

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

September 29, 2016 - 9:03 A.M. **DAY 7**
Public Utilities Commission.
21 South Fruit Street, Suite 10 **Morning Session**
Concord, New Hampshire **ONLY**

IN RE: SEC DOCKET NO. 2015-02
ANTRIM WIND ENERGY, LLC;
Application of Antrim Wind
Energy, LLC for a Certificate
of Site and Facility.
(Hearing on the merits)

PRESENT FOR
SUBCOMMITTEE: SITE EVALUATION COMMITTEE:

Cmsr. Robert R. Scott	Public Utilities Commission
<i>(Presiding as Presiding Officer)</i>	
Cmsr. Jeffery Rose	Dept. of Resources & Economic Development
Dr. Richard Boisvert	Dept. of Cultural Resources/
<i>(Designee)</i>	Div. of Historical Resources
John S. Clifford	Public Utilities Commission
<i>(Designee)</i>	
Dir. Eugene Forbes	Dept. of Environmental
<i>(Designee)</i>	Services/Water Division
Patricia Weathersby	Public Member

Also Present for the SEC:

Michael J. Iacopino, Esq. (Brennan...
Pamela G. Monroe, SEC Administrator
Marissa Schuetz, SEC Program Specialist

COURT REPORTER: Cynthia Foster, LCR No. 014

1 APPEARANCES: (as noted by the court reporter)

2 Reptg. Antrim Wind Energy (Applicant):
Barry Needleman, Esq. (McLane...)
3 Rebecca S. Walkley, Esq. (McLane...)
Henry Weitzner (Antrim Wind Energy)
4 Jack Kenworthy (Antrim Wind Energy)

5 Reptg. Counsel for the Public:
Mary E. Maloney, Esq.
6 Asst. Atty. General
N.H. Attorney General's Office

7
8 Reptg. the Town of Antrim:
Justin C. Richardson, Esq. (Upton...)
Robert Edwards, Selectman
9 Michael Genest, Selectman
John Robertson, Selectman

10 Reptg. Harris Ctr. for Conservation Ed.
11 Stephen Froling, Esq.
James Newsome, Esq.

12 Reptg. Audubon Society:
13 Jason Reimers, Esq. (BCM...)
Francie Von Mertens
14 Carol Foss

15 Reptg. Abutting Landowners Group:
Barbara Berwick, pro se
16 Bruce Berwick, pro se

17 Reptg. Allen/Levesque Group:
Charles Levesque, pro se
18 Mary Allen, pro se

19 Rept. Meteorologists Group:
Dr. Fred Ward

20 Reptg. Wind Action Group:
21 Lisa Linowes

22 Wes Enman, pro se

23

24

1 APPEARANCES: (Continued):

2 Reptg. Non-Abutting Landowners Group:
3 Richard Block, pro se
4 Annie Law, pro se
5 Robert Cleland, pro se
6 Elsa Voelcker, pro se

7 Reptg. Stoddard Conservation Commission:
8 Geoffrey T. Jones
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

WITNESS - KENWORTHY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

WITNESS (Resumed)	JACK KENWORTHY	PAGE NO.
Cross-Examination by Ms. Berwick		6
Cross-Examination by Mr. Levesque		18
Cross-Examination by Mr. Ward		32
Cross-Examination by Ms. Linowes		56
Cross-Examination by Mr. Reimers		104
Cross-Examination by Ms. Maloney		126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

E X H I B I T S

EXHIBIT ID	D E S C R I P T I O N	PAGE NO.
WA-30X	Photograph: Regarding Searsburg Wind Power Facility Welcome Sign	56
WA-31X	Excerpt from transcript re: SEC Docket 2014-04 dated 09-29-15, consisting of page 1, 2 and 159-163	56
LA-8	Document entitled "Absentee Official Ballot Town of Antrim, NH Zoning Ordinance Amendment Ballot March 11, 2014	18

D A T A R E Q U E S T S

How often are sensors cleaned	8
How often are sensors calibrated	8
Cut-in point the system uses	39

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

P R O C E E D I N G S

PRESIDING OFFICER SCOTT: Good morning, everybody. On the record now, before we get back to the panelist, a couple of administrative things. I realize, I apologize, Attorney Maloney. We haven't responded to your motion regarding your -- so I am granting that, but you'll get a written order probably today, if not tomorrow.

MS. MALONEY: Thank you.

PRESIDING OFFICER SCOTT: Ms. Berwick, your motion, too, is granted to allow, is it your son to call in?

MS. BERWICK: Yes.

PRESIDING OFFICER SCOTT: Is there any other administrative issues we need to address before we start? Okay. I think we left off with Ms. Berwick. Your computer was dying, but I'm sure it's charged by now, I trust?

MS. BERWICK: It's all charged up.

PRESIDING OFFICER SCOTT: Mr. Kenworthy.

CROSS-EXAMINATION CONTINUED

BY MS. BERWICK:

Q Yesterday I believe that you explained that

1 Siemens used a different flicker control program
2 overseas. Was the name that you mentioned
3 SCADA?

4 A No. The SCADA system is an acronym for
5 Supervisory Control and Data Acquisition, and
6 the SCADA system is essentially the brains of
7 the whole wind farm. So things like the shadow
8 control system will ultimately be integrated
9 into the SCADA system, but the technology vendor
10 I believe that I referred to yesterday was a
11 company called Northtech.

12 Q Okay. Why is it that Northtech cannot use, that
13 Siemens can not use Northtech here?

14 A Because the technology that the configuration of
15 the way Northtech applies shadow control in
16 Europe is subject to a patent in the United
17 States that's held by a competitor of Siemens.

18 Q Where on the turbines are the sensors placed
19 that would be used for monitoring the shadow
20 flicker?

21 A There will be a sunlight detecting sensor on
22 each of the nacelles.

23 Q Okay. If they have been used to monitor the
24 amount of sunshine, I would think that it would

1 be very important that these sensors are kept
2 clean as even at high atmospheres we have dust.
3 How often are they to be cleaned?

4 A That's a good question. I don't have an answer
5 for you. I can try and get an answer.

6 Q Okay. And we heard Mr. O'Neal tell us that his
7 equipment is calibrated yearly. How often are
8 these calibrated?

9 A Again, I'm not sure of the answer to that.

10 Q All right. So could I ask that you find the
11 answer to those? Or can you make a data
12 request, I guess?

13 PRESIDING OFFICER SCOTT: Any objection?

14 MR. NEEDLEMAN: No. We can try to get the
15 answers.

16 MS. BERWICK: Okay. Thank you.

17 Q It was noted that we should not worry because
18 Siemens would have a lot to lose financially and
19 so of course would live up to its promises. Did
20 you notice on my exhibit, the Insurance Company
21 Blames \$20 Million Turbine Failures on Siemens,
22 you have the insurance company blaming Siemens
23 for shirking its responsibility related to the
24 failure of a steam turbine that even though it

1 is not a wind turbine, they had a very similar
2 contract of monitoring and maintaining as you
3 are currently being promised. Did you notice on
4 here the contract? Did you have a chance to
5 read this?

6 A I didn't notice it.

7 Q Okay. The contract requires Siemens to inspect
8 or supervise the rotor alignment, properly
9 program the turbine, and advise NRG which is the
10 company that uses the steam turbine of any
11 problems, and this insurance company is saying
12 all of which it failed to do according to the
13 complaint. You didn't notice that?

14 A I didn't.

15 Q Does the SEC rules protect the noise and flicker
16 levels in the future if we gave a portion of our
17 land to one of our children to build a house? I
18 think you answered this before.

19 A I believe I did. I don't think my answer is any
20 different.

21 Q I'm sorry. So basically the answer is no,
22 right?

23 A No, I don't think that's what I said yesterday.
24 I said, our interpretation of the rules is that

1 it applies to the structures that exist today,
2 and what may change in the future is really
3 beyond our control.

4 Q Okay. The contract that was signed with the
5 Town of Antrim was for the project in 2011/2012,
6 is that correct?

7 A Well, it was certainly signed during the course
8 of the development of that version of the
9 project, yes, but it's not specific. In other
10 words, that agreement is still in effect.

11 Q Has that agreement been updated?

12 A No, it hasn't.

13 Q So even though this was a new, substantially
14 changed project, there was no new contract; is
15 that correct?

16 A Well, I think the components of this agreement
17 are still applicable to this project. It's
18 worth noting though that there's been a couple
19 of things that we anticipate will lead to some
20 changes in this agreement, one of which is a
21 conversation that we've been having with the
22 Board of Selectmen in Antrim recently as it
23 relates to decommissioning funding in
24 particular. The SEC rules have changed since

1 this agreement was drafted and executed in 2012,
2 and so with respect to decommissioning, we have
3 a couple of terms that we expect to agree to
4 with the Board of Selectmen regarding the amount
5 of decommissioning funding. This agreement
6 contemplates that salvage value will be included
7 in the decommissioning cost estimate so the
8 amount of those funds and the fact that those
9 funds shall not decrease from the initial
10 decommissioning funding estimate amount over the
11 term of the agreement, and also that the form of
12 the decommissioning funding assurance will be in
13 the form of an irrevocable letter of credit.

14 So there certainly are some discussions
15 about what elements of the agreement may be
16 appropriate to modify, but in general, I think
17 the terms of this agreement would apply in
18 either case, either project.

19 Q The reports show a significant impact to the
20 people around Gregg Lake and to the homeowners
21 of White Birch Point. Were you required to
22 notify them or contact them?

23 A I'm sorry. Which significant impacts are you
24 referring to?

1 Q The significant visual impacts.

2 A I wouldn't agree with your characterization.

3 The homes in White Birch Point, I don't think
4 really, I'm not positive about this, but for the
5 most part the homes are all in the woods and the
6 visibility at White Birch Point is really on the
7 beach, but I think Mr. Raphael testified to the
8 aesthetic impacts related to the project, and
9 it's really not my area of expertise.

10 Q Were you required to contact them at all?

11 A Other than the public notices that have been
12 made throughout Antrim specifically, were we
13 required to contact White Birch Point
14 homeowners? No, I don't believe so.

15 Q Why were no members of the White Birch Point
16 involved in the mitigation decision related to
17 the historical district adverse effect?

18 A Well, the process for us with respect to
19 evaluating historic resources began with the
20 Section 106 process which is a federal process
21 in which the Army Corps is the lead agency.
22 That process involved notices that were sent to
23 a variety of different stakeholders for then
24 known historic resources. The Antrim Historical

1 Society, other nearby historical societies that
2 were invited to participate in that Section 106
3 process as consulting parties, the White Birch
4 Point homeowners, that area was not identified
5 as any historic resource, as I think
6 Mr. Stevenson testified to yesterday.

7 So there was no, without having a resource
8 identified, there was no way to know to notice
9 them, but the Army Corps, when there was a
10 public hearing held in Antrim in 2012, that was
11 noticed. It was part of the Section 106
12 process, and it was held concurrently with the
13 SEC public information session, I think it was
14 then called, that occurred after the application
15 was filed under the previous rules, and at that
16 meeting that was noticed publicly in Antrim
17 there was a signup sheet for anybody who wanted
18 to consult in Section 106 process to do so, and
19 all who did then remained as consulting parties
20 throughout that Section 106 process, and nobody
21 did participate from White Birch Point in that
22 process.

23 I think, as you know, the Section 106
24 process concluded with the Corps determining

1 that there was no effect to White Birch Point,
2 and then as we moved forward, essentially we
3 were contacted by the Division of Historical
4 Resources as they continued to consult with the
5 Army Corps on the 106 process, and I think in
6 advance of the Division filing their final
7 comments with the Committee as to whether there
8 may be options for us to mitigate their
9 concerns, we were responsive to their inquiry to
10 us and really followed their lead. So there
11 wasn't any invitation by them or others to the
12 White Birch Point homeowners.

13 Q So DHR did not think they should reach out to
14 the citizens of White Birch?

15 A I don't know what specifically DHR was, you
16 know, what their thought process was, but that's
17 the way it evolved.

18 Q Okay. You stated that you only need to monitor
19 the sound intensities during the first year.
20 Your expert testified that with age, these
21 turbines could produce more sound. It actually
22 makes financial sense for your company as these
23 turbines near the end of their expected lifespan
24 to not as invest as much into maintenance

1 similar to the way we stop investing in fixing
2 all the little problems in our older cars. So
3 is it our job as homeowners to have to get sound
4 studies done in future years?

5 A Well, I would disagree with the characterization
6 regarding maintenance. You know, these turbines
7 are a bit different than a car. These are
8 machines that are generating electricity and
9 that's obviously the business case for building
10 these turbines. We need to ensure that they
11 continue to operate safely and reliably and
12 consistently throughout their operating life.
13 So the maintenance is ongoing throughout the
14 life of these turbines until they're going to
15 ultimately be decommissioned, and, similarly,
16 the requirement that we meet the SEC sound
17 regulations applies throughout the life of the
18 project.

19 Q I understand that applies. But how would I as a
20 homeowner get the information to the SEC if I
21 felt that the decibels were much higher than the
22 allowed? I don't have the sound equipment that
23 would be accepted, I don't believe. I don't
24 think they'll accept my phone decibel reading,

1 would they?

2 A I don't think so.

3 Q No.

4 A No, but I think, so you know, in the event that
5 there is, you know, at some later time during
6 the life of the project a complaint that relates
7 to sound, obviously that complaint can be made
8 directly to Antrim Wind and we will be
9 responsive to it, to understand what the issue
10 is. What the potential cause may be, if there
11 is a problem that's led to some type of a
12 violation and then take steps to correct it if
13 we find that there is an issue.

14 Obviously, also the town is another place
15 to go and file a complaint if that's necessary,
16 and the Committee also ultimately has final
17 authority to enforce the regulations that are
18 contained in its rules so a complaint could be
19 filed there as well.

20 Q My nephew has a seizure disorder, and it's
21 possible that we will have grandchildren or
22 others with this seizure disorder or other
23 people that are in the flicker zone would have
24 adults or children with seizure disorders. I

1 worked at Crotched Mountain as a nurse with
2 brain-injured children and adults who have major
3 seizure disorders. Are you aware that changes
4 in light can bring on seizures and seizure-prone
5 children and adults and that there is set amount
6 of time needed between light changes?

7 A I am no expert on seizure disorders. I can tell
8 you that it's my understanding that the, I have
9 heard that strobing lights can in some cases
10 have some interaction with those who are
11 potentially susceptible to seizures. However,
12 the frequency of any light and shadow changes
13 that are caused by rotating turbines are far too
14 slow to actually kind of fall into that category
15 of strobing lights and that's my lay
16 understanding. So I guess that's the best
17 answer I can give you.

18 Q Okay. I have no further questions. Thank you.

19 (Exhibit LA-8 marked for identification)

20 PRESIDING OFFICER SCOTT: Thank you.

21 Mr. Levesque? I believe you are next?

22 MR. LEVESQUE: Thank you, Mr. Chairman.

23 Sorry I wasn't here yesterday. I was out making
24 a living so I could pay my taxes so Attorney

1 Richardson can get paid.

2 PRESIDING OFFICER SCOTT: As it turns out,
3 looks like our timing was good since you're
4 available now and you're up right now.

5 **CROSS-EXAMINATION**

6 BY MR. LEVESQUE:

7 Q So I know some of these issues were covered
8 yesterday, and I've been briefed on some of them
9 so I'll try not to be repetitive. I'll do the
10 best I can. So for the Committee and folks in
11 the room, two exhibits I'll be referencing, one
12 of which I already handed out which is the
13 official ballot from the 2014 ordinance vote.

14 The second one is in LA-5 which is the
15 Antrim Master Plan, and it's a document you have
16 looked at before when I think I was
17 cross-examining Mr. Raphael, but I will be, in
18 the PDF on LA-5, I will be on page 17 in the
19 PDF, and if you're looking at the actual page
20 numbers of the document, it's III so it's
21 Chapter 3, page 11. That will be at the bottom
22 of that. So those are the two I'm be looking at
23 and discussing.

24 Mr. Kenworthy, thank you for taking my

1 questions. In your Prefiled Testimony when you
2 were discussing the Master Plan in Antrim, you
3 chose to reference one section, the Energy and
4 Conservation Section. Is that correct?

5 A In my original Prefiled Testimony?

6 Q Yes. You talk about the Master Plan, but the
7 section that you refer to is the Energy and
8 Conservation Section.

9 A I believe that's correct in my original Prefiled
10 Testimony. I think we've also referenced a
11 number of other sections. My Supplemental
12 Testimony attached a Data Request Response to
13 Public Counsel which I think went through every
14 section of the Master Plan.

15 Q And in that, I may have missed it, but in that
16 did you in fact reference the Natural Resource
17 and Conservation Section of the plan, the
18 relevant sections? Because I don't recall
19 seeing that you did that.

20 A Just give me one minute, Mr. Levesque, and I'll
21 try and pull this up.

22 Q Thank you. Let me ask you more specifically.

23 A Sure.

24 Q Did you get to the Master Plan, the LA-5

1 exhibit? Do you have that up?

2 A I don't actually have that up right now.

3 Q Okay. Well, anyways, I am on page 17 of the
4 PDF, and I'm just going to read the tail end so
5 this is from the Natural Resource and
6 Conservation Section, and all these sections of
7 the Master Plan end with a set of
8 recommendations which is essentially the
9 summation and what the town should do about what
10 was discussed in the chapter, and the last two
11 recommendations at the bottom of that page go
12 like this: Actively work with the state and
13 other organizations involved in the Quabbin to
14 Cardigan initiative to preserve the large
15 undeveloped areas of Antrim, particularly in the
16 western portion of town. Once developed, these
17 areas can never be recovered for open space.
18 And the last one reads: Work to carry out the
19 recommendations of the Open Space Committee as
20 adopted by Town Meeting, March 2006, and set
21 forth in Appendix 2, and that Open Space
22 Committee report is part of our exhibits.

23 So are these two recommendations, aren't
24 those relevant to this proceeding and the

1 proposed project?

2 A I suppose they are, and I think as we've stated,
3 you know, it's interesting what the first point
4 that you wrote, this project maybe is the
5 exception to the statement that once developed
6 these areas can never be recovered for open
7 space because of the fact that by virtue of the
8 project going forward it actually will be
9 permanently preserved, and, otherwise, would not
10 be. So I think it's a unique example where both
11 conservation and a period of limited development
12 can coexist.

