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4	(Resumed)	ERIC SHAW
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1 P R O C E E D I N G S

2 (Hearing resumed at 12:50 p.m.)

3 PRESIDING OFFICER SCOTT: Good  
4 afternoon. We'll start and reconvene here. I  
5 will say, just for expectations, we took an  
6 hour today. I talked to the Committee members.  
7 In the future, we'll probably try to keep our  
8 lunches to 45 minutes, just so you all can plan  
9 also. And again, the intent of that is not to  
10 short you your lunch hour, but to try to get  
11 these done in an orderly and fairly quick  
12 fashion.

13 So, with that, I think we're on  
14 with Ms. Linowes; is that not correct?

15 MS. LINOWES: Thank you, Mr.  
16 Chairman.

17 CROSS-EXAMINATION

18 BY MS. LINOWES:

19 Q. Good afternoon. I want to ask a question out  
20 of the gates, very important. You had stated,  
21 Mr. Weitzner, today, this morning, that this  
22 project is going to be using the PTC. Your pro  
23 formas, both confidential and public, was based  
24 on the ITC. Has there been a change in the --

1 or has a decision been made to go with PTCs on  
2 this project?

3 A. (Weitzner) No. When I said the PTC, in the  
4 U.S. Tax Code, any project that qualifies for  
5 the PTC can elect to use either the PTC or the  
6 ITC. I was using it generically.

7 Q. Okay. So, the pro forma that has been supplied  
8 publicly and also confidentially still applies  
9 today?

10 A. (Weitzner) We expect we'll be using the ITC,  
11 yes.

12 Q. Okay.

13 PRESIDING OFFICER SCOTT: Hold on a  
14 second.

15 MR. BOISVERT: I'm not familiar with  
16 these initials. What is an ITC versus PTC?

17 PRESIDING OFFICER SCOTT: Thank you.

18 WITNESS WEITZNER: PTC stands for  
19 Production Tax Credit. A qualified renewable  
20 energy project can get tax credits that assist  
21 in their financial viability. Any project that  
22 qualifies for the Production Tax Credit can  
23 elect to use the Investment Tax Credit. The  
24 Production Tax Credit is, as it says, it is

1 production-based. So you get roughly \$24 per  
2 megawatt hour of production as a tax credit.  
3 And so, if you have tax liabilities, you can  
4 offset the liabilities with that credit.  
5 That's the Production Tax Credit.

6 The Investment Tax Credit is a  
7 one -- sorry. The Production Tax Credit is for  
8 10 years. So, you get 10 years of tax credits,  
9 \$24 per megawatt hour.

10 The Investment Tax Credit is a  
11 one-time credit for 30 percent of the qualified  
12 costs of the project.

13 PRESIDING OFFICER SCOTT: Why don't  
14 you continue if you're ready.

15 MS. LINOWES: Okay. Thank you.

16 BY MS. LINOWES:

17 Q. Okay. So I just wanted to ask a question also  
18 before I get into my main line of questioning.

19 You had stated that the 37 percent  
20 capacity factor for the Project took into  
21 account several factors, including bat  
22 mortality curtailment to reduce bat mortality.  
23 I just wanted to ask you what assumption was  
24 used when you -- when that was applied.

1 A. (Weitzner) Curtailing. So the assumption is we  
2 curtail at 3.5 meters per second. One hour --  
3 sorry. Let me be clear.

4 If the wind is below 3.5 meters per  
5 second, we curtail the turbine -- so we don't  
6 allow them to spin at all -- one hour before  
7 sundown to one hour after sun-up.

8 Q. In the summer months or all months?

9 A. (Weitzner) In the summer months.

10 Q. And so not 6 meters per second?

11 A. (Weitzner) No.

12 Q. Okay. And would it be all turbines?

13 A. (Weitzner) Yes.

14 Q. So if it were raised to 6 meters per second as  
15 opposed to 3.5, have you done the calculus on  
16 that?

17 A. (Weitzner) No.

18 Q. Okay. And also, when it's in the summer  
19 months, would it be from May to September?  
20 Would it be June to October?

21 A. (Weitzner) I don't remember exactly the dates.  
22 They're somewhere in our application.

23 Q. Oh, it is in there?

24 A. (Weitzner) I believe so. If they're not,



1           they're in the -- I'm pretty sure they're in  
2           the Application.  If they're not, in the Bird  
3           and Bat Conservation.

4    Q.    Okay.  Also with regard to market pricing, you  
5           had said earlier today that there's not enough  
6           wind in the New England grid region to -- the  
7           grid system to have a market effect on energy  
8           prices.  And I just wanted to ask you if you  
9           had accounted for negative pricing?

10   A.    (Weitzner) Again, seeing as we expect to have  
11           the large majority of our revenue contracted  
12           through a PPA, negative LMP pricing does not  
13           affect us.

14   Q.    I understand that.  But the question you were  
15           being asked earlier today was the effect of  
16           wind energy on market pricing.

17   A.    (Weitzner) It was a general statement.  I  
18           haven't done an analysis on wind energy  
19           pricing.

20   Q.    And then, just another question with regard to  
21           the PPA that you've already signed.  And I'm  
22           not sure if you'll be able to answer this in  
23           public session, but I'll ask anyway.

24                    Has the New England Electric Co-Op

1 accounted for negative pricing in the PPA?

2 A. (Weitzner) There are terms that cover negative  
3 pricing, yes.

4 Q. So I'll ask you in non-public, or can you tell  
5 us those now?

6 A. (Weitzner) I prefer in non-public, if that's  
7 all right.

8 Q. That's fine. Also, you had stated that the  
9 banks typically assess project viability based  
10 on the P99 as opposed to the P50. Can you  
11 just -- I don't know if everyone understands  
12 what those are, although they are explained in  
13 the Application. Can you explain the  
14 difference between those two and also tell us  
15 what the P99 and P50 are for this project?

16 A. (Weitzner) Yes. P50 stands for 50th  
17 percentile, and it is the energy that we expect  
18 the Project to produce from the wind, year in,  
19 year out. That's the P50. In other words, P50  
20 means that 50 percent of the time the Project  
21 will produce more than our stated 37 percent  
22 capacity factor. P99 is shorthand for the 99th  
23 percentile, and it means that 99 percent of the  
24 time the Project will produce more than our P99

1 capacity factor. Our P50 capacity factor, as  
2 we said in our application, is around -- is  
3 approximately 37 percent. Our P99 capacity  
4 factor, our one-year P99 capacity factor is  
5 approximately 26 percent.

6 Q. Okay. And you said it was the P99 that  
7 mattered to the banks; is that correct?

8 A. (Weitzner) Yes.

9 Q. Okay. So, in Exhibit APP 33 -- and I believe  
10 that that is the full application of your --  
11 this would be Volume 1, on Page 68 -- I don't  
12 know if you have it in front of you, but I can  
13 tell you that it states that the debt service  
14 coverage ratio on a P50 is 1.45. Can you  
15 explain what that is?

16 A. (Weitzner) So when I said that that is sized by  
17 the P99, that's really the main limiting  
18 factor. But there are two tests, as we  
19 describe in our application. The first test is  
20 the P50 test. And what that means is the  
21 Project must -- under the P50 scenario, the  
22 Project must generate 1.4 times more than it  
23 needs in order to pay all of the operating  
24 costs and service to debt. That's the P50, 1.4

1 debt service coverage ratio.

2 Q. It actually says 1.45.

3 A. (Weitzner) Okay. Excuse me. 1.45, yes.

4 Q. Also, then the next bullet item on that page  
5 says the debt service coverage ratio for a P99  
6 test is 1.0?

7 A. Yes.

8 Q. And those numbers are actually restated again  
9 in -- again, this would be Exhibit APP 33, and  
10 this is Appendix 18B. This is the letter --  
11 did you get that, 18B? This would be a letter  
12 that you put into the record from, I believe  
13 it's pronounced "Barn LB."

14 A. (Weitzner) BLB.

15 Q. BLB. Okay.

16 On Page 2 of that letter, they identify  
17 also the 1.0X for the P99 and the 1.45 to 1.5X  
18 for the P50 resource. So, do both of those  
19 have to be met?

20 MR. IACOPINO: Did you say Appendix  
21 18B?

22 MS. LINOWES: Correct.

23 MR. IACOPINO: Is that a confidential  
24 document?

1 MS. LINOWES: It is not.

2 MR. IACOPINO: Just for the Committee  
3 members, I think it didn't make it onto the  
4 jump drives that we gave you.

5 Go ahead. Sorry.

6 BY MS. LINOWES:

7 Q. So -- I'm sorry. So, both tests have to be  
8 met.

9 A. (Weitzner) Yes.

10 Q. Now, I want to... if I can look at your  
11 supplemental testimony -- this would be Exhibit  
12 APP 20 -- you reference -- this would be on  
13 Page 2, beginning on Line 15 -- 14 and 15. You  
14 reference three attachments that were included  
15 with your supplemental testimony. They are  
16 W/S-1, W/S-2 and W/S-3. And these are letters  
17 from BLB -- I'm sorry, not BLB -- State -- hold  
18 on. Let me just get that.

19 A. (Weitzner) I believe it's State Street,  
20 Citigroup and CCA Group.

21 Q. Yes. Thank you. Sorry. Correct.

22 And then these were added in addition to  
23 the LBN [sic] letter and the KeyBank letter.  
24 Each of those letters were submitted as part of

1 the Application; is that correct?

2 A. (Weitzner) Yes.

3 Q. Okay. Now, you say in your -- on Line 15, you  
4 say, "These letters of interest from some of  
5 the most reputable and active funding providers  
6 of the U.S. wind sector demonstrate AWE's  
7 extensive network of financing counterparts,  
8 their confidence in the Project's sponsors, the  
9 competitive economics of the Project relative  
10 to other U.S. wind projects, and speak to the  
11 ease with which AWE will be able to secure  
12 construction debt and tax equity"; correct?

13 A. (No response)

14 Q. Okay. So, my question, in looking at, say, the  
15 KeyBank letter -- this would be Appendix 18C --  
16 so, Exhibit APP 33, Volume 1, Appendix 18C --  
17 there's a paragraph in there -- it's the  
18 paragraph almost before the last, third from  
19 the last -- that says, "This letter is for  
20 discussion purposes only and is not an offer of  
21 financing or any commitment on our part, nor is  
22 it intended to be legally binding or to give  
23 rise to any legal or fiduciary relationship  
24 between KeyBank or its affiliates and any other

1 person. Such a commitment, if any, will be  
2 delivered upon receipt of all requisite  
3 internal approvals and completion of due  
4 diligence." Do you see that?

5 A. (Weitzner) No, but I'm familiar with it.

6 Q. Yeah, okay. So, what has KeyBank been given in  
7 order to elicit this letter from you?

8 A. (Weitzner) It's been a while, so I don't  
9 exactly remember. I think the -- I know the  
10 person we're talking to at KeyBank is very  
11 familiar with the Project, very familiar with  
12 the Project returns, and has seen the wind  
13 report and has seen our pro forma.

14 Q. Okay.

15 A. (Weitzner) I believe.

16 Q. Now, this letter is fairly generic. He does  
17 not cite any of the information he received.  
18 Was that received after this letter, which is  
19 dated February 26th?

20 A. (Weitzner) I believe so, yes.

21 Q. Okay. And then, also, the letter from BLB  
22 contains a similar kind of wording. And this  
23 would again be Appendix 18B which we looked at  
24 a moment ago. The last paragraph, "This letter

1 is intended as an expression of commercial  
2 interest in providing the debt... and does not  
3 constitute a binding agreement of any kind  
4 whatsoever with regard to the Project or to the  
5 credit facilities or otherwise."

6 And then, earlier it says, "Subject to our  
7 satisfactory due diligence, credit approval and  
8 documentation... Antrim Wind... could be  
9 financed." Is that as far as BLB is going to  
10 go today?

11 A. (Weitzner) I think it's important to understand  
12 that project finance in the U.S. -- this is how  
13 project financing in the U.S. works, and that  
14 no bank or tax equity provider will issue any  
15 kind of commitment until a project has a  
16 permit, because issuing that commitment  
17 represents a significant expenditure of time,  
18 energy and money. And so these LOIs are taken  
19 seriously by the industry, but as you correctly  
20 pointed out, they are not binding. A bank  
21 won't issue binding commitments until more  
22 conditioned precedence typical for financing  
23 are met.

24 Q. Okay. Thank you for that.



1           And also looking at the State Street  
2           letter -- this would be attachment W/S-2, which  
3           was attached to your supplemental testimony,  
4           which is APP 20. That's not even on  
5           letterhead.

6    A.    (Weitzner) I think it's actually Citibank maybe  
7           that's not on letterhead. Is it the State  
8           Street --

9    Q.    State Street Bank's not on letterhead.

10   A.    (Weitzner) If you want us to get it on  
11           letterhead, we can. It was just an oversight.  
12           But that is a -- our relationship with State  
13           Street is quite deep. They have done a  
14           significant amount of due diligence on the  
15           Project. They're familiar with the wind  
16           report, the pro forma. They have returned a --  
17           they have done their own pro forma on the  
18           Project. So they have done a fair amount of  
19           diligence on the Project already.

20   Q.    Okay. And then, lastly, I want to look at  
21           Attachment W/S-3, also attached to your  
22           supplemental testimony. And this is from CCA  
23           Group. He does say that he reviewed the  
24           Project's financial pro forma, as you said.

1 KeyBank may have as well.

2 Have all of these banks reviewed your pro  
3 forma?

4 A. (Weitzner) Yes.

5 Q. Is the pro forma that they reviewed the same  
6 pro forma that I received?

7 A. (Weitzner) I can't be certain it's identical.  
8 But it is in all material respects the same,  
9 yes.

10 Q. I don't know how to -- I'll ask that question  
11 again in non-public, then, because that doesn't  
12 tell me enough.

13 A. (Weitzner) Well, I'm saying in all material  
14 respects it's the same.

15 Q. Okay. So --

16 A. (Weitzner) There could be some small difference  
17 here and there, but --

18 Q. Can you name one?

19 A. (Weitzner) No. I just don't know.

20 Q. Do you have a copy of that pro form that was  
21 delivered to the bank?

22 A. (Weitzner) We would be able to find it, sure.

23 Q. Something that we could discuss in non-public?

24 A. (Weitzner) I would need time. I don't have it

1 here.

2 Q. Well, okay. So let me just ask you very  
3 quickly, then: Does that pro form assume a  
4 PTC, ITC, or both? Did you do two?

5 A. (Weitzner) That pro forma assumes an ITC.

6 Q. Okay. Now, the signer of the CCA Group letter,  
7 Martin J. Pasqualini, wasn't he on contract  
8 with AWE back in 2012?

9 A. (Weitzner) Yes, he was.

10 Q. So, is he under contract now?

11 A. (Weitzner) No, he's not.

12 Q. Is he still considered an arm's length  
13 participant, or does he have a vested interest  
14 in this project at all?

15 A. (Weitzner) We have no contractual relationship  
16 with him right now.

17 Q. So, okay. So we should assume this letter is  
18 independently provided.

19 A. (Weitzner) It is independently provided.  
20 Absolutely.

21 Q. Okay. Then -- okay. So I guess I understand  
22 what you're saying about commitments. But one  
23 of the issues I wanted to raise with you is  
24 that KeyBank letter. And I think I referenced

1           this in my testimony, and I want to raise it  
2           here.

3                       I have -- I did a Google search on some of  
4           the wording that's in the KeyBank letter and  
5           came up with two identical letters: One for a  
6           wind project in Maine, one for a wind project  
7           in Minnesota, signed by -- let's see -- signed  
8           by different people. But one of them was  
9           signed by the same gentleman that your letter  
10          is signed by. So, the sense is KeyBank gives  
11          these letters out like candy on Halloween. How  
12          serious do we take these letters?

13   A.    (Weitzner) I take the letter very seriously. I  
14          don't think they give them out like candy on  
15          Halloween, by any means. I take them very  
16          seriously. But I also think it's -- yeah, I  
17          take it very seriously. But certainly it's  
18          not -- as I said, no bank will guarantee the  
19          funding until more key condition precedences  
20          are met, the biggest one being a permit.

21   Q.    One of these letters was to First Wind, which  
22          is SunEdison --

23                       (Court Reporter interrupts.)

24   Q.    And they're bankrupt.

1 A. (Weitzner) SunEdison went bankrupt at a  
2 corporate level. It was the corporation that  
3 went bankrupt. The project LLCs, from what I  
4 understand, have not defaulted or gone  
5 bankrupt, and they're still viable entities  
6 getting sold in bankruptcy court because  
7 SunEdison, the parent, the corporation, went  
8 bankrupt. So they didn't -- SunEdison didn't  
9 go bankrupt because KeyBank was lending them  
10 money. KeyBank doesn't lend money -- you know,  
11 this type of loan that KeyBank is proposing to  
12 us is project-financed. And so it's a loan  
13 against a project, and that has very different  
14 and much more conservative, solid economics  
15 than a corporation does.

16 Q. Just for the record, neither one of these  
17 projects -- the First Wind project nor the  
18 Minnesota project, which was a wind project  
19 called Comfry Wind -- was ever built. The  
20 first one was denied, and the Comfrey project,  
21 more to the point here, had its permit withheld  
22 because it couldn't get funding. Is that --  
23 they had the KeyBank letter, but they couldn't  
24 get funding. Immaterial?

1 A. (Weitzner) Is that the question?

2 Q. What is the weight again? Does that letter  
3 from KeyBank have any meaning?

4 A. (Weitzner) Yes, I believe it does.

5 Q. Okay. All right. Let me -- then I'll go on to  
6 my next set of questions. Actually, I did want  
7 to ask you one more question with regard to the  
8 AWE back in 2012, when Mr. -- Joseph  
9 Cocalisi(?) was involved, and Mr. Pasqualini.  
10 At that time they submitted testimony and  
11 stated that \$4 million was made available to  
12 them through Westerly Wind to get the Project  
13 off the ground.

