

1 **STATE OF NEW HAMPSHIRE**

2 **SITE EVALUATION COMMITTEE**

3
4 **December 07, 2016** - 9:12 a.m.
5 Public Utilities Commission
6 21 South Fruit Street Suite 10
7 Concord, New Hampshire

DELIBERATIONS

DAY 1
 MORNING SESSION
 ONLY

8 **IN RE: SEC DOCKET NO. 2015-02**
9 **ANTRIM WIND ENERGY, LLC:**
10 **Application of Antrim Wind**
11 **Energy, LLC for a Certificate**
12 **of Site and Facility.**
13 **(DELIBERATIONS)**

14 **PRESENT FOR**
15 **SUBCOMMITTEE:**

SITE EVALUATION COMMITTEE:

16 Cmsr. Robert R. Scott Public Utilities Commission
17 (*Presiding as Presiding Officer*)

18 Cmsr. Jeffrey Rose Dept. of Resources &
19 Economic Development
20 Dr. Richard Boisvert Dept. of Cultural Resources/
21 (Designee) Div. of Historical Resources
22 John S. Clifford Public Utilities Commission/
23 (Designee) Legal Division
24 Dir. Eugene Forbes Dept. of Environ. Services/
 Water Division
 Patricia Weathersby Public Member

Also Present for the SEC:

 Michael J. Iacopino, Esq. (Brennan...
 Pamela G. Monroe, SEC Administrator

 COURT REPORTER: Steven E. Patnaude, LCR No. 052

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

PRESIDING OFCR. SCOTT: Welcome, everybody. We'll start the proceeding for today. I want to start by, for the audience and for the Committee, the evidentiary record is closed. So, what we're doing today is we'll engage in public deliberations on the evidence presented. Obviously, this is an open proceeding, but basically all the discussions will be between the Committee members. So, I don't know how -- this may not be the best theater you've ever been to. So, for instance, Mr. Ward just walked out to go to something else. Again, you're welcome to be here, but it's not a requirement for members of -- people in the audience.

I will start with a few things. For the Committee, again, I think -- Mr. Boisvert, do you have a microphone there for yourself also? Okay, you do. It's just down. I asked to get everybody a microphone so we can all talk without sharing. For formality sake less so, but more for, again, everything we say has to be transcribed, so, I know you all know

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1 this, but, in the normal public discourse of
2 conversations, we tend to talk over each other.
3 That's not appropriate in this setting, because
4 Mr. Patnaude only has two hands and can't write
5 two conversations simultaneously. So, I will
6 ask, and I may remind you as we discuss things,
7 to take an unnatural break, so we can make sure
8 that we're not talking over each other.

9 So, with that, I'll start. We do
10 have a motion from Mr. Ward to strike some
11 post-hearing brief components made by the
12 Applicant. I'm denying that motion. Much of
13 his motion really talks about the new election
14 results. And, to the extent that that's his
15 motion, the Applicant's submittal was done
16 before the election results. So, I don't see a
17 need to strike.

18 So, beyond that, I'll start with
19 some, to set the groundwork, I'm going to ask
20 Mr. Iacopino, one of the things we need to look
21 at is burden of proof. There was some
22 discussion of that. So, I'll ask him to start
23 a little bit with that. Clearly, it's in our
24 rules also. So, I just wanted to kind of set

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1 the stage with that.

2 So, Mr. Iacopino.

3 *(Presiding Officer Scott and Mr.*
4 *Iacopino conferring.)*

5 PRESIDING OFCR. SCOTT: Mr. Iacopino
6 reminds me, perhaps it would be good to have us
7 introduce ourselves for the record. So, why
8 don't we go through that. We'll start with
9 Mr. Forbes.

10 DIR. FORBES: Good morning. I'm Gene
11 Forbes. I am here as a representative for
12 Commissioner Thomas Burack at DES.

13 MS. WEATHERSBY: Good morning.
14 Patricia Weathersby, a public member.

15 DR. BOISVERT: Good morning Richard
16 Boisvert, Division of Historical Resources.

17 CMSR. ROSE: Good morning. Jeff
18 Rose, Commissioner of the Department of
19 Resources and Economic Development.

20 MR. CLIFFORD: John Clifford, Staff
21 Attorney of the Public Utilities Commission,
22 Designee.

23 PRESIDING OFCR. SCOTT: I'm Bob
24 Scott. I'm a Commissioner with the New

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1 Hampshire Public Utilities Commission and the
2 Presiding Officer for this proceeding.