13 Q And when might that happen if it, in fact, ever
14 does happen?

15 A Sorry? Which part?

16 Q That the area would be permanently conserved and
17 not developed, no longer developed?

18 A So the conservation easement LOIs, and I'm
19 speaking a little bit from memory here, they're
20 all included as part of our Appendix 10 to our
21 Application, and I believe what they specify is
22 that those easements will be final and in place
23 within 180 days of the commercial operation date
24 of the project. So within six months of the

1 project starting operations, those will be in
2 place, and those case restrictions that are
3 contained in the easements would apply on all of
4 the areas within the easement immediately. The
5 wind energy facility is a retained right of the
6 landowners for the period of the leases, and I
7 described a little bit about what period is
8 yesterday, but it's essentially 50 years from
9 the first date of the lease which is December
10 2009.

11 So the vast majority of the lands, of those
12 908 acres, so we have a final footprint of
13 somewhere around 11 acres. Probably we have a
14 final leasehold of somewhere in the range of 20
15 to 25 acres because it will include some
16 vegetative buffers that are required for storm
17 water management. So all but those 25 acres in
18 the original leasehold out of the 908 will be
19 permanently conserved within 180 days, and then
20 ultimately once decommissioning occurs and
21 restoration has been completed, then all of the
22 remainder of that would go in as well.

23 Q Thank you for that. Isn't it true that despite
24 the, I'll call it the deconstruction that will

1 have to go on to reclaim the site that the site
2 won't be the same as it is today after 50 years
3 when that occurs and the easements actually
4 become effective.

5 A Sure. I mean, I would not contend that it will
6 be identical to how it is today. I mean,
7 there's going to be some changes to grading,
8 there's going to be some, as we've talked about,
9 some blasting that needs to occur so it will not
10 be identical, but I think in terms of, when we
11 kind of look at what is required to do during
12 decommissioning under the SEC rules versus what
13 we've committed to do in our decommissioning
14 plan and in these conservation easement
15 agreements where we're going to break up and
16 loam and reseed that road all the way up to the
17 point of Mr. Ott's property, when we
18 decommission, certainly that area is going to
19 revegetate, and I think if you kind of look
20 forward an equivalent amount of time to the life
21 of this project, then that area is going to be
22 forested and used by wildlife, and that kind of
23 footprint area will be significantly restored.
24 Q We hope. Isn't it true that one of the

WITNESS: KENWORTHY

1 landowners which you have a lease with, the Bean
2 family, I'm not sure who the principals are
3 currently, that the vast majority of their
4 ownership of over 1000 acres is not included in
5 the conservation easement that's proposed for
6 that part of the project?

7 A Yes. That's correct. So the Antrim Limited
8 Partnership which is owned by the Bean family, I
9 believe it's around 940 acres that they own,
10 could be over a thousand, it's in that range,
11 they were extremely reluctant to enter into any
12 type of easement agreement. We worked very hard
13 to get them to be included in this conservation
14 package, and we were able to get them to agree
15 to a 100-acre strip along the ridge, and that
16 100-acre strip is important because it
17 accomplishes two goals from a conservation
18 perspective.

19 One is to connect all of the other
20 conservation land so it bridges Mr. Ott's
21 property with the remaining contiguous lands
22 that consist of Cotran, Whittemore and
23 Whittemore Trust and Micheli so that 100-acre
24 strip connects all of that land so the whole 908

WITNESS: KENWORTHY

1 acres is now contiguous, and it means that 100
2 percent of the ridgeline is now permanently
3 conserved.

4 Q Again, the remaining acreage that is in the Bean
5 trust is not going to be conserved so they'll be
6 able to do any development that's allowed under
7 current law and regulation, correct?

8 A Yes. The development on the remainder of their
9 land would not be restricted by conservation
10 easement.

11 Q Thank you. So I want to shift gears a little
12 bit and talk about some things you discussed in
13 your Supplemental Prefiled Testimony, and that's
14 App. 24. Particularly, something you talked
15 about on page 3, but I have a few questions
16 about that. So in 2009, if I get the date
17 right, Mr. Kenworthy, in 2009, when Antrim Wind
18 Energy came to Antrim, can't remember when we
19 met originally, but it was something like that.
20 The zoning ordinance in town at the time did not
21 allow large scale wind development as a
22 permitted use; is that correct?

23 A Yes. I think in terms of the listed permitted
24 uses in the districts where our project is

WITNESS: KENWORTHY

1 planned, there was not a list for large scale
2 wind energy facilities.

3 Q Today in 2016, is that ordinance changed? Does
4 it allow for large scale wind today?

5 A It is still not listed as a principal or primary
6 permanent use.

7 Q Thank you. I know this has been discussed. So
8 there have been three specific zoning ordinance
9 votes to in fact change that since Antrim Wind
10 first started to discuss the project in 2009.
11 Isn't that correct?

12 A Yes.

13 Q And have any of those three proposals which went
14 to votes at town meeting, have any of those
15 three which were all intended to allow large
16 scale wind as a permitted use in these zones,
17 have any of those three passed?

18 A No. None of the ordinances have passed. I
19 would take exception to the characterization
20 that they were actually intended to allow wind
21 energy facilities in Antrim. I understand the
22 basis for your statement, I think. They may
23 have created a, put the words on the page that
24 said that there's an allowed use now in those

WITNESS: KENWORTHY

1 districts, but the regulations and the
2 ordinances were really de facto prohibitions.

3 Q So how about the 2014 vote. Let's go to the
4 2014 vote. So the 2014 vote. That's the
5 handout that I sent around which reads page 4 of
6 4, Exhibit LA-8. So it's, it is an exhibit that
7 we already have in, and I've just excerpted page
8 4 of the 4-page exhibit.

9 So this ordinance vote, in fact, in 2014
10 was written by be Antrim Wind, was it not?

11 A Yes. This is what I was explaining yesterday,
12 and I know you weren't here, Mr. Levesque. I'm
13 happy to state it again. We did work with
14 Antrim residents, and we adopted the language
15 from the town of Antrim agreement into the form
16 of an ordinance, and that was what was reflected
17 in this vote, yes.

18 Q So what you just said before which was that
19 those votes didn't in fact allow for large scale
20 wind to be developed, you can't mean that about
21 this one which you wrote, correct?

22 A You're correct. I apologize. It's a
23 clarification. It's certainly not true for all
24 of the votes. So the first two ordinance votes

WITNESS: KENWORTHY

1 would have been prohibitive.

2 Q Do you have the handout?

3 A I do.

4 Q So would you read what amendment number 5 says
5 so that bold section that begins Amendment
6 Number 5. Would you read that, please?

7 A Yes. It says: Are you in favor of the adoption
8 of an Amendment Number 5 as submitted by
9 Petition for the town of Antrim zoning ordinance
10 which would provide for the development of wind
11 farms in the Rural Conservation District and the
12 Highway Business District and establish specific
13 development standards including standards on
14 proper construction, public health and safety,
15 noise, environmental and visual impacts and
16 require operational agreements with the town.

17 Q Thank you. Would you also read the vote itself,
18 how many yes votes and how many no votes?

19 A It was 278 "yes" to 390 "no."

20 Q So that failed, correct?

21 A It did. It also states here on the actual
22 ballot that the Planning Board did not approve
23 the petitioned amendment which I think was a key
24 factor in this being defeated, and we understand

WITNESS: KENWORTHY

1 it. I think there was a view that, as you
2 stated, that this ordinance was written by the
3 developer, and the town didn't like that, and
4 they rejected it.

5 Q So the other two votes that occurred that you
6 referred earlier as proposed changes that would
7 not necessarily have allowed for large scale
8 wind development, did the Antrim Planning Board
9 make a recommendation on those two votes that
10 were included in the ballot? Do you remember?

11 A I don't remember.

12 Q Would you believe that on both of those that the
13 Antrim Planning Board recommended that they be
14 passed?

15 A I would believe that. The Planning Board wrote
16 them.

17 Q So your suggestion that the voters in Antrim
18 actually listened to the Planning Board
19 recommendations is not really correct, is it?
20 Because in all three cases, the voters didn't
21 listen to the Planning Board?

22 A It's a fair statement. I think, though, there
23 were other factors, and again, I think as you
24 know, you were there, I was there, there was

WITNESS: KENWORTHY

1 obviously a lot of communication around these
2 votes, and, you know, certainly we wanted people
3 in Antrim to know for the first two votes that
4 there were restrictions in these ordinances that
5 would be untenable for any commercial wind
6 project to be able to achieve. And when the
7 third ordinance vote came around there was a lot
8 of publicity around the fact that this had been
9 something that was written by a developer who
10 was trying to regulate itself and I think the
11 town didn't like that. And again, we understand
12 that.

13 Q And this last vote in 2014, is it not true that
14 that vote occurred after the SEC original docket
15 denied your original application?

16 A That's correct.

17 Q One last thing. If you could go to your
18 Supplemental Testimony, and I'm on the PDF
19 which, I think, says page 4, and it may be page
20 3 in your actual testimony, and beginning, I
21 think, on line 12. I've got a sentence that
22 starts while the. Do you see that? While the
23 ordinance?

24 A Yes. I see that.

WITNESS: KENWORTHY

1 Q Would you read the rest of that paragraph
2 starting with "while the ordinance"?

3 A It says: While the ordinance would have
4 provided a reasonable framework for an
5 application to be processed by the township, the
6 voters felt that Antrim Wind was writing the
7 ordinance and were concerned about the lack of
8 independent review.

9 Q Keep on reading the last sentence, please.

10 A Says rejecting this ordinance reflected the
11 town's desire to write their own ordinances or
12 let the SEC maintain jurisdiction over the
13 Antrim Wind project.

14 Q Thank you. So that last sentence in particular,
15 it implies that you have some evidence that
16 verifies that because that seems to be
17 speculation on your part. What evidence do you
18 have that actually shows that that statement is
19 true?

20 A Specifically, I don't have any clear evidence.
21 I think it's our, it's my view and this is my
22 testimony, and I think it's consistent with what
23 we observed happening at the time. I think it's
24 consistent with the testimony for the most part

WITNESS: KENWORTHY

1 of the Board of Selectmen here who have also
2 testified to these series of events over the
3 last four or five, six years.

4 Q So again, did you know if the Selectmen and
5 obviously they're going to be up at some point
6 in time soon, are you suggesting that the
7 Selectmen provided you with some evidence that
8 verifies this statement?

9 A No.

10 Q Okay. So it really is speculation on your part.

11 A If that's how you'd like to characterize it.
12 It's my opinion.

13 Q Okay. Thank you very much. Mr. Chairman, I
14 have no further questions.

15 PRESIDING OFFICER SCOTT: Thank you.
16 Mr. Ward?

17 **CROSS-EXAMINATION**

18 BY DR. WARD:

19 Q First off, I want to thank the Chairman for
20 being easy on me, and we have discussed that
21 meteorology keeps coming in at various places,
22 and this is another place. Before yesterday, I
23 didn't plan to ask any questions, and then
24 meteorology kept coming up and coming up. So

WITNESS: KENWORTHY

1 now I have some serious questions.

2 I've requested to get a copy of the model
3 which Antrim Wind has used to calculate shadow
4 flicker, and I keep hearing that it's
5 proprietary, and, therefore, I can't get it.
6 Mr. Needleman provided me with a partial
7 response yesterday, and I have gone through
8 that. The problem I have still exists, and I
9 think that could be most easily demonstrated to
10 the Committee, if I may, by showing them a copy
11 of the climatic data for Concord, New Hampshire,
12 for November of 1972. If I may approach the
13 witness.

14 MR. NEEDLEMAN: While Dr. Ward is doing
15 that, I just wanted to clarify.

16 PRESIDING OFFICER SCOTT: Go ahead,
17 Dr. Ward.

18 MR. NEEDLEMAN: By proprietary, it's a
19 licensed model for a third party so we don't
20 have a right to turn it over.

21 PRESIDING OFFICER SCOTT: Thank you. Go
22 ahead, Mr. Ward.

23 Q This is the local climatological data for
24 Concord, New Hampshire, for November of 1972,

WITNESS: KENWORTHY

1 and I've just marked out the 17th, and you'll
2 see there's a column here that says the amount
3 of cloudy or sky cover from sunrise to sunset,
4 and then right next to it is a column percent
5 sunshine and if you would read those two
6 numbers.

7 A If I'm reading what you want me to correctly, it
8 looks like the percent of possible sunshine is
9 50.

10 Q Yes.

11 A And the hours in tenths is 4.8.

12 Q Which column?

13 A Is that what you want?

14 Q No. This out in here. The sky cover.

15 A Okay. Sky cover, tenths, sunrise to sunset is
16 10.

17 Q Thank you. There are a lot of numbers in this
18 thing that I referred to. The main reason for
19 picking that date out is how what it shows is
20 that the sky cover was recorded as being 10
21 tenths for the day. That's complete overcast,
22 and yet the percent sunshine was 50 percent
23 which meant 50 percent of the sunshine got
24 through.

WITNESS: KENWORTHY

1 I could show a lot of other weather data
2 that would show similar things where there's a
3 lot of things going on with sky cover and
4 percent sunshine, and while they have a sort of
5 a general relationship, it is certainly not
6 one-to-one. So it gets to my question.

7 In the model that you use, you use percent
8 sunshine as a proxy for whether the sun is
9 strong enough or available enough to cause a
10 shadow flicker, is that not true?

11 A Dr. Ward, I'm really not able to speak to the
12 inputs to the model or how that model is run. I
13 didn't do it. Mr. O'Neal, our expert, did that
14 one.

15 Q No, but he didn't answer. He merely said the
16 model.

17 A I believe he described with precision what the
18 inputs were that he used and where that data
19 came from, but I can't speak to it further.

20 Q Okay. Then let me ask you a question which you
21 can speak to. There's no question that when the
22 sky is completely clear and blue as it is
23 outside, we would have shadow flicker, would we
24 not? If the other situations, the geometry and

WITNESS: KENWORTHY

1 everything, were correct?

2 A Sure. Shadow flicker can occur on clear days,
3 yes.

4 Q Right, and there would be days, and we've had
5 them in the last week or so, where it's very
6 dark and cloudy and we wouldn't get shadow
7 flicker that day even if the geometry were
8 right; isn't that true?

9 A Yes.

10 Q Okay. Now, I admit that meteorologists have a
11 different view of the world around them than
12 maybe you would, and I'm not criticizing you for
13 that, but half of the world that we see is above
14 us. So I'm just asking you from your
15 experience, have you ever looked at the sun when
16 it's overhead and stared at it?

17 A Not since I was a kid.

18 Q I wouldn't recommend it either. You'd go blind.
19 However, when you see the sun down around on the
20 horizon, have you ever looked at it and seen a
21 beautiful red sunshine?

22 A Absolutely.

23 Q And you didn't go blind.

24 A No, I haven't yet.

WITNESS: KENWORTHY

1 Q Have you also had an occasion when you could
2 look up at the sky, and you could see the solar
3 disk, but you didn't go blind because there was
4 enough cloudiness there that it cut down somehow
5 or other on the sunshine? Have you ever thought
6 about seeing -- have you ever, would you ever
7 say you had seen that? That is, a visible disk
8 which you could look at because there was enough
9 cloudiness?

10 A Sure.

11 Q So you would then agree that there would be
12 times when there would be some clouds and yet
13 you might expect flicker. Wouldn't that not be
14 true?

15 A Again, Mr. Ward, I am not the expert in the
16 nuances of the inputs on meteorological factors
17 that go into the model to calculate shadow
18 flicker. I can tell you that the work that Mr.
19 O'Neal and Epsilon did is consistent with how
20 flicker is modeled all over the world, and it's
21 been applied successfully and accurately in
22 numerous other places, but other than what we've
23 provided and what Mr. O'Neal has testified to,
24 I'm afraid I can't give you any more detailed

WITNESS: KENWORTHY

1 information about the nuances of those inputs.

2 MR. NEEDLEMAN: Mr. Chairman, I would just
3 point out that the response we filed to the data
4 request also contains information relevant to
5 this.

6 PRESIDING OFFICER SCOTT: Have you seen the
7 data request?

8 DR. WARD: Yes, I have, and I've read the
9 response.

10 Q In your testimony yesterday, you said that the
11 postconstruction monitoring was some kind of a
12 fancy computer model, and I have no doubt that
13 it's pretty fancy and it's a computer model,
14 okay. It doesn't have percent sunshine in it.
15 What does it use to determine whether there's
16 flicker?

17 A So the shadow control system uses actual
18 sunlight sensors that are installed on each of
19 the nine turbines.

20 Q At what level are the sunlight sensors set
21 between blue sky and 100 percent and something
22 where you could hardly see the sun? There's a
23 level there at which they have to say yes, it is
24 or no, it isn't. Is that true?

WITNESS: KENWORTHY

1 A That is true. So there is a threshold above
2 which the system will register that there's
3 enough sunshine to create flicker, and below
4 which there isn't. I think it's binary. What
5 that level is, I'm afraid I don't have a
6 specific answer for you right now. We can
7 certainly take that as another request and try
8 and get that information back to you.

9 Q Well, I would like to make the request in a form
10 that I need to know on what experimental data
11 there are which was used to determine the level
12 at which it flickers or it doesn't because I
13 frankly don't know how you could possibly
14 determine that. So I would like to ask not just
15 the data which, whatever it is, but on what
16 basis, what was the background, what
17 experimental evidence do you have to know when a
18 flicker goes and when it doesn't. So that would
19 be my request.

20 PRESIDING OFFICER SCOTT: Any objections?

21 MR. NEEDLEMAN: We can certainly provide
22 the cut-in point that the system uses. As far
23 as whatever data went into making that
24 determination, I'm not sure about that.

WITNESS: KENWORTHY

1 PRESIDING OFFICER SCOTT: I will say from
2 my point of view I'd be interested to understand
3 what drove the cut point which I think is the
4 basis, maybe not the exact same thing.

5 DR. WARD: I didn't hear you. I'm sorry.

6 PRESIDING OFFICER SCOTT: I said from my
7 personal point of view, I'm interested in what
8 would drive that cut point for the sensor. That
9 may not be exactly your question for the basis.

10 DR. WARD: Well, I share the same, really
11 the same concern that you have. That is, I
12 don't know how you would determine it, but it
13 has been, apparently has been determined, and in
14 the testimony yesterday, not only has it been
15 determined but they're going to be able to turn
16 things on and off on the basis of whatever this
17 is. And I sat with myself and said okay,
18 somebody called me and asked me what level do
19 you want to do it at, and, frankly, I don't know
20 how to even find it out, let alone give you some
21 number.

22 And as far as Mr. Needleman's comment about
23 yes, he could give me a number, a number of
24 what? What is it going to be? What are the

WITNESS: KENWORTHY

1 dimensions of that number going to be? Number
2 of lumens? The amount of shadow that comes in
3 from top to bottom? If we look at the
4 definition of shadow flicker, 102.48, it doesn't
5 talk about flicker. It says it does. But what
6 it says is alternating changes in light
7 intensity can occur with the rotating blades, so
8 forth.

