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I N D E X

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* * *

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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
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P R O C E E D I N G

(Hearing resumed at 5:04 p.m.)

PRESIDING OFCR. SCOTT: Back on the record.

I think we're now with Counsel for the Public?

MS. MALONEY: I don't have any questions.

PRESIDING OFCR. SCOTT: That was anti-climatic. Okay. Thank you.

Anybody from the Giffin/Pratt intervenors?

MR. PRATT: None.

PRESIDING OFCR. SCOTT: Mr. Enman?

MR. ENMAN: No questions.

PRESIDING OFCR. SCOTT: Mr. Richardson?

MR. RICHARDSON: Thank you.

BY MR. RICHARDSON:

Q. Ms. Linowes, do you still have Abutters Exhibit 52 in front of you? That's the Norwegian study.

A. I do.

Q. Okay. On the fifth page of Exhibit 52, the

[WITNESS: Linowes]

1 pages don't appear to be numbered, so you'll
2 have to flip to it. But that was the page
3 where you said -- you referred Ms. Berwick to
4 the second full paragraph?

5 A. Right.

6 Q. I want to look at the last sentence of that
7 document -- or, that paragraph, where it says
8 "At distances of 150, 75, and 25 meters from
9 the turbine the corresponding return periods
10 are 1000, 100, and 10 years". So, three
11 numbers. Not "1,110", but "1,000" and "100"
12 and "10", "respectively for the dangerous ice
13 throw." Did you -- had you seen this document
14 before?

15 A. I had seen this document.

16 Q. Okay. So, you're aware that the "return
17 period" that's being referred to is the
18 probability of a piece of ice landing on a
19 given square meter at a given distance?

20 A. Yes.

21 Q. And it appears that each time you add 25 meters
22 of extra distance, the probability is
23 decreasing logarithmically. So, if we were to
24 go from 25 meters, the chance is once every ten

[WITNESS: Linowes]

1 years. To 75 -- or, excuse me, 75 meters, so,
2 then, that's adding 50 meters, it goes to one
3 in 100 years. And, then, when we add 25
4 meters, to go to 150 meters, --

5 MS. BERWICK: Mr. Chairman, could I
6 interject that that is for a 4 joule force of
7 ice, which is enough to cause serious injury
8 and death, not just "ice".

9 PRESIDING OFCR. SCOTT: You take that
10 as a friendly amendment?

11 MR. RICHARDSON: Sure.

12 BY MR. RICHARDSON:

13 Q. So, that's what they're plotting is, is the
14 probability, the relationship, whatever the
15 piece of dangerous ice is defined as. Do you
16 see that?

17 A. I do.

18 Q. Yes. And, in fact, below that, on Figure 8, it
19 says "Probabilistic" -- "Probabilities for ice
20 throw strike per square meter per year with an
21 impact energy of above 40 joules from a wind
22 turbine", and then it says is "plotted on a
23 logarithmic scale from 10 to the zero to 10 to
24 minus 7 as a function of a distance in meters."

[WITNESS: Linowes]

1 And, in "10 to the minus 6", that's one in a
2 million, is that right?

3 A. I don't know. I'll take it.

4 Q. Okay. Well, you see --

5 A. But this -- okay, you can sit here and you can
6 talk about probabilities, and you can talk
7 about the person who gets hit with the ice.

8 Q. Right. And, so, I --

9 A. Are you going to -- is the Site Evaluation
10 Committee going to make a determination that
11 it's going to allow that?

12 Q. I'd like to talk about the probabilities, --

13 A. Okay.

14 Q. -- because the statute itself refers to
15 "unreasonable impacts". So, I think we should
16 explore, based on the probabilities, what's
17 reasonable and what isn't.

18 So, if the chance -- if 10 to the minus 6
19 is about one in a million or -- well, put it
20 this way, if, at 150 meters, the return period
21 is one year in a thousand, doesn't this suggest
22 that, if we were to add, say, another
23 25 meters, that scale is going to continue to
24 go up logarithmically, and we're looking at a

[WITNESS: Linowes]

1 probability of about every 10,000 years?

2 A. I think the operative phrase -- I mean, we
3 could sit and debate statistics all day long.
4 And I think the operative information in this
5 paragraph is that, on an average year, they
6 experience 6,000 kilograms of ice throw and 800
7 instances of dangerous ice pieces.

8 Q. Uh-huh.

9 A. And, if you go the -- we also know from this
10 article, and other articles and other papers
11 that have been submitted as part of this
12 proceeding, is that the standard calculation
13 for determining the distance that ice could
14 throw is one half -- 1.5 times height plus
15 rotor diameter. We have evidence in the record
16 that, from the Applicant itself, that ice will
17 throw 820 feet.

18 We don't know if that was on flatland or
19 whether that was on a ridgeline. So, we don't
20 have any information around that. But 820 feet
21 throws ice onto someone's property. We can
22 debate whether it's going to happen today,
23 tomorrow, next year, or a thousand years from
24 now. But the question is "should it happen on

[WITNESS: Linowes]

1 someone else's property?"

2 Q. Right.

3 A. And that's what I'm asking.

4 Q. And what I'm trying to show you is is,
5 actually, you just went through the sequence
6 of, you know, one years, ten years, a thousand
7 years. And what this appears to show is, at
8 175 meters, it would be once every 10,000
9 years. Because, when you look at this Figure
10 8, do you see on the left-hand column, that's
11 the logarithmic scale, it's very hard to read,
12 but you see distance on the X axis. And, then,
13 as you go up, you're looking at "10 to the
14 zero", "10 to the 1", "10 to the 2", "10 to the
15 3".

16 So, in response to your comment, isn't
17 what this graph is showing is that almost all
18 of the ice is landing within that close zone,
19 where it's "10 to the 1 year" or "10 to the 2
20 years"?

21 A. I think that the more informative information
22 in this document is the last page, which it
23 actually shows the distances that ice will
24 throw based on different ice pieces. And you

[WITNESS: Linowes]

1 can see where they have calculated the ice
2 zones to be based on the wind speeds at that
3 point and the rotor RPMs.

4 Q. But --

5 A. So, you can see where ice is going to throw.
6 Again, if you're going to talk about
7 frequency --

8 Q. Hold on.

9 A. Go ahead.

10 Q. Let's try to stay focused on the questions.

11 A. Okay.

12 Q. And, you know, there will be an opportunity for
13 redirect, I'm sure. But --

14 MS. BERWICK: No, there isn't.

15 BY MR. RICHARDSON:

16 Q. -- what I would -- when I heard you talking to
17 Ms. Berwick, I believe it was, you said that
18 "this paragraph was the one that was relevant".
19 Didn't you tell her that this was the one you
20 really wanted to focus on, because you were
21 reading --

22 A. No, I --

23 Q. -- up at the top, but then you said "well,
24 let's look down here." That's what I

[WITNESS: Linowes]

1 understood. So, I've never seen this document
2 before. Is this not the operative paragraph
3 that describes probability?

4 A. Yes. Oh, no, you'll find probability
5 throughout the entire document and conclusions
6 about the probability of events happening.
7 And, if the Site Evaluation Committee is going
8 to take a position that "Well, you know, the
9 chances of someone getting hit from ice is like
10 one in a thousand years", then, you know, let's
11 just not -- let's have a very short distance.
12 But that is -- I would not recommend that as a
13 safety at all.

14 Q. And, so, do know what the Holocene is?

15 *[Court reporter interruption.]*

16 BY MR. RICHARDSON:

17 Q. The Holocene, H-o-l-o-c-e-n-e?

18 A. I don't know that.

19 Q. So, that's the period of glacial or geologic
20 history since glaciation. And, in this area,
21 glaciation ended about 11,000 years ago. So,
22 if Antrim Wind, let's see, the turbines are
23 about 496 feet?

24 A. Four hundred ninety-two (492) feet.

[WITNESS: Linowes]

1 Q. Okay, 492 feet. And the distance to the
2 nearest property line is about 1.2 turbine --
3 that height, right?

4 A. In one, yes. That's in one location.

5 Q. Okay. So, that's about 179 meters, right?

6 A. I don't know.

7 Q. Okay.

8 A. I'll take your word for it.

9 Q. Okay. So, at that distance, we're basically
10 off this calculation and we're in the "10 to
11 thousands of years". So, basically, if you
12 were sitting in a square meter when those
13 glacial erratics were put on the top of the
14 hill, you'd expect ice to go that distance once
15 every 10,000 years. In other words, it's
16 happened once since the glaciers melted?

17 A. I have no idea what you're talking about.

18 Q. Okay.

19 A. But, if I can draw your attention to a diagram
20 that I have in my prefiled testimony, which is
21 Page 11, this diagram is taken from a Seifert
22 report. This is -- it is cited in a footnote
23 on the previous page. This is a very standard
24 document -- chart. And it shows the amount

[WITNESS: Linowes]

1 of -- it maps the amount of heavy icing,
2 moderate icing, or light icing during the
3 course of a year, against the distance ice
4 would throw and the probabilities that you're
5 willing -- the risk factor that you're willing
6 to accept. And, so, if you wanted to get very
7 close -- so, this Antrim, and New Hampshire, in
8 general, would be characterized as "heavy ice
9 areas" on our ridgeline. So that would be we
10 would have at least 25 days a year where icing
11 conditions can occur. That would be at least
12 that.