3 Mr. Iacopino.

4 MR. IACOPINO: Thank you. I'm Mike
5 Iacopino, Counsel for the Committee.

6 Mr. Chairman, the burden of proof
7 overall in these proceedings lies with the
8 Applicant. The Applicant has the burden of
9 proving by a preponderance of the evidence each
10 of the matters required in RSA 162-H, Section
11 16. They have the burden of proof to
12 demonstrate to this Committee by a
13 preponderance of the evidence that the
14 certificate that they seek, if you granted it,
15 there would not be an unreasonable adverse
16 effect on aesthetics, historic sites, air and
17 water quality, the natural environment, public
18 health and safety. They have the burden of
19 demonstrating that the Applicant has the
20 sufficient financial, managerial, and technical
21 capability to site, construct, and operate the
22 Project. They have the burden of proving by a
23 preponderance of the evidence that taking into
24 account the positions and the reasoning of

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1 local planning and legislative bodies that
2 there will not be an unreasonable adverse
3 impact on the orderly development of the
4 region, "will not interfere with the orderly
5 development of the region" is what I should
6 say. And they have the burden of proving by a
7 preponderance of the evidence that the granting
8 of a certificate is in the public interest.

9 With respect to other matters raised
10 by other parties that are not part of the
11 actual consideration of the Application
12 requirements itself, the party who posits a
13 particular issue is the party with the burden
14 of proof, and that burden of proof is by a
15 preponderance of the evidence. The burden of
16 proof is expressed in our rules and, of course,
17 in RSA 162-H as well.

18 And, in the rules, it's at Site
19 202.19. Section (b) indicates that the
20 Applicant has the burden of proof to "prove
21 sufficient facts for the Committee to make the
22 required findings" under the statute. And,
23 under Section (a) of Rule 202.19, "the party
24 asserting a proposition bears the burden of

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1 proving the proposition by a preponderance of
2 the evidence."

3 So, those are the legal standards
4 that are required in this type of docket.

5 PRESIDING OFCR. SCOTT: Does anybody
6 have any questions or issues before we move on?

7 [No verbal response.]

8 PRESIDING OFCR. SCOTT: Hearing none.
9 Next, what I'd like to do is address the legal
10 issue of *res judicata* or claim preclusion and
11 *collateral estoppel*/issue preclusion that has
12 been raised by Counsel for the Public.

13 My understanding is, really among
14 many things we need to decide on that, is is
15 this really a -- is there a material difference
16 between this Application and the application
17 that was done at the last proceeding, I think
18 the Counsel for the Public called it "Antrim
19 I", I think.

20 So, with that, I'll go back to
21 Mr. Iacopino and ask him to kind of set the
22 stage a little bit for us before we have a
23 discussion on it.

24 MR. IACOPINO: Yes. You all have the

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1 briefs of both the Applicant and Counsel for
2 the Public and the other parties that wrote on
3 this particular issue.

4 And, from counsel's perspective for
5 the Committee, I believe that the cases that
6 are cited in those briefs are, in fact, the
7 body of case law that applies here in New
8 Hampshire. And, if you take those case laws --
9 that case law, particularly the *Morgenstern*
10 case and the *Appeal of the Town of Nottingham*,
11 and the *Hill-Grant Living Trust* case, all of
12 which are cited to one degree or another in the
13 various briefs filed by the Parties.

14 I think the Chairman has got it
15 absolutely right. There's a factual
16 determination that has to be made with respect
17 to both the issue of *res judicata* and the issue
18 of *collateral estoppel*, otherwise known as
19 "issue preclusion".

20 And, to basically put it in a
21 nutshell, there has to be a material difference
22 here. The other thing that you may consider is
23 whether or not there was an invitation
24 contained in the prior order to come back to

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1 the Committee.

2 Those are factual determinations. I
3 cannot help you with those. Those are
4 determinations that you have to make. And,
5 basically, it boils to down to whether there's
6 a material change -- material changes between
7 this Application and the one filed in I believe
8 it was a 2012 docket. But those are factual
9 determinations that I, as your lawyer, cannot
10 make for you. You must make them.