9 Flicker, when I think about it in a
10 fireplace is it's on and off. This is not that.
11 Nor is it the definition. The definition says
12 changes in light intensity. What are the
13 dimensions, what, is it lumens, does it have to
14 be so many lumens and so many seconds or what is
15 it? I don't even know how I would define it,
16 and I haven't tried it, but they're claiming,
17 first of all, that they can, they've determined
18 it ahead of time, and leaving aside the, exactly
19 how it was done, but they are also going to be
20 able to determine it postconstruction which
21 implies they have a way of determining it, and
22 I'm asking how the hell are you going to do that
23 basically. What are the units of things and
24 changes in lumens.

WITNESS: KENWORTHY

1 PRESIDING OFFICER SCOTT: Thank you,
2 Mr. Ward. So why don't you take a stab at the
3 data request. I assume the manufacturer or
4 whoever will have some data on what the cut
5 point is and why, and we'll see where we go from
6 there.

7 MR. NEEDLEMAN: Understood.

8 PRESIDING OFFICER SCOTT: Thank you. Why
9 don't you proceed, Mr. Ward?

10 DR. WARD: I think that that is most of
11 what I have on shadow flicker. Let me just
12 check a second. That, by the way, would apply
13 not only to the postconstruction but to the
14 preconstruction, the numbers that they are
15 giving you. That is, there are numbers for
16 shadow flicker which the Committee and everybody
17 has been presented for, in the preconstruction
18 phrase because to try to find in the, what is
19 it, 8 hours per year or whatever it is. So the
20 question applies to that, too, because it looks
21 like, for example, on the basis of the numbers
22 that Mr. Kenworthy read, that the numbers for
23 shadow flicker that have been presented to the
24 Committee with their model, their proprietary

WITNESS: KENWORTHY

1 model, grossly underestimate the number, the
2 actual number of hours to be expected from
3 shadow flicker.

4 If that's the case, then every number that
5 we've been given applied to every particular
6 place where they're looking at it needs to be
7 substantially raised. We're talking about, from
8 what I can see, we're talking about minimum of
9 20 percent to maybe 50 percent, but I don't know
10 what the number is.

11 PRESIDING OFFICER SCOTT: So what's your
12 request?

13 DR. WARD: Pardon?

14 PRESIDING OFFICER SCOTT: What's your
15 request?

16 DR. WARD: I'm really explaining why we
17 need that because it applies to both pre and
18 postconstruction phase.

19 PRESIDING OFFICER SCOTT: The data request
20 I just agreed to was for the cut point and the
21 rationale for the cut point for the sensors on
22 the postconstruction monitor.

23 MR. NEEDLEMAN: And we certainly agree to
24 that. I disagree with what Dr. Ward has said

WITNESS: KENWORTHY

1 because with respect to the rest of that, what
2 he's now talking about the is manner in which
3 the modeling was conducted which is very
4 different from the issue of the cut point on the
5 Siemens system, and I think we have explored
6 that issue exhaustively with Mr. O'Neal.

7 DR. WARD: Okay. Then I will change my
8 format. I'll leave the other one in, but as far
9 as preconstruction modeling, then I will now
10 make another request which says I need to know
11 on what basis they chose to correct, adjust, or
12 whatever the name is, for cloudiness by using
13 percent sunshine. I know they did it. I need
14 to know what the rationale for that was. If
15 there was no rationale, I need to just know
16 that, too.

17 MR. NEEDLEMAN: I'm going to object to that
18 request. Mr. O'Neal has testified. The time
19 has passed for that at this point.

20 DR. WARD: Mr. O'Neal never responded to my
21 question about it.

22 MR. NEEDLEMAN: I think Mr. O'Neal
23 responded extensively. I think there was just a
24 disagreement between Dr. Ward and Mr. O'Neal

WITNESS: KENWORTHY

1 about the response.

2 PRESIDING OFFICER SCOTT: I'm going to
3 sustain the objection.

4 DR. WARD: Pardon?

5 PRESIDING OFFICER SCOTT: I'm going to
6 sustain the objection. Again, this has been
7 asked and answered already.

8 DR. WARD: I won't get another shot at Mr.
9 O'Neal unfortunately.

10 BY MR. WARD:

11 Q Okay. Let's turn to my second concern which is
12 about the noise. And, again, we had when
13 Mr. O'Neal testified, he said there was a model,
14 and basically it was somehow or other put
15 together from the ISO 9613-2. Do you agree with
16 that?

17 A I believe yes. I'm not familiar with the
18 standards that are used to create the model.
19 It's really not my area of expertise.

20 Q You said that if there were questions about
21 noise that it would be, you'd shut a turbine
22 down or something. I don't know exactly what it
23 was you said you were going to do, but you
24 always said that above and beyond everything

WITNESS: KENWORTHY

1 else, if it's a problem, we'll going to solve
2 it. That's in your words.

3 A Absolutely. There's no question. If there's a
4 problem, we will solve it. We're required to
5 meet the standard. I think the preconstruction
6 modeling which we've discussed here, Mr. O'Neal
7 has discussed, shows that we expect to be
8 significantly under the SEC requirement of 40
9 dBA, and if for whatever reason we weren't,
10 which we don't expect, there are tools for us
11 that are available to be able to remedy that
12 situation.

13 Q If somebody, Mrs. Berwick or whatever, says that
14 there's noise, and by some measure there's an
15 agreement that there's noise above the limit,
16 which turbine makes the noise, would you be able
17 to determine that?

18 A It's certainly possible that we would be ale to
19 determine it, yes. I think, you know, there
20 could be something that, generally, the closer
21 you are to a turbine, the more it's going to
22 contribute to sound at a particular location.
23 So that's one factor. I think if there was
24 something mechanically that was wrong with a

WITNESS: KENWORTHY

1 turbine that was causing a noise that was
2 unusual that needed to be corrected, then that's
3 obviously an obvious fix. If it was during
4 normal operation, and there were two turbines
5 that were equidistant, we would need to
6 undertake some analysis to see if there was an
7 issue with one of those turbines, and if there
8 weren't an issue that we could easily discern,
9 then we might need to apply some kind of noise
10 reduced operations mode to both turbines, but in
11 any event, we need to apply sufficient
12 corrective measures until we met the standard.

13 Q So you'd keep shutting off turbines until the
14 noise stopped?

15 A It's not shutting off turbines that is the
16 corrective action in the event of an issue.
17 Really it's kind of twofold. The first issue is
18 if there's something wrong, and the turbine
19 isn't operating properly that is causing it to
20 be an unusual sound, and that's the first fix is
21 to make sure we fix that problem and the turbine
22 may then be able to continue to operate with no
23 noise reduced operations mode applied at all and
24 be within the sound standards.

WITNESS: KENWORTHY

1 If that's not the case, and again, we have
2 no reason to believe that we're even going to be
3 close to an issue like this here, but if it
4 were, that there were normal operations, then
5 essentially what happens is that we are able to
6 limit the turbine's production in a manner that
7 is designed to reduce its maximum sound output
8 by increments of one decibel at a time.

9 So whereas with no noise reduced operations
10 mode, the turbines are guaranteed at 106 dBA
11 plus that one and a half dBA uncertainty. If we
12 had to apply NRO to one or two or more of the
13 turbines, we could apply it at NRO minus one in
14 which case the guaranteed sound level then
15 becomes 105 plus one and a half dBA uncertainty,
16 and we can do that in one-decibel increments all
17 the way up to five decibels which is obviously a
18 huge reduction, and we can do it on one turbine,
19 three turbines, nine turbines, whatever number
20 of turbines we need to apply it to in order to
21 make the project meet the standard.

22 Q That really didn't quite answer my question, but
23 you would be, you feel you'd be able to
24 determine the source of the noise, the excessive

WITNESS: KENWORTHY

1 noise, and do something that would reduce that?

2 A Yes.

3 Q Something you just said, and you've said it a
4 number of times, is that you know that you are
5 confident, let me, I don't want to misstate it.
6 You are quite confident, very confident that
7 you're not going to exceed the 40 dBA, isn't
8 that correct? You just said it now.

9 A Yes, it is.

10 Q Now, if we go into section, SEC rules 301.18,
11 subsection (a)(1), it basically says that in
12 determining the noise levels you're to use ISO
13 9613-2. Does it not?

14 A Could you read me the citation again?

15 Q 301.18(a), Section 1. And it says adherence to
16 the standard, 9613 and so forth. Available is
17 appendix a standard that requires short-term
18 attended measurements. That's the methodology?

19 A Sorry. One more time. 301.18(a)?

20 Q 1.

21 A So this is talking about the sound study
22 methodology so preconstruction sound study.

23 Q That's correct.

24 A Yes. It says adherence to the standard of

WITNESS: KENWORTHY

1 ANSI/ASA S12.9-2013 Part 3.

2 Q Yes, and when Mr. O'Neal was here, he said that
3 the calculations were done following that
4 standard. Is that not how the preconstruction
5 noise levels that you presented to this
6 Committee were determined?

7 A Yes. We've prepared the preconstruction noise
8 studies in accordance with the SEC rules.

9 Q Now, if I go into, well, let's move to first of
10 all, to 301.18(c)(3) which is the following
11 page, I believe, and this says that include
12 predictions to be made at all properties within
13 two miles, and so forth and so forth. For the
14 wind speed and operating mode that would result
15 in the worst case wind turbine sound emissions
16 during the hours before 8 a.m. and after 8 p.m.
17 on each day. That seems to, I want to say,
18 override or contradict using 9613-2. Would you
19 agree?

20 PRESIDING OFFICER SCOTT: Mr. Ward, before
21 your response, so help me here. So are these
22 questions that Mr. O'Neal said I can't answer,
23 you need to talk to Mr. Kenworthy? Or what's
24 the --

WITNESS: KENWORTHY

1 DR. WARD: No. Mr. Kenworthy keeps saying
2 that he's quite confident that the numbers that
3 he's given are going to be met. He keeps saying
4 that as his answer to everybody. We're not
5 going to have a problem. I'm asking him did he
6 read anything, and is that still his opinion.
7 Because if you read the things, they're
8 contradictory and they contradict what he's
9 saying which is one of his big arguments is that
10 we're not going to have a problem. If it's a
11 little problem, well, okay, we'll handle it.
12 That's not what is in the SEC rules, and it's
13 not what's in ISO 9613-2.

14 PRESIDING OFFICER SCOTT: I suspect I know
15 the answer you're going to get, but why don't
16 you go ahead, Mr. Kenworthy.

17 A Sure. My confidence comes from the detailed
18 study that was performed by Epsilon Associates
19 on our behalf combined with the guaranteed sound
20 levels that are provided by Siemens and the
21 history of studies that have been conducted by
22 firms like Epsilon and by Epsilon in very
23 similar circumstances that have demonstrated
24 conservative assumptions in these models.

WITNESS: KENWORTHY

1 I think we've provided an expert to testify
2 to the types of questions that you are asking
3 with respect to the various standards that go
4 into the model, and I can't give you any further
5 insight into those questions because I don't
6 know, but I do have a great degree of confidence
7 in the work that was performed, the results that
8 came out of that work, and given that we expect
9 to have essentially 38 decibels as the maximum
10 sound level at any of the closest, at any of the
11 properties that are nonparticipating property
12 owners, there's a significant margin between
13 that and 40 decibels, and, again, we're very
14 confident that we're not going to be above 38
15 and certainly not above 40.

16 But I am saying that we also, to the extent
17 that there's concern about that, we will need to
18 demonstrate that we do in fact meet the standard
19 which these rules also require us to do during
20 the first year starting three months after
21 operations and continuing throughout that first
22 year, and in the event that there's a problem we
23 have tools that are available to us that can be
24 readily employed that will solve the problem.

WITNESS: KENWORTHY

1 Q You agree that the worst case one, the second
2 one I read, 301.18(c)(3) which talks about worst
3 case that that does or doesn't apply compared to
4 301.18(a). 1 which says to use the method.
5 Which one is the, under your understanding and
6 you keep saying it meets it, what is your
7 understanding as to which is --

8 A I believe they both apply.

9 Q So you agree that 301.18(c)(3) also applies?

10 A Yes. It's here in the rules.

11 Q Okay. Now, if I read you out of ISO 9613-2,
12 clause 1, the very last sentence, it says the
13 accuracy of the method and the limitations to be
14 used in practice are described in clause 9. And
15 if I go over to clause 9, it says that all of
16 this applies to sound propagation in downwind
17 conditions as specified in clause 5 which limits
18 the effect of variable meteorological conditions
19 on attenuation to reasonable values. Is that
20 your understanding?

21 A Dr. Ward, again, I have no expertise in the
22 nuances of the standard that govern the model.
23 We have employed an expert to conduct
24 preconstruction modeling for this project

WITNESS: KENWORTHY

1 consistent with these rules, and he's been here
2 and testified to the work that he's performed.
3 We have confidence in that work which is what
4 I'm testifying to, but I can't give you any
5 answers about what the nuances of the various
6 standards are. I don't know.

7 Q Okay. If it turned out then that the questions
8 that I have about the accuracy and the
9 limitations and what's the worst case and
10 everything turned out to not be the ones that
11 you have quoted about 38 dB or something as the
12 maximum, then all of the things that you've said
13 would be irrelevant, wouldn't they? Your
14 confidence in the models and everything? You
15 say you don't know the models, it looks, this is
16 just plain English that I'm reading. At least I
17 think I am. And it says there are a lot of
18 problems with them, and if it turned out that
19 these problems are real, then pretty much a lot
20 of what you said you would agree would have to
21 be taken back.

22 A It sounds like you're asking me if I'm wrong
23 will I agree that I'm wrong, and, you know, I
24 guess the answer is yes, but we don't think

WITNESS: KENWORTHY

1 we're wrong. Again, we've got studies like this
2 that have been performed using the same models,
3 the same inputs that Epsilon has performed on
4 other wind projects including wind projects here
5 in New Hampshire that have demonstrated that the
6 assumptions have yielded results that are
7 conservative, and we have no reason to expect
8 that the outcome is going to be any different
9 here, and we have, you know, a good margin of
10 safety in Antrim so we're confident in the
11 results.

12 Q I guess Ronald Reagan's thing about there you go
13 again would apply here, but we won't do that.

14 Let me just finish with one last question.
15 If there are serious problems with Mr. O'Neal's
16 testimony and models, such that the shadow
17 flicker, preconstruction questions now, about
18 the shadow flicker and the noise issues, such
19 that in both cases you have substantially
20 underestimated the problem, would you agree then
21 that you would need to apply preconstruction
22 corrections to what you're doing?

23 A I'm sorry, Dr. Ward. I'm not sure I totally
24 understand your question.

WITNESS: KENWORTHY

1 Q Let me try it again. I understand. When I
2 finished I realized it was not a good question.

3 If it turns out that the data on the noise
4 levels from these turbines under what might be
5 the worst case meteorological conditions show
6 that you're well above the 40 dBA and/or the
7 shadow flicker numbers well in excess of the 8
8 hours per year, would you agree you need to go
9 back to the drawing board?

10 A I would agree that we need to fix the problem.

11 Q Thank you. I'm finished.

12 PRESIDING OFFICER SCOTT: Ms. Linowes?

13 MS. LINOWES: Yes, Mr. Chairman. I have a
14 couple of exhibits I would like to hand out, if
15 I may.

16 PRESIDING OFFICER SCOTT: We'll go off the
17 record while you do that.

18 MS. LINOWES: That would be great. Thank
19 you.

20 (Off-the-record discussion)

21 (Exhibits WA-30X and WA-31X
22 marked for identification)

23 PRESIDING OFFICER SCOTT: Back on the
24 record.

CROSS-EXAMINATION

1
2 BY MS. LINOWES:

3 Q Thank you, Mr. Chairman.

4 Mr. Kenworthy, before I get started on my
5 line of questioning, I just want to establish
6 that I am going to be referencing WA-30X which
7 is the color photo as well as WA-31X which I
8 handed out today. That is a transcript from one
9 of the public hearings relating to the rule
10 making process. I also, and I'm hopeful that
11 everyone has their copies of exhibits I handed
12 out last week. They were WA-21X, 22X and 23X.
13 Also I'll be looking at your App. 24 which is
14 your Supplemental Testimony as well as App. 33
15 which is the Application itself.

16 In addition, Mr. Chairman, I'm also going
17 to be looking at App. 25 which is the Final
18 Decision by DHR with regard to the project, and
19 I'm going to start with the questions specific
20 to the MOU, if I might.

21 PRESIDING OFFICER SCOTT: Go ahead.

22 MS. LINOWES: Thank you.

23 Q Mr. Kenworthy, I just want to clarify something
24 that I heard you answer today to a question of

WITNESS: KENWORTHY

1 Ms. Berwick asked. You had said that the
2 property, the White Birch Point property as far
3 as you knew that there was no visibility of the
4 project from the homes, but you said it would be
5 from the beach, but I just wanted to clarify.
6 Did not Mr. Stevenson state yesterday when we
7 were looking at his map and he showed yellowed
8 areas of visibility that in fact some of those
9 homes had visibility of the project. Do you
10 recall that?

11 A I do recall that. I think if you look at those
12 areas that are overlaid, that visibility that I
13 think came from a viewshed map that was prepared
14 probably by Saratoga back in the day, they're
15 actually overlaid over thickly forested areas in
16 many instances so I would certainly acknowledge
17 that that's what the map shows, that there is
18 visibility. I've been up in that area, and,
19 again, I can't say with certainty, but I don't
20 believe there is visibility. All of those homes
21 are --

22 Q Are you challenging what your own witness put
23 into the record?

24 A No. He was testifying to the piece in that

WITNESS: KENWORTHY

1 exhibit that showed that there was visibility
2 shown on the viewshed map of those areas.

3 Q Okay. Thank you. Now, I want to talk now
4 regarding the Army Corps letter. One of the
5 things that is raising concerns for me, and
6 there's not a need to bring this up, it was part
7 of a question I asked, bring the actual letter
8 up, it's part of a question I had asked
9 Mr. Stevenson yesterday, and that is in the Army
10 Corps letter which is dated December 28th, 2015,
11 it says that white, those of you who have it
12 it's on page 2, second paragraph, last sentence
13 of the first paragraph. It says White Birch
14 Point has a potential view of the wind turbines
15 2, 3, 4, 5 and part of 6, and then it says that
16 those aren't located within the Corps's permit
17 areas, but that letter does list turbines 2, 3,
18 4, 5 and 6.