13 So, if you wanted to get to very low to no
14 chance of someone getting hit by ice, their
15 recommendation, based on this profile, is
16 400 meters, from the distance where the turbine
17 is located to where ice is likely to throw out.
18 So, that would be roughly 1,600 feet.

19 Q. But let me --

20 A. So, that's -- I mean, we're talking about how
21 much risk -- how much risk would the State of
22 New Hampshire be willing to put the public at?
23 That's what we're talking about. And these are
24 the kind of numbers that we're looking at.

[WITNESS: Linowes]

1 So, the generic formula is what's
2 recommended --

3 MR. RICHARDSON: Mr. Chairman, I'm
4 not asking about a "generic formula" at all.
5 That's -- I only have one more question on this
6 line, on this topic. So, I'm worried we're
7 just going off where the witness wants to go,
8 rather than answering questions.

9 PRESIDING OFCR. SCOTT: Why don't you
10 ask your question then. Go ahead,
11 Mr. Richardson.

12 BY MR. RICHARDSON:

13 Q. Do you believe that the calculations of
14 probability that are in this document, and at
15 the paragraph that you pointed Ms. Berwick to,
16 are those calculations not accurate or are they
17 accurate?

18 A. It's not a question of the probability of ice
19 being thrown a certain distance, and at what --
20 when it will happen. It's a question of the
21 amount of risk that the public is willing --
22 that the public would be put at. And whether
23 or not someone who has property that is at risk
24 of being hit with ice, whether it's tomorrow or

[WITNESS: Linowes]

1 a week from now, or whenever, whether that
2 should happen? And that's what -- which I
3 believe it should be zero risk.

4 Q. The question was, actually, do you believe
5 those calculations are accurate, yes or no?

6 A. I don't know what they represent. Are these
7 the risks that this -- okay.

8 Q. So, is the answer "you don't know"?

9 A. Let me ask you back a question. How many times
10 have we had a 25-year storm in the last couple
11 of years? It's the same question.

12 PRESIDING OFCR. SCOTT: Please answer
13 the question.

14 MS. LINOWES: Can you ask the
15 question again?

16 BY MR. RICHARDSON:

17 Q. Are these calculations, that are shown in the
18 paragraph that you pointed Ms. Berwick to on
19 Page 5, are those accurate, the probability
20 calculations, in this report?

21 A. I don't see calculations. I see numbers.

22 Q. Okay. The estimates of probability that these
23 researchers prepared in analyzing the
24 probability of ice throw, do you think they did

[WITNESS: Linowes]

1 this wrong? Are these numbers correct or
2 incorrect?

3 A. I think you're reading too much into them. I
4 cannot speak to them. I think that it's a
5 question of risk. How much risk is the public
6 going to be put at if ice is thrown? That is
7 the question.

8 Q. That's the question you want to answer. But my
9 question is is are those numbers correctly
10 calculated or not?

11 A. I don't know.

12 Q. Okay. Thank you. Do you recall asking Mr.
13 Thurber about whether the Lempster Wind Project
14 adversely impacted orderly development in the
15 Town of Lempster?

16 A. I don't know if I did.

17 Q. Okay. But you've discussed noise impacts in
18 your testimony, on Page 3, on Page 5, 6, and 7,
19 I see references to that?

20 A. Yes.

21 Q. And do you recall, I believe, Ms. Longgood as
22 well testified that she believed that, because
23 of noise impacts, "portions of Lempster had
24 been abandoned". Do you recall that?

[WITNESS: Linowes]

1 A. I remember. I do recall reference to that.

2 Q. And that's the risk you're trying to get at
3 in -- when you discuss whether or not this
4 Project complies with the rules? You want to
5 make sure that there aren't noise impacts that
6 are going to impact property values, or use of
7 property, for that matter?

8 A. Is that a question?

9 Q. Yes.

10 A. What is the question?

11 Q. That's the point of regulating sound levels,
12 that you want to make sure that the use of a
13 wind turbine doesn't adversely impact the
14 surrounding properties. That's part of the
15 reason why we go through this whole exercise?

16 A. Well, to be fair, I mean, the Site Evaluation
17 Committee went through that process already
18 when it adopted the rules. Now, we're just
19 looking to ensure that the rules are heeded.

20 Q. Well, I recall Ms. Longgood, I believe, in the
21 transcript, she's asked by the Chairman "if
22 there was any evidence that supported her
23 conclusion or belief that portions of Lempster,
24 the properties, had been abandoned?" And I was

[WITNESS: Linowes]

1 wondering if you recalled that discussion that
2 went back and forth?

3 A. When she was on the witness stand?

4 Q. I believe she was, yes.

5 MS. MALONEY: Is she being asked
6 about another person's testimony? Is that --

7 MR. RICHARDSON: I'm trying to ask --

8 MS. MALONEY: I mean, what's the
9 relevance of this?

10 MR. RICHARDSON: I'm trying to ask
11 her conclusions about noise. So, why don't I
12 show you an exhibit, if I can. I've got copies
13 for the Committee here.

14 *[Atty. Richardson distributing*
15 *documents.]*

16 ADMINISTRATOR MONROE: Do you know
17 what number you're at, Justin?

18 MR. RICHARDSON: Yes. Thank you.
19 This would be "Antrim Exhibit Number 13".

20 (The document, as described, was
21 herewith marked as **Exhibit**
22 **Antrim 13** for identification.)

23 MS. BERWICK: Does this have to do
24 with her testimony? Because I am going to

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1 object like they have done to me. I don't
2 think Ms. Linowes has anything about property
3 values in her testimony.

4 MR. RICHARDSON: Well, this relates
5 to noise impacts, such as those that were --
6 that she alluded to in Lempster.

7 MS. MALONEY: I don't think it --

8 MR. RICHARDSON: And the reason --

9 MS. MALONEY: I don't think it has
10 anything to do with noise impacts that she
11 alluded to.

12 MR. RICHARDSON: I haven't asked the
13 questions yet.

14 BY MR. RICHARDSON:

15 Q. Ms. Linowes, --

16 MS. LINOWES: I believe that this is
17 an effort by, since I don't have an attorney
18 here, then I'm going to object to the
19 questions. Because I believe this is an effort
20 by Mr. Richardson to get information into the
21 record with a witness. I have nothing in my
22 testimony that discusses property values. My
23 testimony is predominantly focused on whether
24 the rules were followed.

[WITNESS: Linowes]

1 MR. RICHARDSON: Right. And I
2 understand that part of the reasons we're
3 concerned about compliance with the rules is
4 what might happen to adjacent properties.

5 MS. MALONEY: While I'm going to
6 object to this exhibit. And I agree this has
7 nothing to do with her testimony. And it's
8 just an attempt to bootstrap this exhibit in
9 through an unrelated witness.

10 PRESIDING OFCR. SCOTT: Sustained.

11 MR. RICHARDSON: Mr. Chairman, if I
12 may respond, because I don't think I've had a
13 chance to articulate what I'd like to do with
14 this.

15 Where I would like to go with this is
16 the suggestion that has been made by Ms.
17 Linowes and by other witnesses that "Lempster
18 had experienced diminished property values due
19 to noise impacts."

20 MS. LINOWES: Mr. Chairman, I have
21 never made that statement. In this entire
22 proceeding, I have never done that.

23 PRESIDING OFCR. SCOTT: Can you point
24 us to the transcript or someplace,

[WITNESS: Linowes]

1 Mr. Richardson?

2 MR. RICHARDSON: Well, where I was
3 going to go with this was is this witness has
4 discussed noise impacts of this Project and its
5 compliance. So, I want to get at the issue of
6 whether there isn't actually any evidence to
7 support this.

8 What I've done here is, because I was
9 concerned about the statements made by other
10 witnesses, that there could be a property
11 values impact. So, I went out and looked at
12 their --

13 MS. LINOWES: Mr. Chairman, the
14 Applicant already has a document in the record
15 on the Lempster property values. I don't
16 understand if this is an effort to recreate the
17 wheel here.

18 PRESIDING OFCR. SCOTT: Again, I've
19 heard you, and I'm going to sustain the
20 objection. I don't see anything in Ms.
21 Linowes' testimony about -- that goes to these
22 property values. So, please move on.

23 MR. RICHARDSON: These are the only
24 questions I have are on this exhibit. So,

[WITNESS: Linowes]

1 that's all I've got.