14 Is there anything like that in place on  
15 this project, a cap on, you know, spend this,  
16 get the Project up and running, then we'll  
17 talk?

18 A. (Weitzner) No. We have budgets of expected  
19 costs that we provide to our partner, RWE. But  
20 there are no caps. And in the budget is also  
21 included the assumption that we will be  
22 providing the project equity for Antrim Wind  
23 Energy.

24 Q. And that project equity, is that the

1           \$11 million?

2           A.     (Weitzner) Yes.

3           Q.     Is there any more than that?

4           A.     (Weitzner) What do you mean?

5           Q.     That's the total amount that RWE is going to  
6           put in?

7           A.     (Weitzner) No, not necessarily.

8           Q.     Can you elaborate on that?

9           A.     (Weitzner) If the Project needs more equity to  
10           get constructed, RWE will provide more equity  
11           to get the Project constructed.

12          Q.     Then you make a statement on Page 3 of your  
13           testimony. This is APP 20, on Line 10. You  
14           said, as described in the Application -- let me  
15           go back. The full sentence starts on Line 9.  
16           "Walden will employ a traditional project  
17           financing structure for U.S. wind projects as  
18           described in our application, in which  
19           construction equity and construction debt will  
20           be sized to ensure the Project can always meet  
21           its operating costs and debt payments."

22                    Okay. So if you run out of cash at any  
23           point, for whatever reason -- the Project  
24           failed, you generated 37 percent capacity

1 factor, operation and maintenance costs were  
2 higher than expected -- you're saying that RWE  
3 is standing by, ready to put in as much money  
4 to stay operational?

5 A. (Weitzner) No, I'm not necessarily saying that.  
6 I'm saying that the commitment to provide the  
7 equity to build the Project will come from RWE.  
8 We estimate that if it -- that it will be \$11  
9 million. If it is more than that, then RWE is  
10 prepared to put in more. You're talking --

11 Q. I'm sorry.

12 A. (Weitzner) You're talking about -- so there's  
13 two separate things. There's the equity to  
14 build the Project -- so, the construction  
15 phase -- and then there's the operational  
16 phase. It's very hard to imagine a situation  
17 where in the operational phase the Project  
18 would not have enough cash flow to service the  
19 operational costs and the debt, again, as I've  
20 said, because of the very conservative nature  
21 of the revenue contracts, the operational  
22 contracts and the debt. So it's very hard to  
23 imagine a situation where the Project will need  
24 additional capital --



1 Q. So you state --

2 A. (Weitzner) -- during operation. Sorry.

3 Q. On that same page, you state, on Line 4, that  
4 there will be sufficient capital to complete  
5 construction of the Project in a manner  
6 compliant with industry standards. So you're  
7 very confident that you're not -- there's --  
8 that your pro forma is conservative.

9 A. (Weitzner) Yes, I am. But -- yeah, I am.

10 Q. Okay. All right. So, okay. Then let's look  
11 at Supplemental Testimony on Page 6, Line 16.  
12 You take objection to a statement I had made in  
13 my prefiled testimony or supplement -- or  
14 prefiled testimony, where I say, "It is evident  
15 from AWE's application and testimonies that  
16 securing a long-term PPA is of singular import  
17 to the Project's viability." Okay. And then  
18 you go on to explain different means of meeting  
19 that separate from a PPA.

20 So, there's a PPA, you talk about a  
21 financial bank hedge, and then you talk about a  
22 synthetic PPA. Okay.

23 Now, in your own words on Page 7 of your  
24 testimony, you describe a "financial bank

1 hedge" as replicating the financial component  
2 of a PPA. Is that your goal, though? In  
3 essence, a PPA would be the preferred route?

4 A. (Weitzner) PPA is preferred, yes.

5 Q. Okay. And, you know, just for that point,  
6 synthetic PPAs, if you were to go that route,  
7 they are typically not for 20 years; correct?

8 A. (Weitzner) Financial hedges are typically not  
9 for 20 years. The synthetic PPAs, such as a  
10 revenue swap, in some ways it is better than a  
11 PPA. It's -- they're trade-offs.

12 Q. But they're also risks, as you state in your  
13 testimony?

14 A. (Weitzner) I wouldn't call them "risks." They  
15 come at a price because, instead of just  
16 guaranteeing price, they guarantee the total  
17 revenue of the Project.

18 Q. But isn't it true that on a synthetic PPA, that  
19 usually doesn't involve every megawatt hour of  
20 generation? There is something established up  
21 front for the amount that it's going -- that  
22 will be covered.

23 A. (Weitzner) A financial hedge typically hedges  
24 less than the P50 production. A synthetic PPA,

1           when you're talking about a revenue swap -- the  
2           idea of a revenue swap is it's really like an  
3           insurance product, in that it guarantees a  
4           certain amount of revenue per year for the  
5           Project, regardless of where power prices are  
6           and regardless of how much the wind blows.

7    Q.    I understand that.  But at a 37 -- at a P50 of  
8           37 percent?

9    A.    (Weitzner) That would be a negotiation with the  
10           revenue -- with the provider of the revenue  
11           swap, how much revenue they will guarantee.

12   Q.    Okay.  And now I just wanted to address one  
13           point that you make in your supplemental  
14           testimony on Page 7 again.  You state that  
15           approximately one third of the 4,800 megawatts  
16           of U.S. wind projects that came online in the  
17           early part of last year relied on financial  
18           hedges.  That article that you were referencing  
19           is actually from 2015, not from 2016.  So that  
20           would have been referring to 2014 production.  
21           Are you aware of that?

22   A.    (Weitzner) That may be.  If so, I apologize.  I  
23           can tell you that still, right now, an enormous  
24           portion of the -- a similar portion of wind

1 projects continue to rely on some form of a  
2 financial hedge rather than a PPA.

3 Q. Well, are you aware, also, that that same  
4 article stated that the vast majority of that  
5 wind [sic] that was under a hedge like that was  
6 in Texas?

7 A. (Weitzner) Yes.

8 Q. And when you say "many do," many wind projects  
9 that are installed today or 2015 and 2014, do  
10 you know of any that have been installed here  
11 in New England or in the Northeast under such a  
12 hedge?

13 A. (Weitzner) I can't say. I don't know. But for  
14 us, there are certainly some trade-offs doing a  
15 PPA. As I said, a PPA is better. The main  
16 reason a PPA is better is because, typically in  
17 a PPA you're hedging your P50 production. And  
18 in a financial hedge, you're hedging -- you're  
19 typically, but not always, hedging your P99  
20 production. So the hedge is a little bit less  
21 attractive to us, the equity. But still, a  
22 hedge still guarantees a significant portion of  
23 the revenue of the Project.

24 Q. So your objection to my statement would have

1           been better if I had been a little bit more --  
2           less specific and said "securing a power  
3           off-take agreement as opposed to a PPA"?

4       A.    (Weitzner) No.  I think my objection was more  
5           specific than that.  And I think maybe we  
6           didn't highlight it clearly enough in our  
7           application.  But there was the implication in  
8           your testimony that, if we don't get a PPA, or  
9           even any kind of off-take, we're not  
10          financially viable, and that's not correct.  
11          The amount of secured cash flow that we  
12          generate through a PPA or financial hedge or  
13          however, that determines how much debt we can  
14          put on the Project.  The more cash flow that we  
15          have secured, the more debt we can put on the  
16          project, and that means the less equity.  As we  
17          have less cash flow secured, then we get less  
18          debt and we need to put in more equity.

19                So, the financial viability isn't tied to  
20                having a PPA or not.  It really just -- having  
21                a PPA or not, and what type of PPA and the  
22                price of the PPA and the tenor of the PPA, or  
23                the tenor of the off-take just determines how  
24                much equity we need to put in.  So it's not of

1 singular importance. We just need -- we just  
2 need to put in more equity.

3 Q. I understand that. And I guess I'm struggling,  
4 and perhaps it'll come out through this  
5 process. I'm struggling with this apparent  
6 "open check" that RWE is ready to put in,  
7 anywhere from \$11 million, from what you're  
8 saying today, to, what, \$65 million?

9 A. (Weitzner) Well, I don't think -- you know, I  
10 don't know. We haven't decided exactly how  
11 much equity we're willing to put in. But  
12 that's going to be a decision that is  
13 ultimately up to RWE and us about what makes  
14 financial sense for us. What makes financial  
15 sense for us has nothing to do with the  
16 financial viability of the Project. What I was  
17 trying to get across is, once we have all of  
18 the construction financing in place, then the  
19 Project is financially viable.

20 Q. I understand. But that is a big question about  
21 how high RWE is going to go. And you're saying  
22 you don't know today?

23 A. (Shaw) I think what Mr. Weitzner is trying to  
24 say is he's trying to get as much secured cash

1 flow on this project as he can, to raise as  
2 much debt as he can.

3 DR. WARD: Speak into the mic,  
4 please.

5 MR. SHAW: Yeah. Sorry.

6 A. (Shaw) And we haven't yet determined how much  
7 the final amount of secured cash flow is going  
8 to be; therefore, we haven't determined what  
9 the debt level is going to be, and therefore we  
10 don't know exactly what the equity ask is on  
11 this project. At RWE, we are not constrained  
12 in this order of magnitude with respect to how  
13 much equity we put in this deal.

14 Q. Okay. So, much will depend on, for the sake of  
15 simplicity, that secured revenue in the form of  
16 a PPA, or something that guarantees you some  
17 price on the -- let's keep it simple -- let's  
18 talk about PPAs -- some price on a megawatt  
19 hour sold or --

20 A. (Shaw) Not necessarily --

21 Q. Okay. Some guaranteed revenue stream. That's  
22 what you're looking for in the form of a  
23 contract or a hedge or something that will  
24 guarantee you, over a period of time, a revenue

1 stream?

2 A. (Shaw) No --

3 Q. Okay. Then how --

4 (Court Reporter interrupts.)

5 PRESIDING OFFICER SCOTT: One at a  
6 time, please.

7 A. (Shaw) What I was saying was, Henry and his  
8 team are out trying to secure as many contracts  
9 for the output from this project as possible.  
10 That will then determine how much debt they can  
11 raise against the Project and therefore  
12 back-calculate into how much equity we need to  
13 contribute to the Project.

14 A. (Weitzner) And if I could add something to  
15 that. We're very confident that we're going to  
16 get the overwhelming majority of this project  
17 cash-flow-contracted.

18 Q. Okay. So you're confident, then, you'll get it  
19 contracted, and you're confident the \$11  
20 million is all RWE is going to have to put in.

21 A. (Weitzner) I think \$11 million is, yes, a very  
22 reasonable number. Could it be a little more?  
23 Yes. Could it be less? Yes.

24 Q. Okay. All right. So let me look on page --



1           okay. On Page 13 of your testimony, I want to  
2           talk a little bit about the market pricing.

3                     In one of your objections to my analysis  
4           on future energy prices, it said -- I'm looking  
5           at an eight-year horizon on electricity prices.  
6           And you're saying the Project should be at  
7           least a 20-year, okay. Or, for that matter,  
8           perhaps coinciding with --

9                     (Court Reporter interrupts.)

10    Q.    -- coinciding with the project life. Then you  
11           provide a table of energy prices after 2015.  
12           And that would be on Page 14.

13                     Okay. Now, you state multiple times in  
14           your testimony that you've been in the energy  
15           business for a long time and, you know, you  
16           know what you're talking about. And I take  
17           that at your word. And my question is: What  
18           historical basis do you have to show an  
19           ever-increasing energy price? What do you know  
20           about New England's energy prices for the last  
21           three decades that says prices will only go up?

22    A.    (Weitzner) So, first of all, this is not saying  
23           that energy prices will only always go up.  
24           This is saying, using your numbers and your

1 analysis and extending that out from 8 years to  
2 20 years, that the numbers that I provide a  
3 final price on the right-hand side of that  
4 column is roughly where a person who is looking  
5 to price 20-year energy would price it. That  
6 one -- that \$1.50 increase year over year  
7 doesn't necessarily represent an increase in  
8 energy prices in the future. It simply  
9 represents roughly a 2-percent inflation rate,  
10 which is pretty standard. And if you look over  
11 not just where U.S. inflation over long periods  
12 of time has run, but also where someone likely  
13 to price this would assume for years going  
14 beyond 2025, where, you know, you don't have  
15 the CME prices to depend on. But the important  
16 thing here is that, while we're talking about  
17 forecasting energy in the future, that's not  
18 really relevant to our financial viability  
19 either. I think, as I was saying with Dr.  
20 Ward, we're going to enter into some kind of  
21 arrangement to hedge the cash flows of this  
22 project now. So a forecast for what energy  
23 prices do in the future is irrelevant.

24

1 Q. That's not what I'm getting at when I -- with  
2 regard to my testimony. The point is how  
3 willing are people -- the whole point is to  
4 discuss what was the market -- what is the  
5 market value of energy and wind energy in New  
6 England. And you seem to bypass that  
7 discussion entirely, saying we'll get a PPA, so  
8 it's irrelevant. But those PPAs are priced  
9 according to market value; isn't that true?

10 A. (Weitzner) Yes, and we know exactly where  
11 market value is because we're in conversation  
12 with many people who are interested in buying  
13 PPAs. We've already entered into one. So we  
14 have a very good idea where that person thinks  
15 long-term energy is. We have talked to two  
16 financial institutions that provide financial  
17 swaps. They've indicated where they're  
18 interested in. So we have a lot of knowledge  
19 about where the market is today to value this  
20 project, and our pro forma is based on the  
21 conversations we are having right now about  
22 where people are willing to buy power for this  
23 project.

24 Q. And you're saying they're all in the \$80 range.

1 A. (Weitzner) No, I'm not saying that.

2 Q. Your pro forma assumes somewhere in the \$80  
3 range.

4 A. (Weitzner) It does not.

5 Q. It does not?

6 A. (Weitzner) No. You've seen it.

7 Q. I have seen it.

8 A. (Weitzner) It's not 80.

9 Q. Okay. It's around 76, and then you -- or 75.

10 A. I thought it was -- is this confidential?

11 MR. NEEDLEMAN: Are we talking  
12 about --

13 MS. LINOWES: I'm sorry.

14 MR. NEEDLEMAN: -- the public  
15 documents provided here?

16 MS. LINOWES: I'm sorry. I  
17 apologize. I don't know what the number is. I  
18 was just -- I move to strike that.

19 PRESIDING OFFICER SCOTT: We'll  
20 strike that.

21 MS. LINOWES: I apologize, Mr.  
22 Chairman.

23 BY MS. LINOWES:

24 Q. Okay. So the -- we'll talk about that in

1 non-public then.

2 And when you are looking at market  
3 pricing, what you're saying is that, regardless  
4 of whatever energy prices will do in the  
5 future, you're finding people that are  
6 interested in paying what you want --

7 A. (Weitzner) Yes.

8 Q. -- sufficient to make your pro forma work.

9 A. (Weitzner) Yes.

10 Q. Now, you also take objection to the REC market  
11 pricing that you have in there. And you state  
12 on -- this would be on Page 14 of your  
13 testimony --

14 MR. IACOPINO: Testimony or  
15 supplemental?

16 MS. LINOWES: Supplemental testimony,  
17 APP 20.

18 BY MS. LINOWES:

19 Q. You see this in the last line, "We can see that  
20 the price increases substantially over time"  
21 for RECs. Now, is that discussion also  
22 irrelevant to you, about where RECs are going?

23 A. (Weitzner) When I said, "prices increase  
24 substantially over time," I was actually

1 referring to the broker sheet that you provided  
2 from ICAP that showed prices in 2016, prices  
3 for 2017, prices for 2018 increasing. I wasn't  
4 talking about where REC -- if it's not clear, I  
5 apologize. I wasn't talking about where REC  
6 prices will be in those future years. I'm  
7 referring to where ICAP is saying they are  
8 today for 2018, 2019, 2020, which is  
9 increasing. 2018 is higher than '17, and '19  
10 is higher than '18, et cetera. It's sloping  
11 up.

12 But again, back to the same comment on the  
13 power prices. I disagree with your analysis on  
14 the REC market. But it is irrelevant to our  
15 financial viability and our financial analysis.  
16 We are basing our pro forma and our returns  
17 expectations on what we are seeing right now  
18 where we can get things done. And -- yup.

19 Q. On that New Hampshire Electric Co-op contract  
20 that you have signed, did the Electric Co-op go  
21 out to bid for a competitive bid, or did they  
22 just -- how did they arrive at whatever number  
23 is in there?

24 A. (Weitzner) I don't know how New Hampshire

1 Electric Co-op arrived at that number. We had  
2 a tough and strenuous negotiating process. But  
3 I don't know what went on, on their side.

4 Q. Did they go out to competitive bid?

5 A. (Weitzner) I don't know. We weren't involved  
6 in a competitive process with them. But what  
7 they've done on the other side, I don't know.

8 Q. Okay. Then I'm all set. Thank you.

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

11 PRESIDING OFFICER SCOTT: Thank you.  
12 New Hampshire Audubon, do you have questions,  
13 and if so, how long?

14 MR. FROLING: No, we don't have any  
15 questions.

16 PRESIDING OFFICER SCOTT: Okay.  
17 Thank you.

18 So we'll go to Counsel for the  
19 Public. And if I understood the request  
20 earlier, you'll do public questions, and then  
21 we'll round back to a non-public session;  
22 correct?

23 MS. MALONEY: I believe so.

24 PRESIDING OFFICER SCOTT: Okay.

1 Please proceed.

2 MS. MALONEY: Thank you.

3 CROSS-EXAMINATION

4 BY MS. MALONEY:

5 Q. I'm just going to go back and forth between  
6 some questions, Mr. Weitzner. And I have some  
7 questions for you, Mr. Shaw. You've been  
8 fairly quiet here today.

9 Mr. Weitzner, when this project was  
10 first -- when the Application was first filed,  
11 RWE was involved, but the structure was  
12 slightly different; correct?

13 A. (Weitzner) The structure between Walden and  
14 Eolian was a little different, but not the  
15 structure between RWE and Walden.