19 Now, my concern is that in the final letter
20 that was issued by DHR, this is the July 28th
21 letter which is App. 25, they state on page 1,
22 the middle of the second paragraph, that DHR has
23 determined that the nearest turbines to the
24 eligible White Birch Historic District are

WITNESS: KENWORTHY

1 numbers 7, 8 and 9 located approximately two and
2 a half miles west. Additional turbines are
3 visible from the recreational beach area
4 contributing to the district known as the Grove.

5 There's a discrepancy there that
6 Mr. Stevenson could not respond to, and I'm
7 wondering in your communications with DHR, do
8 you know why there's a discrepancy there?

9 A I do not.

10 Q Is it possible that, okay, do you know what
11 information DHR was relying on when it made the
12 determination that turbines 7, 8 and 9 and
13 others would be visible from White Birch Point?

14 A Not specifically. I mean, DHR and the Army
15 Corps had the same information that we provided
16 as part of the Section 106 process with regard
17 to turbine locations, turbine sizes, viewshed
18 maps that showed areas that had visibility. Any
19 simulations that were requested as part of that
20 analysis, one of which I think was referenced
21 yesterday that was provided by Saratoga from one
22 of the locations. So they all had the same
23 information from us. I don't know what has led
24 to the discrepancy in each of their letters.

WITNESS: KENWORTHY

1 Q Is it possible that, not knowing that, is it
2 possible that that adverse finding that the DHR
3 has held could possibly be an unreasonable
4 adverse or not adverse at all, and we just have
5 no idea what they were looking at?

6 A No.

7 Q There's no chance.

8 A No. The DHR along with the Army Corps went
9 through a multi-year review of this project and
10 its potential effects on historic resources.
11 They came to a determination that they thought
12 there would be, they thought that White Birch
13 Point was a potentially eligible resource and
14 that there would be an adverse effect there.
15 Army Corps disagreed. We've signed an MOU with
16 DHR that has addressed those concerns.

17 Q But DHR lists turbine 7, 8 and 9. Army Corps
18 doesn't mention them at all. They had to have
19 different viewpoints.

20 A If that's your position, as I said --

21 Q No, it's not my position. I'm asking you, DHR
22 lists 7, 8 and 9 as turbines that are visible
23 from White Birch Point. Army Corps doesn't
24 mention that at all. If you don't know the

WITNESS: KENWORTHY

1 discrepancy, then I would pose that there might
2 be a concern there, don't you think?

3 A If your position is that DHR or Army Corps made
4 a mistake, that's your position. That's not our
5 position. They both had the information from
6 us. We've concluded both processes with both
7 agencies. I don't know how to answer it more
8 clearly than that.

9 MS. LINOWES: Mr. Chairman, I don't know
10 how to resolve that. I think that that is an
11 open question I guess we could cover and brief
12 in closing briefs, but --

13 PRESIDING OFFICER SCOTT: Well, he has
14 answered your question.

15 MS. LINOWES: He has. To the extent he
16 could. Okay.

17 Q Moving on to the MOU, if I understood correctly
18 from yesterday, you and DHR largely negotiated
19 this agreement; is that correct?

20 A It was entirely Antrim Wind and DHR.

21 Q Okay. So Army Corps wasn't involved. Correct?

22 A Correct.

23 Q And we've already established that residents of
24 White Birch Point were not involved, correct?

WITNESS: KENWORTHY

1 A Yes. I've stated it was entirely Antrim Wind
2 and DHR.

3 Q Do you know in your communications with DHR why
4 they conceded that this form of mitigation of
5 either signage or a website was enough now after
6 years of holding the position that it would be
7 an adverse effect? Do you have any idea from
8 your communications with them why now they
9 changed their mind?

10 A I can't speak to DHR's mind.

11 Q So now going, now that the agreement has a
12 stipulation section, and it says there are three
13 stipulations listed. One is to put a sign in
14 place that will talk about the history of the
15 area. The second is to develop a page, I
16 believe, on DHR's website that would discuss the
17 history of the area, and then, finally if there
18 is an objection, or if there's found either one
19 of those options were not feasible, then you
20 would deliberate further on options; is that
21 correct?

22 A Yes. For the most part, that's correct.

23 Q Mr. Kenworthy, have you placed a price tag on
24 what either one of those tasks would involve?

WITNESS: KENWORTHY

1 A No.

2 Q Do you know if it would be \$10,000, 5000?

3 A I honestly, I don't know. We haven't put a
4 price on it.

5 Q Now, you do agree that it's DHR's position that
6 the introduction of turbines into the viewshed
7 of an area that is eligible for the National
8 Register would, their position is it will
9 diminish its historic setting, feeling and
10 association, they have stated that?

11 A Where is that?

12 Q That's in their letter. It's in their letter,
13 but I'm asking do you agree. This would be the
14 same App. 25. First page of the letter, last
15 sentence of that page. DHR has further
16 determined that the introduction of turbines
17 within the viewshed of the eligible district
18 would diminish its historic setting, feeling and
19 association. Do you see that?

20 A I'm sorry, Ms. Linowes. I'm still trying to get
21 to the page. You said it was on the second
22 page?

23 Q First page. Last sentence. App. 25.

24 A Yes. I see that.

WITNESS: KENWORTHY

1 Q Okay. And the belief is and I think you might
2 have said this yesterday, and I'm not sure, but
3 that it's common to put in these kinds of
4 mitigations; to put a sign in, to kind of, some
5 other method of addressing the impact. Is that
6 true?

7 A I believe that was Mr. Stevenson's testimony.

8 Q Okay. Thank you. Now, in other contexts where
9 you have, say, a more developed area. I'll
10 throw an example of Groton with the Groton Wind
11 Project. There's a Wal-Mart within the
12 viewshed, there's a Hannaford within the
13 viewshed, there's a large, Route 93 in the
14 viewshed, there's incremental encroachment of
15 industrial or commercial development. Is there
16 similar kind of incremental encroachment that
17 has already occurred around the White Birch
18 Point property that you could name?

19 A I guess I'm not really sure what you're saying
20 it's similar to.

21 Q Is there a Wal-Mart?

22 A You're asking if there's something --

23 Q Is there a big box development, is there an
24 interstate, is there a McDonalds?

WITNESS: KENWORTHY

1 A Within what distance?

2 Q The viewshed. Somewhere in the area that has
3 already encroached on the Historic District of
4 White Birch Point?

5 A No. There's not a McDonald's or a Wal-Mart.

6 Q Okay. So that kind of mitigation might make
7 sense in an area that has already had
8 incremental encroachment, but in this area, it
9 hasn't had any, correct? This would be the first
10 industrial development within the viewshed of
11 White Birch Point?

12 A Maybe but for the dam that is right at the
13 entrance to White Birch Point, yes, and, again,
14 the mitigation proposal here is not Antrim
15 Wind's. The Division of Historical Resources in
16 this case is really, I mean, these are kind of
17 their charge to ensure that there's adequate
18 protection of these resources, and this is what
19 they've proposed to us and what we agreed to do
20 to satisfy those concerns.

21 Q Let me ask you this question then since you
22 brought that up. In that negotiation, did they,
23 did just a long period of time go by where
24 nothing, you know, from January they're saying

WITNESS: KENWORTHY

1 adverse. They had concerns about it. And then
2 a light went off in May, they picked up the
3 phone and say hey, we'll mitigate? Or was
4 there, what brought that about? You're the one
5 who had the communications with them.

6 A Sure. So no, I don't think any light went off.
7 You know, there has been a consultative process
8 that has been going on for many years. There
9 was various disagreements throughout the course
10 of this consultation which I think Mr. Stevenson
11 testified to between the Corps and DHR and in
12 some cases our own consultant. For example,
13 when we originally did a survey for resources we
14 recommended White Birch Point was not eligible.
15 That was Mr. Stevenson's original determination.
16 It's in the record. The Division of Historical
17 Resources said that it was. We proceeded on the
18 basis that it was an eligible resource to go to
19 determination of effects and so we went forward
20 with that stage of the process. Again, we
21 recommended that there was no adverse effect.
22 DHR continued to have concerns. We proceeded
23 through the conclusion of the White Birch Point,
24 but even back, you know, years ago, there was

WITNESS: KENWORTHY

1 discussions that mitigation for this type of
2 effect could be something like a website. So
3 it's not new. I think that in order for us to
4 proceed with DHR to get to the final MOU we
5 needed to first conclude the 106 process, and
6 there was a period of time in the middle where
7 we had no active Application before the Corps
8 where that got slowed down and delayed. So I
9 think once we resolved 106 and it was concluded,
10 the discussions between DHR and ourselves
11 outside of the 106 process picked up and led to
12 this MOU.

13 Q And that conclusion of the 106 process, was that
14 around the, was it at the point when the Army
15 Corps sent its letter in December or some time
16 shortly thereafter?

17 A I believe they continued to consult with the DHR
18 up until June. June, July.

19 Q Okay.

20 A That was the point at which they informed me
21 that their December letter stood. Their final
22 determination.

23 Q And the DHR's letter came in the end of July.
24 So coincided with that?

WITNESS: KENWORTHY

1 A Well, I said June. Then the end of July.
2 Approximate.

3 Q Okay. Now, I did want to ask you one question
4 as well regarding your witness yesterday. He
5 stated, I think I heard this correctly, that the
6 state wasn't aware that White Birch Point was
7 even an area of significance until he brought it
8 to their attention. Did he say that yesterday?
9 Back in the 2012 docket?

10 A Honestly, I don't recall if that's specifically
11 what he said yesterday or not.

12 Q On Paragraph 1 B of the MOU, this is the Dispute
13 Resolution. It says here, if at any time during
14 the implementation of measure stipulated in this
15 MOU an objection should arise by an interested
16 member of the public, the parties will consult
17 to determine the appropriate response.

18 Can you help me understand first what is
19 the definition of an interested member of the
20 public; and second, who are the parties?

21 A Sure. I think that's a fairly straightforward
22 answer. I think an interested member the public
23 is just that. An interested member of the
24 public. I think the parties are Antrim Wind and

WITNESS: KENWORTHY

1 DHR.

2 Q So a person can come off the street or could be
3 someone from White Birch Point, they have an
4 objection, they could raise it to your attention
5 and then you and DHR can deliberate over what to
6 do on that. And this agreement that, the letter
7 that accompanies the agreement which I've been
8 pointing to, DHR has stated what it wants the
9 Committee to put into the certificate related to
10 the MOU, but they're not asking for the MOU
11 itself to be put into the certificate; is that
12 correct?

13 A Sorry. Where are you referring to again?

14 Q I'm referring of page 2 now of App. 25.
15 Beginning of the second paragraph. The Site
16 Evaluation Committee approves this project
17 Application for Certificate, the DHR requests
18 that the following conditions be included. And
19 I do not see in here, maybe I missed it, but I
20 don't think that the DHR is asking for the MOU
21 itself to be included as part, as a condition of
22 approval; is that correct?

23 A I'm sorry. I'm not finding the language. You
24 said it's on page 2 of the MOU?

WITNESS: KENWORTHY

1 Q No. Page 2 of App. 25 which is the letter that
2 accompanied the MOU.

3 A I see. Sorry. Yes. I see that they have
4 requested that the following conditions be
5 included in a certificate, and those are the
6 same conditions that are in the MOU.

7 Q Okay, but if there's a dispute, you and DHR can
8 go off and deliberate over what can happen, but
9 ultimately, the certificate is what prevails.
10 Is it not? The conditions that are in the
11 certificate ultimately prevail. So it's a sign
12 or it's a website or if those aren't feasible,
13 you guys can decide what to do otherwise, but
14 what could any member of the public object to?
15 Wording?

16 A No. In fact, I think what the MOU contemplates
17 is really during the implementation of the
18 measures that are contemplated by the MOU with
19 respect to dispute resolution so that would be
20 during the effort to implement construction of a
21 sign or development of a website, but, you know,
22 again, this process and the public's opportunity
23 to be involved with it has been open since 2010
24 or so, and there has been extremely limited

WITNESS: KENWORTHY

1 public involvement in the Section 106 process so
2 the result has been that we've concluded the
3 process. We've concluded it by addressing any
4 concern about effects with this agreement or
5 fully supportive of including these conditions
6 in the certificate and in honoring any
7 commitments that we have under the MOU with DHR.

8 Q I understand that, but just to state, isn't it
9 the fact that the Army Corps has long held the
10 position that the impacts on White Birch Point
11 are not material to the Section 106 process and
12 so it really falls to the State if the State
13 chooses to protect that area; don't you agree?

14 A What are you referring to as the basis for that
15 statement? I don't know that there's a history
16 of the Army Corps taking any position for a long
17 time. Their position didn't come out to us
18 until we received this letter.

19 Q You did not know that the Army Corps, okay. Let
20 me direct you to the last paragraph of the
21 letter that accompanies the MOU, and it's in
22 this paragraph where DHR establishes what it is
23 that the narrow view that the Army Corps took in
24 reviewing the section, this project under

WITNESS: KENWORTHY

1 Section 106. It goes, the Corps has defined its
2 permit areas for the project as three areas
3 where fill will be placed in wetlands for the
4 construction of the new substation for temporary
5 impact for a project laydown staging area and
6 for culvert installation for road construction
7 providing access to turbine 9. Rather than
8 considering potential impacts to historic
9 resources for the entire project, the Corps only
10 considered potential impacts in these three
11 discrete locations and determined that the
12 project will have no effect on historic
13 properties.

14 That is, that was the Section 106 result.
15 You're saying that that, none of that was known
16 while you were going through the process?

17 A They didn't make their determination until they
18 issued us a letter in December, and that wasn't
19 final until the summer.

20 Q So you had no --

21 A Excuse me. I'd just like to finish my response.
22 That was December of 2015. Regardless of
23 whether the Corps or Antrim Wind believed that
24 White Birch Point was eligible or ineligible or

WITNESS: KENWORTHY

1 there was an effect or not an effect, we
2 performed the work. So we agreed to go forward
3 with DHR's recommendation that it was an
4 eligible resource and to conduct the effects
5 assessment. All of that was part of the 106
6 process that was open to public involvement
7 throughout.

8 Q Okay. I have a couple more questions on the
9 MOU, and then I'll move on. In the section
10 titled Monitoring and Reporting, here it says
11 that there's a yearly compliance report, but
12 then if you go down to paragraph 5 B, under
13 Termination, it says that the upon completion of
14 the measures outlined in the stipulation section
15 of this agreement, Antrim Wind's obligations
16 under this agreement shall be considered
17 complete and this agreement shall terminate.
18 You see that?

19 A Yes.

20 Q And it also says under the stipulations, I
21 didn't point it out, but it says that these
22 actions, the sign and/or the website have to be
23 completed one year after the project start, I
24 believe. There's a fixed date, correct?

WITNESS: KENWORTHY

1 A Yes. There is a fixed date.

2 Q From the start of project construction. I'm
3 sorry.

4 A Yes. That's correct. The deadline for
5 installation will be one year from the start of
6 project construction. It's in the first
7 stipulation.

8 Q So really this whole agreement goes away after a
9 year. After a year from starting construction.

10 A Yes.

11 Q And you have no obligations beyond that.

12 A Correct.

13 Q So I want to call your attention to the colored
14 image that I sent. We here, this is WA-30X. We
15 heard testimony yesterday that Mr. Thurber from
16 Lempster couldn't be sure and did not think that
17 the sign that was required to be erected was
18 still in place, and he seemed to think that
19 actually it was not there anymore. Do you
20 recall hearing that?

21 A Yes, I recall that.

22 Q And I believe that at some point your witness,
23 Mr. Raphael, has kind of proudly said that there
24 was a sign at the Searsburg project in Vermont

WITNESS: KENWORTHY

1 talking about benefits of wind power and that
2 project. Do you remember him mentioning that at
3 any point?

4 A I don't specifically remember that part, but I
5 believe he may have.

6 Q I wanted to show you. This is a photograph that
7 I took at the Searsburg Wind Power Facility.
8 This project went on line in June 1997. This is
9 what the proud sign looks like today. So does
10 this sign or that website become, since your
11 obligation goes away, does it become an unfunded
12 mandate for some state employee to make sure
13 that these things continue after the project is
14 completed or do we end up with litter on the
15 landscape?

16 A You know, honestly I don't know the answer. I
17 think we have committed to construct a sign.
18 We've committed to construct a sign in
19 consultation with DHR. About how the sign is
20 designed and where it goes, obviously that would
21 be subject to, our understanding, of the subject
22 to approval from the Association. I think
23 there's certainly a possibility the Association
24 does not want a sign, in which case we may very

1 well end up building a website which may not
2 require any maintenance to document the history
3 of White Birch Point. So I think it's unclear
4 which option will ultimately go forward. But
5 again, I think the agreements that we have are
6 set forth in this MOU.

7 Q Okay. Thank you. So now I just want to, I want
8 to talk to you a little bit about safety because
9 I think that that comes under the area of
10 orderly development. I just have a few
11 questions on that. On page, in your
12 Supplemental Testimony, this is App. 24, on page
13 29 of 85, I believe that you had raised this
14 yesterday as well. This is line 6. You say
15 that turbine is located 589 feet from the
16 nearest nonparticipating property line or
17 slightly over 1.2 times the maximum tip height.
18 Do you see that?

19 A I'm sorry, Ms. Linowes. One more time. It's
20 page 29?

21 Q PDF 29 of 85.

22 A Sorry. On line 6?

23 Q Correct.

24 A Yes.

WITNESS: KENWORTHY

1 Q So okay. And on page 33, excuse me. I'm sorry.
2 App. 33, this is the actual Application. On
3 page 7 of the Application or PDF page 19 of 350,
4 if you can go to that. I want to call your
5 attention to C 3 which is at the bottom there.
6 In the paragraph before the last, you talk about
7 the nearest year-round residence is located
8 approximately half a mile due north of the
9 northernmost proposed turbine, and that this
10 owner, the owner of this residence is among the
11 parties that have entered into a lease
12 agreement, correct?

13 A That's correct.

14 Q But that's the location of the home, not the
15 property line, is that correct?

16 A That's correct.

17 Q And then you go the closest structure owned by a
18 party who does not have a lease agreement with
19 AWE is a seasonal hunting camp located
20 approximately half a mile to the northeast of
21 the northernmost turbine. Do you see that?

22 A Yes.

23 MR. IACOPINO: What's that PDF page again?

24 MS. LINOWES: 19. Paragraph before the

WITNESS: KENWORTHY

1 last.

2 Q Just so we're clear, that seasonal hunting
3 structure is the same dilapidated hunting camp
4 that Mr. O'Neal refers to in his Supplemental
5 Testimony that is not required to be evaluated
6 for sound and flicker? Do you recall if that's
7 the case?