2 PRESIDING OFCR. SCOTT: The Applicant
3 have any questions?

4 MR. NEEDLEMAN: No questions.

5 PRESIDING OFCR. SCOTT: How about any
6 member of the Committee? Ms. Weathersby.

7 BY MS. WEATHERSBY:

8 Q. In your testimony, you've pointed out a number
9 of instances where you allege that the
10 Applicant failed to fully comply with the
11 rules. What is your position regarding the
12 consequence of failing to fully comply with the
13 procedural rules?

14 A. In terms of how the Committee should respond?
15 I think, if the Application has failed to meet
16 the rules as written, then the Project should
17 be denied.

18 Q. Do you have support for that position or is
19 that just your opinion?

20 A. Well, the hope is that the rules as written are
21 considered to be, I mean, they have almost the
22 weight of law. The Committee has the -- there
23 is the opportunity to request a waiver, in the
24 event that the Applicant can't meet one or more

[WITNESS: Linowes]

1 of the rules. None -- to my knowledge, no
2 waivers have been requested, including a waiver
3 regarding the decommissioning, and said there's
4 debate over the definition of infrastructure.
5 So, it's -- you know, that I think, especially
6 now, this is the first project to go before the
7 Site Evaluation Committee within the new rules,
8 I think it's so critically important that they
9 be adhered to, and that the Committee make
10 every effort to meet the letter of the rules,
11 because of the effort that went into putting
12 them in place.

13 If a Project fails to meet the rule, for
14 instance, if it -- if the noise limits exceed
15 the 40 decibels, there's not a lot of room
16 around the way the rule is written. The rule
17 states "the Project shall" -- that's a maximum.
18 If it turns out -- so, now, it comes down to
19 arguments have been made that the predictive
20 modeling that says "the Project is not going to
21 exceed the 40 decibels", according to the
22 Applicant, there has also been arguments in the
23 proceeding that have said "yes, there will be
24 an exceedance." That you're right up at --

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[WITNESS: Linowes]

1 you're at 39.9 now decibels. There are going
2 to be meteorological conditions that will
3 definitely push the noise limits over 40.

4 I think that, if the Project were
5 approved, when it's right on the limit like
6 that, then it's going to produce -- it's going
7 to be very difficult for the public and the
8 Committee, because you are going to have
9 exceedances. The complaints are going to come
10 forward. And there's going to be years of
11 debate over what to do about it.

12 And, so, if there are obvious and clear
13 locations in the rules that have not been met,
14 I believe that the Application should be
15 denied. Or, you know, deny and come back with
16 a new project that does meet the rules.

17 Q. Also in your testimony you stated that the
18 federal production and investment tax credits
19 are set to begin phasing out on January 1,
20 2017?

21 A. Correct.

22 Q. What are the implications of that, if true, for
23 this Project?

24 A. The -- I'm sorry, I don't have the calculations

[WITNESS: Linowes]

1 in front of me. But, right now, the investment
2 tax credit -- the Applicant has stated publicly
3 that they're going to be exercising the
4 investment tax credit. And that's, with really
5 rough numbers, represents a 30 percent of the
6 \$65 million project cost, you know, maybe --
7 you know, plus or minus a little bit. So, that
8 is how much the federal government or taxpayers
9 nationwide are going to be contributing to the
10 project costs, in effect.

11 Come January 1, 2017, that is going to
12 drop, and that investment tax credit is -- so,
13 it's going to drop by 20 percent, is what's
14 going to happen. So, instead of it being 30
15 percent, it will be 20 percent of that.

16 And, in the case of the Production Tax
17 Credit, which is \$23 a megawatt-hour. So,
18 every megawatt-hour of generation the Project
19 will be receiving -- producing, it will get a
20 \$23 credit, which gets monetized. And, so,
21 that, in effect, is money from the taxpayers to
22 cover the cost of the Project over a ten-year
23 period.

24 When that -- that \$23 will drop by

[WITNESS: Linowes]

1 20 percent. So, it will be somewhere closer to
2 \$18 a megawatt-hour. So, that differential
3 between the \$18 and \$23, times the number of
4 megawatt-hours a year, times ten years,
5 that's -- that's how much of a difference that
6 would make. In some projects, it's millions,
7 many millions of dollars difference.

8 So, it's not clear whether -- there will
9 be wind projects that will not get built, if
10 they can't get their projects started by the
11 end of this year, because of that. That's how
12 significant it is. And I don't know with
13 certainty if that's the case on this Project.
14 But my guess is it will have -- it will be a
15 factor.

16 Is that clear?

17 Q. And does that affect the financial capability
18 of the Applicant going forward or just the
19 initial financing?

20 A. Yes. In my opinion, just from the public
21 proforma that I saw, there's a lot weighing on
22 that Investment Tax Credit coming through in
23 its full form. And it will -- and, again, I've
24 already publicly stated -- okay, we don't have

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1 a good understanding of the costs, the
2 operating costs of this Project, in my opinion.

3 So, if it turns out -- there are a number
4 of factors in the proforma that are problematic
5 for me. But, if the ITC does not come through
6 in its full form, I do believe it's going to
7 affect the financial outcome of this Project.
8 It may well not get built.

9 Q. And my last question, in your supplemental
10 testimony, you questioned whether Antrim Wind
11 would have sufficient cash flow to cover their
12 debt and still operate the Project in
13 accordance with the Certificate, due to what
14 you deem is a more realistic 31 percent
15 capacity factor, and that the prices were more
16 in line with your analysis. There's been
17 comments submitted, and I understand that
18 Antrim Wind now has contracts for all of the
19 power to be produced by this Project. Does
20 that affect your concern at all?

21 A. It has contracts for 25 percent of their energy
22 right now. It has an intent, a letter of
23 intent for another 70 percent. So, we don't
24 know what the situation is with that extra

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1 70 percent, and whether that -- how that's
2 going to be negotiated.

3 And they have also been accepted under the
4 Tri-State RFP. But that only means that they
5 start negotiations, okay? That we don't know
6 what price that ultimately is going to end up
7 being.

8 So, you're asking me if the -- so, I think
9 there are unknowns there. But they're on a
10 path. So, does it change everything? I think
11 that -- my worry is, if they get the contracts
12 at the price they want, and the project costs
13 end up higher than what is anticipated, they
14 don't get the ITC as anticipated, and other
15 kinds of things do not work out, they still
16 could have a very profitable contract, but a
17 project that is not performing as expected.
18 And, then, if that happens -- so, it doesn't
19 produce as much as they wanted, and the costs
20 were higher than expected, then New Hampshire
21 could be sitting on a project that's abandoned,
22 or sold to someone else who could handle the
23 extra cost. But that's my worry.

24 So, even if everything fell into place

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1 regarding the Project, there are still issues
2 there. I think they're right on the border.

3 MS. WEATHERSBY: I have nothing
4 further.

5 PRESIDING OFCR. SCOTT: Dr. Boisvert.

6 BY DR. BOISVERT:

7 Q. With the applications for a certificate, they
8 can be approved or they can be rejected. But
9 it is common that there are conditions that are
10 placed on the approval of a certificate by the
11 Committee. And there's quite a variety out
12 there. I've made some suggestions for some
13 conditions. Do you have any suggestions for
14 conditions, should the Committee decide that we
15 should go forward and grant the Certificate,
16 are there some conditions that you feel that
17 would be essential for the Project?

18 A. I do think -- okay. I do think that some of
19 the questions -- that some of the things that
20 were discussed earlier, previously, were having
21 to do with the construction period. So, I
22 think that the public should be more involved
23 and be made more aware when there's blasting,
24 when the development is happening. I think

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1 that there needs to be some kind of
2 compensation or protection for the properties
3 that are immediately adjacent to where
4 development is happening. So, I believe it's
5 Ms. Berwick's property, somewhere in the
6 200 feet or less from where the road is going.
7 So, if there's going to be impact immediately
8 to her property, I think there should be some
9 consideration there that the Committee can
10 oversee.

11 The rules -- okay, if the Committee is
12 willing to allow the Project to go in with
13 regard to the noise, I said I think they're
14 right at the limit of what is allowed under the
15 noise, there can be a condition in there that
16 says they have to put in noise-reduction
17 operations. That's -- I would hope that
18 oversight on that would be very closely
19 monitored. That, if they're -- so, right now,
20 the rules say that the noise testing has to be
21 done I think it's for four seasons over one
22 year, I can't remember exactly. I think that,
23 if they're so close to the limit, we should
24 discuss much more rigorous noise testing,

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1 because they're so close to the limit. And I
2 would encourage the public to be part of that
3 discussion, and even if it means having a
4 separate proceeding to discuss that.

5 So, those are the areas. I mean, it's
6 mostly around health and safety that I'm really
7 concerned about, and making sure the public
8 that is going to be most impacted by it has a
9 voice in it, or at least consideration, given
10 the impacts.

11 Sorry I didn't articulate specific rules,
12 though, or conditions.

13 Q. So, what I hear is health and safety, noise
14 would be one of those, and issues concerning
15 how the construction will take place.