16 Q. But as of March, isn't that when RWE became --

17 A. (Weitzner) No. March is when Walden Green  
18 Energy purchased Eolian. So the relationship  
19 between RWE and Walden hasn't changed.

20 Q. Okay. And are you equal partners in Walden  
21 Energy?

22 A. (Weitzner) With RWE?

23 Q. Correct.

24 A. (Weitzner) They are majority owner. They



1 provide the majority equity. And the board is  
2 split 50/50 between Walden Green Energy and  
3 RWE.

4 PRESIDING OFFICER SCOTT: Ms.  
5 Maloney, you think maybe you can move the mic a  
6 little bit closer?

7 MS. MALONEY: I will.

8 BY MS. MALONEY:

9 Q. You've indicated that RWE is going to provide  
10 the equity. And right now, you're saying it's  
11 \$11 million, but it could be more.

12 A. (Weitzner) It could be more, could be less.

13 Q. Okay. With respect to RWE -- now Mr. Shaw.  
14 You're the global head of Principal Investments  
15 for RWE Supply and Trading?

16 A. (Shaw) That's correct.

17 Q. And you also are the CEO of RWE Trading  
18 Americas; correct?

19 A. (Shaw) That's also correct.

20 Q. And all of these are wholly-owned subsidiaries  
21 of RWE?

22 A. (Shaw) Yes.

23 Q. And thus far, I don't think we have a whole lot  
24 of information about RWE. You've indicated

1           that it has a market capitalization of  
2           \$12.9 billion, assets of \$104 billion. I don't  
3           know if that's dollars or -- and operating  
4           revenues of \$63.3 billion. And that's -- those  
5           are really, really big numbers. But what I  
6           really don't -- you haven't provided anything  
7           more about, for example, your debt or your  
8           obligations or anything else that might be  
9           going on with the company presently.

10        A.     (Shaw) Right. And I'm probably not the right  
11           person to answer those in detail. RWE is a  
12           large public company, so all of our financial  
13           statements and financial information is  
14           provided in the public domain for anybody to  
15           pull down. But I can give you, you know, a  
16           sense for what it is.

17        Q.     Well, the public -- you can certainly answer  
18           some of these questions. Trust me, I'm not  
19           going to get into the nitty gritty. But, you  
20           know, I became aware that as of 2011, I guess,  
21           Germany, as a result of Fukushima, issued --  
22           the government of Germany issued orders to shut  
23           down all nuclear plants by 2022. And that has  
24           caused a great deal of problems for RWE. And

1           then, since then, it's been sort of a slide,  
2           and the company has lost about 70 percent of  
3           its value. And actually, there are discussions  
4           ongoing about bankruptcy. At least that's  
5           what's going on in the public sector. Are you  
6           familiar with that?

7    A.    (Shaw) I think there's probably speculation  
8           about almost every public company. But the  
9           fact is that RWE still remains a triple --

10                           (Court Reporter interrupts.)

11   A.    (Shaw) Remains an investment-grade credit-rated  
12           entity.

13   Q.    Well --

14   A.    (Shaw) There's certainly no doubt that there  
15           have been challenges in the continental  
16           European energy markets, you know, both from  
17           the shutdown of nuclear and the rapid build of  
18           renewables. And we participate in that market  
19           and therefore are affected by it.

20   Q.    Well, if you don't mind, I'd like to discuss  
21           that a little bit with you.

22                           I've got a number of exhibits, starting  
23           with No. CP2 through CP7 for identification  
24           that I would like to circulate.

1                   PRESIDING OFFICER SCOTT: And these  
2 are not on the list; is that correct?

3                   MS. MALONEY: They are not.

4                   MR. IACOPINO: You should provide  
5 them to Barry first.

6                   MS. MALONEY: I've got them for  
7 everybody.

8                   PRESIDING OFFICER SCOTT: Why don't  
9 we go off the record while we're sorting this  
10 out.

11                   (The documents were herewith marked as  
12 Exhibits CFP 2 through 7 for  
13 identification.)

14                   [Ms. Maloney distributing documents.]

15                   PRESIDING OFFICER SCOTT: We're back  
16 on the record.

17 Q. Just directing your attention to Counsel for  
18 the Public Exhibit 3 for identification, this  
19 was an article that appeared in The Economist  
20 on July [sic] 7th of 2014. That discusses  
21 essentially the beginning of the slide for RWE.  
22 First page, if you look at the second sentence,  
23 "Having overinvested in gas- and coal-fired  
24 plants before the financial crisis, the two

1 largest" -- E.ON? I'm not sure how that's  
2 pronounced.

3 A. (Shaw) You can pronounce it "eon."

4 Q. "E.ON and RWE, ended up with excess capacity  
5 and the ensuing downturn, just as lavish  
6 subsidies to wind- and solar-power producers  
7 were bringing a host new competitors to  
8 market."

9 So, at that time, is it fair to say that  
10 RWE was primarily invested in the coal energy  
11 production and nuclear?

12 A. (Shaw) At that time, about the time of the  
13 financial downturn, I think that would be an  
14 accurate statement.

15 Q. Okay. And later on it indicates that the  
16 German government decided that all nuclear  
17 plants in the country must close by 2022,  
18 bringing forward the huge cost of  
19 decommissioning them. And that would be placed  
20 on RWE's shoulders; correct?

21 A. Well, that's actually the subject of a very  
22 detailed negotiation between the German  
23 government and RWE at this point. But  
24 certainly part of it would be on our, RWE's

1           shoulders.

2       Q.    And it further indicates that the shares in the  
3           two power giants have fallen half in the past  
4           five years; so, basically, since the  
5           announcement.  And further on, on Page 2 of the  
6           article, it indicates you also hope the courts  
7           will come to your aid.

8                        So, currently, do you have lawsuits  
9           pending against the government of Germany?

10       A.   (Shaw) I don't know, actually.

11       Q.    If you'll refer to Page 2, the last paragraph  
12           there, it indicates that they have come late to  
13           the renewable energy business, and going big on  
14           wind and solar just when the government is  
15           trying to cut its subsidiaries may not be a  
16           wise move.  Understanding -- and I think that  
17           reference is to RWE and E.ON.  Understanding  
18           obviously that's Germany and not the United  
19           States -- we still have Production Tax Credit  
20           and Investment Tax Credit.  But that was --  
21           that is sort of a perfect storm that was going  
22           on in Germany at the time in 2014; correct?

23       A.   (Shaw).  Yes, it's difficult to argue that the  
24           business conditions for RWE and E.ON in Germany

1           have been ideal.

2       Q.     Have been what?

3       A.     (Shaw) Far less than ideal.  Difficult to argue  
4           with the notion that --

5                       (Court Reporter interrupts.)

6       A.     (Shaw) I was going to say that it has been a  
7           difficult market time for E.ON and RWE, which  
8           is what this article is telling you.

9       Q.     Right, in 2014.  And if you reference CP3 for  
10          identification, this is an article from Reuters  
11          that appears on April 23rd, 2015.  And I'll  
12          just touch upon it a little bit, because it  
13          looks like it's just continuing reporting on  
14          this slide.  If you reference the first  
15          paragraph, it talks about Germany's largest  
16          power producer, RWE --

17                       (Court Reporter interrupts.)

18                       MS. MALONEY:  I'm so sorry.

19                       MR. RICHARDSON:  We're going really  
20          fast, and I don't even know if the witness has  
21          ever seen this.  And I'm trying to follow, and  
22          it's challenging.  I imagine for the witness as  
23          well --

24                       MS. MALONEY:  I think if the witness

1 is having a problem, he can tell me.

2 PRESIDING OFFICER SCOTT: True. But  
3 for the transcriptionist, if you could slow  
4 down --

5 MS. MALONEY: I will.

6 MR. RICHARDSON: Just I'm having a  
7 problem as well.

8 MS. MALONEY: I'll slow down.

9 PRESIDING OFFICER SCOTT: Thank you.

10 BY MS. MALONEY:

11 Q. If you reference the first paragraph in that  
12 article on the second page, it says,  
13 April 23rd, "Germany's largest power producer,  
14 RWE, will explore a split of its businesses if  
15 the sector's crisis intensifies." And your  
16 chief executive officer, Peter Terium, was  
17 keeping the option of a drastic overhaul  
18 similar to E.ON. But we don't know what that  
19 was about, about future -- I'm sure you can  
20 explain that, or not.

21 A. (Shaw) Is that a question?

22 Q. Yes.

23 A. (Shaw) What's the question?

24 Q. If RWE had explored a split of its businesses.



1 A. (Shaw) Oh, yeah, absolutely. And that's all  
2 well documented in the press as well. We have,  
3 as a company, without going into too much  
4 excruciating detail, but we've separated out  
5 our grid businesses and the biggest part of our  
6 renewables businesses, the sort of core of  
7 those businesses, into a company or a division  
8 of the company which is separate from the  
9 original or the conventional generation part of  
10 the business.

11 Q. Right. We can talk about that a little bit  
12 later. But in here, midway through the page,  
13 Mr. Terium indicates, "The crisis is far from  
14 over. Times will get harder." And you were  
15 familiar with that as this was happening;  
16 correct?

17 A. (Shaw) Yes, I'm familiar with the general  
18 market conditions that we face in Europe.

19 Q. And then it references that the crisis -- down  
20 in the third to the bottom of the page, "The  
21 crisis has also triggered fears over whether  
22 Germany's utilities will be able to survive the  
23 fundamental shift that is taking place in the  
24 power sector, but Terium said there was no risk

1 of an insolvency in the short term."

2 A. (Shaw) That's what it says.

3 Q. Do you know what he meant by "short term"?

4 A. (Shaw) I don't know exactly what he was  
5 referring to when he was doing this particular  
6 interview, no.

7 Q. Okay. And then I'd like to direct your  
8 attention to CP4 for identification. This is  
9 an article in The Wall Street Journal that  
10 appeared on August 11th, 2015. And this  
11 indicated that RWE AG plans to cut its profit  
12 outlook for 2015 when it reports its first-half  
13 earnings on Thursday. Again, you're familiar  
14 with the ongoing decline of RWE at that time?

15 A. (Shaw) Yeah, this article is from last year.  
16 But, yes, I'm aware.

17 Q. And then CP5 for identification, again, another  
18 article from The Wall Street Journal. This is  
19 from February 17th of 2016. In this particular  
20 article, it indicated that your shares  
21 plummeted, essentially, I believe, as a result  
22 of RWE announcing that it was not giving any  
23 dividend at all to shareholders, I guess of  
24 common stock, in 2015; is that correct?

1 A. (Shaw) I believe that's what this article is  
2 referring to, yes.

3 Q. And if you turn the page, Page 2 of 4, it  
4 indicated that shares in the Germany power  
5 company fell more than 13 percent after Chief  
6 Executive Peter Terium said RWE would suspend  
7 the payment of dividends on its ordinary shares  
8 and drastically reduce the payoff for holders  
9 of its preferred stock, raising worries about  
10 the state of the group's finances. RWE had a  
11 net debt of around 25.1 billion -- and I think  
12 that's euros -- 28.4 billion at the end of last  
13 year. So, the end of 2015.

14 A. (Shaw) Correct.

15 Q. So you're familiar with that as well?

16 A. (Shaw) I see what's on the page, yes.

17 Q. Well, I mean --

18 A. (Shaw) I mean, I think that's generally the  
19 number of net debt that's thrown around within  
20 the financial community.

21 Q. I think, if you look a couple paragraphs down,  
22 it talks -- it states -- "It also illustrates  
23 how a perfect storm of higher taxes, tougher  
24 regulations and low electricity prices in a

1 market swamped by new supplies of subsidized  
2 renewable energy is still rumbling over the  
3 utilities sector in Germany" -- "in Europe,  
4 most intensely in Germany... a situation made  
5 worse by falling oil and gas prices."

6 Again, that is the situation in Germany.  
7 We have obviously lower gas and oil prices here  
8 in the United States. I don't think we'd call  
9 it a "perfect storm." But that is what was  
10 going on. That was what was impacting RWE at  
11 that time.

12 A. (Shaw) Hmm-hmm.

13 Q. That and Germany's regulations and the  
14 government orders that they shut down the  
15 nuclear facilities by 2022.

16 A. (Shaw) Correct.

17 Q. Further down, if you look at the bottom of that  
18 Page 2 of 4, it talks about Moody's placed its  
19 ratings of RWE and E.ON on review for  
20 downgrade. "The ratings agency cited the  
21 companies' significant exposure to declining  
22 commodity and power prices and limited  
23 financial flexibility."

24 So when you were talking about the

1 ratings, you were talking about your ratings --  
2 Moody's ratings, is that what you were talking  
3 about just now?

4 A. (Shaw) Moody's, I believe, is --

5 (Court Reporter interrupts.)

6 A. (Shaw) Yes, I was referring to the ratings of  
7 the company.

8 Q. And here it indicates, as of February, that  
9 they're looking to downgrade. Are you aware if  
10 that occurred?

11 A. (Shaw) Yes, I think the quotes I just gave you  
12 are subsequent to the downgrade. But I'm not a  
13 hundred percent sure. I can check it if I have  
14 to.

15 Q. Okay. And if you look at Page 3 of 4, the  
16 second paragraph talks about RWE adjusting its  
17 dividend policy at the end of 2014 to a payout  
18 based on multiple measures rather than just  
19 after-tax profit, made its latest move after  
20 reporting a net loss of over 200 million euros  
21 in the 12 months to December 31st.

22 Further down on the page, it talks about  
23 warning that the outlook for earnings is worse  
24 this year -- I guess that's 2015 -- which is, I

1 guess, why RWE proposed the dividend  
2 suspension.

3 Are you familiar -- or are you involved in  
4 any of those decisions?

5 A. (Shaw) At the corporate balance sheet level,  
6 no.

7 Q. Okay. But you were certainly aware that their  
8 operating earnings fell in 2015 quite  
9 dramatically --

10 A. (Shaw) Yes.

11 Q. -- from 2014.

12 A. (Shaw) Yes.

13 Q. In fact, you sort of went from a net to a  
14 significant loss of money in 2015; correct?

15 A. (Shaw) Yes.

16 Q. If you take a look at CP6 for identification,  
17 this again is an article from Bloomberg. This  
18 is dated May 3rd, 2016. Again, I believe this  
19 just references that you -- not you -- RWE,  
20 Germany's biggest electricity producer,  
21 suspending annual payoffs to shareholders.  
22 There are a number of charts indicating -- the  
23 first chart, I know it's hard to read 'cause  
24 it's small, but I couldn't get it to print out

1 larger. The lower prices -- the next chart --  
2 and I don't think that's comparative to here.  
3 It talks about wind pushing out coal. But  
4 that's what was going on in Germany.

5 The third chart, Page 2, talks about RWE's  
6 debt risk versus Iberdrola. That's the Spanish  
7 wind company. And then the last chart talks  
8 about the gloomy outlook. Again, on Page 2 of  
9 4. There is some discussion about, the second  
10 paragraph -- well, actually, the first  
11 paragraph, under that first chart, it talks  
12 about the cost of insurance against the default  
13 at RWE was a near record in March. Do you know  
14 what that's in reference to?

15 A. (Shaw) I believe that's the price of the credit  
16 default swap, yes.

17 Q. And -- right. Next paragraph talks about  
18 Iberdrola's credit default swap is 41 percent  
19 cheaper.

20 The second paragraph talks about Germany's  
21 government negotiating with utilities to close  
22 coal plants, which along with nuclear shutdowns  
23 will cost 25,000 jobs.

24 Would that be just RWE? Do you know if

1           you had any discussion at your level about loss  
2           of jobs as a result of that downturn?

3    A.    (Shaw) Oh, there's discussions in every  
4           European utility about the potential loss of  
5           jobs from the massive challenges that are  
6           facing it with the rise of renewables.  So,  
7           yes.

8    Q.    Further on in that paragraph, it indicates that  
9           shutting coal-fired stations immediately after  
10          forcing nuclear shutdowns will incur large  
11          costs and might destroy a company like RWE,  
12          Germany's biggest power producer, and that RWE  
13          declined to comment on that.

14   A.    (Shaw) Yeah.  I mean, I don't think we would  
15          comment on that.  I think you look at the  
16          financial markets for the prices of our debt,  
17          which are, in corporate bond terms, very, very  
18          low.  All of these articles need to be taken in  
19          the proper context, I think.

20   Q.    Okay.  But you do have an opportunity to  
21          comment somewhere.

22   A.    (Shaw) Okay.  When you've gone through all your  
23          articles.  I didn't want to interrupt your  
24          flow.



1 Q. Okay. I just want to direct your attention  
2 again to CP7 for identification. This is from  
3 Global Edition of Handelsblatt, which  
4 identifies itself as "Germany's leading  
5 business and finance daily."

6 A. (Shaw) You can think of it as the The Wall  
7 Street Journal of Germany.

8 Q. That's what I sort of thought. At least I  
9 could read this. It wasn't in German. There  
10 were several I couldn't read 'cause they were  
11 in German.

12 This is dated September 9th of this year.  
13 And it references that RWE, at the top of the  
14 page on the first page, is expected to start  
15 posting losses in two to three years' time from  
16 its conventional energy business due to low  
17 energy prices.

18 This references that there were a number  
19 of cost-cutting measures and also, I believe,  
20 references -- if you turn to Page 2, I think  
21 it's discussing -- and take your time to read  
22 it -- you were talking about an offshoot, a  
23 company that RWE was -- had formed to hold the  
24 renewables.

1 A. (Shaw) Well, to hold a series of businesses.  
2 That includes the majority of the renewables  
3 business, yes.

4 Q. Is that company called Innogy?

5 A. (Shaw) Innogy. Correct.

6 Q. Is that the one referenced?

7 And here on Page 2 there's some reference  
8 to that company was formed to sort of "sell off  
9 the silverware" of the company. I think what  
10 they're -- the implication is that the rest of  
11 the company's going south and they're  
12 trying to --

13 A. I think --

14 Q. -- protect this one sector.

15 (Court Reporter interrupts.)