8 A I don't believe that is the case. I believe
9 that this camp is actually a camp that is
10 further west and that that camp that Mr. O'Neal
11 referred to as the dilapidated hunting camp is
12 about 2800 feet. It's a bit over a half mile.

13 Q Okay. I have no way to know that one way or the
14 other. So now I want to go to page 20, PDF page
15 20, which is the next page. Now, this document,
16 I believe it was this page that had come up
17 before when, this is on the second day of
18 hearings. I was asking you questions about
19 meeting Rule 301.08(a)(3) having to do with
20 showing the property lines, showing the
21 buildings. Do you remember? Out to two miles.
22 Do you remember that? And this was the page
23 that you pointed to?

24 A Yes. I do remember that.

WITNESS: KENWORTHY

1 Q Okay. Thank you. Now, do you know which one of
2 these is the hunting camp?

3 A Yes, and I'm actually going to correct myself.
4 I believe you were correct, Ms. Linowes, that
5 that camp which is shown, I believe it is the
6 green dot. I don't know if folks can make it
7 out. It coincides with the pink outline and the
8 dark black outline of a portion of Mr. Ott's
9 property. The north end of the project area
10 there's a green dot which, I believe, represents
11 that camp.

12 Q Okay. Thank you. Now, we can't see his, his
13 property line is not distinguished here so it
14 looks like he's sitting on the property line of
15 the project. Does that --

16 A It's close to the property line.

17 Q Do you know how far?

18 A No. Not specifically.

19 Q So what I'd like to do now if I can, I'm just
20 going to, I don't want to confuse things, but
21 bear with me for one second, Mr. Chairman.

22 So, okay. Without going back and looking
23 at the rules and what the rules, I don't want to
24 debate that with you right now, but if anyone

WITNESS: KENWORTHY

1 were to look at this map, knowing that the
2 obligation was to show the proximity of
3 structures to the project site, roughly that's
4 what the rule said. Do you want me to read the
5 rule? I can read the rule.

6 A If you're going to ask me a question about the
7 rule, then yes.

8 Q Then it would be Rule 301.03(c)(3). This is the
9 contents of the Application so 301.03(c)(3), the
10 location shown and, okay, each Application shall
11 contain the following information with respect
12 to the site of the proposed energy facility and
13 alternative locations, and that says the
14 location shown on a map of property lines,
15 residences, industrial buildings, and other
16 structures and improvements within the site on
17 abutting property with respect to the site and
18 within 100 feet of the site if such distance
19 extends beyond the boundary of any abutting
20 property. Do you see that?

21 A Yes. I see it.

22 Q So in looking at, going back to your, the map,
23 the only property lines that you have identified
24 are the property lines of parcels that are

WITNESS: KENWORTHY

1 participating in the project. Is that true?

2 A The map in the Application -- I'm sorry. I'm
3 just moving around between many PDFs. Does show
4 the property boundaries of the project parcels
5 and, of course, those boundaries are also the
6 same boundaries as the shared portion of the
7 abutting parcel. So it's both property owners'
8 property line.

9 Q I understand, but the actual parcels that are
10 abutting the property, we can only, we can't
11 even know from looking at this where a parcel
12 boundary belongs to one parcel versus another.
13 You didn't put any other property lines in here,
14 did you? Or --

15 A No.

16 Q So conceivably, not the case, but conceivably,
17 all of these, many of these dots representing
18 structures, let's say, on the west side of the
19 project could all be on one parcel or could be
20 ten different parcels. We don't know. Correct?

21 A The map doesn't show those property lines.

22 Q Are there any maps in the Application that show
23 property lines for other, for the adjacent
24 properties?

WITNESS: KENWORTHY

1 A Yes. In our, I believe it's, I believe it's
2 Appendix 2, it's either the alteration of
3 terrain permit Application or the wetlands
4 permit Application which shows property
5 boundaries and identifies all abutting property
6 owners to the project.

7 Q It does, but it would not show their entire
8 parcel. It would only show that portion that is
9 as you go through the detail where it's
10 necessary to show where there's impact, where
11 we're coming close to the property. Wouldn't
12 you agree?

13 A I'm sorry.

14 Q It doesn't show the whole parcel of each
15 property.

16 A I'm not certain about that. I could pull it up.

17 Q Well, just to point out, I think we noticed this
18 last week, too, the scale is zero to 4000 feet
19 so really the smallest scale that we could get
20 out of these maps would be 1000 feet, correct?

21 A I'm sorry. Which map now are you referring to
22 again?

23 Q The same map that we were on. This would be
24 C.3.

WITNESS: KENWORTHY

1 A The smallest distance unit that's denominated on
2 that scale is a thousand feet. That's right.
3 Did you want me to keep looking for the property
4 abutters map?

5 Q No. We can come back on that. I don't think
6 it's there.

7 A You don't think it's where?

8 Q I don't think the full properties are shown in a
9 way that could be identifiable and map to C.3.
10 So I don't know if, that doesn't quite answer
11 the question. It's not part of your
12 Application.

13 A Sure, it is.

14 Q If you want to find it, then --

15 A I'm sorry. If you're saying that this Appendix
16 isn't part of our Application, then certainly I
17 disagree. If the question is does this
18 particular map that's in the, again, I believe
19 it's the wetlands permit application, does it
20 show abutting property owners, and the answer is
21 yes. So yes. This is on page, PDF page 36 of
22 Appendix 2A, and Mr. Chairman, I apologize, I'm
23 not well-versed in the language of exhibit
24 numbers. So Appendix 2A to our Application.

WITNESS: KENWORTHY

1 MR. IACOPINO: That would be exhibit
2 Applicant 33.

3 A Thank you. On PDF page 36 is a map that shows
4 all of the project parcels highlighted in red.
5 It shows the project footprint in yellow, the
6 locations of the turbines and it shows what
7 appears to be in its entirety every abutting
8 property owner.

9 Q I don't have access to internet here so I can't
10 see. Could I come over and see what you have?

11 A Sure.

12 MR. IACOPINO: Do all of the Committee
13 members have it up? Okay.

14 Q Is that part of the alteration of terrain
15 permit?

16 A It's the wetlands permit application. It may
17 also be in the ATP. I'm not sure.

18 Q So if someone wanted to find out where their
19 property was relative to, their property
20 relative to the turbines, they would have to go
21 to the wetlands permit to see the parcel
22 boundaries, then they'd come back to this, to
23 the map that we were just looking at and find
24 what might be the dot for their home and kind of

WITNESS: KENWORTHY

1 map it together. Is that what you're asking?

2 A No. I think most people know where their home
3 is.

4 Q But not everyone lives here, too. So this is
5 anyone reading this. Not everyone knows that.

6 A Sure. And there are many places throughout our
7 Application where we show the location of the
8 project, the location of the project boundaries,
9 the location of residences, structures, roads,
10 and, again, where we have shown property parcel
11 boundaries, all abutting property owners also
12 share those boundaries, this is the place that
13 I've directed you to where we provide the full
14 boundary and numerical names coded to actual
15 property owners on the next page of that
16 Application. So there's, yeah, there's a number
17 of places where we provide information through
18 the Application.

19 Q Okay. So now if you can go to page 134 of the
20 App. 33. This is the Application again. This
21 is another map.

22 MR. IACOPINO: 134 of 350?

23 MS. LINOWES: Correct. 134 of 350.

24 Q Now here you show the road.

WITNESS: KENWORTHY

1 MS. IACOPINO: Hold on. We're not all on
2 the same thing. We were just in Appendix 33,
3 Appendix 2A to the Application. Where are you
4 asking us to look?

5 MS. LINOWES: I'm in App. 33. The actual
6 document.

7 MR. IACOPINO: The Application. Thank you.

8 Q So here you show the roads, correct?

9 A This map is in, PDF page 134, it's a map of
10 formal recreation areas.

11 Q I understand that, and you show many maps that
12 have, throughout the Application that have the
13 turbine locations and the roads, and I just
14 wanted to, they're not included in the map that
15 we were looking at a moment ago, C.3, but here I
16 just grabbed this one simply because it shows
17 that the roads go very close to adjacent
18 properties. Do you see that? Particularly
19 between, as it comes up from the Route 9 area
20 and also as it, we pass turbines 1, 2, 3 and
21 then it goes very close to a property line. Do
22 you see that?

23 A Yes. There are roads that go close to property
24 lines.

WITNESS: KENWORTHY

1 Q So would someone have to pull up your Alteration
2 of Terrain Permit Application to see just how
3 close that road is going to go or have you
4 established some kind of setback that you're
5 operating under? Because this goes right to the
6 property line.

7 A I don't actually know how close the edge of the
8 road is to the property line.

9 Q Okay. Now, on page, now I want to go back to
10 your Supplemental Testimony. This is App. 24.
11 And on page 27, PDF 28, actually, but page 27.
12 So PDF 28 on line 15, you state, in DMVGL's
13 experience based on empirical data, the furthest
14 thrown ice detected at an optional project is
15 250 meters from the center of the turbine. You
16 see that?

17 A Yes.

18 Q And I think that came out to like 850 feet or
19 some distance. Don't remember, but -- I could
20 do the math.

21 A I'll tell you.

22 Q Okay.

23 A 250 meters is 820 feet.

24 Q Okay. Thank you. So beyond the 589 feet for

WITNESS: KENWORTHY

1 that property line, correct?

2 A Yes. That's a larger number.

3 Q And do you know the context of that empirical
4 evidence? Was it with the size of the turbine,
5 the size of the blade? Was it on a ridgeline or
6 on flat ground? Do you know anything about it?

7 A I think it is all circumstances. It doesn't, in
8 other words, my understanding of the information
9 that DMVGL has shared with us applies
10 universally to turbines that are operating in
11 areas where icing conditions can occur.

12 Q So okay. So it says the furthest thrown ice
13 detected in operational project, you're saying
14 that they don't cite a specific case, but when
15 they were out there noting ice had thrown at one
16 time it threw out to 250 meters. Or more times?
17 Lots of times? Who knows.

18 A I don't know how many times.

19 Q It could have been on flat land.

20 A It could have been, but in no instances was it
21 further than 250 meters, and in many cases,
22 obviously turbines are installed on ridges which
23 would ostensibly fall within the empirical
24 experience of DMVGL.

WITNESS: KENWORTHY

1 Q But we do site turbines in North Dakota and
2 Minnesota where it can be flat?

3 A Absolutely.

4 Q Now, you have also made a comment, you've noted
5 at least once, maybe more than once, that the
6 Site Evaluation Committee did not impose a
7 safety setback distance for the turbines in the
8 new rules. You know that, correct?

9 A Yes. There is no specific rule like there is
10 for sound or flicker that says X distance to a
11 structure or a property line. That's correct.

12 Q Were you involved in the rule making process?

13 A In some ways, yes.

14 Q So you're aware of the process at least.

15 A Yes, I'm aware --

16 Q And you've sent letters and participated?

17 A I did participate.

18 Q Okay. And I think you were asked by Attorney
19 Maloney at one point was there any time that you
20 felt that your due process rights were limited
21 in terms of participating in the rule making
22 process. You never felt that your Due Process
23 rights were limited in the rule making process?

24 MR. NEEDLEMAN: I'm going to object

WITNESS: KENWORTHY

1 Mr. Chairman. I don't see the relevance of
2 this.

3 MS. LINOWES: Okay. Well, I'm just
4 commenting, reiterating a question he was asked
5 by Attorney Maloney.

6 Q Okay. So I want to call everyone's attention to
7 WA-31X which is a, this is a transcript, portion
8 of a transcript from the Committee's, one of the
9 Deliberative Sessions that the Committee had on
10 rule making from September 29th, 2015. This
11 particular portion beginning on page 159. This
12 is where the Committee was debating what it
13 should do about a setback distance. In the
14 initial draft it had some setback distance, and
15 here's where it was discussing it, and now, and
16 the debate was do we establish a setback
17 distance or do we leave it on a case by case
18 basis, and you could see that in that first, on
19 line 11 where Chairman Honinberg says is this
20 also a section where there were comments that
21 said if you can't get it exactly right, don't
22 set any standard at all in your rules. Do you
23 see that? This would be on page 159.

24 A Yes, I see it.

WITNESS: KENWORTHY

1 Q Going to the next page, this is Commissioner
2 Bailey is speaking. And here she says this may
3 be the one that, where it's better to do it on a
4 case-by-case basis because as technology
5 evolves, I assume that the, maybe I mean, I
6 assume that the five times the height has to do
7 with the ice throw. Five times the height was
8 one of the comments from the public. And then
9 she goes, and if there's some kind of technology
10 that warms the blades so the ice doesn't
11 accumulate on the blades, then maybe having that
12 kind of setback is stricter than it needs to be.
13 You see that?

14 A Yes.

15 Q So she says next I'm leaning towards a
16 case-by-case basis. And then further down,
17 Commissioner Scott says, I don't object to doing
18 that on a case-by-case basis, and then he says
19 on top of the next page, I don't think anyone is
20 suggesting there won't be some kind of setback.
21 It's just the matter of what that should be.

22 And I think you agree with that as well.
23 There should be some setback and you've made an
24 argument for what, that your setbacks are safe,

WITNESS: KENWORTHY

1 correct?

2 A I'm sorry.

3 Q You agree with Commissioner Scott that there has
4 to being some kind of setback. It's just a
5 question of what it should be based on the
6 circumstances, correct?

7 A Yeah. The rules require us to demonstrate that
8 we have adequate setbacks to protect public
9 health and safety.

10 Q Now, you also testified, as you were saying
11 earlier, you testified that ice could throw 820
12 some feet. So it could throw on to an adjacent
13 property, correct?

14 A It is possible.

15 Q Now I want to go down to the last comments on
16 this, this would be Ms. Weatherby's commentary,
17 and she says I was struck by the presenter
18 during a public session who spoke about having
19 not full use of his land or having to post his
20 land because of the potential or ice throw
21 landing on it. Ice from a turbine coming on to
22 his property. And so I'd be in favor of
23 eliminating some of these requirements because
24 they are very site specific. These were where

WITNESS: KENWORTHY

1 we were talking about specific distances. But
2 adding something that not only will be a setback
3 but a setback shall ensure that ice throw and
4 shall not, and shall not, you know, cross the
5 property line or some kind of standard that
6 protects buildings and adjacent property lines.
7 You see that?

8 A Yes.

9 Q So it was in the minds of the Committee at the
10 time, Committee members at the time when they
11 established the rules that there should be some
12 protections to at least not encumber someone
13 else's property with events that might occur on
14 your property that you have leased, correct?

15 MR. NEEDLEMAN: I'm going to object,
16 Mr. Chairman. Certainly the transcript speaks
17 for itself, but, more importantly, the rules
18 speak for themselves.

19 PRESIDING OFFICER SCOTT: Sustained.

20 MS. LINOWES: I have no problem with that.

21 Q Then lastly, let's go to the last page. This
22 is --

23 MR. NEEDLEMAN: I want to object at this
24 point. I wanted to see where Ms. Linowes was

WITNESS: KENWORTHY

1 going. I think right now she's just reading
2 transcripts, and I don't see how there could be
3 legitimate questions associated with this.

4 PRESIDING OFFICER SCOTT: Ms. Linowes?

5 MS. LINOWES: Let me think about that for a
6 second. I have just one more quote, and then
7 I'll have my questions on that.

8 PRESIDING OFFICER SCOTT: Okay. All right.
9 Go ahead.

10 Q This is on the last page, Mr. Oldenburg, where
11 he says that there can be places where you build
12 a project where there are no buildings, but then
13 on line 16, but then you're going to get to
14 where there could be a residential area right
15 adjacent to a wind farm where you'll want to
16 make it more stringent.

17 PRESIDING OFFICER SCOTT: Why don't you ask
18 your question.

19 MS. LINOWES: Here's my question.

20 Q Do you agree that the location where you're
21 siting this project is in a residential area?

22 A Well, not really, no. The closest property
23 owner, the property setback that you're
24 referring to is to a vacant wood lot. It's

WITNESS: KENWORTHY

1 about a 300-acre lot. There's no structures at
2 all on it. It's not used at all for residential
3 purposes. So I think characterizing it as a
4 residential area, certainly there are some
5 residences in the area. But with respect to
6 this setback that you're discussing, you know,
7 (a), in the first place, for reasons that you
8 and I have discussed before and I've stated here
9 on the record when I was testifying with the
10 Technical and Managerial Panel, the what is in
11 fact a greater than 1.2 times setback to this
12 property exceeds the setback that the SEC found
13 was sufficient to protect public health and
14 safety in this docket in 2012. It exceeds the
15 setback --

16 Q I'm going to stop you there because --

17 MR. NEEDLEMAN: Actually, I think the
18 witness should be allowed to finish the answer.

19 MS. LINOWES: But those rules don't apply
20 today. There are new rules today.

21 A I would argue that the rules that apply are the
22 rules that require us to demonstrate that we
23 have adequate setbacks to protect public health
24 and safety, and that's what I'm trying to

WITNESS: KENWORTHY

1 explain.

2 Q Okay. Then let me ask one question --

3 A I would like to finish the response. Thank you.

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

6 A They exceed the prior docket in Antrim where the
7 Committee found that there was no unreasonable
8 adverse effect on public health and safety, they
9 exceed the requirements in the setback from the
10 Groton Wind Project where 1.1 times tip height
11 was the closest setback to a property, and I'm
12 not aware of any issues that have occurred
13 there, and I gave the example of two other
14 fairly recent dockets in Vermont where in
15 circumstances like this, where you have turbines
16 this are located within a couple hundred feet of
17 adjacent property lines in wooded settings, they
18 have approved setbacks that are just literally
19 to the tip of the blade. 55 meters or 60
20 meters. Far less than we have proposed here.
21 And in the alternative scenario in those two
22 cases, the Department of Public Utilities in
23 Vermont was actually arguing that in the absence
24 of a site specific study, the PSB should employ

WITNESS: KENWORTHY

1 a 1.1 times tip height setback to a property
2 line. So the more conservative default was 1.1.
3 We exceed that. The actual approved condition
4 was 55 meters, and I think as part of that
5 analysis, it's important to note that there was
6 an analysis done as part of those dockets which
7 determined that at 55 or 60 meters from these
8 turbines, the likelihood of a piece of ice
9 striking any one square meter greater than those
10 distances was roughly 1 in about 230 years. So
11 it's just a very low probability risk.

12 Q Mr. Kenworthy, did you do a site specific
13 analysis of this location regarding ice throw?

14 A No. We did not, and we are not asking for a 55
15 meter setback, either. We're asking for a 1.2
16 times tip height setback.

