will  
20  not be available to appear?   And, now, just because I ask  
21  this, doesn't mean that your schedules are going to be  
22  accommodated, but I like to be a nice guy and I like to  
23  recommend that we try to accommodate as much as possible  
24  people's schedules.   But this is a big room.   So, I'll

1 start with Mr. Needleman.

2 MR. NEEDLEMAN: I probably have the same  
3 problem that a lot of people have. School vacation week  
4 at the end of February.

5 MR. IACOPINO: End of February?

6 MR. NEEDLEMAN: Yes. I think it's the  
7 week of --

8 MR. IACOPINO: Does anybody know what it  
9 is this year?

10 MS. MALONEY: The 16th.

11 MR. NEEDLEMAN: I think it's the week  
12 after.

13 MS. MALONEY: Oh, it is?

14 MR. NEEDLEMAN: Yes. I think it's the  
15 week of the 23rd.

16 MR. IACOPINO: Do we know, is it uniform  
17 throughout New Hampshire this year or -- because I know my  
18 nephews used to have different week than my kids.

19 MR. NEEDLEMAN: It's the week of the  
20 23rd.

21 MR. IACOPINO: Week of the 23rd? Okay.  
22 All right. And, that's probably -- quite frankly, that's  
23 probably a problem for some of our Committee members as  
24 well. What about for the rest of your table there, Barry?

1 Is there any -- okay. Counsel for the Public, do you know  
2 if you or Mr. Roth have vacations or anything that we can  
3 try to accommodate?

4 MS. MALONEY: I'm going on vacation next  
5 week. So, --

6 MR. IACOPINO: Good for you.

7 MS. MALONEY: I have grand jury duty,  
8 other than that, for the next six months, other than that,  
9 just regular --

10 MR. IACOPINO: From another case, it was  
11 my understanding that Peter Roth was -- is he going to be  
12 the lead on this, do you know?

13 MS. MALONEY: I don't think so.

14 MR. IACOPINO: Oh. Okay.

15 MS. MALONEY: I think it's going to be  
16 me.

17 MR. IACOPINO: Good. Okay. All right.  
18 From another case, I do know that he had some kind of  
19 problem --

20 MS. MALONEY: He's going out next week,  
21 too.

22 MR. IACOPINO: Yes. Okay. All right.  
23 So, you don't have a -- as long as it's not next week,  
24 you're fine?



1 MS. MALONEY: Except for grand jury  
2 duty, which I can also make -- ask to be excused from  
3 grand jury.

4 MR. IACOPINO: Okay. All right. I  
5 don't want to talk about the secret grand jury now. How  
6 about David, for the Audubon Society, any particular?

7 MR. HOWE: No scheduling issues.

8 MR. IACOPINO: Okay. Mr. Froling?

9 MR. FROLING: I don't have any  
10 scheduling problems through April. I don't think it's  
11 realistic to address July, where I might have a big  
12 scheduling problem.

13 MR. IACOPINO: Okay. Hopefully, we  
14 won't have to.

15 MR. FROLING: Hopefully, we won't have  
16 to.

17 MR. IACOPINO: Mr. Schaefer?

18 MR. SCHAEFER: No.

19 MR. IACOPINO: Okay. Mr. Leary?

20 MR. LEARY: No.

21 MR. IACOPINO: How about on the Board of  
22 Selectmen there? Are you guys going to be able to have  
23 somebody cover?

24 MS. GENEST: No issues.

1 MR. IACOPINO: Okay. Mr. Levesque?

2 MR. LEVESQUE: None.

3 MR. IACOPINO: Dr. Ward?

4 MR. WARD: None.

5 MR. IACOPINO: Ms. Law or Mr. Cleland?

6 MS. LAW: None.

7 MR. CLELAND: None.

8 MR. IACOPINO: Ms. Voelcker?

9 MS. VOELCKER: I'm going to be away

10 February 11th till the 15th.

11 MR. IACOPINO: To the 15th?

12 MS. VOELCKER: Yes.

13 MR. IACOPINO: Okay. Thank you. Lisa?

14 MS. LINOWES: None.

15 MR. IACOPINO: Planning Board?

16 MR. CONDON: None.

17 MR. IACOPINO: Mr. Craig is not here.

18 Ms. Duley Longgood?

19 MS. LONGGOOD: No issues.

20 MR. IACOPINO: Okay. And, Mr. and Mrs.

21 Block?

22 MR. BLOCK: We will probably be away

23 March 13th through 22nd. And, on the plus side, Fridays

24 are always good, other than that.