16 A. Yes. Involved with blasting and road
17 development. And that I guess the last one is,
18 I don't think that the -- I looked at the
19 invasives plan, and know this is not part of
20 my -- part of my testimony, but I think that
21 there should -- that that needs to be more
22 rigorous than what's -- just the revegetation
23 back of that road, it's going to be very
24 difficult to revegetate it back, based on the

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1 testimony we've heard. And, so, I think we
2 need much closer oversight on that.

3 And, unfortunately, I think it tends to
4 fall on Fish & Game. So, I mean, the -- to do
5 that kind of thing, and perhaps DES. And I'm
6 not sure, a condition where someone who is
7 experienced in that kind of mitigation be hired
8 to oversee that, I think will be very
9 important.

10 DR. BOISVERT: Thank you.

11 PRESIDING OFCR. SCOTT: Mr. Clifford.

12 MR. CLIFFORD: I guess I just have
13 one question.

14 BY MR. CLIFFORD:

15 Q. So, when you say, if, ultimately, the Antrim
16 meets the SEC requirements, you would not
17 venture to guess that we should deny an
18 application, if it actually meets all the
19 criteria set out in the rules?

20 A. That's correct.

21 Q. And that you just outlined some other
22 conditions you might be interested in --

23 A. Right.

24 Q. -- in the approval. And, then, ultimately,

[WITNESS: Linowes]

1 wouldn't you agree that, even if it's approved,
2 and these folks can't deliver financially, the
3 Project would fail, ultimately, on its own
4 merit in the financial world? If, for example,
5 you say that they can't meet their commitments
6 under the -- or, not the "commitments", but
7 can't utilize the tax credits, or if the price
8 of wind -- if they overestimated their price of
9 wind energy, then those turbines may never get
10 built, even if it were approved, and the market
11 says "well, we don't like", you know, --

12 A. Yes.

13 Q. -- you're basically delivering \$10 a gallon
14 gasoline, when everybody else is making it for
15 5?

16 A. Absolutely.

17 Q. Okay.

18 A. Yes.

19 MR. CLIFFORD: All right. Thank you.

20 MR. FORBES: No questions.

21 PRESIDING OFCR. SCOTT: Commissioner
22 Rose?

23 CMSR. ROSE: Thank you. Just a
24 couple of quick questions.

[WITNESS: Linowes]

1 BY CMSR. ROSE:

2 Q. In your prefiled testimony, you reference
3 skepticism, perhaps, on the capacity factor at
4 "37 percent"?

5 A. Yes.

6 Q. I was just curious if you could explain to me a
7 little bit why you don't -- why you're
8 concerned about that figure?

9 A. In that I don't trust it or why I'm concerned
10 about --

11 Q. Yes. Why do you question that "37 percent"?

12 A. I can say none of the operating wind projects
13 in New England are reaching that level --
14 rather, I'm sorry, not "in New England", in New
15 Hampshire are achieving that level. And this
16 would be a new turbine. We don't -- and this
17 is an applicant who has not built a wind
18 project in New England, or anywhere, actually,
19 I should say. So, there's -- we don't have
20 access to the wind data. We haven't looked at
21 the wind data that they have collected at the
22 site. We haven't seen the analysis, really,
23 that they have done to justify it. So, just
24 mapping that, the experience we've had in New

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1 Hampshire, we are seeing actual projects coming
2 in at less than that, they claim to come in.

3 For instance, Granite Reliable came in,
4 initially, it was going to be in the
5 35-36 percent capacity factor. Brookfield came
6 in, they lowered that down to, still in the
7 30s, but lower. And the actual operating
8 performance at the Granite Reliable Project is
9 around 25-26 percent, on average.

10 So, we don't know if that is because
11 there's not enough transmission up there and
12 they're getting curtailed. We don't know if
13 they're, because of the lightning strikes and
14 other various failures, you know, in
15 operational failures that are limiting their
16 total output, or whether the wind resource is
17 not meeting with their needs.

18 So, for whatever reason, Groton and
19 Granite Reliable have not come in anywhere near
20 what they have advertised. So, I think we
21 should be skeptical.

22 And how much does it matter to New
23 Hampshire and to the Site Evaluation Committee?
24 Well, it does matter. If they don't meet the

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1 performance, then they're not going to make the
2 money. And, even if they are able to get
3 contracts at the price, and if the costs are
4 higher -- you know, it's all about the
5 finances. And I don't want to see a project
6 get built that fails. That will be worse than
7 anything right now, I think.

8 Q. On your -- we referenced that chart within your
9 prefiled testimony on Page 11 that was talking
10 about the ice throw?

11 A. Correct.

12 Q. And I just wanted to make sure I had this about
13 right. And it's been a little while since I've
14 played around in some of these decibels, but
15 looking at the X axis, that's the frequency of
16 occurrence, and then the Y is the distance. Do
17 I have that right?

18 A. That's correct.

19 Q. Okay. So, at 200 meters, is that once every
20 thousand years? Is that -- am I reading that
21 right?

22 A. For heavy? You're talking about for heavy?

23 Q. Yes. I'm sorry. I should have qualified. You
24 had referenced New Hampshire would be one of

[WITNESS: Linowes]

1 the heavier, so that solid -- the solid line?

2 A. Yes.

3 Q. The thickest of the lines?

4 A. I believe that is it. Now, I believe that is
5 correct. And just saying that I tend to read
6 this chart as meaning "absolute certainty"
7 to -- a full risk of something happening and no
8 risk of something happening, and then there's
9 the grading.

10 And I'm not sure, as I was responding to
11 Mr. Richardson, I'm not sure how much weight,
12 in my opinion, when we're talking about health
13 and safety, we should apply to, you know, the
14 number of years or the chance of something
15 happening. Point is, will it happen or won't
16 it happen? And I lean towards go where it
17 won't happen.

18 Q. But, just so I understand this chart, that
19 would be, you know, about 200 meters, at about
20 650 feet or so. So, there's, you know, the
21 potential for ice throw at 650 feet about once
22 every thousand years, according to this chart?

23 A. I believe that's correct.

24 Q. Okay. You had made a statement in your

[WITNESS: Linowes]

1 testimony, or, actually, I guess, yes, in your
2 testimony here today, that you seem to question
3 whether or not adding additional renewable
4 energy was in the public interest, because we
5 have a high level of renewable energy in New
6 England.

7 A. Right.

8 Q. And I guess I was just curious as to, if you
9 could -- do you have a feel for where we are in
10 New Hampshire, as it pertains to our Renewable
11 Standard Portfolio and our Executive Orders, in
12 terms of trying to have a certain percentage of
13 renewable energy, I believe the latest is
14 "50 percent by 2050", I think that's the most
15 current. And I just wasn't sure how we're
16 tracking, and how that reconciled with your
17 comment about that we're "doing pretty well",
18 in terms of our renewable energy capacity in
19 New England?

20 A. Thank you. Now, when you say a 50 -- the RPS,
21 which is the statute, I believe that you quoted
22 a goal of "50 percent by 2050"? I'm not -- I'm
23 not familiar.

24 Q. I think the statute, and somebody is probably

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1 much more familiar, --

2 A. Twenty-five.

3 Q. -- but I think it's like "25 by 2025", or
4 something like that.

5 PRESIDING OFCR. SCOTT: That's close
6 enough.

7 **BY THE WITNESS:**

8 A. Yes.

9 BY CMSR. ROSE:

10 Q. Okay.

11 A. It's something slightly less than that.

12 Q. And I think there's an Executive Order that has
13 it different.

14 A. Okay.

15 Q. But, nonetheless, let's speak to the statute,
16 and maybe you can just give me a status as to
17 how we're achieving in New Hampshire, as it
18 pertains to our Renewable Standard Portfolio?

19 A. And we have -- okay. Now, I tend to focus in
20 on Class I. I tend to focus in on the Class I
21 resource, because that's wind and all the, you
22 know -- so, we have met our RPS Class I
23 obligation 2014, '15, '16, and we are going to
24 meet it in '17 for sure. And the biggest

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1 contributor to that right now is Burgess
2 BioPower, which is producing, I believe,
3 somewhere in the range of 500,000
4 megawatt-hours of RECs. So, New Hampshire is
5 doing very well right now.

6 And all of the states in New England have
7 met their obligation, which is an amazing
8 circumstance. That's why our REC prices are
9 down around \$18 a megawatt-hour, because we
10 have met compliance. There is nothing -- there
11 is nothing holding that \$18 up. It's probably
12 going to come down to like \$10, which is -- the
13 last time we saw that was in 2010.

14 So, New Hampshire is going to continue to
15 benefit from -- okay. So, let me just step
16 back. The reason why New Hampshire has been
17 able to meet its obligation is because
18 Massachusetts has been able to meet its
19 obligation. Massachusetts is like the
20 800-pound gorilla in the room. They have the
21 biggest mandate out there. They've put so much
22 emphasis on building solar behind the meter
23 that they have been able to meet their Class I
24 obligation because of that.