17 Q Did you know if during the hearings in Vermont
18 it was stated that ice would throw over one of
19 the property lines up to several hundred feet
20 over?

21 A It wouldn't surprise me given that it's a
22 55-meter setback.

23 Q Do you know if that was the case?

24 A I don't know.

WITNESS: KENWORTHY

1 Q So you don't know if at the time the Public
2 Service Board was deliberating over that issue
3 it had information in hand that said, as you
4 have said, that a property, a turbine will throw
5 ice, could throw ice onto an adjacent property?

6 A Yes, they did because they did a probability
7 analysis that determined how frequently ice
8 would strike an area on that adjacent property.

9 Q That is a different answer, but okay. So let me
10 get, so you have now, however, established that
11 ice can throw on to an adjacent property,
12 correct?

13 A It is possible.

14 Q And you have stated that 300-acre wooded lot is
15 undeveloped today, correct?

16 A Correct.

17 Q Are you stipulating that at no time in 25 years
18 or 50 years that property will get developed?

19 A Ms. Linowes, I believe you asked me this very
20 same question.

21 Q I did ask the question, I did, and I want to
22 hear your answer again.

23 MR. NEEDLEMAN: I'm going to object at this
24 point. I'm concerned that we're ranging far

WITNESS: KENWORTHY

1 afield from orderly regional development and
2 revisiting a lot of technical and managerial
3 issues.

4 MS. LINOWES: No, this is entirely orderly
5 development which is why I'm asking. We have
6 300 parcel acre, 300-acre parcel in Antrim that
7 would, could turn into something that's
8 developed. Or it could not. So, but --

9 PRESIDING OFFICER SCOTT: Ms. Linowes,
10 you've already said to us just now that you
11 already asked and already received an answer so
12 I really don't want to be retreading the same
13 grounds.

14 MS. LINOWES: Understood. Thank you,
15 Mr. Chairman.

16 Q And Mr. Kenworthy, are any of the properties
17 other than this one undeveloped lot surrounding
18 the property, do they have anything but
19 residential on them?

20 A Just to make sure I understand your question.
21 Are you asking if any abutting properties are
22 other than residential?

23 Q Correct. Is there, they may be farming, but is
24 there, is the primary activity of the

WITNESS: KENWORTHY

1 surrounding properties residential?

2 A I would say the primary activity of surrounding
3 properties is either as kind of forest
4 management or residential.

5 Q Are there any other parcels surrounding the
6 properties, the project properties that are
7 vacant other than that one?

8 A That's a good question. I believe there are,
9 there certainly are more. I don't know how many
10 more, and there are many that also don't have,
11 may have a hunting camp that's located somewhere
12 on the property. So I'm sorry. I can't give
13 you a complete list of all the uses of all of
14 abutting property owners. I think we've
15 identified kind of what those uses are in the
16 Application.

17 Q Then I'll just close with one last question.
18 This would be drawing your attention to WA-21X,
19 22X, and 23X. This could all have been just one
20 exhibit, but WA-21X is a subset of catastrophic
21 failures that were in the news just this year.
22 These are just titles of the articles, the
23 location, and the date. So if you could just
24 look at that. Do you see that?

WITNESS: KENWORTHY

1 A Do I see Exhibit 21X?

2 Q Yes.

3 A Yes, I do.

4 Q You see what I'm referring to?

5 A Yes.

6 Q Okay. So fires, lots of thing happened. You
7 said there are very rare, events, I believe you
8 testified, are very rare, but they do happen
9 obviously, correct?

10 MR. NEEDLEMAN: Mr. Chairman, I'm going to
11 object to this exhibit. This plainly seems to
12 be a technical and managerial question, and I
13 feel like we're at a disadvantage not having
14 someone like Mr. Marcucci here to speak to
15 something like this.

16 MS. LINOWES: I'm referring, again, the
17 same issue of orderly development. If it turns
18 out that there are risks associated with living
19 or developing near the project, I'm just raising
20 the point that it extends beyond ice throw.

21 PRESIDING OFFICER SCOTT: Why don't you
22 just answer the best, within your purview and
23 then we'll move on.

24 A Sure. Well, you know, this is just a printed

WITNESS: KENWORTHY

1 list of words. I don't know where this comes
2 from, if it's true, or what the circumstances
3 was that lended these issues, but yes, we would
4 acknowledge that catastrophic failures in
5 turbines can occur, but they are very rare, and
6 I think they're very rare in Siemens turbines
7 and that the setbacks that I described and the
8 approval of those setbacks at other wind farms
9 were not simply setbacks that were to address
10 concerns related to ice throw. They were
11 concerns that were related to all issues that
12 touch on public safety.

13 Q Okay.

14 A So you know, while there's an extremely low
15 probability that some type of catastrophic
16 failure could occur it's certainly our position
17 that the setbacks that are in place here are
18 adequate to protect public health and safety.

19 Q I just point you to WA-23X. This is an example
20 in New York State, happened earlier this year,
21 the blade fell off the turbine, and I just want
22 you to reference that, that at the top of the
23 article where it says editor's note.

24 Mr. Foranger confirmed by phone that the

WITNESS: KENWORTHY

1 initial impact crater was 323 feet from the base
2 of the turbine. The blade then bounced and
3 ultimately landed 471 feet from the base. And
4 you can see that's fairly flat land. So even in
5 a situation where a blade was not thrown but
6 fell off, you could see it, do you agree that
7 that's close to the distance that would have
8 landed near that property line that is close to
9 turbine 4?

10 A Is 471 feet close to 549? Sure. Reasonably
11 close.

12 MS. LINOWES: I'm all set, Mr. Chairman.
13 Thank you.

14 PRESIDING OFFICER SCOTT: Thank you. Off
15 the record.

16 (Recess taken)

17 PRESIDING OFFICER SCOTT: Back on the
18 record. I think we're with Mr. Reimers.

19 MR. REIMERS: Jason Reimers on behalf of
20 New Hampshire Audubon.

21 **CROSS-EXAMINATION**

22 BY MR. REIMERS:

23 Q Good morning, Mr. Kenworthy.

24 A Good morning.

WITNESS: KENWORTHY

1 Q Do you have the Application in front of you?
2 Would you look at page 12 of the Application?

3 A Is that numbered page 12?

4 Q Yes. I believe so. The map?

5 A Yes. I see it.

6 Q Bear with me. I'm having a computer issue.
7 Okay. You see where Willard Pond is?

8 A Yes.

9 Q And can you kind of describe for everybody where
10 that is?

11 A Willard Pond is basically due south of the gray
12 parcel, the gray-shaded parcels that are
13 outlined in black that show the project area.

14 Q Willard Pond would be that blue area?

15 A Yes.

16 Q With that white section attached to it?

17 A Adjacent to it, yes.

18 Q Do you remember the other day when David Raphael
19 testified that throughout his work on the
20 project he thought that Audubon owned about 50
21 percent of the shoreline of Willard Pond?

22 A Yes.

23 Q And on the map that we're looking at now, are
24 those white areas depicted as unconserved?

WITNESS: KENWORTHY

1 A Well, the key says that the conservation lands
2 are shown in green. So that would, just by
3 deduction, I suppose, mean that everything not
4 shaded in green is not conservation lands.

5 Q I would assume the same. Would it surprise you
6 that Audubon became the owner of the last
7 unprotected parcel on the shores of Willard Pond
8 in 2009?

9 A No. It would not. And again, I understand that
10 this map doesn't show that area as being
11 protected, but it has been our understanding
12 that that land is protected.

13 Q Well, based on the map and Mr. Raphael's
14 testimony, there seems to be, there seems to be
15 a misunderstanding on the part of the Antrim
16 Wind team of Audubon's conservation interests
17 along Willard Pond.

18 A No, I don't believe so. It just isn't shown on
19 this map, and this was prepared by TRC.
20 Obviously, I acknowledged that it's mistaken not
21 to show that area as shaded, but it was our
22 understanding and our knowledge that Audubon,
23 that all these lands around Willard were
24 conserved and that Audubon owns the area

WITNESS: KENWORTHY

1 surrounding the pond. That was my
2 understanding.

3 Q Moving away from the map, in the 2012 project
4 proposal, Antrim Wind proposed radar-activated
5 lights; is that right?

6 A Yes. We reached a settlement agreement with the
7 Appalachian Mountain Club in the summer of 2012
8 where we made that commitment to resolve their
9 concerns around aesthetic impacts.

10 Q So the radar-activated lights, they're not a new
11 mitigation feature of the current project; is
12 that right?

13 A No. The commitment to use radar-activated
14 lights was made in 2012.

15 Q The Nature Conservancy has offered its opinion
16 that the project would not have an unreasonable
17 adverse effect on the natural environment or on
18 air and water quality; is that your
19 understanding?

20 A Yes.

21 Q And they submitted a letter?

22 A They did.

23 Q And that letter is Applicant's Exhibit 16.

24 A Just give me one moment to get there. I'm

WITNESS: KENWORTHY

1 shuffling a lot of PDFs.

2 Q Me, too.

3 A Okay.

4 Q Okay. So as I just said, the Nature Conservancy
5 offered its opinion that the project would not
6 have an unreasonable adverse effect on the
7 natural environment or on air and water quality;
8 is that right?

9 A Yes. I think they also stated that the project
10 would be in the public interest.

11 Q Okay. And with regard to the natural
12 environment and air and water quality, the
13 Nature Conservancy's opinion would be consistent
14 with the 2012 Subcommittee's findings that
15 denied the project but that did find that the
16 2012 project would also not have an unreasonable
17 adverse effect on the natural environment and
18 air and water quality; isn't that right?

19 A Was the question as to whether or not --

20 Q Is TRC's opinion consistent with the finding of
21 the 2012 Subcommittee?

22 A Yes. I believe so. In those regards.

23 Q And did the Nature Conservancy offer an opinion
24 on whether the current project would have an

WITNESS: KENWORTHY

1 unreasonable adverse effect on aesthetics?

2 A They offered an opinion that the project that's
3 currently proposed --

4 Q Mr. Kenworthy, most of my questions are capable
5 of being answered yes or no. So I understand
6 that you want to explain more, but I'm asking
7 you questions that are answerable yes or no to
8 the extent they can be, and you will have a
9 chance if you want, I believe, on redirect if
10 you feel there's more to be explained. Okay?

11 MR. RICHARDSON: I think he should be,
12 allow the witness to answer because I didn't
13 hear a yes or no question that was asked.

14 A I mean, it's a 13-page letter. There's a lot in
15 here, and I think while they stopped short of
16 taking a final position on whether there was or
17 was not an unreasonable adverse effect on
18 aesthetics, they recognized and stated in the
19 letter that the project's visual impacts had
20 been reduced from the 2012 Application, and I
21 was just looking for --

22 Q Page 5?

23 A -- for that language. So I think it's important
24 language. It says, given the importance of this

WITNESS: KENWORTHY

1 issue, however, we will acknowledge that in
2 comparison to the 2012 Antrim Wind proposal the
3 current Application reduces the adverse visual
4 impacts by utilizing smaller turbines,
5 eliminating one tower, therefore by lessening
6 but not eliminating the aesthetic areas of
7 conservation concerns. So they do weigh in on
8 the question of aesthetics.

9 Q And that paragraph began with the language, the
10 Nature Conservancy is not prepared to pass
11 judgment as to whether the visual impacts of the
12 proposed project are unreasonable. This is
13 outside our area of expertise.

14 A Yes. That's what it says.

15 Q In the letter the Nature Conservancy discussed
16 two preserves that it owns in Stoddard and
17 Antrim. Loverens Mill, Cedar Swamp Preserve and
18 Otter Brook Preserve; is that right?

19 A Yes.

20 Q Have you been to those preserves?

21 A I have been to the outskirts of the Loverens
22 Mill, Cedar Swamp. Never been to the Otter
23 Brook Preserve.

24 Q Are you aware of either preserve having a

WITNESS: KENWORTHY

1 mountaintop view such as that from Bald Mountain
2 or Goodhue Hill?

3 A I'm not aware.

4 Q Are you aware of either preserve having a pond
5 similar to Willard Pond that is open to boating?

6 A I'm not aware.

7 Q And does either preserve have the same amount of
8 recreational visitors that the Willard Pond
9 sanctuary has?

10 A I don't think there's any numbers in the record
11 as to what visitorship to either of those
12 resources is. I don't know.

13 Q The New Hampshire Sierra Club sent two letters
14 in support of the project; is that right?

15 A Yes.

16 Q There's Applicant's Exhibit 11 and 29. I'm not
17 sure that we need to look at them, but to the
18 extent we do, we can go there. The first letter
19 that the Sierra Club wrote, New Hampshire Sierra
20 Club does not mention any standard in RSA 162-H.
21 Do you know that?

22 A I don't know that, but I could flip through it
23 or I can take your word.

24 Q You can look through it. Actually, it would be

WITNESS: KENWORTHY

1 faster if you took my word for it.

2 A Okay.

3 Q It wasn't a trick question. In the second
4 letter that the New Hampshire Sierra Club sent,
5 they stated that the project would not have an
6 unreasonable adverse effect on the natural
7 environment or air and water quality. Do you
8 recall that?

9 A Can you just point me to where they've said
10 that?

11 Q I can't actually.

12 A I see a paragraph on the top of page 2 that
13 refers to the Committee's decision in 2012
14 stating that that project would not have an
15 unreasonable adverse effect on natural
16 environment and/or air and water quality nor
17 rare and endangered plant species, natural
18 communities, et cetera, et cetera. And then it
19 talks about since 2012 the project footprint has
20 been significantly reduced and conservation land
21 has been significantly increased. So happy to
22 keep reading from it.

23 Q No, no, no. So actually does the Sierra Club
24 offer its opinion that this project would not

WITNESS: KENWORTHY

1 have an unreasonable adverse effect on the
2 natural environment?

3 A I don't know if those specific words are in
4 there or not. Honestly, I think the statement
5 has been that they encouraged the Committee to
6 approve the citing of the project which must
7 necessarily mean that they don't believe there's
8 an unreasonable adverse effect on the natural
9 environment or on aesthetics.

10 Q That's your assumption?

11 A It would be impossible otherwise.

12 Q Okay. I want to turn to the Project Mitigation
13 Package which is Appendix 10 to the Application.

14 A Okay.

15 Q Is the Committee there as well?

16 MR. IACOPINO: Not yet.

17 MR. NEEDLEMAN: Jason, it's broken into
18 four sections on the website. Is there a
19 particular page you're going to look at?

20 MR. REIMERS: It's not paginated.

21 MR. NEEDLEMAN: Okay.

22 MR. REIMERS: The first one. Appendix 10,
23 Land Conservation Mitigation Appendix Final.

24 Oh, I see where it's broken up. Just open up

WITNESS: KENWORTHY

1 the broken-up section to see if that's been
2 paginated.

3 MR. NEEDLEMAN: That's okay. You don't
4 have to wait for me.

5 MR. REIMERS: Oh, okay. Is the Committee
6 ready?

7 PRESIDING OFFICER SCOTT: Is there a page
8 number?

9 MR. REIMERS: No, but it's page 5. Page 5
10 has a chart toward the bottom.

11 PRESIDING OFFICER SCOTT: Is that the one
12 that says Landowner LOI Counterparty --

13 MR. REIMERS: Yes. That's the one.

14 PRESIDING OFFICER SCOTT: Thank you. How's
15 the rest of the Committee on this? Getting
16 thumbs up so I think you're set now.

17 MR. REIMERS: Okay. Great.

18 Q All right. In that paragraph before that chart,
19 you, well, I'm don't know about you, but it is
20 discussed that there are 6 easements and I know
21 you've discussed many of the easements. In the
22 middle of that paragraph, it says of the three
23 homes that are allowed two of them are
24 restricted in their location so that they cannot

WITNESS: KENWORTHY

1 be placed on the ridgeline. Is that right?

2 A Yes.

3 Q Then looking at the chart, the first landowner
4 is Michael Ott. Is Michael Ott the one
5 landowner who can build a house on the
6 ridgeline?

7 A Yes.

8 Q And the third one, Antrim Limited Partnership, I
9 believe about an hour ago you were discussing
10 that one, and that's the Bean property, right?

11 A That's right.

12 Q And on that property, no building is allowed?

13 A Correct.

14 Q And on the Ott property, one home is allowed?

15 A Correct.

16 Q And that's it.

17 A On the Ott property?

18 Q On either.

19 A Yes.

20 Q So now moving ahead a couple pages to what would
21 be page 7, there's a map, and would the property
22 with, looks like turbines 1 and 2 at the top be
23 the Ott property?

24 A Yes, it is.

WITNESS: KENWORTHY

1 Q And then the next one with turbines 3, 4, 5, 6,
2 that would be the Bean property?

3 A Correct.

4 Q And the Bean property, well, for both the
5 conserved area is the green; is that correct?

6 A Yes. That's correct.

7 Q So it's the conserved area that would be subject
8 to the restrictions or the allowed uses in the
9 conservation easements?

10 A Correct.

11 Q And going through that Bean property, I'll just
12 say in the middle of the property, is that the
13 wind facility road?

14 A Yes.

15 Q And then looking at page 9 and the top of page 9
16 says Notes on Reserve Rights. Looking at
17 paragraph number 5, it says the Antrim Limited
18 Partnership, ALP, conservation easement, 100
19 acres, does not allow any homes on it, and we're
20 talking about the Bean property, right?

21 A Correct.

22 Q It allows access across the easement to connect
23 the two portions of ALP property bifurcated by
24 the easement. Did I read that correctly?

WITNESS: KENWORTHY

1 A Yes.

2 Q So looking back at the map that we just looked
3 at, you've got the wind facility road going down
4 the middle, and I believe what it says on page 9
5 is that access is allowed across the easement to
6 connect the two portions of ALP property
7 bifurcated by the easement.

8 So in your understanding, would that access
9 go perpendicular to the road? More or less?

10 A Well, it's important to note that they will be,
11 this road is coming out at decommissioning.
12 They will be prohibited --

13 Q Well, I've got some questions about the road.
14 We'll get to those.

15 A My point is the road won't be there at any point
16 they would be accessing the back side. They
17 can't impact our road during the term of the
18 wind farm so --

19 Q Oh, right. I'm talking about afterwards.

20 A Correct.

21 Q The access road, I'm just, so we can place the
22 access road mentally on this map, it would go
23 from one side, it would traverse the green area,
24 right?

WITNESS: KENWORTHY

1 A Yes, and if I recall, I think it's intended to
2 be as perpendicular as possible to the
3 orientation of the easement itself.