1                   MR. IACOPINO:   Okay.   Are you racing the  
2   dogs then?

3                   MR. BLOCK:   We're not sure yet.   But  
4   that's spring break for us, we're doing something.   We're  
5   going somewhere.

6                   MR. IACOPINO:   For those of you who  
7   don't know, on our site visit last time we got to see the  
8   Blocks' sled dogs, which is very interesting.

9                   Okay.   All right.   On my agenda here, at  
10   number VI, I had "Discussion regarding settlement or  
11   stipulations if any."   And, I know I kind of jumped to  
12   that at the beginning to see, try to get a feel if there  
13   was really an objection to jurisdiction, which there  
14   apparently is.   Is there any other issues of settlement or  
15   stipulations that anybody can think ought to be addressed  
16   today?   I know, because you don't know what the process is  
17   actually going to be, it's a difficult question to answer.  
18   But is there anything that jumps to anybody's mind that we  
19   might be able to address today, that we haven't already,  
20   especially if there might be agreement on it?

21                   (No verbal response)

22                   MR. IACOPINO:   Hearing nobody, anybody  
23   have any other issues they wanted to raise about this  
24   particular docket?   I'm not asking for substantive

1 arguments on the proposed facility or even the issue of  
2 jurisdiction. But any other procedural issues that  
3 anybody thinks needs to be raised as part of this  
4 prehearing conference and what they would like to see in a  
5 pre -- in a scheduling order? Yes, sir.

6 MR. ENMAN: I just have a question. Wes  
7 Enman, resident. Counsel for the Public seems as, in the  
8 past, has been representative of opposition. As a member  
9 of the public, is there an outlet for other residents who  
10 are in favor of the Project, without having a conflict of  
11 interest, to have a representative? I mean, obviously, a  
12 counselor can't represent both sides or can they? I'm  
13 curious. It just seems like a conflict of interest.

14 MR. IACOPINO: Well, I don't -- are you  
15 talking about on the issue of jurisdiction?  
16 Because you're correct --

17 MR. ENMAN: In general.

18 MR. IACOPINO: -- you're correct.  
19 Counsel for the Public has objected to jurisdiction. I'm  
20 not sure I would go so far to say that they oppose the  
21 siting or construction of the Project, because that issue  
22 is not before us.

23 There are, procedurally, there are many  
24 ways for the public, regardless of what your view on the

1 issue is, to participate in SEC proceedings. We had a  
2 deadline for the filing of motions to intervene, and, as  
3 you can see, 14 people at least have saw fit to try their  
4 hand at becoming intervenors. And, the Committee will  
5 determine whether or not they should be -- whether or not  
6 they have a substantial interest to be an intervenor in  
7 the case.

8 But, also, we, at every -- in every  
9 proceeding that we have, we take public comment.  
10 Oftentimes we take it orally at the adjudicatory hearings,  
11 either at the beginning or the end of the day, and that  
12 usually will be in a notice. We also accept written  
13 public comment throughout the entirety of every docket  
14 that we have, and that written public comment is  
15 considered by the Committee members. So, there are a  
16 number of ways that the general public can make their own  
17 individual views known.

18 Counsel for the Public's role is  
19 explained in the statute. It's to represent the public  
20 at-large, with respect to whether or not the project is --  
21 meets that balance of energy and the environment.

22 But there are certainly a number of ways  
23 that the public can participate or members of the public  
24 can participate in our proceedings. I don't know if you

1 believe that any particular intervenors have expressed the  
2 view that you have. But, even if they haven't, there will  
3 be opportunity to write a letter or come to a hearing and  
4 speak as a member of the public about your views on the  
5 particular issue.

6 Understanding that the issue that's  
7 right now before the Committee is not whether the facility  
8 should be sited, constructed and built or not, it is  
9 whether or not this should be the committee or the  
10 determiner of that fact.