16 A. (Shaw) So I think that may be one of the points  
17 in the article. But you'll note that Peter  
18 Terium rejected the notion that we're "selling  
19 the silverware." I can walk you through,  
20 actually, what's going on here.

21 Q. Can I just -- one more question about Innogy.

22 Innogy, though, is sort of -- it actually  
23 goes for an IPO next month.

24 A. (Shaw) I believe that is the intention. But I

1 don't know for sure.

2 Q. And there's actually quite a bit hanging on  
3 that, isn't there?

4 A. (Shaw) I don't know what that means.

5 Q. For the financial viability of RWE.

6 A. (Shaw) I think the plan that the company has to  
7 manage this transition to the new energy world  
8 is -- the pillar of it is in energy, yes.

9 Q. And I guess the point of bringing up all of  
10 this, Mr. Shaw, is that, looking at what was  
11 presented here, we didn't really get a full  
12 snapshot of what RWE is. Granted, it is a  
13 large utility. But my concern as Counsel for  
14 the Public is that, you know, as the old saying  
15 goes, "The bigger they are, the bigger they  
16 fall."

17 So, my question is: You have money that  
18 I'm assuming is set aside for equity. But you  
19 also have contracts to draft, and you have  
20 banks that have to do due diligence and lend  
21 you money. And I'm assuming your contracts --  
22 isn't that correct?

23 A. (Shaw) Well, we have banks that need to lend  
24 the project money.

1 A. (Weitzner) Let me interrupt and address that.  
2 I think Eric can definitely talk about the RWE  
3 side. But in terms of how the RWE name is  
4 received in the financial institution --  
5 financial markets, that's something we're -- in  
6 some ways, I'm better qualified to discuss.

7 A. (Shaw) Probably true.

8 A. (Weitzner) RWE has BBB- credit rating, which is  
9 investment grade. It has a substantial balance  
10 sheet. And what we are finding when we're  
11 talking to banks and entering into other  
12 contracts is that the RWE name is -- opens a  
13 lot of doors, and people are quite anxious and  
14 interested in lending money, you know, backed  
15 by the RWE name. That's what we're finding  
16 when we're talking to large and highly  
17 creditworthy institutions like Citibank BBB+,  
18 and State Street that has an A rating, et  
19 cetera.

20 A. (Shaw) Perhaps it's helpful to put some of  
21 these numbers in context when we're talking  
22 about \$11 million of equity for this project.

23 RWE is undoubtedly in the midst of an  
24 energy transition from the old world to the new

1 world. It has been aggressively investing in  
2 wind power around the world in the last few  
3 years, and it continues that push. We operate  
4 now over 3,500 megawatts. That's  
5 3,500 megawatts of wind power in various  
6 jurisdictions, both onshore and offshore. We  
7 have capital close to 6 billion euros in  
8 renewables worldwide. The equity check here,  
9 whether it's \$11 million or whether it grows  
10 from there, as was referred to earlier, is  
11 largely immaterial to that size of a company.  
12 RWE is 113 years old. It's been through any  
13 number of transitions, political and economic.  
14 I don't think there's any expectation,  
15 realistic expectation in the financial  
16 community, either from the equity or the debt  
17 side, that the company is in any peril of going  
18 bankrupt. I think you see that reflected in  
19 the absolute levels of the debt costs that we  
20 have been borrowing. And you also see it in  
21 our stock price, which has been rallying  
22 strongly over the last week on the expectations  
23 of the Innogy flotation that you refer to. We  
24 expect to raise somewhere between 2 and

1           4 billion euros next month when we float  
2           Innogy. And a good chunk of that is going to  
3           go to investment in renewables.

4    Q.    But isn't it true that RWE -- I understand the  
5           11 million is not -- might be a drop in the  
6           bucket to you. I'd like to win a lottery  
7           ticket for 11 million.

8                    But isn't it true that RWE has about  
9           45 billion euros in long-term liabilities and  
10          only eight times the equity? I mean, isn't  
11          that accurate?

12   A.    (Shaw) I think the relevant number is net debt,  
13          which is 25 billion, as you pointed out  
14          earlier. But all that information, not taken  
15          piecemeal, but in its totality, is wrapped up  
16          in the credit ratings that we're awarded by the  
17          credit rating agencies and the rates at which  
18          we're able to borrow debt at the corporate  
19          level. But again, these are discussions about  
20          sizes of numbers which far dwarf our  
21          obligations to this project. So the financial  
22          viability of this project needs to be  
23          considered in the context of how big an  
24          obligation it is to RWE.

1 Q. And I appreciate that. What I'm concerned  
2 about is, you know, when I see headlines -- and  
3 I read a translation of a headline in a  
4 newspaper called Frankfurter Allgemeine  
5 Zeitung, and it was unfortunately in German.  
6 But I did read enough of the English  
7 translation of the headline "The Last Days of  
8 RWE." That causes me some concern that -- and  
9 it actually goes into the detail about the  
10 financial problems of RWE. And I am concerned  
11 about a bankruptcy by RWE. And so I have to  
12 ask those questions and what implication that  
13 would have, seeing as the companies that you're  
14 the CEO and chair of, global head of  
15 fully-owned subsidiaries, and that you now have  
16 ownership in part of Walden and Antrim Wind.

17 A. (Shaw) Right. And --

18 Q. And I don't know bankruptcy law in Germany. I  
19 don't know anybody who does --

20 A. (Weitzner) So let me --

21 (Court Reporter interrupts.)

22 MR. RICHARDSON: Can I just object to  
23 the question, because the witnesses aren't  
24 being given the opportunity to respond to the

1 statements. I just heard about an article that  
2 was allegedly -- and I'm not discounting that  
3 you did this. But, I mean, without being able  
4 to see the article or the translation, you're  
5 having someone say in the courtroom that it  
6 says this when the witness hasn't seen it. I  
7 mean, I'm looking at trying to assess what  
8 weight to give this. And I think the witness  
9 needs to be given a chance to respond to the  
10 evidence that's being presented, and I'm not  
11 seeing that happen right now. Right now, all I  
12 hear is that there are articles, and the only  
13 thing the witness has really said is that the  
14 words on the page are what the article says.  
15 But we're not hearing whether or not the  
16 conclusions in those articles are accurate. I  
17 think that is -- I mean, it makes for exciting  
18 transcripts, but we want to get to the truth of  
19 it.

20 MS. MALONEY: I do. We're talking  
21 about one article. I showed the witnesses all  
22 the other articles. And I don't --

23 BY MS. MALONEY:

24 Q. I imagine with a headline of that nature, you



1 probably heard about it. Are you saying you  
2 didn't hear about that from the FAZ?

3 A. (Shaw) I'm not sure if I heard about that  
4 specific article. I certainly haven't read the  
5 translation of it, and I don't read German.  
6 But I will say, you know, it's not surprising  
7 to me that there's sensationalist headlines  
8 with these titles out there, given the scale of  
9 the change.

10 What I'm saying is, rather than picking a  
11 certain number of articles from the press, if  
12 you're truly trying to assess the financial  
13 future of RWE, you need to look to the  
14 financial markets and the ratings agencies and  
15 look to what they're telling you --

16 Q. Well --

17 A. (Shaw) I'm saying I personally believe there's  
18 not any material risk of any bankruptcy of any  
19 RWE entity for the foreseeable future. And  
20 we've been through this in detail internally.  
21 But I'm not objective on that subject --

22 Q. I appreciate that. But you don't dispute that  
23 the company's lost 70 percent of its value  
24 since 2011.

1 A. (Shaw) I think that -- I'm not sure that's the  
2 right number. But it has lost quite a lot of  
3 equity value. There's no doubt.

4 Q. And you don't doubt there's repercussions in  
5 other countries, like England, with EnPower(?),  
6 where they've been laying off people and --

7 A. (Shaw) Correct. Yeah. But there is a  
8 transition going on, and we're re-deploying our  
9 investable capital. We're taking it away from  
10 the conventional generation world and we're  
11 putting it to the renewable energy world, and  
12 this project is part of that wave of  
13 investment.

14 Q. And this project is a small project --

15 A. (Shaw) Very. You know, as you said --

16 PRESIDING OFFICER SCOTT: One at a  
17 time.

18 A. (Shaw) But it's caught up in this wave of  
19 investment that we're redirecting toward  
20 renewable energy.

21 Q. And that's what I'm concerned about, 'cause  
22 I've also looked at your financial statements  
23 and the losses from 2014 to 2015. And my  
24 concern I think is a very real one, that

1 bankruptcy could be at risk. So my question  
2 is --

3 A. (Shaw) That's fine. I would also be concerned  
4 about that if I were doing the same assessment  
5 you were. But I think all you can do is look  
6 to what the experts say about what the  
7 financial condition of this company is, because  
8 it's large, very complex --

9 Q. But you didn't --

10 (Court Reporter interrupts.)

11 Q. I appreciate that. But you didn't provide very  
12 much information about your company up front,  
13 and you filed supplemental testimony twice --

14 A. (Shaw) Right.

15 Q. -- and you didn't provide additional  
16 information about the company. And I think  
17 that we have a right to know what the debt  
18 situation is and what the future obligations  
19 are of the company as well --

20 A. (Shaw) Absolutely, and that's all publicly  
21 available --

22 Q. -- because, for example, what happens if  
23 RWE goes bankrupt --

24 A. Yeah --

1 (Court Reporter interrupts.)

2 PRESIDING OFFICER SCOTT: So, as to  
3 the witnesses, I appreciate you wanting to  
4 answer, and that's great. I'll say two things:  
5 Let Attorney Maloney finish and then, space,  
6 you can start so we get it on the record. And  
7 I got to assume, also, at redirect, your  
8 attorney will give you an opportunity to say  
9 what you needed to say also, okay. Thank you.

10 Q. That was my question.

11 A. (Weitzner) So, I think it's important to  
12 understand -- you were saying you don't know  
13 what bankruptcy laws in Germany are like and  
14 that that has somehow an influence on this.  
15 And I want to underline the fact that it does  
16 not have, or barely -- it's very difficult to  
17 draw a line between bankruptcy laws and the  
18 safe operation -- the safe construction,  
19 operation and decommissioning of the Antrim  
20 Wind Project. Ultimately, RWE's responsibility  
21 is going to be to provide the equity, the \$11  
22 million, as soon as we get a permit to start  
23 construction. And after that, what you have is  
24 an independent project entity, as I've said in

1 the past, that is based on extremely  
2 conservative assumptions about wind production  
3 and extremely conservative levels of debt. So,  
4 even if RWE were to go bankrupt -- and I  
5 couldn't agree with Mr. Shaw more, that it's  
6 almost an unimaginable situation, in spite of  
7 the sensationalist stuff in the press. Even if  
8 it were to go bankrupt, it doesn't matter. The  
9 Antrim Wind Energy, LLC is still a viable and  
10 profitable entity whether RWE is there or not.

11 Q. So, wouldn't it be one of RWE's assets, though?

12 A. (Weitzner) Yes. And as an asset it could get  
13 sold, sure. But that does not change the fact  
14 that it has an obligation to service its debt  
15 and its operating costs, which are sized in  
16 such a fashion that 99 years out of 100 they  
17 will be able to service that. And it doesn't  
18 get out of its obligation to issue a  
19 decommissioning irrevocable letter of credit or  
20 bond to ensure that at the end of its useful  
21 life, or if there are any problems, there is  
22 always the money to decommission the Project.  
23 An RWE bankruptcy doesn't change and can't  
24 change any of those requirements, precisely an

1           irrevocable letter of credit or decommissioning  
2           bond and the sizing of the debt.

3       Q.    Well, if it gets sold, I mean, is it going to  
4           get sold for 100 cents on the dollar or. --

5       A.    (Weitzner) Again, that doesn't matter. It  
6           doesn't affect the financial viability of the  
7           entity. It doesn't affect its ability to  
8           continue paying its CAPEX, and it certainly  
9           doesn't affect its requirements to have the  
10          decommissioning money available for a safe  
11          decommission.

12       Q.    So your testimony is that it has no effect on  
13           your ability to get financing through the  
14           banks.

15       A.    (Weitzner) Well, my testimony right now is,  
16           because RWE is a BBB- credit investment grade,  
17           that we're having absolutely no problem  
18           discussing and having financial conversations  
19           with the banks. And they're extremely happy to  
20           be lending money to the RWE name. Very happy.  
21           And that's also repeating what Mr. Shaw said,  
22           that the borrowing cost for RWE are still  
23           extremely low, and that's really the indication  
24           of the true market's assessment of its

1 financial health.

2 Q. But if RWE were to go bankrupt next week, the  
3 week after, energy doesn't produce the way it's  
4 expected to produce, I mean, what then happens  
5 to your ratings?

6 A. (Weitzner) So, we don't have a credit rating.  
7 If RWE goes bankrupt tomorrow, then we don't  
8 have the \$11 million and the Project doesn't  
9 get built. But once the \$11 million is there  
10 and deployed, then, by nature of the very  
11 conservative construction of project financing  
12 in this country, what you have is a very  
13 viable, safe, conservative project entity that  
14 can continue operating safely for its  
15 operational life, 25, 30 years, whatever that  
16 is.

17 Q. And --

18 A. (Shaw) Let's be clear. We're talking about a  
19 company that maintains an investment-grade  
20 credit rating, okay. We're talking about a  
21 company that borrows money today at, I believe,  
22 less than 150 basis points over LIBOR, which is  
23 close to zero. So we borrow money for less  
24 than 2 percent, okay. That's what the

1 financial markets are telling us about our  
2 financial health and our financial outlook. We  
3 are having hypotheticals about infinitesimally  
4 small probabilities here, in my opinion.

5 Q. So what you're saying, for example, the Town of  
6 Antrim should have no worries about its PILOT.

7 A. (Weitzner) About its what? Sorry.

8 Q. Its PILOT.

9 A. (Shaw) Who was that question for?

10 A. (Weitzner) For me. The PILOT is one of the  
11 operating expenses that a bank factors into its  
12 calculation of how much cash flow this project  
13 will generate and therefore how much debt it  
14 can service.

15 Q. And Mr. Shaw, you're assuring this committee  
16 that there is virtually no chance for RWE to go  
17 bankrupt prior to the completion of these  
18 proceedings.

19 A. (Shaw) What I'm telling you is that the  
20 financial markets are telling you that. To the  
21 best of my knowledge, that's my belief as well,  
22 personal belief. If there's information I  
23 don't have or I don't know, then I can't  
24 control for that. But absolutely, in my view,



1           you're talking about an infinitesimally small  
2           probability.

3       Q.    Well, I agree.  But the financial markets have  
4           shown the company's lost 70 percent of its net  
5           worth, that you didn't issue shareholders  
6           dividends, that stock prices have dropped  
7           tremendously --

8       A.    (Shaw) Yeah, we stipulated -- I mean, we've  
9           agreed that there's a massive energy transition  
10          going on in Europe.  It's not just Germany and  
11          it's not just RWE.  But there's a massive  
12          transformation happening.  We're participating  
13          in that transformation, and the company is  
14          going to look different when it comes out the  
15          other side of that.  That's the reason we split  
16          the company into two.  That's the reason we're  
17          going forward with the Innogy flotation, which,  
18          by all accounts in the press this week, if you  
19          want to keep talking about the press, the  
20          flotation of Innogy will be wildly successful  
21          relative to expectations.  And, yeah, in my  
22          opinion, there's no probability that RWE goes  
23          bankrupt in any near term.

24       Q.    You indicated that if it were to go bankrupt,

1           there would be no \$11 million, there would be  
2           no project; is that correct? And I assume  
3           there would be no financing either.

4    A.    (Weitzner) I mean, if you want me to engage in  
5           this unbelievably wild hypothetical, we could  
6           find -- we would not have -- I can say we would  
7           not have a problem finding another person  
8           willing to put in the equity of a similar or  
9           higher credit rating.

10   Q.    I might ask you a few questions, Mr. Weitzner,  
11           now, just a couple things.

12                   With respect to your supplemental  
13           testimony where you are primarily critiquing  
14           Ms. Linowes, she did some research, and there's  
15           a chart in her testimony indicating, I guess,  
16           the net capacity factor -- or the actual  
17           production at, I think Granite Reliable and the  
18           other wind projects, was about 31 percent. Do  
19           you have any reason to dispute that? Because  
20           you didn't dispute it in your supplemental  
21           testimony.

22   A.    (Weitzner) I have no knowledge of what Granite  
23           Reliable's capacity factor is. But I don't see  
24           how that has any relevance to Antrim Wind

1 Energy's capacity factor that was arrived at  
2 after four years of wind collection, LIDAR  
3 campaign, and was calculated by a  
4 meteorological group that has done these  
5 calculations on many, many gigawatts, and I  
6 would say the industry has accepted as the  
7 highest quality.

8 Q. But are you aware that on those other projects  
9 they had come to this Committee with a higher  
10 net capacity factor?

11 A. (Weitzner) I'm not aware, no.

12 Q. Is it possible, though, I mean, that Antrim  
13 Wind could have a lower net capacity factor  
14 than 37 percent?

15 A. (Weitzner) It's certainly possible. I wouldn't  
16 expect that to happen. But two key things to  
17 keep in mind: For there to be any financial  
18 stress in the project, it would need to produce  
19 below 26 percent, because the banks  
20 calculate -- they look at what the expected  
21 locked-in revenues are, what the operating  
22 costs are, what the debt is, and they say,  
23 well, you may say -- it may be 37 percent, but  
24 the limiting factor on how much money they'll

1           lend is that they assume it's going to produce  
2           26 percent. So it's already an extremely  
3           conservative approach.

4                       MS. MALONEY: Okay. I don't think I  
5           have anything else.

6                       PRESIDING OFFICER SCOTT: Thank you.  
7           So, before we go to non-public session, are  
8           there any questions from the Subcommittee for  
9           the panel? Commissioner Rose.