4 Q And that would be to connect the two sides of
5 the Bean property that are not encumbered by the
6 conservation easement?

7 A Correct.

8 Q Let's look at the Bean conservation easement.
9 It's not paginated so I don't know what page,
10 but it's the second easement that's attached.
11 So first there's the Ott easement. I'll come
12 back to that, and the Ott easement is 13 pages
13 long, and then it's the next one.

14 A I have it on page PDF page 34 of my document.

15 Q PDF page 34?

16 A Of my document. Mine's all one.

17 Q Okay. Is that the one that says at the top
18 Conservation Easement Deed, and then it begins
19 Charles S. Bean, III?

20 A Sorry. That page was the first page of the LOI
21 so the first page of the easement deed itself is
22 PDF page 40.

23 PRESIDING OFFICER SCOTT: Is the Committee
24 all with us? Thanks.

WITNESS: KENWORTHY

1 Q Okay. So PDF page 40 is the beginning of the
2 first page of the Conservation Easement Deed
3 between Charles S. Bean, III, and the Town of
4 Antrim. So Bean is the grantor, is that right?

5 A Yes.

6 Q And the Town of Antrim is the grantee?

7 A Yes.

8 Q So the Town of Antrim as the grantee is the one
9 that owns the conservation easement.

10 A Yes.

11 Q Okay. Please go to page 6 of the easement, page
12 6 of 13. Paragraph 5 is mostly crossed out,
13 redlined, but the last sentence says grantee
14 shall have the right but not the obligation to
15 remove and reseed the wind facility access road.

16 So is that saying that the Town of Antrim
17 has the right but not the obligation to remove
18 and reseed the wind facility access road?

19 A I'm sorry. Can you tell me where you are again?

20 Q Yeah. I'm on page 6 of 13 of the easement deed.

21 A A-hah.

22 Q And second paragraph from the bottom where most
23 of it is redlined out, but there's one section
24 remaining or actually there's two.

WITNESS: KENWORTHY

1 A Yeah. That's what this says. That the grantee
2 shall have the right but not the obligation to
3 remove and reseed the wind facility access road.

4 Q And this is after the decommissioning of the
5 wind project; is that right?

6 A Correct.

7 Q So after decommissioning, it will be up to the
8 Town of Antrim whether to remove and/or reseed
9 that road.

10 A No. That's not the case. This easement
11 document grants that right. Subsequent to
12 entering into this conservation easement LOI,
13 and in direct response to concerns that were
14 identified in the prior docket, Antrim Wind has
15 itself committed to removing, scarifying,
16 loaming and reseeded that entire road that will
17 exist on this easement. So it will, it will
18 still have the right, but the work will have
19 been done by us.

20 Q Okay. The next paragraph, could you read aloud
21 the next paragraph? Paragraph B?

22 A Paragraph B says the right to construct and
23 maintain an access road and electrical service
24 through the property to be constructed in a

WITNESS: KENWORTHY

1 to-be-determined location by Grantor
2 approximately perpendicular to the easement for
3 the purposes of providing vehicular access
4 between the northern and southern portions of
5 Grantor's land. Grantor shall use reasonable
6 effort to minimize the width of the read,
7 clearing and disturbance from the installation
8 of any such access road and in no instance shall
9 the width of the road and all associated
10 clearings exceed 80 feet.

11 Q This is the access that we were talking about
12 earlier when we were looking at the map, isn't
13 it?

14 A Correct.

15 Q So this access will be in a location determined
16 solely by the Grantor; by Bean, is that right?

17 A You know, I think it's restricted in terms of
18 certain elements here. I'd have to go back and
19 read the entire easement to see if there were
20 other restrictions that would apply here.

21 Q Is there any language in this section giving the
22 town of Antrim as Grantee oversight of where
23 that road would be located?

24 A Oversight, no. I don't believe so. Not in this

WITNESS: KENWORTHY

1 section.

2 Q And this road could be 80 feet wide?

3 A The maximum width of the road and any associated
4 clearing is 80 feet.

5 Q And this access road could be permanent?

6 A Yes. I don't think it's restricted in time.

7 Q And this right to the access road also includes
8 associated electrical service along the road?

9 A It does.

10 Q Would utility lines be allowed along that line?

11 A What do you mean by utility lines?

12 Q Electrical poles.

13 A Presumably, if it's for the purposes of bringing
14 electrical service to that portion of the
15 property.

16 Q Um-hum.

17 A You know, as a point of interest, I think it's
18 probably very unlikely that electrical service
19 would ever come in that way, but it's possible.

20 Q Do you think that when the town of Antrim was
21 drafting their Master Plan years ago they might
22 have thought it was unlikely that a wind farm
23 would be proposed in view of Willard Pond?

24 A I do not have any idea.

WITNESS: KENWORTHY

1 Q Okay. So we were talking about the electrical
2 services and the access road that is allowed.
3 If you go back two pages in the same easement to
4 page 4 of 13, and there's a paragraph C in the
5 middle that begins with except. Okay. Would
6 you agree that this paragraph begins by saying,
7 by describing various structures and
8 improvements that are not allowed under this
9 easement?

10 A Yes.

11 Q And then in the middle would you read the part
12 that begins with however?

13 A It says: However, ancillary structures and
14 improvements including but not limited to a
15 road, dam, fence, bridge, culvert, barn, maple
16 sugar house or shed made be constructed, placed
17 or introduced on to the property only as
18 necessary in the accomplishment of the
19 agricultural, forestry, conservation, habitat
20 management or noncommercial outdoor recreational
21 uses of the property and provided that they are
22 not detrimental to the purposes of this
23 easement.

24 Q Okay. So in addition to the access road and the

WITNESS: KENWORTHY

1 associated electrical services, ancillary
2 structures and improvements that you listed here
3 may also be allowed on the property?

4 A Only insofar as they are necessary in the
5 accomplishment of the agriculture, forestry,
6 conservation, habitat, or noncommercial outdoor
7 recreational uses and provided that they are not
8 detrimental to the purposes of the easement.

9 Q But otherwise, they are allowed under the
10 easement.

11 A In those limited circumstances, yes.

12 Q And then, okay. Moving to the Ott easement
13 which is the first easement attached. I don't
14 know what paginated page it is.

15 A I have Ott starting on PDF page 17.

16 Q Does it say conservation easement deed, Michael
17 J. Ott?

18 A Yes.

19 Q Thank you. So PDF page 17, please. So this is
20 another easement that the project has entered,
21 well, that is associated with the project. In
22 this one Michael J. Ott is the Grantor, the
23 landowner?

24 A Yes.

WITNESS: KENWORTHY

1 Q And the Harris Center for Conservation Education
2 is the Grantee?

3 A Correct.

4 Q And the Grantee is the holder of the easement?

5 A Yes.

6 Q If you go forward a few pages to page 6 of 13,
7 this is, paragraph B, which is the bottom
8 paragraph, allows one single family home not to
9 exceed 3500 square feet. Is that correct?

10 A Yes. It's 3500 square feet in total footprint
11 together with all outbuildings, barns, sheds,
12 domestic garages and other structures, all of
13 which must be within 300 feet.

14 Q So, and this is the property that we looked at
15 the chart and it said all that was allowed was
16 one single family home.

17 A Right.

18 Q In addition to that single family home, I
19 understand the square footage, 3500 square
20 footage requirement, it allows various other
21 structures as well, doesn't it?

22 A Yes. If there are ancillary structures to that
23 single family home, they are allowed provided
24 they don't exceed 3500 square feet or within

WITNESS: KENWORTHY

1 that 300-foot distance of the house.

2 Q Okay. And the next page, page 7, paragraph C,
3 does this paragraph allow Ott to build a cell
4 tower?

5 A It would, subject to local zoning ordinances,
6 rules and regulations.

7 Q Right. But absent or if it's allowed under the
8 zoning, if the Zoning Board allows it, this
9 would allow it, is that correct?

10 A Yes. I believe that, yes.

11 Q And how tall, do you know how tall such a cell
12 tower might be?

13 A I don't know. I think there would be subject to
14 local zoning.

15 Q Are you aware that in 2015 the Antrim Zoning
16 Board approved, granted a special session and a
17 variance for a 150-foot-tall cell tower
18 overlooking Franklin Pierce Lake?

19 A I was not aware of that.

20 Q I don't have any further questions. Thank you.

21 PRESIDING OFFICER SCOTT: Thank you.

22 Attorney Maloney?

23 **CROSS-EXAMINATION**

24 BY MS. MALONEY:

WITNESS: KENWORTHY

1 Q Good morning, Mr. Kenworthy.

2 A Good morning.

3 Q Mr. Kenworthy you used to be the CEO of Eolian,
4 correct?

5 A That's right.

6 Q And currently you are the Head of Development
7 for Walden Green Energy?

8 A That's right.

9 Q And you participated in both the 2012 and this
10 docket as a representative of Antrim Wind
11 Energy?

12 A Yes.

13 Q And Antrim Wind Energy, LLC, was a party to the
14 2012 docket seeking an Application, Certificate
15 for Site Facility?

16 A Yes. It was the Applicant.

17 Q And Antrim Wind Energy, LLC, is the entity
18 that's seeking a Certificate of Site Facility in
19 this docket as well, correct?

20 A Yes.

21 Q In the 2012 docket, do you believe you have had
22 a full and fair opportunity to present your
23 case?

24 A You know, in the 2012 docket. I'm not entirely

WITNESS: KENWORTHY

1 sure how to answer that. I think we went
2 through the process. There was a result and
3 we've moved forward. I think if it's a legal
4 interpretation of what a full and fair
5 opportunity means, I don't know.

6 Q I understand you're not happy with the result,
7 but did anyone prevent you from putting on any
8 evidence, putting on any testimony?

9 MR. NEEDLEMAN: I'm going to object to this
10 question. What happened in the 2012 docket and
11 Mr. Kenworthy's opinions of it are not relevant
12 to the Application before the Committee.

13 MS. MALONEY: Well, he is a representative
14 of Antrim Wind Energy in both dockets, and they
15 are relevant and they're relevant to legal
16 arguments that Counsel for the Public will be
17 making later in this docket.

18 MR. NEEDLEMAN: Well, he's certainly a
19 representative of both, but, again, I don't see
20 how there's any relevance to this as it pertains
21 to this Application.

22 Q Let me ask you this. Did you have an
23 opportunity to appeal the determination of the
24 decision of the SEC on the 2012 docket?

WITNESS: KENWORTHY

1 MR. NEEDLEMAN: Same objection.

2 MS. MALONEY: I think it's a relevant
3 question.

4 PRESIDING OFFICER SCOTT: I'd like to hear.

5 A Did we have an opportunity to appeal the SEC
6 decision? My understanding is yes.

7 Q Okay, and instead you chose not to appeal and to
8 file this Application, correct?

9 A That's right.

10 Q I wanted to ask you a few questions that I'm not
11 quite clear about with respect to requirements
12 for public health and safety and that relates to
13 the participating landowners. Do I understand
14 correctly that they are waiving health and
15 safety regulations in some respect with regard
16 to shadow flicker and noise?

17 A Yes. So all of our leases with the
18 participating project owners as well as the
19 easement agreement we have with Dr. Micheli
20 specifically address the issue of noise and
21 flicker for one and also setbacks and any other
22 kind of regulatory limits that might otherwise
23 apply.

24 Q And I think your earlier testimony indicated

WITNESS: KENWORTHY

1 that you believe under your interpretation of
2 the rules that's permitted?

3 A Well, yes. I mean, if we were unable to reach
4 agreements with private landowners that allowed
5 us to do things on their property, then we could
6 never have a wind project.

7 Q What I'm getting at is that you believe that --
8 I don't think that answered my question. I
9 think you said earlier that your interpretation
10 of the rules permitted that waiver.

11 A Yes. Our interpretation is that we meet the
12 requirements of the rules. In my view, it's an
13 unequivocal necessity that participating
14 landowners that have decided to pursue this
15 project and be compensated for it and understand
16 and agree that the project may exceed applicable
17 sound levels or applicable flicker levels or
18 otherwise applicable setbacks must necessarily
19 allow us to do so.

20 Q Well, getting back to where you believe the
21 rules permit that, could you direct me as to
22 where that would be in the rules?

23 A I don't know that the rules specify those
24 things. It's just our interpretation of the

WITNESS: KENWORTHY

1 rules.

2 Q And I guess similar question for an issue was
3 raised earlier from other Intervenors about new
4 construction or successive owners. I think your
5 testimony was that Antrim Wind didn't believe
6 its obligation extended to them with regard to
7 the health and safety issues concerning shadow
8 flicker and noise.

9 A I'm not aware that that has been the practice of
10 this Committee in other wind projects that have
11 been certificated here to apply, to have an
12 Applicant or an owner address issues to
13 potential future structures that don't exist at
14 this time.

15 Q Well, and that may very well be, but this is the
16 first Application that's come before the
17 Committee since the rules were enacted so I have
18 an obligation to ask these questions pursuant to
19 the rules. So with respect to, say, a
20 successive owner, do they have to purchase the
21 property pursuant to a waiver or is that how
22 that would be accomplished?

23 A I don't know. I think the rules require us to
24 address impacts of sound and flicker to, out to

WITNESS: KENWORTHY

1 specified distances, a mile for flicker, two
2 miles for sound, at all structures, receptors,
3 that exist within that area, and that's what
4 we've done.

5 Q I understand that. That's the lay of the land
6 today, but with regard to new construction or
7 successive owners, I couldn't see, I'll be
8 honest with you, I couldn't see a carve-out for
9 that in the rules, and so based on your earlier
10 testimony, there won't be any testing done with
11 respect to shadow flicker or noise at any new
12 development in the area.

13 A My testimony is that I don't think that's what
14 the rules require us to do.

15 Q Okay. Taking a look at your Supplemental
16 Prefiled Testimony and just reviewing it in
17 general and just making a comment. It looks to
18 me like this was somewhat of a summation of some
19 facts and opinion regarding all the testimony,
20 most of the testimony of the Intervenors and
21 Counsel for the Public's expert. Is that a fair
22 characterization?

23 A It is certainly rebuttal testimony to testimony
24 that was filed by other parties in this docket,

WITNESS: KENWORTHY

1 yes.

2 Q Well, and I think you discussed with
3 Mr. Levesque regarding, I just want to address,
4 I guess, public support for the project, and I
5 think you indicated there were a number of votes
6 taken by the Town of Antrim and I just wanted to
7 confirm. You've not only indicated the vote
8 results but you also included your opinion as to
9 why the voters voted that way; is that correct?

10 A Yes. I have.

11 Q Okay. And you certainly didn't speak with all
12 the voters after the vote so you really don't
13 have a basis to understand why they voted any
14 particular way, do you?

15 A I don't think that's an accurate statement. I
16 certainly didn't speak with every voter after
17 the vote, but we have spoken with many voters
18 throughout New Hampshire over a period of many
19 years, and we have been closely involved in
20 these processes. We have a basis for our
21 understanding. It's the same basis that is
22 shared by the Board of Selectmen who have
23 provided similar interpretations of the results
24 of these votes. The Committee in 2012 shared

WITNESS: KENWORTHY

1 the same opinion that for the votes that have
2 then occurred that it was clear to them that
3 those who had voted were doing so in support of
4 the project. Reporters who were reporting on
5 this issue also shared our interpretation so I
6 think it was a strong basis for my opinions, but
7 yes, they are my opinions.

8 Q Okay. For example, the 2014 vote you did not
9 speak with everyone would voted against that
10 ordinance?

11 A No.

12 Q And you don't have any, with regard to the straw
13 polls, you're not suggesting they were conducted
14 in any kind of scientific manner, are you?

15 A No. I think they speak for themselves. They
16 were straw polls that were conducted, and in one
17 case I forget the 2010 Planning Board straw
18 poll, but 2011 was at town meeting and it was
19 conducted by the Board of Selectmen and they can
20 tell you more about it, but it's a straw poll.

21 Q It's a straw poll.

22 A Yes.

23 Q And the ARG poll, I guess, survey by mail and
24 internet, that did not do to every resident in

WITNESS: KENWORTHY

1 the town of Antrim.

2 A It was absolutely intended to go to every
3 resident in the Antrim. ARG was contracted by
4 Antrim Wind to survey every household in Antrim.
5 They used several lists that were available to
6 them, including the taxpayers' list and other
7 purchased lists that survey groups like ARG use,
8 and the surveys were sent to every household.
9 There was a followup, there was a followup mail
10 that was sent out to everybody that also made,
11 again, sent to every household that we had an
12 address for, made it known that there was an
13 internet survey available, and if they were
14 aware of anybody who had not received a survey
15 that they should direct them to the internet
16 survey, and we extended the amount of time
17 available for people to complete those internet
18 surveys so we could have the highest possible
19 rate. But certainly nobody was intentionally
20 kept from responding to that survey, and people
21 were on multiple occasions encouraged to get
22 others that hadn't yet responded to respond.

23 Q Would it surprise you to learn that a lot of the
24 Intervenors here didn't get a copy of that

WITNESS: KENWORTHY

1 survey?

2 A Yes, it would.

3 Q With regard to the public information hearings,
4 you also cite that as example of public support,
5 and I believe there was one without the SEC and
6 there's been one when the SEC was present, and I
7 guess I was present at both of those. I
8 understand, are you suggesting that they
9 represent public support or represent support
10 from citizens of Antrim?

11 A Both.

12 Q Okay. I recall at the public hearing with
13 regard to the, when the SEC was present, there
14 was actually quite a bit of testimony from
15 individuals who, for example, worked for Maine
16 Drilling & Blasting and were not residents of
17 the area or region. I think there were at least
18 five people that testified in that regard. Are
19 you suggesting that represents support for the
20 project in the area?

21 A The tally from that second public hearing in
22 Antrim was roughly 3 to 1, supporters
23 outnumbering opponents of the project including
24 all speakers. If you look at only Antrim

WITNESS: KENWORTHY

1 residents who spoke, that number is
2 approximately 2 to 1 in favor of the project.
3 So yes, I do mean both public support and
4 support within the town of Antrim.

5 Q Well, you know, as Counsel for the Public, I do
6 tallies as well and I noted on the first time it
7 sort of was the opposite, and the second time I
8 noticed there was a lot of people who had direct
9 financial interest in the project who were
10 speaking in support of that.

11 A So just to clarify, I disagree with your
12 characterization of the first time. The first
13 public information session I believe was roughly
14 2 to 1 in favor again.

15 Q Okay. Well, I guess our numbers disagree.

16 A And the second time, as I said, while there were
17 people that were clearly there to talk about
18 economic development benefits and folks that
19 were potentially looking for work out of a
20 project like this, that is, you know, the folks
21 who came out from the Town of Antrim were 2 to
22 1.