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1 And, so, as a result, renewable energy
2 RECs, that normally would be going into
3 Massachusetts, are now going to Connecticut,
4 New Hampshire, they all tend to flow to
5 Massachusetts first, and then they'll flow out
6 to the other states. So, when you see states
7 like Massachusetts meet its RPS, that means New
8 Hampshire -- everyone else has as well.

9 And the only thing I could say is, there's
10 more renewable energy being built in New
11 England right now, and we have those RFPs that
12 have been -- that have been approved. But we
13 also have a significant influx of -- the likely
14 significant influx of wind energy that's
15 operating in New York that's going to come into
16 New England beginning actually this year, and
17 to start coming in. They have 1,800 megawatts
18 of wind. And that is going to start coming
19 into New England this year, and then it's going
20 to continue to come through the next three to
21 five years and beyond.

22 So, that's going to help us to continue to
23 make our RPS obligation. And, so, I don't know
24 what the future is going to hold for New

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1 Hampshire, like '18, '19, '20, 2018, '19, '20.
2 But all the signs are that we are going to
3 continue to do well.

4 The only unknown right now is our -- we
5 have administratively reduced our Class III
6 obligation down to one-half of 1 percent, I
7 believe, and that's going to shoot up to
8 8 percent next year, next year. And that's
9 going to put a drain on -- you know, it's going
10 to be a big cost impact. So, I don't know what
11 that's going to happen.

12 But, as far as Class I is concerned, we're
13 doing very well.

14 Q. And the last question. So, you referenced that
15 we're approaching a cliff in January '17 for
16 the ITC and the PTC.

17 A. Correct.

18 Q. Are there future dates out to the right that
19 would also be dropping the Production Tax
20 Credits?

21 A. Yes. It is scheduled now to decrease by
22 20 percent every year through 2019, and then it
23 disappears altogether. And, a couple of years
24 ago, there was discussion about reducing it

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1 down to its original. So, when it was put in
2 place in 1992, it had an escalator based --
3 tied to the CPI. And it started out at 1.5
4 cents and \$15 a megawatt-hour, and then went
5 up, and now it's up to \$23.

6 When there was discussion actually of
7 dropping that even a little a couple of years
8 ago, there was a lot of panic. So, we don't
9 really know how well wind -- how well wind
10 projects will respond in a world where the PTC
11 is significantly lower than \$23.

12 So, this one cutoff is going to tell us
13 something, in 2017, and then it's going to drop
14 another 20 percent after that, and then a year
15 from then. So, we'll see.

16 CMSR. ROSE: Thank you.

17 PRESIDING OFCR. SCOTT: I just had
18 one -- I'll put the microphone on. I just had
19 one question to follow up on your discussion
20 regarding the REC market.

21 BY PRESIDING OFCR. SCOTT:

22 Q. What is your understanding, you've acknowledged
23 that the Project -- it was selected under the
24 Three-State RFP, Connecticut, Rhode Island, and

[WITNESS: Linowes]

1 Massachusetts. Why do you think that Project
2 was selected, if those states didn't need wind
3 resources for their -- whether it's their RPS
4 or their Global Warming Solutions Act?

5 A. Well, they -- and I can't speak for
6 Connecticut, but states like Massachusetts have
7 already mandated that a certain number of
8 renewables come in under contract. And I
9 believe that they have to meet that independent
10 of their RPS obligation. So, that's what's
11 driving it there. And I don't know if
12 Connecticut has a similar kind of obligation, I
13 apologize about that. But -- so that -- I know
14 that's what's driving Massachusetts.

15 Q. So, I think you've answered my question. So,
16 isn't there a demand from that side of things,
17 independent of RECs, these state laws to the
18 states to the south of us?

19 A. Yes. Those policies are going to -- will drive
20 development in other states. And I think that
21 the -- whether this Project will serve the
22 public interest, I take that to mean "servicing
23 New Hampshire's public interest". And, so,
24 when you're weighing, you know, environmental

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1 effects and impacts, against whether or not New
2 Hampshire needs the Project, that's where I
3 would say we're doing very well, and I don't
4 think we need the Project from that regard.

5 Q. Okay. So, I may have misunderstood where you
6 were going with that. I thought you were
7 suggesting those state policies to the south of
8 us don't provide an economic backstop for the
9 Project. You weren't saying that. You were
10 saying "it's not needed for New Hampshire", is
11 that what you were saying?

12 A. Yes. That's my primary, because I think
13 that's -- I believe that's what the public
14 interest means, "does it serve the interest of
15 the State of New Hampshire?" And I don't think
16 we need the Project. And we've got plenty of
17 renewable energy.

18 So, I'm not sure I -- now, those, you
19 know, we could -- I could have a debate over
20 whether those policies are necessary, because
21 the RPSs have been driving so much renewable
22 energy. But, you know, that's another debate.

23 PRESIDING OFCR. SCOTT: Okay. Thank
24 you very much. I think that's it for

1 questions. Thank you. You're welcome to stay
2 there. I'm going to wrap up.

3 WITNESS LINOWES: Okay.

4 PRESIDING OFCR. SCOTT: Whatever
5 works for you. You're welcome to go back also.

6 WITNESS LINOWES: Okay. Thanks.

7 PRESIDING OFCR. SCOTT: I think a
8 couple things. I do have a motion from
9 Ms. Berwick regarding what we agreed to earlier
10 is we would do written closings, and correct me
11 if I'm wrong, somebody, please, what we had
12 originally talked about was there would be one
13 week for everybody but the Applicant, and the
14 Applicant had another week beyond that. I
15 believe we've had an objection, a motion for
16 objection, with the question being who has
17 the -- sorry, it's late in the night.

18 (Multiple parties indicating
19 "burden of proof".)

20 PRESIDING OFCR. SCOTT: -- the burden
21 of proof, thank you, everybody. So, --

22 MS. BERWICK: Also, based on the last
23 SEC hearing, where everything was due at the
24 same time.

1 PRESIDING OFCR. SCOTT: Okay. I'm
2 not going to -- I don't think I can comment on
3 the last, but I'm going to overrule your
4 objection.

5 MS. MALONEY: Could I just make a
6 comment? Because, I mean, I wasn't sure, and
7 forgive me, this might have been -- I'm not
8 sure it was an agreement, I think it was a
9 ruling, but I think I had spoken to somebody on
10 the Board about, you had talked about "seven
11 days", but we aren't going to have a transcript
12 for the final day. And, so, I think, from the
13 point of view of -- I mean, I disagree that
14 they need an additional seven days, because
15 they certainly can be working on their stuff
16 now. But I also don't think seven days is
17 really seven days for Counsel for the Public or
18 any of the intervenors, because we don't have
19 the final day testimony.

20 PRESIDING OFCR. SCOTT: So, I'm going
21 to go to -- off the record, so I can ask Steve
22 a question, so he didn't have to write it. So,
23 off the record.

24 *[Brief off-the-record discussion*

1 *ensued.]*

2 PRESIDING OFCR. SCOTT: Back on the
3 record.

4 Mr. Needleman, were you about to
5 speak?

6 MR. NEEDLEMAN: I was. Mary had
7 mentioned that to us, and I understand the
8 concern. Given what I understand the Committee
9 to be thinking about in terms of deliberation
10 times, I don't think that's unreasonable. We
11 would ask for a similar treatment. And I would
12 also observe that the way this is now
13 following, a good portion of our time is right
14 over the Thanksgiving holiday. So, we would
15 look for a little extra time to accommodate
16 that.

17 PRESIDING OFCR. SCOTT: And,
18 Ms. Monroe, what date are we looking at for
19 deliberations.

20 ADMINISTRATOR MONROE: Starting
21 December 7th. So, you know, if you got all
22 your briefs by the 30th of November, that would
23 give the Committee a week. I don't know -- are
24 you going to put a limit on pages or I

1 didn't -- I wasn't at all the hearings, so --

2 PRESIDING OFCR. SCOTT: No. I'm not
3 going to put a limit. I just ask that the
4 briefs be concise, if you could.

5 MS. MALONEY: The more time I have to
6 write it, the more concise it will be.

7 PRESIDING OFCR. SCOTT: So, today is
8 the 7th. If Mr. Patnaude is suggesting, I
9 think, that by the end of the week, the 11th,
10 that you should have the transcripts.

11 ADMINISTRATOR MONROE: Which is a
12 holiday.

13 PRESIDING OFCR. SCOTT: And that's a
14 holiday. So, we would see them on the 14th,
15 the transcripts.

16 *[Court reporter interruption.]*

17 PRESIDING OFCR. SCOTT: Yes.

18 ADMINISTRATOR MONROE: Oh, we're back
19 on the record? I'm sorry.

20 PRESIDING OFCR. SCOTT: Yes. We're
21 still on the record. Okay.

22 ADMINISTRATOR MONROE: I'm sorry, I
23 didn't realize that.

24 PRESIDING OFCR. SCOTT: Hold on. Why

1 don't we go off the record while we noodle the
2 dates here.