10                      CMSR. ROSE: Just one quick question.  
11           The P99 that was referenced, is that the same  
12           as the 26 percent that the bank calculates off  
13           of their analysis?

14                      WITNESS WEITZNER: Yes.

15                      CMSR. ROSE: Thank you.

16                      PRESIDING OFFICER SCOTT: Anybody  
17           else? Okay.

18   QUESTIONS BY MS. WEATHERSBY:

19   Q.   Concerning the bank loans, are the banks  
20           lending to Antrim Wind Energy or to Walden or  
21           to RWE?

22   A.   (Weitzner) They're lending to Antrim Wind  
23           Energy. So those loans are collateralized by  
24           the assets of Antrim Wind Energy, which

1 includes the equipment, the PPAs, the lease  
2 contracts, et cetera.

3 Q. Are there any guaranties by any of the Walden  
4 entities to those -- to that debt financing?

5 A. (Weitzner) No. These are -- project financing  
6 in the U.S., typical is what are called  
7 "non-recourse loans." So the loans are secured  
8 against the assets of Antrim Wind Energy, and  
9 that's it.

10 Q. Thank you.

11 And concerning RWE, RWE is giving the \$11  
12 million to Walden, who is then giving it to  
13 RWE? How is that flowing, and what is RWE  
14 getting in return?

15 A. (Weitzner) It is -- that is how it's flowing.  
16 We have a regular procedure in process for  
17 requisitioning funds from RWE. They get paid  
18 to Walden, and then Walden disburses those to  
19 our project entities. So it will flow like  
20 that: RWE to Walden to Antrim. And Antrim --  
21 excuse me -- Walden Green Energy is 100 percent  
22 owner of Antrim Wind Energy. RWE is majority  
23 owner in Walden. So they will be getting the  
24 majority of the profits from the Antrim Wind

1 Energy flowing through Walden.

2 MS. WEATHERSBY: Thank you.

3 PRESIDING OFFICER SCOTT: Mr.  
4 Clifford. I think I need to give you my  
5 microphone.

6 MR. CLIFFORD: I just have one quick  
7 question, or actually two.

8 QUESTIONS BY MR. CLIFFORD:

9 Q. One was you talked about the limiting factor  
10 for essentially the bank financing, the  
11 production of roughly 26 percent. So, using  
12 that as a floor, have you done a break-even  
13 analysis, and would you care to share that  
14 percentage? In other words, for the Project  
15 itself, what percentage of capacity do you need  
16 to -- do you consistently need just to cover  
17 your bare bones costs, lending costs, capital  
18 costs, et cetera?

19 A. (Weitzner) That is that 26 percent. The  
20 26 percent is a 1.0 debt service coverage  
21 ratio. That means, essentially, whatever the  
22 facility produces, first it goes to pay the  
23 operating costs to keep the utility producing,  
24 then it goes to service to debt, and then -- so

1 in that case, there would be no money left  
2 over.

3 Q. And then the second question is --

4 A. (Weitzner) If I could just add one thing. That  
5 includes payments to the PILOT. That is an  
6 obligation. So it's all the operating costs,  
7 including the PILOT.

8 Q. Okay. And then the second question was, you  
9 talked in your testimony earlier about the  
10 MOUs, the letters. And aren't the language in  
11 those consistent with sort of the terms of --

12 (Court Reporter interrupts.)

13 Q. Aren't the terms in those letters similar to  
14 the comfort letter and the IPO circular letter,  
15 where a formal letter isn't issued until the  
16 Project is actually green-lighted and set in  
17 motion?

18 A. (Weitzner) Exactly, yes.

19 PRESIDING OFFICER SCOTT: I have a  
20 couple questions also.

21 QUESTIONS BY PRESIDING OFFICER SCOTT:

22 Q. Mr. Weitzner, going back to your discussion  
23 with Mr. Ward, you were talking about the  
24 Forward Capacity Market in ISO-New England.

1 A. (Weitzner) Yup.

2 Q. I was intrigued, 'cause I follow some of this  
3 sometimes. What kind of assumptions did you  
4 make for the Forward Capacity Market? Were you  
5 projecting like a capacity-constrained market  
6 moving forward, or can you just characterize  
7 directionally?

8 A. (Weitzner) We didn't make any assumptions. We  
9 won a capacity allocation in FCA10. So we have  
10 seven years of capacity allocation. So we  
11 didn't make an assumption about whether it's  
12 constrained or not. Important to note: In our  
13 pro forma that we provided, all we do is -- the  
14 only thing we included in our pro forma is that  
15 seven years of capacity allocation that we know  
16 we will receive. We did not include a capacity  
17 allocation for years 8 through 20. I think  
18 that's a very conservative assumption. We  
19 believe there will be capacity auctions that we  
20 can participate in. I don't have a view on  
21 whether capacity prices are going up or down,  
22 so we just put in zeros for years 8 through 20.

23 Q. And inherent in your conversation, you talk  
24 about being penalized if you can't produce when



1           you're asked to.

2       A.     (Weitzner) Yeah.

3       Q.     So that implies to me that you're obviously  
4           following the new changes that will come in  
5           effect in that time frame.

6       A.     (Weitzner) Yes.

7       Q.     And again, to reiterate, you feel comfortable  
8           that that proposition is still there for you to  
9           take a capacity supply obligation.

10      A.     (Weitzner) Yes.  It's very attractive for wind  
11           projects.  I think the new capacity design is  
12           very attractive, so we've taken advantage of  
13           it, yeah.

14      Q.     Excellent.  Piggybacking on Mr. Clifford's  
15           questions about the letters of intent, are you  
16           aware of any cases where these are withdrawn  
17           unless there's some significant changes to the  
18           conditions of the projects that they're being  
19           issued for?

20      A.     (Weitzner) No, I'm not aware of any.  Yeah, I'm  
21           not aware of any.  I think it's important that,  
22           you know, our -- the reason we went out and got  
23           these letters of intent was twofold and was --  
24           No. 1 was to demonstrate to the Committee that

1 banks take this project seriously. And I think  
2 those letters of intent clearly indicate they  
3 do. And then, equally important to us was to  
4 go to these banks that validate our opinion  
5 that this is a good and financially viable  
6 project. So we've had that confirmed, I would  
7 say, on both ends. I think we can state to the  
8 Committee that this is very viable, and we're  
9 confident ourselves that it's viable.

10 Q. So, process-wise, Mr. Needleman --

11 ADMIN. MONROE: Bob --

12 PRESIDING OFFICER SCOTT: More  
13 questions. I'm sorry. Mr. Boisvert.

14 QUESTIONS BY DR. BOISVERT:

15 Q. Going back to much earlier testimony in regard  
16 to decommissioning, you made the case that  
17 there will be bonding or irrevocable --

18 A. (Weitzner) Letter of credit.

19 Q. Right, letters of credit. I'm familiar with  
20 similar kinds of bonding requirements in the  
21 mining industry years ago. It was a program  
22 from the federal government, called the  
23 "Abandoned Mine Lands Program," where failed  
24 surface mining coal companies left behind

1 environmental damage. They had bonded the  
2 reclamation that those bonding companies had  
3 gone out of business.

4 Is there some assurance that these  
5 irrevocable letters of credit or the bonding  
6 companies will, in fact, be there 30 or 40  
7 years from now? Is there some mechanism that  
8 can provide a level of trust for those  
9 companies?

10 A. (Weitzner) So I think the level of trust in  
11 those companies is really determined by their  
12 credit rating. And I think there is a  
13 requirement in our agreement with the Town that  
14 the credit rating be at least a BBB, which is  
15 one step above investment grade. Right now,  
16 the entities that we're talking to are BBB+ or  
17 better. So I think that the assurance should  
18 come from that, that they're highly  
19 creditworthy entities. And, you know, if those  
20 entities go bankrupt, then I expect, you know,  
21 in order to continue to satisfy our  
22 requirements under the SEC regulations, we  
23 would need to go out and find, for instance a  
24 new -- we would be required to find a new

1           irrevocable letter of credit and make sure that  
2           that was established. We don't see it as we  
3           get a letter once and that's it. We're  
4           required to have that for the life of the  
5           Project so that the Project can fully be  
6           decommissioned.

7    Q.    So if the company's bond rating dips below a  
8           certain amount, Antrim Wind would then look for  
9           a different company?

10   A.    (Weitzner) We would be required to under the  
11           agreement with the Town I believe is what the  
12           -- is what is regulating that credit rating.

13   Q.    My concern is that these credit ratings are  
14           more or less near-term kinds of evaluations  
15           compared against a 30- or 40-year reasonable  
16           expectation for application of this  
17           decommissioning. And I'm just a little -- I  
18           need some better reassurance beyond that it's  
19           just a good credit rating now.

20   A.    (Weitzner) So I think it is a good credit  
21           rating now, and it must maintain that credit  
22           rating. If it doesn't maintain that credit  
23           rating, then we need -- it is our obligation to  
24           replace it with someone -- with an entity that

1           meets the credit requirements of our agreement.  
2           And I don't think that's something that, you  
3           know, happens once every 10 years. If the  
4           credit rating dips below BBB, then we no longer  
5           have a valid financial decommissioning  
6           assurance under the SEC regulations and so  
7           we're in violation and so we need to fix that.

8    Q.    Okay. Thank you.

9                           PRESIDING OFFICER SCOTT: Commissioner  
10           Rose.

11                          CMSR. ROSE: Yes. Thank you.

12    QUESTIONS BY CMSR. ROSE:

13    Q.    You demonstrated significant confidence in the  
14           Project's financial viability once constructed.  
15           And in your conversation that you had with  
16           Mr. Ward, you outlined that there were three  
17           revenue streams that help build that level of  
18           confidence, and you referenced it as the cost  
19           of the electricity, the renewable credits that  
20           you'll be receiving, as well as the capacity  
21           payments that you'll be receiving. And I was  
22           wondering if you could give a percentage or  
23           certainty as to the levels of predictability of  
24           those three streams. You referenced the

1 capacity payments were a very modest component  
2 of that, but I didn't have a real good scale of  
3 context as to what that meant in the overall  
4 revenue of the Project.

5 A. (Weitzner) So the capacity payments are going  
6 to be equal to, very roughly, 8 percent of the  
7 revenues, and the remaining 92 percent is  
8 energy plus RECs. And breaking up that  
9 92 percent, I would say it's roughly 75,  
10 80 percent energy, 20 percent RECs. So the  
11 capacity revenues are, as I said, quite small.

12 CMSR. ROSE: I'm sorry. Thank you.

13 PRESIDING OFFICER SCOTT: Attorney  
14 Iacopino.

15 QUESTIONS BY ATTORNEY IACOPINO:

16 Q. Thank you. We've heard a lot about RWE here  
17 today. Can one of you just take us from Antrim  
18 Wind up to the parent corporation and what the  
19 layers of the corporate structure are?

20 A. (Weitzner) Yes. I think we have that in our  
21 application. But just walking through it, so  
22 if we start at the bottom, Antrim Wind Energy  
23 is the project LLC. For sort of structural  
24 reasons and convenience, there are two LLCs

1           that own Antrim Wind Energy: One is called  
2           Walden Green Energy Northeast Wind, and the  
3           other one is called Walden Antrim, LLC. Both  
4           of those are 100 percent controlled by Walden  
5           Green Energy. Walden Green Energy is  
6           majority-owned by RWE --

7   Q.    Is it RWE AG, or is it some other entity within  
8           RWE?

9   A.    (Weitzner) It's RWE Principal Investments  
10          Walden I believe is the full name. And so it's  
11          majority-owned by that entity. And the board  
12          is 50/50 Walden Founders, which is myself and  
13          George Manahilov and Sarah Valdovinos, and  
14          50 percent RWE Principal Investments. And  
15          that's it.

16   Q.    And where is RWE Principal Investments,  
17          Incorporated? Where is that subsidiary of RWE  
18          AG? Is it a U.S. company?

19   A.    (Shaw) Yeah, I believe that's a Delaware LLC.

20   Q.    So that's an LLC. And I take it there's still  
21          several layers between that entity and RWE AG?

22   A.    (Shaw) Yeah, I don't have that information  
23          right with me now, but I can get that to you.

24   Q.    Let me ask you this: The entities that invest

1 in Walden, in your organization, is this part  
2 of the Innogy spinoff that RWE is selling off  
3 in the coming weeks?

4 A. (Shaw) No, it's not.

5 Q. You discussed in some of your questions with  
6 Ms. Linowes and with Dr. Ward about the debt  
7 and equity structure of the company. And to  
8 me, it sounded as though basically you're  
9 saying, if we have to put in more equity, we'd  
10 put in more equity.

11 Do you have a goal as to what the  
12 debt/equity ratio for the company should be?

13 A. (Weitzner) I think the debt/equity ratio that  
14 we shared in our pro forma was that \$11 million  
15 of debt -- excuse me -- \$11 million of equity,  
16 and then the remaining \$54 million in debt and  
17 tax equity -- tax equity which acts like debt.  
18 That's our goal, and that's also fairly  
19 industry standard for wind projects in the U.S.

20 Q. So when you were testifying about, well, if we  
21 don't meet -- if we can't get enough debt, tax  
22 equity, I guess, we'll just substitute  
23 equity --

24 A. (Weitzner) Yup.



1 Q. -- your goal is not to continue to substitute  
2 equity, it's to remain at a certain ratio; is  
3 that correct? Or as close to it as you can.

4 A. (Weitzner) Yes. We think that \$11 million is a  
5 very reasonable objective, and we expect we  
6 will meet it. And if something happens where  
7 we have to put more equity, you know, then what  
8 that does is it makes it a slightly less  
9 attractive project from a return basis. But  
10 there's still plenty of room to put more equity  
11 into the project and still make it a very  
12 attractive investment.

13 Q. So you and your fellow investors in Walden  
14 Green, that's the sweet spot for you and for  
15 the majority owners from RWE, or whatever  
16 entity of RWE it is?

17 A. (Weitzner) Yes.

18 A. (Shaw) Yeah, I would agree.

19 Q. I want to switch gears now and talk about  
20 decommissioning as well.

21 When you talked about decommissioning, you  
22 made much of the fact that you will have,  
23 consistent with the Site Evaluation Committee  
24 rules, the provision of a financial assurance

1 in the form of an irrevocable standby letter of  
2 credit and performance bond, surety bond for  
3 unconditional payment guaranty executed by the  
4 parent company. That's our rule. It's Site  
5 301.08. And you made much of the fact that the  
6 Town of Antrim will be a partner with you, in  
7 that, if for some reason you're not there to  
8 decommission, Antrim will be the beneficiary, I  
9 suppose, of that financial instrument.

10 A. (Weitzner) Yeah.

11 Q. Is it the plan to just leave -- even at the end  
12 of your 40 years, is the plan to just leave and  
13 let the town take care of it?

14 A. (Weitzner) No. Absolutely not.

15 Q. So what is the plan?

16 A. (Weitzner) The plan is, at the end of the  
17 Project's useful life, to perform the  
18 decommissioning.

19 Q. As a company?

20 A. (Weitzner) Yes, yes.

21 Q. And during your testimony, Mr. Weitzner, you  
22 mentioned the New Hampshire Electric Co-op PPA.  
23 You also talked about having two other -- I  
24 forget the words that you used -- potential

1           conversations and one probable conversation.  
2           Obviously, I don't want to get into anything  
3           that's confidential. But when you say -- can  
4           you tell us what you're describing there when  
5           you talk about, I think it was two "potential  
6           conversations" -- I assume this is either about  
7           a PPA or a hedge -- and one "probable"? Is  
8           "probable," in your definition, something  
9           that's closer to fruition than the other two?  
10          Is that -- just trying to understand what your  
11          testimony was. And if that needs to be  
12          addressed in the confidential session, just let  
13          us know.

14        A.     (Weitzner) No. I think that I said there are  
15           two maybe or -- sorry if I'm slightly changing  
16           what I said. I don't know exactly what I said.  
17           But there are two "active" conversations --

18        Q.     That may be the term.

19        A.     (Weitzner) -- which I would say there's still  
20           some details to be ironed out, and we're  
21           still -- you know, we still have some  
22           questions, and nothing is done until it's  
23           signed. But I think that those two  
24           conversations could, if we want, very, very

1           likely lead to a PPA for some portion of the  
2           Project. In one case it's a similar sort of  
3           25-ish percent, and in another case it's a much  
4           larger percentage. It would be something that  
5           would almost complete the Project. So I think  
6           those are two conversations that I'm confident  
7           could lead to a PPA. And then we're also  
8           talking to two other entities, where I would  
9           say the conversation is at an earlier stage and  
10          we're still kind of feeling things out.

11                   I just want to add, as a backstop, we also  
12          always have the financial market, the  
13          opportunity to do a financial swap. We're in  
14          constant touch with two banks, highly  
15          creditworthy, that would be, you know, happy to  
16          put a financial hedge on this project should we  
17          need it. But as I mentioned earlier with Ms.  
18          Linowes, that's less attractive to us, but  
19          still an option that's available.

20    Q.    And I guess my last question is just about --  
21          you talked about curtailment in the calculation  
22          of your net capacity factor. I just want to  
23          make sure I understood this correctly. Are you  
24          saying that there is no curtailment for --

1           curtailment estimate for noise and shadow  
2           flicker that is calculated into your net  
3           capacity factor because of the rules?

4    A.    (Weitzner) There is no curtailment for sound  
5           because we're very confident we will  
6           comfortably meet the regulations. There may  
7           need to be some curtailment for shadow flicker.  
8           I think we may violate the shadow flicker rules  
9           by a few hours a year. And so if you just  
10          imagine what a few hours per year of  
11          curtailment would mean for the net capacity  
12          factor, it is an absolute trivial amount.

13   Q.    But do you know if that trivial amount is  
14          included in the present net capacity factor  
15          that you put before the Committee?

16   A.    (Weitzner) It is not included.

17   Q.    Okay.

18                   MR. IACOPINO: I don't have any other  
19                   questions.

20                   PRESIDING OFFICER SCOTT: Does any  
21                   other Subcommittee member have any questions  
22                   before I go on? Great.