11 I can point out that perhaps the best
12 example of changes is contained in the
13 *Morgenstern* case. In that case, the second
14 application on the merits had changes to that
15 application that included, and this is just as
16 an example for you, an example of what the
17 Supreme Court has found to be the types of
18 things that are a material difference. In that
19 case, the second application included a new
20 driveway design that allowed for
21 more natural -- and I'm quoting from the
22 decision, "that allowed for more natural
23 absorption of rainfall into the ground, and a
24 new footprint design, which no longer required

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1 a retaining wall to protect the wetlands."

2 So, those are some of -- those are
3 just examples of things that the appellate
4 court has relied on to find that a second
5 application contained material changes.

6 PRESIDING OFCR. SCOTT: Thank you,
7 Attorney Iacopino.

8 Perhaps I'll start to get the
9 conversation moving. I do find it compelling,
10 my recollection of the record of the 2012
11 docket was the Applicant, at the time,
12 attempted to alter, effectively, the
13 Application with some changes I think were
14 suggested by Ms. Vissering. And the response
15 from the Committee at the time, if I understand
16 it, was that that would change the -- they
17 would have to basically restart the process,
18 because the changes would -- effectively made
19 it materially different than what they were
20 looking at. So, that's compelling to me.

21 I'll also point out the obvious.
22 Since that application that was being
23 discussed, we now have different law and
24 different rules that are being applied. So,

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1 the application, as far as what the Committee
2 is doing, is a little bit different in that
3 respect also.

4 So, does anybody else have any
5 comments, questions, or anything?

6 Mr. Boisvert.

7 DR. BOISVERT: Yes. I was on the
8 Subcommittee for the first Antrim Wind
9 decision. And, when that was brought up, I
10 recall discussions, fundamentally, we were
11 unanimous that this would have been an entirely
12 new application, that the economics would
13 change and so forth, and that we did not
14 consider it. We said it would be a wholly new
15 application, we would have to start over.

16 So, just to confirm your statement,
17 that was my recollection of my opinion and the
18 opinion of the others on the Committee --
19 Subcommittee.

20 PRESIDING OFCR. SCOTT: Mr. Forbes.

21 DIR. FORBES: Yes. I was also very
22 interested in this point, that, you know, the
23 prior docket reached a conclusion here relative
24 to material differences.

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1 Now, Counsel for the Public and
2 others have argued *collateral estoppel* -- issue
3 preclusion and such. Why wouldn't those same
4 principles apply to that decision, or would
5 they, of the Committee that said that this was
6 a material difference that they had? If
7 anything, the Application in front of us has
8 changed to a greater extent than what was
9 presented to that -- to the Committee back in
10 2012-13.

11 PRESIDING OFCR. SCOTT: Ms.
12 Weathersby.

13 MS. WEATHERSBY: That *res*
14 *judicata*/claim preclusion doesn't apply here
15 for probably the three reasons I think that
16 have been floating around. There's that
17 three-part test where they need to the same
18 parties, the same cause of action in the final
19 judgment on the merits, and I think it falls
20 down on the same cause of action. Because I do
21 think we need to account for the changes in the
22 Application based on that *Morgenstern* decision.
23 The changes of the 100 acres, the one less
24 turbine, different turbines, the money for the

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1 Forest -- all the changes in the Application.
2 I think that we need to account for those. And
3 that causes the new Application to be
4 materially different in nature and degree from
5 the previous application.

6 I also think that the changes in the
7 law, the SEC rule changes, require this to
8 be -- require the issue -- the claim preclusion
9 not to apply, because the controlling law, in
10 fact, will not be the same.

11 And, also, when -- I do think I agree
12 with Dr. Boisvert and Mr. Forbes that the prior
13 docket really did invite submission of the new
14 application, calling it "materially different".
15 And when that -- when a material -- and because
16 of that, and the *Hill-Grant/Kearsarge* decision,
17 I think that also shuts down the claim for *res*
18 *judicata*.

19 PRESIDING OFCR. SCOTT: Any other
20 comments?

21 Mr. Clifford.

22 MR. CLIFFORD: Yes. I just want to
23 echo the statements made by Ms. Weathersby. Is
24 that I've read the *Morgenstern* decision, I've

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1 read the briefs. And I think this is a
2 material change from the first application in
3 many respects. And, in particular, even absent
4 the invitation to file a subsequent
5 application, I think that the changes are so
6 numerous that you can't help but find that
7 there has been a change precluding the --
8 excuse me -- eliminating the *collateral*
9 *estoppel* and *res judicata* effects.