3 *[Brief off-the-record discussion*
4 *ensued.]*

5 PRESIDING OFCR. SCOTT: Got to go
6 back on the record, I think.

7 MR. NEEDLEMAN: I was referring to
8 "ten days from today". I wasn't referring to
9 "ten days from the date of the transcript". I
10 thought that's what you had originally
11 contemplated.

12 MS. MALONEY: I like the ten days
13 from the date of the transcripts myself. I
14 have another written project due for Monday.

15 MR. RICHARDSON: Mr. Chairman, I
16 think that, you know, this is a -- we've
17 finished almost all the transcripts, I believe,
18 leading up to today. I know I've been working
19 on those sections that, you know, don't involve
20 what we heard today. But I just wonder, we
21 don't have to wait for perfection in the
22 transcripts before we, you know, start this.
23 So, I tend to think --

24 MS. MALONEY: Well, I agree that's

1 true for all the parties then.

2 MR. RICHARDSON: Yes.

3 MS. MALONEY: So, I mean, I don't
4 know --

5 *(Inaudible statement from the*
6 *floor.)*

7 PRESIDING OFCR. SCOTT: So, what I'd
8 like to do is, we'll go to -- we'll require
9 the -- well, first of all, again, --

10 MS. BERWICK: I know.

11 PRESIDING OFCR. SCOTT: -- your
12 motion has been denied, Ms. Berwick.

13 What I'm suggesting is we'll have all
14 but the Applicant's in by the 23rd, and the
15 Applicant's will be in by the 30th. I
16 understand there's a holiday in there.

17 MR. NEEDLEMAN: Could we have until
18 the 2nd? Because nobody is going to work on it
19 from the 23rd to the 27th, it's Thanksgiving.

20 PRESIDING OFCR. SCOTT: Okay. And
21 when is the hearing again?

22 ADMINISTRATOR MONROE: The 7th.

23 PRESIDING OFCR. SCOTT: So, that
24 would give the Committee three days to read.

1 MR. NEEDLEMAN: Well, they would be
2 able to read everyone's, except ours.

3 PRESIDING OFCR. SCOTT: Right.

4 MS. BERWICK: Mr. Chairman, could I
5 ask a question? So, we file our briefs,
6 they're allowed to read our briefs, and then
7 respond to their briefs -- our briefs in their
8 briefs?

9 PRESIDING OFCR. SCOTT: Again, the
10 burden of proof is on them. That's why they
11 get to go last.

12 MS. BERWICK: Didn't Mr. Clifford,
13 though, say that, if they meet the SEC rules,
14 that they should be granted a -- I mean, isn't
15 the whole -- your Site Evaluation Committee,
16 isn't it really for -- isn't it kind of
17 weighted for the industry side already?

18 PRESIDING OFCR. SCOTT: The burden of
19 proof is the Applicant needs to show that they
20 meet the law and the rules.

21 MS. BERWICK: So, does that mean
22 that you weigh --

23 PRESIDING OFCR. SCOTT: And the
24 Committee needs to make findings based on what

1 the law --

2 *[Court reporter interruption.]*

3 PRESIDING OFCR. SCOTT: And the
4 Committee needs to make findings to issue a
5 certificate that they meet the intent of both
6 the law and the rules. So, the burden is on
7 them to proof that.

8 So, all right.

9 ADMINISTRATOR MONROE: So, they do
10 have all -- all the transcripts are up.

11 PRESIDING OFCR. SCOTT: All right.
12 So, the only transcript that is not up yet is
13 today's?

14 ADMINISTRATOR MONROE: Is today's.
15 Correct.

16 PRESIDING OFCR. SCOTT: Okay.

17 ADMINISTRATOR MONROE: So, you could
18 shorten that initial date for the parties to
19 submit.

20 PRESIDING OFCR. SCOTT: How about if
21 we did the 21st for the main group, and that
22 will give you one, two --

23 MS. MALONEY: You know, I just might
24 point out that, you know, there's nothing to

1 prevent the Applicant from working on it now.
2 They're basically getting double the time.

3 MS. BERWICK: Exactly.

4 PRESIDING OFCR. SCOTT: So, what I'm
5 going to do is I'll give to the 21st for the
6 main group and the 30th for the Applicant. And
7 that will give the Committee time to digest
8 everything prior to the deliberation -- first
9 deliberation date on the 7th.

10 ADMINISTRATOR MONROE: Correct.

11 PRESIDING OFCR. SCOTT: Okay. I also
12 had a request to leave the record open for one
13 more day. Is there any objections to that?

14 MS. BERWICK: What does that mean?

15 MS. ALLEN: What does that mean?

16 PRESIDING OFCR. SCOTT: Mr.

17 Needleman.

18 MR. NEEDLEMAN: Yes. We requested
19 that the record remain open for one day. There
20 was a period of time early in the proceedings
21 when Dr. Boisvert asked about the possibility
22 of some sort of condition being proposed to the
23 Committee that would deal with the issue of
24 future structures. And we have been working on

1 trying to come up with a proposal. We can
2 submit it right now. But I was hoping to give
3 Mary another opportunity to look at it one more
4 time in the morning. And, so, that's why we
5 ask that it remain open for one more day.

6 MS. MALONEY: After I vote, I will
7 get it.

8 MS. LINOWES: Excuse me, Mr.
9 Chairman?

10 PRESIDING OFCR. SCOTT: Would expect
11 nothing less. Who is speaking? Sorry.

12 MS. LINOWES: Over here, sorry. I
13 understand that there was a discussion about
14 whether or not the Applicant can work with
15 Counsel for the Public on that. But I think
16 all of the intervenors should be part of that
17 process or allowed to be -- at least allowed to
18 comment, number one.

19 Number two, I know that was just
20 about shadow flicker. Would it also apply to
21 noise as well? Thank you.

22 MR. NEEDLEMAN: So, Mr. Chairman, it
23 will provide, really, both noise and shadow
24 flicker. And, once we submit the proposal,

1 anybody is free to comment on it.

2 MR. RICHARDSON: I think that's the
3 purpose in leaving the record open, so that all
4 the parties see it. I mean, because the
5 condition could be proposed in a memo, and that
6 would, you know, no one would have a chance to
7 respond to it. So, by leaving the record open,
8 we can get it to all the parties.

9 MR. NEEDLEMAN: Well, and our goal is
10 to get it in by tomorrow, so people have ample
11 time to respond to it.

12 PRESIDING OFCR. SCOTT: Okay.

13 MS. LINOWES: Excuse me, Mr.
14 Chairman. Will we be responding within our
15 brief or will we be responding independent, in
16 a separate document?

17 PRESIDING OFCR. SCOTT: At this
18 point, I think your brief is probably the
19 logical place.

20 MS. ALLEN: Mr. Chairman? How long
21 will you take public --

22 *[Court reporter interruption.]*

23 MS. ALLEN: How long will you take
24 public comment?

1 PRESIDING OFCR. SCOTT: We'll take
2 public comment any time until we issue a
3 Certificate. Again, it's all how much weight
4 it's going to be given, if at all.

5 MS. ALLEN: Okay. Thank you.

6 MS. BERWICK: Isn't that submitting
7 new evidence at this point or -- I mean, like
8 we're not allowed to bring anything new in. We
9 were told, even with our supplemental
10 testimony, that we were not supposed to bring
11 anything new in.

12 PRESIDING OFCR. SCOTT: Right.
13 So, --

14 MS. BERWICK: And, I mean, this is
15 something new that none of us has never seen,
16 and all we're going to be allowed to do is
17 write a comment about it. I mean, it seems
18 like it's new testimony or new evidence or like
19 new everything, because it sounds to me like it
20 is.

21 PRESIDING OFCR. SCOTT: Mr.
22 Needleman.

23 MR. NEEDLEMAN: We don't view it as
24 "new testimony" or "evidence", we view it --

1 it's not necessary in any way to support or
2 prove our case. It's meant to be of assistance
3 to the Committee, if they think a condition in
4 this area would be helpful. It's suggested
5 language, and the Committee can do what they
6 want with it.

7 MS. BERWICK: I would suggest then
8 they could submit to the Committee after this
9 hearing is decided, after the deliberations are
10 done and the hearing is decided, since it's --
11 if it's not going to have anything to do with
12 this case. Because, otherwise, it is new
13 information being submitted on the very last
14 day, and to have a say in that, the only way we
15 can respond is in a brief, and in a brief
16 that's supposed -- we've been told to keep
17 brief.

18 PRESIDING OFCR. SCOTT: Mary.

19 MS. MALONEY: I was going to say
20 something, but I'm not sure I should say it
21 now.

22 PRESIDING OFCR. SCOTT: Okay.

23 MS. LINOWES: Mr. Chairman, may I
24 just ask one question? Sorry. A number of

1 witnesses have stood up here, myself included,
2 were asked what kind of conditions we would
3 like to see on the Certificate. And I -- would
4 the Committee have any objection to any of us
5 actually setting aside a section of our brief
6 articulating some of those conditions, since we
7 have not -- I mean, I should have been more
8 prepared for the question, because I heard it
9 asked before. But would that be a problem for
10 the Committee?