11 MR. ENMAN: Yes. I'm aware of this  
12 scenario. I guess my thoughts were, an attorney has --  
13 Counsel for the Public has maybe a little bit more weight  
14 than, and I don't know, on the Committee.

15 MR. IACOPINO: I can tell you that  
16 Counsel for the Public's position has not always been  
17 adopted by the Site Evaluation Committee.

18 MR. ENMAN: Yes.

19 MR. IACOPINO: So, I -- in the past, I  
20 can tell you that.

21 MR. ENMAN: No. And, I thought long and  
22 hard about becoming an intervenor myself, and chose at  
23 that time not to.

24 MR. IACOPINO: Well, that is your

1 decision to make. And, I think that we've probably  
2 answered your question maybe too much, but --

3 MR. ENMAN: No. Thank you. Appreciate  
4 it.

5 MR. IACOPINO: Mr. Levesque?

6 MR. LEVESQUE: I'm a little embarrassed  
7 to ask this question, but I am not clear on what criteria  
8 the SEC uses to determine jurisdiction. It's clear by the  
9 discussions that have occurred here this morning so far  
10 that there are differing opinions about what those  
11 criteria are. And, looking through the rules and the  
12 statutes, I'm not finding any clear direction. Maybe you  
13 know exactly where it is. I suppose precedent is also  
14 something that the SEC would use. But it's not clear to  
15 me on which criteria they rely to actually make the  
16 jurisdictional question decided.

17 MR. IACOPINO: I think that if, Mr.  
18 Levesque, just to point you in the right direction, if you  
19 look at RSA 162-H, Section 2, the definitional section,  
20 XII, defining "renewable energy facility", I think that  
21 statute there says that if "the Committee determines that  
22 the facility requires a certificate, consistent with the  
23 findings and purposes set forth in RSA 162-H:1, either on  
24 its own motion or by petition".

1                   So, that's the statutory criteria. How  
2 the Committee will interpret that in any particular case,  
3 I cannot tell you.

4                   MR. LEVESQUE: Is there no additional  
5 rules that have been put in place to embellish this part  
6 of the statute as I understand it?

7                   MR. IACOPINO: I don't think there is  
8 anything that interprets the statute or embellishes on the  
9 statute. There may -- there are some procedural rules,  
10 how many copies and things like that. Just for everybody  
11 to know, there are pending substantive rules that are  
12 pending in another docket before the Site Evaluation  
13 Committee. And, I think that there's going to be a notice  
14 of a hearing on those procedural rules. And, those rules  
15 contain much more, they're a big difference in the type of  
16 rules we have now. They contain substantive requirements  
17 in them, particularly for wind facilities. And, those  
18 rules will be -- there will be public hearings on those  
19 rules. And, I think you're going to see, within the next  
20 week or so, some public notices in that docket. And, if  
21 you're interested in that, I would advise you to take note  
22 of those notices and participate in that docket.

23                   Yes, Mr. Block.

24                   MR. BLOCK: My question is along those



1 lines. Since we last went through this, in 2011-2012,  
2 there have been changes made. The Committee is made up  
3 differently. And, as I understand, the rules are in  
4 process of changing.

5 Two-part question: Is there anything  
6 that we should know about the changes to prepare ourselves  
7 for this? And, two, if and when those rules, and I assume  
8 they will, if and when they change, if it happens midway  
9 through this proceeding, how does that affect us? Are we  
10 grandfathered into the old rules or are there things in  
11 the new rules that kick in while that hearing is in  
12 process?

13 MR. IACOPINO: I can't --

14 MR. BLOCK: Either both in a  
15 jurisdictional hearing and a future potential hearing?

16 MR. IACOPINO: I really can't answer  
17 that question for you. The first half of your question, I  
18 can't give you legal advice, but I would recommend that  
19 everybody become very familiar with the statute as it  
20 presently exists. And, all of the rules, I don't know  
21 what the new rules are going to say, because they're in  
22 the process of being drafted and vetted, and they could be  
23 changed. They may have effective dates in them; they may  
24 not. I don't know. So, I can't really answer that

1 question. Plus, I can't give you legal advice either.  
2 But I would recommend that everybody that seeks to  
3 participate in this proceeding become familiar with the  
4 statute and the rules as they are presently in effect.