23                                So, Attorney Needleman, what I  
24                   think I'd like to do, since we're still in the

1 public session, is offer you a chance to do  
2 redirect and then go to the private session and  
3 do the same again. Does that work for you?

4 MR. NEEDLEMAN: Sure. That's fine.  
5 Thank you.

6 REDIRECT EXAMINATION

7 BY MR. NEEDLEMAN:

8 Q. Just a couple of questions. So, Mr. Weitzner,  
9 at one point, with respect to a conversation  
10 about RWE, you said, "Banks are happy to lend  
11 money when they see the RWE name." Do you  
12 recall that?

13 A. (Weitzner) Yes.

14 Q. So this Application was filed on October 2nd,  
15 2015. And I think you said that since that  
16 time your relationship, AWE's relationship with  
17 RWE has not changed; is that right?

18 A. Walden's relationship with RWE has not changed.  
19 Correct.

20 Q. And as I look through the various articles that  
21 Ms. Maloney walked us through, the first one  
22 begins I think in July of 2014 -- so, at least  
23 a year before the Application was filed, and  
24 they run through fairly recently. And you've

1 looked at all of them.

2 So, is it fair to say that, from the point  
3 the Application was filed up through today you  
4 have been having conversations with these  
5 various lending institutions that you  
6 referenced?

7 A. (Weitzner) Yes, numerous.

8 Q. And you've been having those conversations  
9 while your relationship with RWE has remained  
10 the same and while all of these issues have  
11 been public in the financial markets; is that  
12 right?

13 A. (Weitzner) Yes.

14 Q. And the three letters that you attached to your  
15 supplemental testimony are all dated in August  
16 of 2016. So could you characterize for me, if  
17 you can, what knowledge those potential lenders  
18 had of your relationship to RWE at those times?

19 A. (Weitzner) They have a clear knowledge and  
20 understanding of the financial relationship and  
21 the control relationship. It was in each case  
22 an item of due diligence for them to understand  
23 what our relationship with RWE is. And it has  
24 been a very strong benefit in those three

1           conversations that we are backed by RWE.

2    Q.    And how would you characterize the  
3           sophistication of those three potential  
4           lenders?

5    A.    (Weitzner) So I think it's two potential  
6           lenders, and that would be Citibank, which is  
7           extraordinarily sophisticated, and State  
8           Street, which is both sophisticated and  
9           extremely conservative.

10   Q.    In addition to the three in these letters, it  
11           sounds to me as though you've had other  
12           conversations with financial institutions about  
13           this project; is that right?

14   A.    (Weitzner) Yes.

15   Q.    And have those conversations been with  
16           sophisticated financial parties?

17   A.    (Weitzner) Yes, all of them.

18   Q.    And what has their reaction been to your  
19           relationship with RWE?

20   A.    (Weitzner) Similar. They view the RWE name as  
21           a strong benefit to the Project, a strong  
22           credit support, and are eager and anxious to do  
23           business with RWE.

24   Q.    Thank you.



1 MR. NEEDLEMAN: Nothing further.

2 PRESIDING OFFICER SCOTT: Thank you.

3 We'll now go to private -- excuse me --

4 confidential session.

5 Did you have something --

6 MS. MALONEY: I just want to --

7 PRESIDING OFFICER SCOTT: -- Counsel

8 for the Public?

9 MS. MALONEY: I'm sorry. I just  
10 wanted to move to strike I.D.s and move to make  
11 the exhibits as full exhibits.

12 MR. NEEDLEMAN: I thought we were  
13 going to do all of that at the end of the  
14 proceedings.

15 MR. IACOPINO: That's usually what we  
16 do.

17 PRESIDING OFFICER SCOTT: Yeah, we'll  
18 do it at the end.

19 MS. MALONEY: Okay.

20 PRESIDING OFFICER SCOTT: But hold  
21 that thought.

22 MS. MALONEY: Made the motion.

23 PRESIDING OFFICER SCOTT: So, again,  
24 we'll go into confidential session. And for

1 any of those -- well, before I ask you to clear  
2 the room, again, how much time do you expect  
3 for the confidential side?

4 MS. MALONEY: I just have maybe a  
5 question or two.

6 MS. LINOWES: Probably about 30  
7 minutes.

8 PRESIDING OFFICER SCOTT: So,  
9 probably about 45 minutes by the time we're  
10 done. Maybe a tiny bit of redirect, depending  
11 on questions from the bench. Okay. So, again,  
12 roughly 45 minutes. We can't guarantee that.  
13 So if anybody wishes to come back -- but again,  
14 if you've not signed a non-disclosure  
15 agreement, we'll ask you to leave the room at  
16 this time.

17 DR. WARD: What do we pick up with  
18 after the confidential session?

19 PRESIDING OFFICER SCOTT: Next on the  
20 agenda is the same as the order of  
21 presentation. So at that point we would start  
22 with the Technical and Managerial Capability  
23 Panel, which is Panel No. 2.

24 DR. WARD: And do you expect to do --

1                   PRESIDING OFFICER SCOTT: Depends on  
2 the time. Maybe an hour.

3                   DR. WARD: I have a wife who's  
4 running for office, and I have to do some  
5 things. That's why I'm trying to figure -- in  
6 other words, you're probably going to have an  
7 hour after you finish the --

8                   PRESIDING OFFICER SCOTT: Well, does  
9 any of the Subcommittee have an issue if we go  
10 closer to 5:00? Well, we can take a break now  
11 while we're clearing the room. So, probably  
12 about an hour. So we'll go off the record and  
13 take a quick five-minute recess.

14                   (Pages 100 through 156 of the transcript  
15 are contained under separate cover  
16 designated as "Confidential and  
17 Proprietary.")

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1 PUBLIC SESSION (CONT'D)

2 (Hearing now resumes in the public  
3 redacted portion of the record.)

4 PRESIDING OFFICER SCOTT: Back on the  
5 record now.

6 So, while we're not done today,  
7 when we reconvene on Thursday, instead of 10:00  
8 as noticed, we'll do 9:00 in order to hopefully  
9 not go as late for some people. Mr. Ward has  
10 indicated that he has a conflict, so he  
11 probably won't be able to be here until closer  
12 to 10:00. But we've agreed, as we'll probably  
13 be on Panel 2, that we'll -- if he's not back  
14 in time, we will go out of order so that he can  
15 still question the panel.

16 Okay. With that, we're now on  
17 Panel No. 2 regarding Technical and Managerial  
18 Capability. Mr. Needleman.

19 MR. NEEDLEMAN: Thank you, Mr.  
20 Chairman.

21 So, Mr. Weitzner, you've already  
22 been sworn in. We have your testimony. So  
23 I'll start with --  
24

1 (WHEREUPON, ARTHUR CAVANAGH, DARRELL  
2 STOVALL, JACK KENWORTHY, HENRY WEITZNER  
3 and DONALD MARCUCCI was/were duly sworn  
4 and cautioned by the Court Reporter.)

5 DIRECT EXAMINATION

6 BY MR. NEEDLEMAN:

7 Q. Start with you, Mr. Kenworthy.

8 A. (Kenworthy) My name's Jack Kenworthy. I'm an  
9 executive officer for Antrim Wind and the head  
10 of development at Walden Green Energy.

11 Q. And you have both your initial prefiled  
12 testimony and two supplements in front of you;  
13 is that correct?

14 A. (Kenworthy) Yes, it is.

15 Q. Do you have any changes to any of that  
16 testimony?

17 A. (Kenworthy) No, I don't. I do not.

18 Q. And do you adopt it today and swear to it?

19 A. (Kenworthy) I do.

20 Q. Let me move on to Mr. Stovall. Could you  
21 please state your name for the record.

22 A. (Stovall) Yes. Good afternoon. Darrell  
23 Stovall, principal engineer with DNV GL.

24 Q. And where is your place of business?

1 A. (Stovall) Houston, Texas. That's our main U.S.  
2 office.

3 Q. And because you may not be familiar to most  
4 people in this room, could you just briefly  
5 describe the purpose of your testimony.

6 A. (Stovall) Yes. I'm here in the capacity as  
7 owner's engineer --

8 DR. WARD: Speak into the microphone,  
9 please.

10 MR. IACOPINO: Got to get real close  
11 to it.

12 A. (Stovall) I'm here in my capacity as owner's  
13 engineer, supporting the Project in various  
14 phases, which we'll be discussing the details  
15 about, I'm sure.

16 Q. You have your prefiled testimony in front of  
17 you?

18 A. (Stovall) Yes, I do.

19 Q. And do you have any changes to that testimony?

20 A. (Stovall) No changes.

21 Q. And do you adopt it and swear to it today?

22 A. (Stovall) Yes, I do.

23 Q. Let's go to Mr. Cavanagh. And if you could  
24 state your name for the record.

1 A. (Cavanagh) Arthur Cavanagh.

2 Q. And where do you work?

3 A. (Cavanagh) I Work for Reed & Reed.

4 Q. And briefly state the purpose of your  
5 testimony.

6 A. (Cavanagh) I'm here to testify as a BOP  
7 contractor for the Antrim Wind Project.

8 Q. And your testimony is joint with Mr. Marcucci.  
9 Maybe we should have had you sitting next to  
10 each other to look at it. So if you could just  
11 look at it and tell me whether you have any  
12 changes to your portion.

13 (Witness reviews document.)

14 A. (Cavanagh) I do not.

15 Q. So do you adopt it and swear to it today?

16 A. (Cavanagh) Yes, I do.

17 Q. And if you can pass that down to Mr. Marcucci.

18 And then, finally, Mr. Marcucci, if you  
19 could state your name for the record, please.

20 A. (Marcucci) Donald Marcucci.

21 Q. And where do you work?

22 A. (Marcucci) Siemens Energy, Inc., out of  
23 Orlando, Florida.

24 Q. And briefly state the purpose of your



1 testimony.

2 A. (Marcucci) My testimony is to talk about the  
3 experience of Siemens and its SWT-3.2-113 model  
4 wind turbine that Antrim has selected for this  
5 project.

6 Q. And do you have any changes to your prefiled  
7 testimony?

8 A. (Marcucci) Other than some of the numbers on  
9 the number of turbines installed which were  
10 submitted about a year ago have increased, no.

11 Q. What page on your testimony is that?

12 (Witness reviews document.)

13 A. (Marcucci) Somewhere in here it talked about  
14 525 of these 3.2-113 turbines had been  
15 installed globally. That's now about 1,050.

16 Q. Okay. Other than that, do you have any other  
17 changes?

18 A. (Marcucci) No.

19 Q. And so, do you adopt that testimony and swear  
20 to it, subject to that one change?

21 A. (Marcucci) Yes.

22 Q. Thank you.

23 MR. NEEDLEMAN: They're available for  
24 cross-examination, Mr. Chairman.

1 PRESIDING OFFICER SCOTT: Thank you.

2 I believe the Town of Antrim is next.

3 MR. RICHARDSON: The Town has no  
4 questions. Thank you.

5 PRESIDING OFFICER SCOTT: Is Mr.  
6 Enman here?

7 [No verbal response]

8 PRESIDING OFFICER SCOTT: Okay. How  
9 about Giffen-Pratt intervenors?

10 [No verbal response]

11 PRESIDING OFFICER SCOTT: Okay. The  
12 Harris Center?

13 MR. FROLING: No questions.

14 PRESIDING OFFICER SCOTT: Mr. Ward,  
15 maybe you get to do this today.

16 DR. WARD: No chance.

17 PRESIDING OFFICER SCOTT: How about  
18 the abutting landowners?

19 MS. BERWICK: Yes, I do have  
20 questions, but Mr. Ward could go first if that  
21 works out better.

22 DR. WARD: I only really have one  
23 question.

24 PRESIDING OFFICER SCOTT: So you'd

1 like to go now?

2 DR. WARD: I'd love to.

3 PRESIDING OFFICER SCOTT: Any  
4 objections?

5 MR. NEEDLEMAN: No.

6 PRESIDING OFFICER SCOTT: Let's do  
7 that.

8 CROSS-EXAMINATION

9 BY DR. WARD:

10 Q. You talked, I think it was Mr. Weitzner or --

11 UNIDENTIFIED SPEAKER: Microphone.

12 Q. There was some testimony this morning about the  
13 met tower, and it became quite obvious in the  
14 testimony that your whole layout, your  
15 technical layout of how you're going to go it,  
16 in fact, whether it's even worthwhile, hinged  
17 on wind information from the met tower. So my  
18 question is: Do you know whether any of those  
19 things would have changed materially if the  
20 position of the met tower had been changed on  
21 the hill?

22 A. (Kenworthy) Sure, I'll take that question, Dr.  
23 Ward.

24 Certainly you're correct that wind data is

1           important in design of a wind farm and the  
2           layout of a wind farm, and ultimately the  
3           performance of a wind farm.  When we gather  
4           data from one or multiple points, that site  
5           data is then extrapolated using models for the  
6           entirety of the wind site and taking into  
7           account where that data was collected from.  
8           So, not being a meteorologist myself, my  
9           understanding is that, if that met tower had  
10          been moved slightly in one direction or  
11          another, or even if it had been over by Turbine  
12          8 instead of Turbine 2, we would have taken  
13          that into account.  And it would be unlikely to  
14          have resulted in significant changes to the  
15          layout, which also are informed by a number of  
16          other factors, including the land we have  
17          available to us, environmental resources that  
18          are present on the site, and potentially  
19          constructability constraints and things of that  
20          nature.

21                 The one other thing that I will point out  
22                 is that it's not just a single met tower that  
23                 we have data from.  We have a LIDAR that  
24                 collected data over the course of a year from

1 three different locations on the site, both at  
2 our met tower location by the location of  
3 Turbine 6, and by the location of the former  
4 Turbine 10. So we have representative data  
5 across the site.

6 DR. WARD: Thank you. I'm finished.

7 PRESIDING OFFICER SCOTT: Okay.

8 Great.

9 DR. WARD: Thank you.

10 PRESIDING OFFICER SCOTT: Okay.

11 We'll go back to the abutting landowners.

12 CROSS-EXAMINATION

13 BY MS. BERWICK:

14 Q. These questions are going to be addressed to  
15 you, Mr. Kenworthy. And if you feel someone  
16 else needs to answer them --

17 A. (Kenworthy) Sure.

18 Q. First of all, can you tell me, if you had a  
19 choice between one house with a constant noise  
20 level -- "whoop, whoop, whoop" -- hours of  
21 flicker and views of turbines versus the very  
22 same type of house in a very similar setting  
23 without these factors, which would you choose?

24 A. (Kenworthy) I think it's hard for me to really

1           actually imagine a choice in a hypothetical in  
2           the manner that you're describing it. I think,  
3           as Mr. Weitzner stated earlier, it's certainly  
4           our belief that with the protections that the  
5           Site Evaluation Committee rules put in place  
6           for this project, particularly as it relates to  
7           sound and flicker, that the actual levels of  
8           impact that will be experienced by folks that  
9           are in close proximity are going to be quite  
10          low.

11        Q.    So you don't think there would be any  
12            difference in the house that has the flicker  
13            and the noise versus the house that doesn't  
14            have the flicker and the noise?

15        A.    (Kenworthy) I can't say that there would be  
16            zero difference. I think in some cases,  
17            certainly, yes, there will be changes. But I  
18            think those changes are not unreasonable  
19            changes.

20        Q.    I just wonder how you can say there would be no  
21            reduction in our home values.

22        A.    (Kenworthy) We make that statement based on  
23            data. And certainly, you know, I understand  
24            the concern that homeowners may have about what

1 changes could lead to, in terms of home values,  
2 and that there might be an expectation that  
3 some, you know, changes could lead to  
4 decreases. But we just have not seen that  
5 borne out by the data. We've cited a number of  
6 different national studies and some regional  
7 studies that have looked at tens of thousands  
8 of property transactions. We've also performed  
9 our own studies -- both in the area of Lempster  
10 and referenced other studies that were done in  
11 the city of Groton here in New Hampshire --  
12 that all support, I think, our conclusion that  
13 property values will not be impacted.

14 Q. And you have eliminated from those studies any  
15 houses that were bought out by the wind  
16 companies before sales, haven't you?

17 MR. NEEDLEMAN: Mr. Chair, this panel  
18 is for technical and managerial capability.  
19 Mr. Kenworthy is also an orderly regional  
20 development witness, but that's a separate  
21 topic.

22 PRESIDING OFFICER SCOTT: Ms. Berwick,  
23 if you can stay on topic.

24 MS. BERWICK: Okay, I'll wait. Thank

1           you.

2                               So, safety, would that come  
3           under this?

4                               PRESIDING OFFICER SCOTT: Again, this  
5           is technical and managerial capability of the  
6           Applicant.

7                               MS. BERWICK: Well, managing. How  
8           they would manage their --

9                               PRESIDING OFFICER SCOTT: If you stay  
10          on that tone. And again, to the extent you  
11          want to go to other areas, you can look at some  
12          of the other topics as you move on also. So,  
13          you can ask those questions, but they should be  
14          related to those topics, how they manage and  
15          their technical capability to do things.

16                               MS. BERWICK: Okay.

17   BY MS. BERWICK:

18   Q.   Can you tell me how wide the base is, or the  
19          platform that the turbines sit on?

20   A.   (Kenworthy) Sorry. You're asking what the  
21          diameter of the base of the turbine tower is?

22   Q.   I'll tell you why I'm asking and maybe you can  
23          answer it better. You gave documentation of  
24          how far our property line is from the turbines.



1           It's 900-something feet. From what I  
2           understand in reading the reports, that's to  
3           the center of the base; is that correct?

4   A.   (Kenworthy) I believe that is correct, yes.

5   Q.   So what I'm really trying to find out is, the  
6           turbines come out from the center of the base.  
7           Like if I was to say how far this table is from  
8           that table, I would not do it from the center;  
9           I would do it from edge to edge. So I'm trying  
10          to find out the edge of your turbines, how  
11          close they are to our property line.