11 PRESIDING OFCR. SCOTT: I don't see
12 any objection to that. And, again, it may help
13 inform the Committee.

14 MS. LINOWES: Okay. Thank you.

15 PRESIDING OFCR. SCOTT: And, so,
16 again, I'm going to grant the motion to leave
17 the record open for another day.

18 I think the last issue we have is
19 marking the exhibits. Do we have any
20 objections to exhibits?

21 MS. BERWICK: I have objections -- I
22 have objections to all those exhibits that
23 Mr. Needleman submitted today that were his own
24 little calculations. I'm trying to work the

1 numbers. Okay, I can tell you the numbers.
2 It's Application -- Applicant 73, 71, 70, 69,
3 67, 66, 62, 64, 63, and 65.

4 PRESIDING OFCR. SCOTT: So, those are
5 all the -- what was termed "corrections", is
6 that correct?

7 MS. BERWICK: Well, that's what I
8 think he termed them, yes.

9 PRESIDING OFCR. SCOTT: What's your
10 basis for disallowing those?

11 MS. BERWICK: Well, as they have
12 said, where is the source that -- this is -- he
13 took numbers and played around with them in a
14 chart form to make them seem what he wanted to
15 see. He is not a visual assessment person. He
16 did not make a visual assessment program. He
17 was trying to take her program and tear it
18 apart and make the numbers fit his thing.
19 These are just his numbers in a thing that he
20 did. This is no -- there is no -- we haven't
21 even had the time to, you know, see if there's
22 any verification that those numbers are even
23 right that he put in there.

24 But that it's just I could take a

1 chart and put numbers in. I mean, this is just
2 his own personal little, you know, fooling
3 around with numbers.

4 PRESIDING OFCR. SCOTT: Mr.
5 Needleman.

6 MR. NEEDLEMAN: Mr. Chairman, all the
7 exhibits are highly relevant. They speak
8 directly to Ms. Connelly's testimony. They
9 come directly from this docket. They pertain
10 specifically to the work they did here -- she
11 did here, and they are simply a different way
12 of looking at that. And I think they're quite
13 relevant to this docket. And the Committee is
14 free to give them whatever weight they want.

15 MR. RICHARDSON: Mr. Chairman, I was
16 just going to suggest that we, you know, that
17 we could go over exhibit, we'd be here till the
18 end of time. I really think the arguments
19 Ms. Berwick makes are perfectly appropriate to
20 make in a brief, as to the weight any
21 particular evidence should be given.

22 So, I was just going to suggest that
23 we strike the identification on all exhibits,
24 and let the parties argue what the --

1 MS. BERWICK: Is he saying that we're
2 supposed to argue about exhibits during our
3 briefs? Because I understood, and I have tried
4 working on my brief to actually keep it brief
5 and be respectful of the Committee. If I have
6 to go through why each exhibit that I just
7 mentioned, which was a working that was done by
8 Mr. Needleman. There is not -- it was not
9 documentation from anyone else. It was just
10 Mr. Needleman's working figures. There is not
11 even -- he didn't even run it by any other
12 visual person. There is just his figures on
13 paper of numbers.

14 MR. RICHARDSON: That was my
15 proposal. Was just that we let the Committee
16 decide, based on the arguments of the party
17 what weight any particular evidence should be
18 given. I think it's the simplist rule, it gets
19 us out of here today, and allows us to argue
20 the merits.

21 PRESIDING OFCR. SCOTT: Well, why
22 don't we see where we can go today.

23 Any other comments on Ms. Berwick's
24 motion?

1 MS. MALONEY: Well, you know, I think
2 it was sort of an interesting exhibit, except
3 we don't know the basis for it. I mean, I
4 think, when he raised it, I -- I'm not sure I
5 objected or not, I can't remember back that
6 far, but the -- to the extent that he thinks
7 its relevant, and to the extent he has the
8 expertise to put that together, that would -- I
9 don't know. There wasn't any real foundation
10 for why he did what he did. So, to that
11 extent, I agree with Ms. Berwick.

12 On the other hand, I also pointed out
13 that he's used sort of incorrect -- that his
14 corrected versions are not really accurate,
15 because he used the old numbers, and it doesn't
16 work that way.

17 MR. NEEDLEMAN: Mr. Chair, I laid
18 perfect foundations for all of those. Again,
19 every one of those are tied directly to the
20 work that she did here. I think the relevance
21 of them is plain. And the arguments that
22 Ms. Maloney is making go to whether or not she
23 perceives them to be accurate, which I,
24 obviously, don't agree with, and the Committee

1 can decide what weight it wants to accord.

2 MS. LINOWES: Mr. Chairman? Mr.
3 Chairman, I would argue that, instead of
4 accepting the briefs, if he wants to include
5 them as part of -- excuse me -- instead of
6 accepting the documents, have it be part of
7 Mr. Raphael's brief, well, that portion that's
8 going to apply to him. If he -- does he
9 endorse -- does he endorse those documents?
10 Did he prepare them?

11 MR. NEEDLEMAN: It's not relevant.
12 What's relevant is the arguments I've made.

13 PRESIDING OFCR. SCOTT: Okay.
14 Ms. Berwick, I'm going to overrule your motion.
15 And, again, as mentioned, the Committee will
16 give those exhibits the weight they deserve.

17 Any other comments on any of the
18 exhibits?

19 MR. NEEDLEMAN: I guess, Mr.
20 Chairman, there are a number that I have
21 objections to. I'm the last person that wants
22 to keep us here late. And, so, the question
23 is, do you want to go through them or would you
24 rather take Mr. Richardson up on his request?

1 I mean, we could do it in a footnote or two, I
2 think.

3 PRESIDING OFCR. SCOTT: Well, my
4 concern is, if people are writing briefs, and
5 they're not sure which exhibits they can
6 reference, that that seems problematic to me.

7 Can somebody talk to that for me?

8 MR. NEEDLEMAN: Well, yes. Maybe I
9 can shortcut this.

10 We have a range of objections to
11 exhibits that I think you sustained our
12 objections to those exhibits during the
13 process. Can we assume that the sustaining of
14 those objections means that they don't come in
15 or do we need to revisit those all now?

16 PRESIDING OFCR. SCOTT: We'll have to
17 look at the transcripts, I'm sure. But you can
18 assume that, correct.

19 MR. NEEDLEMAN: Okay. Well, I think,
20 subject to that, then I will not go through the
21 list.

22 MR. RICHARDSON: And that was my
23 assumption in making that suggestion as well.
24 Like Antrim Exhibit 13, which I wanted to

1 offer, I thought it was relevant, but the
2 objection to that exhibit was sustained. So, I
3 didn't mean to suggest we'd be bringing that
4 one in. What I was assuming was is anything
5 that was allowed in, and the identification was
6 upheld at this point, we would simply mark it
7 for final, and it would be considered evidence.
8 The weight it's given is up to the parties to
9 argue.

10 PRESIDING OFCR. SCOTT: Okay. I view
11 that as a different recommendation than what I
12 thought I heard you say, Mr. Richardson. I
13 think I heard you differently, I think.

14 MR. RICHARDSON: Okay. All right. I
15 apologize. And I'm not sure how you would have
16 understood what I thought I was saying, I'm not
17 sure what I thought I was saying was actually
18 what I said. So, --

19 MS. LINOWES: I'm sorry. I don't
20 think I understand what you said.
21 Mr. Richardson, are you saying you want that
22 document? You want to submit that document or
23 you understand that it was overruled?

24 MR. RICHARDSON: No. No. No. I was

1 agreeing with Attorney Needleman that
2 documents, which were offered into the record,
3 and for which an objection was raised and the
4 objection was sustained, would not be in. But
5 all of the other ones are right now in this
6 unique status of having been marked for
7 identification, but not admitted. And all of
8 those would be admitted. The ones that for
9 which an objection was sustained would be
10 excluded.

11 MS. LINOWES: Okay. Thank you.

12 PRESIDING OFCR. SCOTT: Off the
13 record for a second.

14 *(Presiding Officer Scott and*
15 *Ms. Dore conferring.)*

16 PRESIDING OFCR. SCOTT: Back on the
17 record.

18 So, within your suggestions, so we
19 had, if I understand correctly, we do have some
20 exhibits that were handed to us that I don't
21 believe were referenced by anybody. Is that a
22 correct statement?

23 MR. NEEDLEMAN: I guess that is a
24 fair point. It reminds me, though, if nobody

1 ever referenced them and they weren't used, it
2 seems to me that there's no basis for those to
3 come in.