10 So, that's where I come out on this.

11 PRESIDING OFCR. SCOTT: All right.
12 I'll ask, are we comfortable for a vote or do
13 we want to discuss this further?

14 Mr. Rose.

15 CMSR. ROSE: Just a brief comment. I
16 appreciate Dr. Boisvert's refresher in terms of
17 the perspective of the previous SEC in their
18 ruling. But I also agree with the comments
19 made by Ms. Weathersby, in that I do believe
20 that their second Application contains
21 substantive and material changes from the
22 initial Application. And I'm comfortable.

23 PRESIDING OFCR. SCOTT: My sense is
24 we're all in agreement, but maybe we could do a

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1 show of hands regarding our -- let me formulate
2 this in my mind what the question is. For a
3 straw vote for whether we agree that the legal
4 doctrines of claim and issue preclusion do not
5 apply here? So, if I can get a show of hands
6 for a straw vote that they do not apply?

7 [Show of hands.]

8 PRESIDING OFCR. SCOTT: Go ahead.

9 MS. WEATHERSBY: I don't think we've
10 dealt with issue preclusion really yet.

11 PRESIDING OFCR. SCOTT: Okay.

12 MS. WEATHERSBY: More of the *res*
13 *judicata*/claim preclusion. I don't know if we
14 want to have more discussion on issues.

15 PRESIDING OFCR. SCOTT: Well, why
16 don't we tease that out a little bit more
17 before we do a straw vote then. So, it sounds
18 like you'd like to talk on that.

19 MS. WEATHERSBY: All right. So,
20 Counsel for the Public raised the issue of
21 issue preclusion, *collateral estoppel*,
22 particularly with regard to whether
23 conservation land can be a mitigation method in
24 this case and the identification of sensitive

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1 sites.

2 And I understand that there's five
3 elements that need to be satisfied for
4 *collateral estoppel* to apply: Has to be the
5 same issue; has to be resolved finally on the
6 merits; same party; a full and fair opportunity
7 to litigate the issue; and a finding that was
8 essential to the first judgment.

9 And I think, with regard to the
10 conservation land as the mitigation method, I
11 think it does fall down a bit on whether it was
12 resolved finally on the merits. I don't really
13 think the issue was litigated. It seems as
14 though the -- that suggestion -- that just kind
15 of came out, and I would ask maybe Dr. Boisvert
16 to look back in his memory, but it seemed as
17 though it kind of came out during deliberation
18 that mitigation wasn't -- the conservation land
19 wasn't a satisfactory method of mitigation in
20 that case. And, to the contrary, it was even
21 suggested by Jean Vissering that some
22 mitigation -- conservation land as mitigation
23 might be reasonable.

24 And, with regarding the sensitive

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1 sites, I guess they both kind of fall down on
2 that. That it wasn't really resolved, that
3 issue wasn't resolved finally on the merits and
4 it had a full and fair opportunity to litigate
5 it. The list of sensitive sites, again, seemed
6 to come out, obviously, through expert
7 testimony, but through the Subcommittee's
8 deliberations that they said "these are the
9 sensitive sites". But I'm not sure that there
10 was actual back-and-forth on that.

11 Maybe you could help there?

12 PRESIDING OFCR. SCOTT: Dr. Boisvert.

13 DR. BOISVERT: I would not trust my
14 memory to those levels of detail in the
15 deliberations as to if we accepted all the
16 sensitive sites and so forth. We would have to
17 look back into the record. Our opinion was
18 that it had more to do with suggested changes
19 were large enough that we felt that we would
20 need to revisit major portions of the
21 Application, and that did not get into the
22 definition of all of the sensitive sites.

23 Also bear in mind that we did not
24 consider the financial capability or managerial

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1 capability. I don't believe we got to those.
2 And I believe there was an observation that, if
3 one reduced the number of towers in the
4 Project, that would reduce the production
5 capacity, which would have an effect on
6 financials. And that seemed to be a
7 significant difference.

8 As to the mitigation options, I do
9 not recall specific discussion on that.

10 MS. WEATHERSBY: Just looking back at
11 the decision in the prior case, the
12 Subcommittee decision regarding the mitigation,
13 the conservation land as mitigation, says
14 "However, the dedication of land to a
15 conservation easement **in this case** would not
16 suitably mitigate the impact", meaning the
17 "impact of the Project". And I think that
18 those two key phrases "in this case" and
19 "impact" mean that it's not applicable to every
20 single subsequent case. And, when the impact
21 changes, because of reduced turbines, etcetera,
22 that that will change it, and also just
23 subsequent cases that the conservation easement
24 as mitigation doesn't necessarily -- isn't

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1 necessarily barred forever.