12   A.   (Kenworthy) I don't have the precise figure in  
13          front of me. Maybe Mr. Marcucci does. My  
14          belief is that the base diameter of the tower  
15          is somewhere in the vicinity of 14 or 15 feet.  
16          So, that 900 and change of feet from the center  
17          of the tower to your property line could be  
18          reduced by 7 or 7-1/2 feet.

19   Q.   I read in the Berlin Sun --

20                   (Court Reporter interrupts.)

21   Q.   I'm sorry.

22                   I read in the Berlin Sun an article -- and  
23                   I did not submit this, but I'm just going to  
24                   have to question you because I think -- Vestas

1 Wind Systems warns, "Do not stay within a  
2 radius of 1300 feet from the turbine unless it  
3 is necessary." And these are 400-foot  
4 turbines. Can you tell me what the safety  
5 radius for your highest turbines would be, how  
6 far away a person should be for a safety  
7 radius? Perhaps --

8 A. (Kenworthy) Well, maybe I'll speak about this  
9 generally, and then I can ask if Mr. Marcucci  
10 has anything that he wants to add about  
11 Siemens' position.

12 I'm not familiar with that statement from  
13 Vestas. We certainly do know Vestas. We're  
14 aware of the company and their turbines. I  
15 mean, we do not have, to my knowledge, an  
16 established safety radius to which you should  
17 stay beyond. You know, generally speaking, I  
18 mean, these are machines. They move. And if  
19 you don't need to be up working underneath  
20 them, then you probably wouldn't be,  
21 necessarily.

22 But I think as it relates to a matter of  
23 public safety, we look at very specific issues.  
24 And so, I think in that case, the way we have

1           sited this position with the setbacks and  
2           property lines to public roads, to residences,  
3           all far exceed -- you know, meet or exceed the  
4           industry standards for public safety in those  
5           setbacks.

6    Q.    Is there no safe distance that should be in  
7           case of icing?

8    A.    (Kenworthy) So, we can talk about icing. I  
9           think, in general, you know, there's -- we've  
10          put a lot of testimony in about icing and the  
11          potential for ice throw from the turbines. And  
12          it's also addressed in my supplemental prefiled  
13          testimony.

14                 Icing can occur on turbines, like it can  
15                 on any structure that is in a cold climate that  
16                 has moisture in the air and ice can form.  
17                 Generally speaking, the turbines are equipped  
18                 with a number of different mechanisms to ensure  
19                 that there are not hazardous conditions that  
20                 arise due to ice formation. We talk about  
21                 those in our application. Primarily they have  
22                 to do with the anemometer on the wind turbine  
23                 that can ice up. And if that occurs, which  
24                 typically is what happens first, then it shuts

1 the turbine down until those conditions  
2 subside. Similarly, there is a turbine  
3 condition monitoring system that is integral to  
4 the Siemens turbines which detects imbalances  
5 or vibrations that could occur if there's any  
6 significant ice build-up on the blades and,  
7 again, either slows the turbine down or shuts  
8 it down until those conditions subside. So, as  
9 a result of all that, there really is, I think,  
10 a very small likelihood of any significant  
11 amount of ice shedding from these turbines.  
12 But certainly it can happen. And I think when  
13 it does, typically it's within about, you  
14 know -- the vast majority of those ice  
15 fragments fall within about 70 meters of a  
16 turbine, and I think out to a maximum -- and I  
17 may ask Mr. Stovall to weigh in on this as  
18 well -- about 250 meters. So, generally  
19 speaking, we see ice throw as a very small  
20 public safety risk.

21 Q. All right. Remind me. Two hundred  
22 fifty meters equals how many feet --

23 DR. WARD: Eight hundred.

24 A. (Kenworthy) About 800, yeah.

1 Q. So there's no risk for us on our land that  
2 we're going to have ice coming from those  
3 turbines if we're walking up there.

4 A. (Kenworthy) No. I don't believe so at all.

5 PRESIDING OFFICER SCOTT: And again,  
6 if I could remind you that there will be a  
7 panel -- if you look at Panel No. 6, they'll be  
8 discussing public health and safety explicitly  
9 with those panel members there.

10 MS. BERWICK: Yes, but Ms. Linowes  
11 asked about that the last time we were here,  
12 and I thought that they said we should cover  
13 ice safety on this one. Am I wrong, Mike?

14 MR. IACOPINO: I don't know. I don't  
15 remember that.

16 BY MS. BERWICK:

17 Q. Jack, do you know?

18 A. (Kenworthy) Yeah, I can say that I think we're  
19 perfectly comfortable as a panel to handle  
20 questions that relate to, for example, ice  
21 throw, as it relates to turbine safety issues  
22 and construction, blasting. You know, any kind  
23 of catastrophic failure questions that people  
24 may have, we certainly do expect to answer

1 those.

2 PRESIDING OFFICER SCOTT: Okay. So  
3 we may have some redundancy. So, go ahead  
4 then.

5 MS. BERWICK: What was said at the  
6 last meeting was the safety, when we come to  
7 it, was really the safety during construction  
8 and not safety after construction.

9 PRESIDING OFFICER SCOTT: Okay.

10 BY MS. BERWICK:

11 Q. Is there a reason that a visual assessment was  
12 never done from our property?

13 A. (Kenworthy) You likely would want to ask that  
14 question of our expert, David Raphael. But my  
15 answer, to the best of my knowledge, is that  
16 private property locations are not scenic  
17 resources under the SEC rules and therefore  
18 aren't evaluated in terms of assessing the  
19 aesthetic effects of a project. They did  
20 include a sampling of private property  
21 locations in response to the new rules that  
22 were adopted in December. And my understanding  
23 is that they used their professional judgment  
24 to select what they thought would be

1 representative of private property locations.  
2 But that's really probably a better question  
3 for him.

4 Q. Can you explain if you have any plans to put  
5 fencing around the turbines?

6 A. (Kenworthy) No, we do not.

7 Q. Okay. Has the land that has been put in  
8 permanent conservation after decommissioning,  
9 has it already been purchased?

10 A. (Kenworthy) So, first of all, I would say the  
11 land is not going to be placed into  
12 conservation after decommissioning, but after  
13 commercial operation. So, subject to check, I  
14 don't have these agreements right in front of  
15 me, but I believe we have 180 days after the  
16 project reaches commercial operation to  
17 complete the purchase of the easements. There  
18 are six of them on site. And the agreements  
19 that bind us to make those purchases have all  
20 been executed. So we have binding letters of  
21 intent between ourselves and the Harris Center  
22 in five instances, with the Town of Antrim in  
23 one instance, and the six private landowners.  
24 So, all parties have signed those documents and

1 negotiated the easements themselves. So it's  
2 just a function of within a certain period of  
3 time after COD that we will execute to purchase  
4 the easements.

5 Q. So, 180 at the completion of building turbines.

6 A. (Kenworthy) Yes, I believe it's 180 days after  
7 completion. But I can check that for you.

8 Q. What would be the penalty to Antrim Wind Energy  
9 if the property were never purchased?

10 A. (Kenworthy) Well, I presume any party to those  
11 contracts would have any recourse that's  
12 available to them as a party to those  
13 contracts. So, you know, they could sue us.  
14 But presumably these are going to become  
15 conditions of this certificate. So I think  
16 there would be enforceability under a  
17 Certificate of Site and Facility if the  
18 agreements were not ultimately put into place.  
19 But again, these are binding contracts. We've  
20 negotiated them. We stand by them, and we have  
21 every intention of purchasing those easements  
22 once the project goes forward.

23 Q. Are these submitted in the --

24 A. (Kenworthy) They are. They're actually a



1 part -- the LOI and easements are a part of our  
2 Appendix 10. And I don't know what -- that's  
3 probably not its own exhibit. It's probably an  
4 appendix to the main Application.

5 Q. Okay. You wrote that Antrim Wind Energy's new  
6 application retains the many favorable  
7 components of the Project reviewed by the SEC  
8 in Docket 2012-01, while making significant and  
9 beneficial improvements to features of the  
10 facility that previously caused concern.

11 I looked up the definition of the  
12 "significant": Noteworthy, remarkable,  
13 important, serious, crucial. I can go on.

14 Would you say the reduction of 38 inches  
15 on an almost 500-foot tower is truly  
16 "significant"?

17 A. (Kenworthy) I would say that the changes that  
18 we've made between 2012 and now are  
19 significant. I stand by that statement. There  
20 are quite a variety of changes that we have  
21 made, including the full removal of Turbine 10,  
22 which is not only 10 percent, 10 full percent  
23 of the Project's turbines, but more  
24 importantly, I think was a turbine that was

1 identified specifically as a concern at the  
2 Willard Pond location. It was on the tallest  
3 piece of land that was associated with the  
4 Project. And all of the infrastructure between  
5 Turbine 9 and 10, which was a fairly  
6 considerable amount of new road, all of that is  
7 gone. The significant reduction in height of  
8 Turbine 9, so that that tower and nacelle are  
9 no longer visible from Willard Pond, together  
10 with the --

11 Q. And that's the 38 inches?

12 A. Nope. That's 45 feet.

13 Q. Forty-five feet?

14 A. (By Kenworthy) Yup. And again, these were  
15 targeted changes that were made to respond to  
16 concerns that we were made aware of in the 2012  
17 docket. The addition of -- when we initially  
18 filed, it was 685 acres of conservation; we now  
19 have 908 acres. And again, specifically, it  
20 was identified in that docket that there was a  
21 concern that 100 percent of the ridge line was  
22 not conserved; now it is. We've added  
23 vegetative screening around the substation  
24 area. That was in direct response to concern

1 from the 2012 docket. We've entered into  
2 additional agreements with the Town of Antrim,  
3 such as the scholarship funding agreement.  
4 That's an additional benefit to the community.  
5 I think all of these things add up to, yes,  
6 what we believe are very significant changes in  
7 the Project.

8 Q. So you think that giving money to the Town of  
9 Antrim for brick laying and giving money to  
10 scholarships makes a significant change in the  
11 physical and visual features of the Antrim --

12 A. (Kenworthy) I think I've answered your  
13 question. I think that the changes between  
14 2012 and 2015 are significant.

15 Q. All right. You state that the turbines will  
16 have an average 37 percent net capacity factor.  
17 In coming up with that figure, were the times  
18 that the turbines must be stopped to comply  
19 with flicker regulations, common nighthawk  
20 sightings, ice, wind, excess winds, taken into  
21 consideration in that 37 percent?

22 A. (Kenworthy) Let me maybe take those one at a  
23 time and you can tell me if I've missed any of  
24 them.

1           So, with respect to shadow flicker, I  
2           think Mr. Weitzner answered this question  
3           earlier, which is no. Curtailment to be able  
4           to meet shadow flicker requirements of eight  
5           hours per year is not accounted for in that  
6           capacity factor. However -- and we can check  
7           this -- my expectation, as Mr. Weitzner stated,  
8           is the total expected amount of shadow flicker  
9           at any residence is a maximum of 13 hours and  
10          48 minutes, if I recall correctly, which is 5  
11          hours and 48 minutes over the regulatory  
12          requirement. To be able to curtail one or two  
13          turbines for a maximum of five hours per year  
14          is going to have a negligible impact on net  
15          capacity factor. It's unlikely to change that  
16          percentage at all.

17                 With respect to common nighthawk, we have  
18                 no requirements to curtail the Project for  
19                 common nighthawks. We have a bird and bat  
20                 conservation strategy that we've worked out  
21                 with the New Hampshire Fish and Game Department  
22                 and U.S. Fish and Wildlife Service. There are  
23                 no nesting nighthawks on our site, so there  
24                 will be no requirement to curtail for

1 nighthawks. We have included the bat  
2 curtailment. And I think -- yes. So, bat  
3 curtailment is included in that analysis. I  
4 think it's conservative.

5 I may actually want to clarify a point Mr.  
6 Weitzner made earlier about what those  
7 curtailment levels are that I think may be a  
8 little different. It is 5 meters a second from  
9 July 15 to September 30. So, anything below 5  
10 meters a second we curtail, and we do it for 5  
11 out of the 9 turbines in year one. And if it  
12 leads to a meaningful impact in reduction of  
13 bat mortality, then we apply it to all nine  
14 turbines for the life of the Project. Our  
15 modeling pro forma for the net capacity factor  
16 already assumes we're applying it to all nine  
17 turbines for the life of the Project. So  
18 that's conservative.

19 Q. Are you only applying it to one turbine in the  
20 beginning?

21 A. (Kenworthy) Five of the nine turbines for one  
22 year, and then we evaluate the effectiveness of  
23 that curtailment strategy, together in  
24 consultation with New Hampshire Fish & Game and

1 U.S. Fish & Wildlife. But the outcome of that,  
2 you know, will only result in a potential for  
3 what we've already modeled, which is all nine  
4 turbines for the life of the Project.

5 Other things -- icing, yes. Icing is  
6 accounted for in our model. And what were the  
7 other ones you listed?

8 Q. Nighthawk, icing, high winds and bats.

9 A. (Kenworthy) Yup. So, all of the wind speeds  
10 are obviously taken into account --

11 Q. Can you tell me what percentage of time the  
12 turbines would be on -- can you tell me what  
13 percentage of time the turbines would be on was  
14 used for the calculations for the 37 percent?  
15 Is there a percentage of time? I asked this  
16 before and I was told to ask it again.

17 A. (Kenworthy) So I don't think I have a precise  
18 answer for you, if I understand your question  
19 correctly. But let me try, and then we can see  
20 if you have some follow-ups.

21 It is our expectation that these turbines  
22 will be producing some amount of power roughly  
23 90 percent of the time, maybe 94 percent of the  
24 time. So, obviously, there's a power curve.

1           And these turbines cut in at 3 meters a second  
2           and cut out at 32 meters a second --

3                       MR. MARCUCCI: Twenty-five.

4   A.   (Kenworthy) Twenty-five. So, everywhere in  
5       between there, there is some amount of power  
6       that's being generated by these turbines. And  
7       so they will be operating and producing some  
8       amount of power. Again, I know this is not  
9       precise. I'm saying between 90 and 94 percent  
10      of the time. So, pretty often.

11               And the way the net capacity factor is  
12      calculated is a fraction that is the total  
13      estimated energy yield over the course of a  
14      year divided by the maximum theoretically  
15      possible energy if all turbines are producing  
16      100 percent of power, 8,750 hours per year.  
17      Does that answer your question?

18   Q.   Yes, it does.

19               In your testimony, you state, "Antrim  
20      residents have consistently demonstrated their  
21      support for commercial wind energy in town; A)  
22      in 2010, the Antrim Planning Board held a straw  
23      poll where 84 percent of respondents favored  
24      commercial wind energy."

1           First, I want to ask you: Did everyone at  
2           that meeting vote in this straw poll?

3   A.   (Kenworthy) You're asking about the 2010 --

4   Q.   Yes.

5   A.   -- planning board straw poll?

6   Q.   Yes. You submitted it.

7   A.   (Kenworthy) Yeah, I just want to make sure I  
8           was clear on which one you're talking about.

9           My understanding is there were somewhere  
10          around a hundred responses.

11   Q.   So did everyone at the meeting respond -- vote?

12   A.   (Kenworthy) I actually don't know the answer to  
13          that. I think it was a straw poll that was --  
14          I don't recall. I think it says on the poll  
15          itself.

16   Q.   Okay. So I was going to ask you, do you have  
17          any idea how many -- you said a hundred?

18   A.   (Kenworthy) That's my belief. I mean, I can  
19          pull it up or if --

20   Q.   Do you have any idea how many residents there  
21          are in Antrim?

22   A.   (Kenworthy) Twenty-five hundred, thereabouts.

23   Q.   So you're trying to say that this was a  
24          scientifically conducted poll?



1 A. (Kenworthy) No. I think we have articulated in  
2 a number of places our belief and the reasons  
3 for our belief that the Town of Antrim has been  
4 supportive of this project. And I can tell you  
5 that it is very, very consistent from 2009  
6 through 2016. And the planning board straw  
7 poll, the select board straw poll, which had  
8 several hundred responses to it the following  
9 year, are consistent with the survey we  
10 conducted by the American Research Group, which  
11 was sent out all across Antrim --

12 Q. Was that sent to all the citizens in Antrim?

13 A. (Kenworthy) In fact, it was. I know there was  
14 a statement that was made during the technical  
15 session that perhaps some people had  
16 intentionally been left off of that survey.  
17 That's not true. We hired American Research  
18 Group, based in Manchester. They're a credible  
19 third-party survey company. And they used a  
20 combination, I believe, of voter lists and  
21 taxpayer lists, and maybe one other source of  
22 data that they had, to come up with a master  
23 list. And they sent surveys to every household  
24 and Town of Antrim. I am not saying that every

1 household necessarily received them. We  
2 certainly -- there are returns. In these  
3 events, it's not a perfect system. But we also  
4 made available an online survey, so that  
5 anybody who did not receive a paper copy could  
6 participate in the poll. We had some -- again,  
7 I don't have the precise number, but it was  
8 close to 700 responses. Very, very high  
9 response rate. And again, roughly 80 percent,  
10 77 percent supported the Project. So I think  
11 there's been a very long history here in Antrim  
12 of showing support.

13 Q. So your answer directly contradicts what was  
14 said during the other hearings, evidence -- the  
15 hearings that we had, the technical hearings.

16 A. (Kenworthy) I'm sorry. Which part of my answer  
17 are you referring to?

18 Q. That the survey was mailed to all residents.  
19 In the technical hearing, the selectmen said it  
20 was not mailed to all residents, and the other  
21 people said it was not mailed to all residents.

22 MR. NEEDLEMAN: Mr. Chair, it sounds  
23 like we are again on orderly regional  
24 development. Mr. Kenworthy is the right person

1 to speak to this. I'm just not today is the  
2 day.