4 So, for example, we had an exhibit
5 that I actually -- I didn't hand to you and we
6 didn't use. So, obviously, we don't intend for
7 that to come in. I know that there were some
8 today that Ms. Berwick actually handed out, or
9 one maybe, that was never referenced. So, I
10 would suggest that, in cases like that, they
11 shouldn't come in.

12 PRESIDING OFCR. SCOTT: So, we could
13 do one of two things. We could cull the
14 transcripts and do it that way. Or, if anybody
15 has any -- first of all, does anybody have any
16 objection to what's been raised?

17 MS. MALONEY: I don't.

18 *(Presiding Officer Scott and*
19 *Ms. Dore conferring.)*

20 PRESIDING OFCR. SCOTT: What I'm
21 entertaining -- I'm back on the record. What
22 I'm entertaining, just for (a) giving people an
23 opportunity within, again, if we cull the
24 transcript, I'm a little bit concerned that

1 there may be some disagreement where people
2 don't feel there's disagreement right now. So,
3 if we're able to have the people who have
4 submitted exhibits file a motion, "here's the
5 exhibits we want in", I think that's probably
6 the cleanest way to do that. That way, if
7 anybody feels a need to object, they can. I'm
8 a little bit worried, by trying to do this
9 quickly, that we're going to --

10 MS. BERWICK: Mr. Chairman?

11 PRESIDING OFCR. SCOTT: Yes.

12 MS. BERWICK: I did not know how this
13 process worked at first. So, I don't even know
14 what my exhibits were, what I put in at first.
15 So, I wouldn't be able to do that for you.

16 I didn't keep them -- at first, I
17 actually was throwing away papers. And, now,
18 I've kept everything, since I realized how
19 things worked. But I'm not a lawyer.

20 MS. MALONEY: I was just wondering if
21 all those exhibits are identified on these
22 lists?

23 PRESIDING OFCR. SCOTT: Yes.

24 MS. MALONEY: Do you have this list?

1 MS. BERWICK: I do. But some of them
2 I don't know exactly what they are just by what
3 that says there. I could try.

4 PRESIDING OFCR. SCOTT: Okay. Why
5 don't you do that. And really what I'm looking
6 for is, if there's any objections to any of the
7 exhibits, to make sure I can rule on those.

8 MS. MALONEY: Well, I guess -- I
9 don't want to make this any more difficult. If
10 there are no objections, I would have a problem
11 with that. I mean -- so, I mean, if the
12 objections were made contemporaneous with the
13 exhibit coming in, and the parties had an
14 opportunity to discuss it, and it was
15 sustained -- I mean, the only thing I can think
16 about objections is if something was sustained
17 and they're asserting a mistake. But to be
18 raising objections after the proceeding, where
19 the parties didn't contemporaneously discuss
20 that, I don't know if that's appropriate, and
21 it would not be fair.

22 MR. RICHARDSON: Mr. Chairman? Can I
23 suggest, based on what you just outlined, to
24 say why don't we just set a date certain to

1 file a motion if any party objects to the
2 admission of any exhibit that was properly
3 marked for exhibit -- marked for identification
4 and wasn't, you know, there wasn't a sustained
5 objection. That, say, by a week from today,
6 the parties could file a motion. That way --
7 well, that puts it pretty tight, because then
8 we've got the deadlines coming up. But, at
9 least by then pretty much everything is coming
10 in, unless an objection is submitted within a
11 week from today.

12 I think that makes a very clean
13 record, which is what I believe you're looking
14 for.

15 PRESIDING OFCR. SCOTT: Any
16 objections to that?

17 MS. MALONEY: I didn't understand
18 what he's saying.

19 MR. RICHARDSON: Well, what I was
20 trying to suggest was is that all of the
21 exhibits have been marked for identification
22 properly, and there isn't a sustained objection
23 to, those would be full exhibits, unless a
24 party files a motion to exclude them from the

1 record. Then, that triggers, you know, the
2 deadline to object to that motion. And, then,
3 we've honed in at least on the exhibits that
4 are in.

5 I think it's crazy to go, you know,
6 I'm going to get a list from every party about
7 saying what all their exhibits are, and then
8 I'm going to have to figure out where they are.
9 And, in reality, I think that's just not a
10 productive use of time.

11 But, if someone wants to object to
12 the exhibits, they could. And that way it's a
13 clean record for the Committee to know what
14 they're ruling on, what's objected to and what
15 isn't.

16 MS. MALONEY: Well, I mean, I'm
17 trying to avoid as many filings as possible at
18 this point, because they're starting to pile
19 up. So, you, basically want an exhibit from
20 us. The exhibits that were introduced, not
21 objected to or sustained -- or, if they were
22 objected, the objection wasn't sustained.
23 That's what you want from us?

24 PRESIDING OFCR. SCOTT: I think that

1 would be helpful, yes.

2 MS. MALONEY: Okay. And, then,
3 you're going to have -- people have an
4 opportunity to object after that?

5 PRESIDING OFCR. SCOTT: Can we avoid
6 that? I don't --

7 MS. MALONEY: If, on the record,
8 there was an objection that was overruled, then
9 it should be admitted. So, I don't
10 understand -- you know, to go back now and file
11 another objection, I mean, I don't want to open
12 the door to that, because I don't really want
13 to be filing objections. I'm not filing
14 objections to anybody's exhibits.

15 MR. RICHARDSON: Nor am I.

16 MS. MALONEY: If I didn't -- okay.

17 MR. RICHARDSON: At least that's what
18 I was -- sorry, that's what I was trying to
19 say.

20 MS. MALONEY: If there was a mistake,
21 so, if somebody wants to point out there was a
22 mistake, and this one was sustained, it
23 shouldn't come in, or this one, you know,
24 that's fine. But, you know, I don't know that

1 we need a motion and response to that, but we
2 could just reference, you know, --

3 PRESIDING OFCR. SCOTT: Sorry.

4 MS. MALONEY: -- point it out in the
5 record.

6 PRESIDING OFCR. SCOTT: Mr.
7 Needleman, you were about to speak, I think.

8 MR. NEEDLEMAN: I was going to say, I
9 think I agree with Mary. That it sounds to me
10 like what you're looking for are exhibits that
11 were introduced, but not used?

12 PRESIDING OFCR. SCOTT: Yes.

13 MR. NEEDLEMAN: Everything that was
14 introduced and used, and not objected to, where
15 the objection was sustained, is coming in?

16 PRESIDING OFCR. SCOTT: Correct.

17 MR. NEEDLEMAN: So, you want us to do
18 the work to figure out what was introduced, but
19 not actually used, which makes sense that we
20 should do it.

21 PRESIDING OFCR. SCOTT: I like that
22 line of thinking.

23 MR. NEEDLEMAN: So, I think we're on
24 the same page.

1 PRESIDING OFCR. SCOTT: Okay.

2 MS. BERWICK: Are we going to have to
3 know which exhibits we put in and they were
4 objected to and sustained? Is that what you're
5 saying? That we need to provide a list? I'm
6 not really understanding. I'm so sorry.

7 PRESIDING OFCR. SCOTT: And that
8 should be in the transcript, right?

9 MS. BERWICK: So, I need to go
10 through the transcript and read, and find out
11 if anything was sustained for an objection?

12 PRESIDING OFCR. SCOTT: Yes.

13 MS. BERWICK: Okay.

14 PRESIDING OFCR. SCOTT: Anything
15 else?

16 MS. LINOWES: Mr. Chairman, over
17 here. Over here.

18 There was just one exhibit that I put
19 in that, on the first day I referenced it, it
20 was not objected to. On the second day, it was
21 objected to, but I don't remember if there was
22 a -- I don't remember how you responded to
23 that. And, then, Mr. Needleman objected to it
24 again today, saying that he had previously

1 objected to this. This is Will Staats'
2 testimony. So, it's kind of ambiguous.

3 But I'm going to go ahead and put it
4 in the motion, just so you know, and I can make
5 a comment around that in the motion.

6 PRESIDING OFCR. SCOTT: Anybody else?

7 MS. BERWICK: Is that what you're
8 asking us to do is put it in a motion? Or how
9 do we get it to you? Do we -- see, motions, to
10 me, I'm -- that motion I wrote was the first
11 one I ever did without copying somebody else's,
12 you know. So, do you want a motion or you just
13 want us to provide -- send it to the SEC a
14 list?

15 PRESIDING OFCR. SCOTT: I think a
16 list is fine.

17 MS. BERWICK: Okay.

18 PRESIDING OFCR. SCOTT: Anybody else?

19 *[No verbal response.]*

20 PRESIDING OFCR. SCOTT: Okay. So,
21 the next time, in theory, you'll see the
22 Committee will be on the 7th, if you come to
23 our deliberations.

24 I would like to thank everybody. I

1 assume they'll be there anyways, but I just
2 want to thank you for all your time. I know
3 people put a lot of time and effort into this
4 on both sides. So, we do appreciate that.
5 Thank you.

6 This proceeding is closed.

7 ***(Whereupon the hearing was***
8 ***adjourned at 6:21 p.m.)***

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