23 Q Okay. I guess we'll just agree to disagree on
24 that.

WITNESS: KENWORTHY

1 A I could share with you the specific names if
2 it's helpful.

3 Q No, I've got transcripts and so thank you.

4 I wanted to ask you a number of questions
5 about your comments about Ms. Connelly's
6 testimony, and I think that begins on page 14 of
7 your Supplemental Testimony. You indicate on
8 page 14, I guess, beginning at 9 -- well, first
9 of all, I believe you said this morning that,
10 and I think it was a response to a question from
11 Ms. Berwick, that you are not an expert in
12 aesthetics and that was Mr. Raphael's field. Do
13 you recall that this morning?

14 A Yes.

15 Q And it looks like here, what you're doing is
16 you're characterizing her report and testimony.
17 Do you see that?

18 A Only with regards to her characterization of
19 local conservation efforts.

20 Q Okay. And so basically, this is your opinion
21 about her testimony.

22 A Yes.

23 Q You suggest that she characterizes the project
24 as being at odds with local conservation

WITNESS: KENWORTHY

1 efforts. Do you see that?

2 A I don't know that it's a suggestion. I think
3 she does characterize the project that way.

4 Q Where in her testimony does she say that?

5 A I think the language that I'm referring to is
6 the language that I have quoted here where she's
7 talking about what cannot be accounted for.

8 Q Okay.

9 A It is the vigor and commitment of the local
10 population's passion and investment in
11 purchasing, connecting, protecting and
12 preserving local conservation lands. And again,
13 this is a --

14 Q Let me ask you a question about that. How would
15 her acknowledgment of what the local communities
16 have done to conserve the Audubon sanctuary and
17 the various preserves in the area, how would
18 that be at odds with conservation efforts?

19 A I'm not sure I understand that question.

20 Q Well, that's what she's referring to right
21 there.

22 A Well, she's referring to her disagreement with
23 LandWorks' assessment that it is a good site for
24 a wind project because of what it doesn't

WITNESS: KENWORTHY

1 account for.

2 Q There's a lot of reasons why she, her testimony,
3 her testimony and her report disagrees with
4 LandWorks.

5 A Right.

6 Q But I would like to know why her appreciation
7 for what the local community has done to
8 conserve the DePierrefeu Wildlife Sanctuary and
9 the various preserves in the area, why that
10 would be at odds with conservation efforts.
11 That's what's being said in that statement.

12 A I'm sorry. Well, first let me, I think, give
13 you the basis for my statement, and then I'd
14 like to characterize, just clarify what my
15 statement actually is. I am not stating that
16 her characterization of the fact that there's
17 been efforts locally to conserve land is at odds
18 with conservation. I am suggesting that this
19 statement in her assessment mischaracterizes the
20 views of local conservation groups. That's my
21 suggestion.

22 Q Well, when we looked at what -- okay. And the
23 Sierra Club did not hire an aesthetics expert,
24 did they?

WITNESS: KENWORTHY

1 A No, but --

2 Q No. Did they? Are you aware of whether or not
3 the Sierra Club hired an aesthetics expert --

4 A No, but --

5 Q -- to review this project, and did they conduct
6 a visual impact assessment?

7 A No, but that doesn't mean that they can't have
8 an opinion as a --

9 Q They can have a nonexpert opinion on aesthetics.

10 A So --

11 Q Correct?

12 A Yes. It is their opinion.

13 Q And it is nothing in their letter that refers to
14 aesthetics, is there?

15 A No. That's not true. The first --

16 Q They talk about the environment.

17 A No. The first letter from, and you'll just have
18 to give me a minute to get to it. The first
19 letter from Sierra Club talks about this project
20 being the ideal scale -- I just want to find the
21 language. So on page 4 of the January 5th
22 letter from the Sierra Club, they note in
23 paragraph number 7 that the project proposal
24 addresses concerns, they talk about turbines

WITNESS: KENWORTHY

1 being fewer, smaller, quieter. They talk about
2 there being more conservation land and other
3 benefits. They in paragraph 8 go on to talk
4 about reduced visibility from Willard Pond and
5 being less visually impactful. They talk about
6 the conservation land at the bottom of that page
7 4. They state the scale of this project is
8 exactly what environmentalists endorse for
9 small, local and manageable power sources. So I
10 do think Sierra Club has addressed this issue in
11 their letter.

12 Q They talk about visibility. Do you see that?
13 Reduced visibility? You just said that.

14 A Yes. It's less visible.

15 Q And you'll remember Mr. Raphael testifying and
16 it's certainly in his report that visibility
17 does not equate to visual impact. Just because
18 it's less visible doesn't mean that it doesn't
19 have an unreasonable adverse impact.

20 A Well, that may be true, but Sierra Club is here
21 on the record recommending this project for
22 approval to this Committee which requires them
23 to make a finding that it doesn't have an
24 unreasonable adverse effect on aesthetics so

WITNESS: KENWORTHY

1 clearly that is their position.

2 Q The Committee. The Committee. So we have a
3 group who's interested in conservation,
4 undoubtedly, and they support the project,
5 correct?

6 A Correct. We have several groups.

7 Q And they've not hired an aesthetics expert, and
8 they're not offering in this letter any kind of
9 expertise on aesthetics or landscape
10 architecture or anything of that nature in
11 support of the project.

12 A Well, they're offering their views as among the
13 leading conservation groups in this state as to
14 what they think about this project and the
15 benefits that it will bring, and, obviously, one
16 of the things that factor into that evaluation
17 is what the project's impacts are going to be.
18 So I will concede that you that none of these
19 groups have hired a professional aesthetics
20 expert to perform a visual impact assessment,
21 but that does not mean that they can't
22 characterize what their views are about this
23 project from their perspective as conservation
24 groups, and there are many of them, and to get

WITNESS: KENWORTHY

1 back to, I think, the original question which is
2 that when I read that language in the VA which
3 is what my Supplemental Testimony talks about,
4 Terraink's VA, that she is essentially
5 characterizing this project as being
6 inconsistent with the conservation efforts that
7 have been undertaken in this area, and that is
8 why I'm saying she is mischaracterizing it
9 because of these strong views that have been put
10 forward by numerous leading conservation groups
11 in the state.

12 Q Mr. Kenworthy, you would agree with me there's a
13 difference between conservation land for the
14 purposes of wildlife and habitat and the
15 conservation lands, we're talking about offsite
16 conservation that Ms. Connelly addressed.

17 A I don't believe Ms. Connelly's statements
18 identified either onsite or offsite conservation
19 lands.

20 Q Well --

21 A Or distinguished between lands that were
22 conserved for scenic or other purposes.

23 Q We can agree to disagree on that, and her report
24 will speak for herself, and she will be

WITNESS: KENWORTHY

1 testifying later, but you also indicate that,
2 but you would agree with me that none of the
3 conservation groups that have submitted letters
4 have hired visual impact experts, correct?

5 A Yes.

6 Q And none of them have put forth any testimony or
7 any Visual Impact Assessment with regard to this
8 project, correct?

9 A They are not provided testimony here, no.

10 Q And even the Nature Conservancy specifically
11 said they are not qualified to issue that kind
12 of an opinion. It's not in their realm of
13 expertise. That was specifically said in their
14 letter, correct?

15 A Yes, and they also said that there's been, that
16 they would acknowledge that there's been a
17 reduction in the aesthetics impacts from 2012,
18 and listen, it's really telling --

19 Q There's not a question pending, Mr. Kenworthy.

20 A Okay.

21 Q You also take issue with Ms. Connelly's position
22 on conservation as mitigation for aesthetic
23 impacts. Do you see that on page 17?

24 A Yes.

WITNESS: KENWORTHY

1 Q Okay. Do you, I think I brought this up, I
2 think, with Mr. Raphael, but do you have that
3 same disagreement with the SEC's decision in the
4 2012 docket that found that offsite conservation
5 was not appropriate for mitigation for aesthetic
6 impacts?

7 A That's not my understanding of the SEC's
8 position in the 2012 docket.

9 Q Give me just a second and I'm trying to pull it
10 up. Do you have a copy of that in front of you?

11 A I can pull it up in just one moment.

12 Q I think it was one of my prior exhibits.

13 A Yes. I have it now.

14 Q If you go to the bottom of page 53.

15 A Okay.

16 Q You see where it says, similarly, the
17 Subcommittee finds that the offer of more than
18 800 acres of conservation easements in and
19 around the proposed facility is a generous offer
20 by the Applicant. However, the dedication of
21 lands to conservation easement in this case
22 would not suitably mitigate the impact. While
23 additional conserved lands would be of value to
24 wildlife and habitat, they would not mitigate

WITNESS: KENWORTHY

1 the imposing visual impact the facility would
2 have on valuable viewsheds. Do you see that?

3 A Yes.

4 Q And Ms. Connelly's opinion is consistent with
5 that, correct?

6 A They're different docket. They're different
7 projects, they're different impacts, different
8 mitigation packages.

9 Q I appreciate you saying that. The mitigation
10 impact in this one was 800 acres, and you've
11 added 100 acres on the top of the ridgeline,
12 correct?

13 A And a hundred thousand dollars for offsite
14 mitigation including land conservation offsite.

15 Q Oh, okay.

16 A All right.

17 Q And you think that, so do you take issue with
18 this decision then? Do you think that the SEC
19 in issuing this ruling was at odds with
20 conservation?

21 A No. I think what your original statement was is
22 that in this order it somehow made a
23 determination that conservation lands weren't
24 appropriate to be used for mitigation of

WITNESS: KENWORTHY

1 aesthetic impacts.

2 Q Just reading what I see here.

3 A Sure. My read of this language is it applies
4 specifically to this case. The 2015 docket is
5 not the same as the 2012 docket based on just
6 the facts in the case in terms of the project
7 being proposed and the mitigation being offered.
8 Additionally, there are new rules now than there
9 were before and those rules do identify, you
10 know, mitigation for aesthetic impacts. They
11 don't specify what is acceptable mitigation for
12 aesthetic impacts. I know that there's been
13 information submitted by conservation groups
14 that supports the position that conserving lands
15 is an acceptable kind of best mitigation or best
16 practice in mitigation for aesthetic impacts.

17 Q In this docket?

18 A No, not in this docket. In the rule making
19 docket.

20 Q Okay. And that didn't make its way into the
21 rules.

22 A The language that allows for mitigation of
23 aesthetic impacts is in the rules.

24 Q Right, but not offsite conservation. That

WITNESS: KENWORTHY

1 didn't make its way into the rules.

2 A It didn't specify in the new rules exactly
3 what's allowed for mitigation of aesthetic
4 impacts.

5 Q Well, I don't intend to have a legal argument
6 with you here, Mr. Kenworthy, and we can agree
7 to disagree about the impact of that decision,
8 but I did want to ask you because you did
9 include it in your Supplemental Testimony. You
10 had some comments, I think, on page 18 about
11 Counsel for the Public's position in prior
12 dockets. Why do you feel it's important to
13 include that in your testimony? What's the
14 relevance of that here?

15 A Well, I think it's relevant because there's a
16 position taken by your expert about mitigation
17 that we have entered into and agreed to with the
18 town of Antrim that is consistent with other
19 forms of mitigation that have been used for
20 other wind dockets in New Hampshire that were
21 supported by another attorney in the Attorney
22 General's Office as Public Counsel in a
23 different case so I think it's noteworthy.

24 Q So you think that because Counsel for the Public

WITNESS: KENWORTHY

1 in another docket in another case took a
2 position that they should be taking the same
3 position in this case?

4 A I think --

5 Q Why is this in here?

6 A I think I just said.

7 Q You think it's noteworthy, but do you think that
8 because Counsel for the Public took a position
9 in another docket in another case they should be
10 taking the same position here?

11 A I don't know, I guess I don't know why Counsel
12 for the Public would argue on in one case that
13 funds are acceptable mitigation for aesthetic
14 impacts, and in another case argue that funds
15 are not acceptable mitigation for aesthetic
16 impacts.

17 Q So are you taking the position that Counsel for
18 the Public because they took that position in
19 another docket and another case they should be
20 taking that same position here?

21 A Sure. I guess so. I think that makes sense to
22 me.

23 Q Okay. So why isn't the SEC decision that took
24 this position in this case in another docket

WITNESS: KENWORTHY

1 with the same parties and the same issue and
2 offsite conservation, why should that not be
3 applicable in this case as well?

4 A I think I've said, I think it's (a), a different
5 project; (b), a different mitigation package;
6 (c), there are new rules; and (d), I don't see
7 anything in that order that says that there is a
8 universal statement that conservation lands are
9 not appropriate or can't be used as mitigation
10 for aesthetic impacts.

11 Q And as it refers to offsite mitigation, and
12 that's what that provision, part of the ruling
13 dealt with, the difference between the last
14 docket and this docket was an additional 100
15 acres of offsite mitigation.

16 MR. RICHARDSON: Mr. Chairman, I guess I
17 want to object at this point on relevance
18 because we're just going back over the 2015
19 docket in which this Committee determined that
20 this is a new project, and, therefore, has to be
21 reviewed under the rules that are now in effect.
22 Obviously, the proposal here --

23 MS. MALONEY: And I would object to that
24 characterization and disagree with that.

WITNESS: KENWORTHY

1 MR. RICHARDSON: So what I'm trying to get
2 at is going back over what was determined in
3 2012 or in the taking of jurisdiction over this
4 project really is beside the point we're here
5 today to decide which is is this mitigation
6 package sufficient or not.

7 PRESIDING OFFICER SCOTT: Your response?

8 MS. MALONEY: My response is that Mr.
9 Kenworthy took the opportunity to opine on these
10 issues, took the opportunity to opine on what
11 Counsel for the Public's done in the past, and I
12 would direct Attorney Richardson's attention to
13 the order in the jurisdictional phase that
14 indicated that issues regarding res judicata and
15 issue preclusion would be dealt with in this
16 docket. So I think that my line of questioning
17 is appropriate and that that's it. So my
18 question was, and I think Mr. Kenworthy was in
19 the response, in the process of answering the
20 question when Mr. Richardson interrupted him.

21 PRESIDING OFFICER SCOTT: Okay. How much
22 more on this line do you have?

23 MS. MALONEY: I don't.

24 PRESIDING OFFICER SCOTT: Okay. I thought

WITNESS: KENWORTHY

1 you might be done with it.

2 MS. MALONEY: Yes. It was a good point for
3 me until I got interrupted.

4 MR. RICHARDSON: I'm just trying to stay
5 focused. I don't know how long, how many
6 questions she has, and I don't want to make this
7 personal. I mean, I'm obviously just objecting
8 because I'm trying to stay on task, and I really
9 don't think that's appropriate.

10 PRESIDING OFFICER SCOTT: So sounds like
11 we're done with this line of questioning?

12 MS. MALONEY: I think so.

13 PRESIDING OFFICER SCOTT: So why don't you
14 press on or how much more do you have?

15 MS. MALONEY: No, I just wanted to ask some
16 questions.

17 Q In your original Prefiled Testimony, I think you
18 had talked about that the impact of the project,
19 the energy generated would, I think you said it
20 would produce enough energy to, produce enough
21 electricity for about 12,000 homes?

22 PRESIDING OFFICER SCOTT: I was actually
23 asking you a question. How much more do you
24 have?

WITNESS: KENWORTHY

1 MS. MALONEY: Oh, this is my last line of
2 questioning. I mean, it would take five
3 minutes.

4 PRESIDING OFFICER SCOTT: Okay. Proceed.
5 Thank you.

6 Q Do you recall that?

7 A Yes.

8 Q I guess one of the issues I asked this question
9 is because, obviously, and I think you've
10 already stated that even after decommissioning
11 you can't state that this project will not have
12 an impact on the ridge, correct?

13 A I think what I stated is that after
14 decommissioning, the ridgeline will not be
15 exactly the same as it is today.

16 Q I know. I see some of the things that are
17 submitted that talk about these impacts are
18 temporary, but if I recall the testimony from
19 Mr. Cavanagh he indicated there would be
20 probably more than 5000 cubic yards of rock that
21 needed to be blasted from that area, and my
22 mathematical calculations that's about 7,000
23 tons of rock and blasting that will have to
24 occur on Tuttle Ridge and those are permanent

WITNESS: KENWORTHY

1 impacts, aren't they?

2 A Yes. They're going to change areas. Yes.

3 Q Right. So what occurred to me about the
4 production of electricity for these 12,000 homes
5 is that it's great when we do these things and
6 it's great to support alternative energy, but
7 we're not doing very much about making sure that
8 those homes are energy efficient, and so we can
9 be producing all kinds of energy for these
10 homes, but you don't know whether or not these
11 people are going to have proper insulation or
12 proper windows or proper lighting or energy
13 efficient appliances and so it seems that from a
14 conservation point of view maybe we'd be better
15 off working in that direction.

16 MR. NEEDLEMAN: I'm going to object to the
17 relevance of that.

18 PRESIDING OFFICER SCOTT: I know you lost
19 me so maybe you could help a little bit.

20 MS. MALONEY: Well, there's going to be
21 permanent impacts with this project, and there's
22 also a statement made in the testimony that this
23 is going to produce enough electricity. I'm
24 trying to draw a comparison between conservation

WITNESS: KENWORTHY

1 and producing a lot of different invasive energy
2 projects.

3 PRESIDING OFFICER SCOTT: And your
4 question?

5 MS. MALONEY: That's my question.

6 MR. NEEDLEMAN: Well, if I may,
7 Mr. Chairman, Ms. Maloney may actually be right.
8 I don't know. But this is not a docket about
9 choices between different approaches to energy
10 conservation so I don't see how it's relevant.

11 Q Well, I noted that you also submitted the
12 testimony or letters from some of the State
13 Representatives in the area that supported the
14 project, correct?

15 A Yes. All four of them.

16 Q And are you aware that most if not all of them
17 voted against the 2012 building code for energy
18 updates for 2012?

19 MR. NEEDLEMAN: Same objection.

20 PRESIDING OFFICER SCOTT: Why don't you
21 answer?

22 A I'm not aware.

23 Q Okay. I don't have anything further.

24 PRESIDING OFFICER SCOTT: Okay. Sounds

WITNESS: KENWORTHY

1 like a good breaking point for lunch. We'll
2 come back with questions from the Subcommittee,
3 and then I believe I'm showing Mr. Enman next,
4 is that right?

5 MS. BERWICK: Selectmen?

6 MR. NEEDLEMAN: Doing the Town next and
7 then Mr. Enman. Thank you. We'll break now for
8 45 minutes.

9 (Hearing recessed at 12:30 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24