3 MS. BERWICK: Well, I'm --

4 PRESIDING OFFICER SCOTT: Maybe we  
5 can table that. You'll get to ask the same  
6 question of the same person, but why don't  
7 we --

8 MS. BERWICK: Okay.

9 PRESIDING OFFICER SCOTT: 'Cause  
10 we're grouping these types of questions so  
11 they'll be a little more appropriate --

12 MS. BERWICK: All right. So you  
13 don't want me --

14 MR. KENWORTHY: If it's helpful, I  
15 can just answer that question, which is, this  
16 is my testimony: It was mailed out by American  
17 Research Group to everybody that they were able  
18 to get addresses for, intended to be reached by  
19 every household in Antrim.

20 MS. BERWICK: Do you not want me to  
21 pursue the questions about surveys and Antrim's  
22 support?

23 PRESIDING OFFICER SCOTT: Again, I  
24 think it may be better if we can kind tailor

1 out -- I'm not sure what else you have. So I  
2 don't want to --

3 MS. BERWICK: Okay. I will wait.

4 PRESIDING OFFICER SCOTT: And again,  
5 I don't want you to not ask questions --

6 MS. BERWICK: I understand.

7 PRESIDING OFFICER SCOTT: -- I just  
8 want to put them in the right place.

9 BY MS. BERWICK:

10 Q. The conservation land that you entered into a  
11 letter of intent to donate land to the Town of  
12 Antrim, was this something the selectmen  
13 solicited from you?

14 MR. NEEDLEMAN: I do think this is  
15 the same issue we just talked about.

16 MS. BERWICK: Same issue? Sorry.

17 PRESIDING OFFICER SCOTT: Ms.  
18 Linowes?

19 MS. LINOWES: Actually, I'm having  
20 some of the same difficulty understanding what  
21 the questions should be for this session versus  
22 others. I'm wondering if we could get  
23 clarification, because the titles may not be  
24 representative. Unless this has to do with --

1           their testimony is even crossing over on  
2           different days and...

3                       PRESIDING OFFICER SCOTT:  Maybe I can  
4           look to Mr. Iacopino.  You were at the  
5           structuring conference; right?

6                       MS. MALONEY:  Could I add something,  
7           too?  It's sort of difficult to plan questions,  
8           too, in these boxes.  And a lot of people  
9           aren't attorneys here and come up with a set of  
10          questions for one day and then a set of  
11          questions for another day.  And I think it  
12          stifles what could be a cross-examination or  
13          questions to have for witnesses.  I wish -- I  
14          understand there is an order here.  But if  
15          there could be some leeway with this so that  
16          people can sort of follow the train of thought.  
17          I'm not sure that -- I mean, we had the  
18          financial this morning, and that was fairly  
19          clear.  But the technical and managerial, there  
20          are certainly things that are about managerial  
21          that have to do with other aspects other than  
22          just capability.  So that's sort of -- if we  
23          get to orderly development and somebody would  
24          be shut out because it was a managerial

1 question, I mean -- so that's where I'm sort of  
2 having problems.

3 PRESIDING OFFICER SCOTT: And I do  
4 agree. I don't want to have these categories  
5 be used as a reason for questions not to be  
6 asked. So, again, I'm going to pick on Mr.  
7 Iacopino because I can.

8 MR. IACOPINO: I didn't think that  
9 there was a real -- any ambiguity. This is  
10 supposed to be -- this panel is on technical  
11 and managerial capability. We have individuals  
12 that can address those capabilities from both  
13 the Applicant itself and its vendors. So  
14 that's what I assume. I think the most  
15 important thing, Mr. Chairman, is that the  
16 Committee -- my concern is that the Committee  
17 get all the information that it needs and in an  
18 organized fashion so that the Committee can  
19 make the very important determinations that  
20 they have to make under the statute. So that's  
21 why it's organized this way. You're clearly  
22 authorized to give as much leeway as you want  
23 with respect to the questions. But the other  
24 thing that I will point out is that we have

1 five witnesses up here, some of whom are not  
2 going to be here to talk about orderly  
3 development on September 23rd. And, you know,  
4 there is the matter of whether or not -- and  
5 they'll probably be here tomorrow as well. So  
6 there is the matter of are we wasting time not  
7 breaking it down into the panels that we've  
8 decided beforehand and that all parties knew  
9 about beforehand.

10 PRESIDING OFFICER SCOTT: So what I  
11 think I would ask, though, before I go to  
12 Mr. Ward -- so I do want to -- some of your  
13 questions we're saying they would be better  
14 under orderly development. So what I want to  
15 do is make sure we're not taking any of your  
16 questions and putting them in a place where you  
17 never get to ask them.

18 MS. BERWICK: I'll get them asked.

19 PRESIDING OFFICER SCOTT: Okay. So  
20 that's the most important thing in my mind.

21 MS. BERWICK: I really was just  
22 unclear because of the way --

23 (Court Reporter interrupts.)

24 MS. BERWICK: I really was just

1           unclear because of the description we had at  
2           our last session. I thought this was the  
3           place. But that's okay. I will ask later.

4                       PRESIDING OFFICER SCOTT: Okay. And  
5           I'd rather have this discussion than not,  
6           frankly. So if you're not sure, ask, and we'll  
7           have the discussion.

8                       So, Mr. Ward?

9                       DR. WARD: Yeah. I just have -- one  
10          of the few technical people here. I have a  
11          problem with the lawyer's definition of  
12          "technical." And so I would just support what  
13          Attorney Maloney said, that we need a little  
14          flexibility. That's all.

15                      PRESIDING OFFICER SCOTT: Okay.

16                      DR. WARD: You don't have to react to  
17          it.

18                      PRESIDING OFFICER SCOTT: Ms.  
19          Berwick.

20 BY MS. BERWICK:

21 Q.       Okay. Mr. Kenworthy, can you explain why  
22       Antrim hired Wes Enman?

23 A.       (Kenworthy) Sure. We hired him for roughly a  
24       year to provide support during our LIDAR



1 campaign. LIDAR is a form of equipment that is  
2 paired with the met tower to collect wind data.  
3 It's a laser, so it takes quite a bit more  
4 power than the met tower does, which operates  
5 on one very small solar panel and a battery  
6 pack. This thing has a windshield wiper and a  
7 water pump and a laser. So it needs a power  
8 supply, and that power supply runs on propane.  
9 And so it needed to be fueled and occasionally  
10 checked and reset, and Wes performed that  
11 function for us.

12 Q. Are you continuing to pay Wes Enman?

13 A. (Kenworthy) No, we are not. We had roughly a  
14 one-year contract with him that ended several  
15 years ago.

16 Q. Is the Harris Center under a written contract  
17 demanding that they be neutral in exchange for  
18 the conservation easement land?

19 A. (Kenworthy) I believe I've provided information  
20 in my supplemental testimony. It is a letter  
21 from the Harris Center to me, dated August 10,  
22 2016, that provides a number of clarifications  
23 around different pieces of testimony that have  
24 been entered in this docket. I think one of

1 the things -- first of all, the terms of our  
2 agreements, other than the agreements we've  
3 already provided with the Harris Center, are  
4 confidential. But one of the things that this  
5 letter clarifies and that we have submitted  
6 here in the record is that the Harris Center  
7 has agreed, by virtue of entering into this  
8 series of settlements with us, not to oppose  
9 the Project. That's right. And that's right  
10 here in Attachment JK17 to my supplemental  
11 testimony.

12 Q. Did Antrim Wind Energy or any of its  
13 representatives contact Michael Ott, Charles  
14 Bean, Steve Cotran and the Whittemores to ask  
15 them to write letters stating that they would  
16 not put their land in conservation easements  
17 unless Antrim Wind Energy went through and also  
18 suggest to them that they would try to develop  
19 their land?

20 A. (Kenworthy) No. I would agree -- I would  
21 disagree with that characterization. You know,  
22 these landowners don't follow this docket as  
23 closely as we do. So we certainly made them  
24 aware of allegations made in the docket that

1           this land would be available for conservation,  
2           even if this wind project did not go forward.  
3           And we asked them to share with us their  
4           opinions on whether or not that was the case.  
5           I happen to know, having negotiated all these  
6           conservation agreements with the landowners,  
7           what each of their positions is. So, yes, we  
8           did ask them to write letters, but we did not  
9           ask them to write letters in the manner that  
10          you've characterized it.

11        Q.    Then you don't think it's quite coincidental  
12           that these four people wrote almost exactly the  
13           same thing on the same day?

14        A.    (Kenworthy) I disagree with that statement  
15           entirely. I think the letters are all very  
16           different, and I think they came in at  
17           different times. I submitted them all  
18           together. But they came in at different times,  
19           and they're very different letters.

20        Q.    Are you aware that these lots are restricted  
21           from development by the very zoning that you  
22           could not get overturned by Antrim voters?

23        A.    (Kenworthy) I'm not sure I agree with part of  
24           the premise of your question, or actually, any

1 of the premise of your question. I would  
2 acknowledge that there is zoning in Antrim and  
3 that that zoning contains within it certain  
4 regulations in every district in town. The  
5 rural conservation district is where most of  
6 the land that we lease is. The rural  
7 conservation district allows 3-acre  
8 subdivisions. So, theoretically, you could  
9 subdivide the 1800 acres that we lease into 600  
10 lots. There's lots of development that can  
11 happen in this area.

12 Q. Are you aware of the physical characteristics  
13 of the land that would make it next to  
14 impossible to develop without a major source of  
15 money and zoning changes?

16 A. (Kenworthy) I'm not sure I understand your  
17 question.

18 Q. That land -- we own land going up the mountain,  
19 too. It is pretty -- it would take a lot of  
20 money to have anybody build anything in that  
21 land. Maybe one house. But those four letters  
22 were suggesting that they were going to do some  
23 major commercial building projects. And the  
24 land is pretty inhospitable to any major --

1 plus, it's also zoned for rural conservation.  
2 A. (Kenworthy) It's called the "rural conservation  
3 district." It is not zoned for rural  
4 conservation. The rural conservation district  
5 has numerous allowed uses, including  
6 residential subdivisions and 3-acre lots. It  
7 also includes a number of other uses that are  
8 allowed by rights that would require only site  
9 plan approval and subdivision approval, which  
10 would need to be granted in accordance with the  
11 town zoning laws.

12 Certainly I recognize there's some steep  
13 terrain in that area that may not be suitable  
14 for development. But there's a lot of terrain  
15 in that area that could be suitable for  
16 development. I can't speak for the landowners,  
17 but what I can tell you is what they told me.  
18 And it's not uncommon that -- you know, wind  
19 energy is a form of economic development that  
20 provides revenue to landowners, that allows  
21 them to keep the remainder of that property  
22 undeveloped. And otherwise, you know, this is  
23 all private land. These are private  
24 landowners. They own the land there. And

1           these are, you know, activities that they would  
2           like to see go forward. And if they were not  
3           to, I think what you've heard them say is that  
4           they would pursue other ways to generate  
5           revenue from those properties.

6    Q.    Yes, I did hear --

7                       (Court Reporter interrupts.)

8    Q.    Yes, I did hear them say it in letters, but at  
9           the same time with encouragement from Antrim  
10          Wind.

11                       MR. NEEDLEMAN: Oh, I would object to  
12          that characterization.

13                       Again, Mr. Chairman, Mr.  
14          Kenworthy is certainly the right person for  
15          this. But my concern is that Mr. Stovall has  
16          come from Texas and Mr. Marcucci came from  
17          Florida --

18                       MS. BERWICK: I've only I got two  
19          more questions -- oh, no, I don't. I've got  
20          lots more.

21                       MR. NEEDLEMAN: I'm happy for people  
22          to ask questions. I just think we're going to  
23          create an issue if we don't stay on topic with  
24          the panels.

1 MS. BERWICK: Okay.

2 PRESIDING OFFICER SCOTT: And also,  
3 again, questions, not statements, please.

4 MS. BERWICK: Okay.

5 BY MS. BERWICK:

6 Q. Where at this moment does Antrim Wind stand on  
7 the FAA approval of the lights on the top of  
8 the towers that would only come on when  
9 airplanes came close?

10 A. (Kenworthy) The status is that we have filed  
11 with the FAA. And I apologize. I should have  
12 said this at the very beginning. We have filed  
13 with the FAA an application for the ADLS, the  
14 aircraft lighting detecting system, with a  
15 vendor that we've identified, called Laufer  
16 Wind. Laufer was originally a company that was  
17 based out of Bedford, New Hampshire. Their  
18 technology has been -- has met the approval of  
19 the FAA. And that application was filed with  
20 the FAA. I'd have to check the date, but  
21 sometime in the last couple weeks. And so, at  
22 this stage, it's for the FAA to now review the  
23 technical data that we've provided them and to  
24 hopefully, ultimately issue an approval for us

1 to use that technology at this site.

2 PRESIDING OFFICER SCOTT: Ms.  
3 Berwick, how much more do you have, do you  
4 think?

5 MS. BERWICK: I think most of this is  
6 going to stay for the next time I guess I see  
7 Mr. Kenworthy. I only have a few more  
8 questions then.

9 PRESIDING OFFICER SCOTT: Can you put  
10 a time frame on it? I'm not trying to rush you  
11 at all, but I'm just trying to decide whether  
12 we break now, 'cause I know some of our  
13 committee members have obligations, and I  
14 believe Mr. Ward does, too, actually.

15 MS. BERWICK: About two minutes.

16 PRESIDING OFFICER SCOTT: I'll hold  
17 you to that.

18 BY MS. BERWICK:

19 Q. Okay. If you don't get those things on the top  
20 of the ones you were just talking about within  
21 six months of your construction, will you be  
22 putting them on at all?

23 A. (Kenworthy) Yes. If we ultimately get the  
24 approval, then yes. I think the -- again, I'd



1           have to look. But I think what we've committed  
2           to is to install the system in accordance with  
3           the settlement agreement that we executed with  
4           the Appalachian Mountain Club, which, again, if  
5           I recall, stipulates that if we get the  
6           approval anytime within six months or so of, I  
7           can't remember if it was the commencement of  
8           construction or if it was some other date, that  
9           we would install the system simultaneous with  
10          the remainder of construction, but that if we  
11          were to receive that approval anytime  
12          thereafter, that we would install it and have  
13          it operational within one year of that  
14          approval.

15 BY MS. BERWICK:

16 Q.       Okay. This is for when you are doing the  
17       blasting. What are the plans to ensure that  
18       landowners' wells are not impacted?

19 A.       (Kenworthy) I'm going to speak very generally  
20       about that, and then I'm going to ask Mr.  
21       Cavanagh to talk a little bit more about  
22       blasting and how it occurs and what the process  
23       is.

24                       We have -- one of the comments that DES

1           made to us in -- I forget when it was.  
2           Sometime in the spring they asked for some  
3           additional information, and they asked for  
4           information or a plan relating to well tests,  
5           in the event that we had more than 5,000 cubic  
6           yards of blasting, that we would have a testing  
7           program for any wells that were within 2,000  
8           feet of any blasting activities. And we have  
9           informed them that we have no issue with that,  
10          and that, in fact, if we end up having that  
11          degree of blasting, we would develop such a  
12          plan. So that's what we've committed to with  
13          DES. And I think in terms of kind of how we go  
14          from when we issue a notice to proceed to our  
15          construction contractor to when the blasting  
16          actually occurs, I'd like to ask Mr. Cavanagh  
17          to talk a little bit more about that.

18        A.   (Cavanagh) So when the blasting project moves  
19              forward, we'll develop a detailed,  
20              comprehensive blasting plan, and we'll hire a  
21              competent blaster that's licensed in the state  
22              and that follows all the state regulations.  
23              Typically, our blaster will go out, and is  
24              required to go out and survey any properties

1           that are in close proximity, or any structures,  
2           including wells, that are in close proximity to  
3           the blasting operations. To date, you know,  
4           what we also do is monitor vibration of the  
5           blasting. And typically, the vibration of  
6           blasting, you know, we restrict the level of  
7           blast so that it creates a very small vibration  
8           the further you get away from the blast zone.  
9           And, you know, to limit -- what we're trying to  
10          limit is any cracking of any type of substrate.  
11          So, you know, we're -- even plaster or anything  
12          like that. So we'll document the condition of  
13          structures before blasting and then after  
14          blasting.

15    Q.    All right. If this project gets approved, when  
16          would you start construction? And I'll tell  
17          you why I'm asking it so you can -- I'm  
18          concerned we have black bears on that mountain  
19          and if you start in October or November when  
20          they're just going into hibernation, what would  
21          happen.

22    A.    (Cavanagh) I'm going to let Mr. Kenworthy  
23          address that.

24    Q.    And that's my last question.

1 A. (Kenworthy) I can't really speak to the black  
2 bear issue specifically. I think that would be  
3 a good question to ask Mr. Valteau and  
4 Mr. Gravel. But I think it's likely -- well,  
5 final construction timing is going to depend on  
6 a number of factors. Certainly it's going to  
7 depend on the timing of the issuance of the  
8 certificate. And once that certificate has  
9 been issued and any potential, you know,  
10 process that may ensue, then the close of  
11 financing. And, you know, our anticipated  
12 schedule now is that we would issue at least  
13 some type of notice to proceed either late this  
14 year or early next year so that we could at  
15 least start clearing work in the wintertime,  
16 because we're -- we've agreed in our  
17 conversations with New Hampshire Fish and Game  
18 Department to limit clearing to between  
19 October 1 and March 31 to avoid potential  
20 impacts to ground-nesting birds. And so we  
21 want to try and hit that window and get  
22 clearing done ideally this winter so that it's  
23 not delayed to the following winter. I think  
24 with that schedule, which we think we can meet,

1           then we would start construction shortly  
2           thereafter.

3                       MS. BERWICK: All right. That's my  
4           last question.

5                       PRESIDING OFFICER SCOTT: Thank you  
6           all. We will adjourn for the day and come back  
7           again at 9:00 on Thursday. We will pick up  
8           with the non-abutting property residents. I  
9           assume that's Mr. Block. Thank you all.

10           (Whereupon the hearing was adjourned at 5:12 p.m.)

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SEC 2015-02 ANTRIM WIND ENERGY Hearing on the Merits

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