5 And, I also, that's the other thing, is  
6 have any of the *pro se* intervenors considered or are they  
7 considering hiring counsel?

8 (No verbal response)

9 MR. IACOPINO: Dr. Ward, were you?

10 Okay.

11 MR. WARD: Hiring counsel?

12 MR. IACOPINO: Yes.

13 (Mr. Ward indicating non-verbally in the  
14 negative.)

15 MR. IACOPINO: I do recommend to all *pro*  
16 *se* people that you do your very best to educate yourself  
17 about the process and how the Site Evaluation Committee  
18 works. I always recommend to people that it is always  
19 better to seek counsel, if you can. You know, this is a  
20 legal process, and you're probably always going to be  
21 better off with a lawyer representing your interests.  
22 But, if you don't, that's fine as well. But please make  
23 sure that you're familiar with the rules. And, I would  
24 also recommend to all of the participants that you review

1 the prior actions taken by the Site Evaluation Committee,  
2 oftentimes those are cited as precedent. Whether or not  
3 the Committee adopts them as precedent in any particular  
4 case is up to the Committee. But just a piece of advice  
5 to everybody involved.

6 Any other issues that anybody thought  
7 should be raised? Thank you.

8 MS. MALONEY: Just two things. One, I  
9 just wanted to address what that gentleman was saying  
10 about Counsel for the Public. And, to assure him that  
11 Counsel for the Public reviews everything that is filed in  
12 this case, including proponents, anybody who has any --  
13 who is in favor, any individuals who are in favor of the  
14 project, we review that. And, you know, our view of what  
15 we do is we look at the criteria at which the SEC  
16 determines whether or not an application is complete and  
17 whether an application should be granted or denied. And,  
18 we address those criteria through whether it's hiring  
19 experts, whether they be aesthetics, wildlife, financial  
20 capability of the company, and so on. And, we try to  
21 gather and make transparent as much information as there  
22 is out there so that the public can see that.

23 And, yes, in cases, there are times, and  
24 perhaps many times, when Counsel for the Public does take

1 a position, based on a full exploration of the record.  
2 But he's free to contact us any time directly. And, we,  
3 obviously, take people -- listen to people who are in  
4 favor or against any particular project. That was just  
5 that one particular issue.

6 And, second, would you entertain us  
7 submitting our own schedule? I can submit it later today,  
8 if that's --

9 MR. IACOPINO: Yes. That's fine.

10 MS. MALONEY: Okay.

11 MR. IACOPINO: If anybody has a proposed  
12 schedule. Let's put a deadline on it, though. Today is  
13 Friday. Let's say, can you do it by Monday, at 5:00?

14 MS. MALONEY: Yes.

15 MR. IACOPINO: I mean, it's only -- it  
16 doesn't have to be a legal brief.

17 MS. MALONEY: No. Just a schedule. A  
18 schedule, yes.

19 MR. IACOPINO: And, what I would ask you  
20 to do is to e-mail that to me, and to Jane Murray. I  
21 thought I brought cards. But I will -- when we go off the  
22 record, I'll make my e-mail available to everybody.  
23 Actually, I'll do it on the record. It's  
24 *miacopino@brennanlenehan.com*. And, that's

1       b-r-e-n-n-a-n-l-e-n-e-h-a-n.com. Thank you.

2                   Did anybody have any other issues that  
3 they think we should address at this prehearing  
4 conference?

5                   (No verbal response)

6                   MR. IACOPINO: Okay. There will be an  
7 order both on the petitions to intervene and on what  
8 process we are going to use going forward. It will  
9 probably be published within the next two weeks.

10                   And, any time anybody has any procedural  
11 questions or process questions, please feel free to call  
12 me. I cannot give you legal advice. However, I might be  
13 able to just point you in the right direction to find what  
14 you need to find to try to answer your questions for  
15 yourselves.

16                   There being no further business, we will  
17 adjourn. Thank you all very much.

18                   **(Whereupon the prehearing conference was**  
19                   **adjourned at 11:11 a.m.)**

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