2 PRESIDING OFCR. SCOTT: Thanks for
3 that, Ms. Weathersby. That was a much more
4 granular look at the issue than I was.

5 So, help me out, being an attorney,
6 and I'm not. So, I was originally looking at
7 the issue of whether it's materially different
8 for both issues. Is that not an appropriate
9 assessment? For instance, the removal of Tower
10 10, the shortening of the Tower 9, the slight
11 changes to the other towers seem to have at
12 least some impact, obviously, on the visual
13 aesthetics and the impact on scenic resources.
14 So, that I was kind of lumping the two
15 together. Is there a logic to that?

16 MS. WEATHERSBY: I think probably
17 Attorney Iacopino can address that more
18 carefully. My understanding is that, for *res*
19 *judicata*, you have to have the same cause of
20 action. And, when it's determined to be
21 materially different, then that wouldn't be --
22 then that wouldn't be successful. Whereas the
23 test for *collateral estoppel*, the issue
24 preclusion, is a different test. And I think

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1 that the changes to the Project impacted, but
2 it impacts it slightly differently.

3 Attorney Iacopino, can you help me
4 out here?

5 MR. IACOPINO: I think you're exactly
6 right. *Res judicata* is claim preclusion, which
7 addresses the overall case, if you will. And
8 *collateral estoppel* is issue preclusion, which
9 involves particular issues that are important
10 to the case.

11 And, however, at the heart of the
12 analysis for both of them is whether there's
13 been a material change. Because it would
14 make -- if there's been a material change, the
15 argument is that they would not be the same
16 cause of action for *res judicata* purposes, and
17 it would not be the same -- well, as you
18 addressed, the same opportunity to litigate and
19 to decide particular issues.

20 Remember, it's not "fact preclusion".
21 It's not every fact that the prior Committee
22 found that you are bound by; it's the issues.
23 And, so, what you have to be concerned with is
24 the substantial change affecting the issue

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1 that's before you. So, it's not like, because
2 they said that the -- the prior panel said that
3 the -- you know, the runoff would travel for a
4 quarter mile, you're not necessarily bound by
5 that fact. But the issue may be is that, if
6 the runoff is still going to -- still going to
7 go a quarter of a mile, and that, for some
8 reason, caused an unreasonable adverse impact
9 on the natural environment, in that case you
10 might be assuming that everything else remains
11 the same, you might be bound by issue
12 preclusion considerations.

13 So, the issue of whether there's been
14 a material change goes to the heart of both of
15 the questions. However, the legal turn of the
16 phrase for each is a little bit different.

17 PRESIDING OFCR. SCOTT: Thank you for
18 that. Any other discussion?

19 Mr. Clifford.

20 MR. CLIFFORD: I just -- I think that
21 Attorney Iacopino pointed out in a nutshell,
22 and I thought that that *Sunnen* case that was
23 cited in the brief was particularly insightful,
24 and that's where it falls down on both issue of

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1 claim preclusion is that it's where the
2 controlling facts and the law remain unchanged.
3 And I think, if you look at this as a whole,
4 the controlling facts are -- and law are
5 entirely different.

6 Now, while I was not present for the
7 first case, I think that the invitation was
8 made, and that the facts as presented, and I
9 know there's been a lot of comparison
10 throughout the 13 days of the proceedings to
11 what was said in the prior application, it
12 seems to me, just at first blush, that there's
13 a material difference here between the first
14 proceeding and the second, and, in fact, we now
15 have a set of rules that were not in effect in
16 the first proceeding. And, you know, material
17 changes from everything from the number of
18 towers, to lighting issues, to conservation
19 issues, to differences in the amount of land
20 impacted. I mean, it's an entirely different
21 animal.

22 So, I come out that *collateral*
23 *estoppel* and *res judicata* probably don't apply
24 in this situation.

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1 PRESIDING OFCR. SCOTT: Anybody else?

2 *[No verbal response.]*

3 PRESIDING OFCR. SCOTT: What's the
4 sense of the Subcommittee? Are we okay for a
5 straw vote at this point, on both issues?

6 *[Multiple members nodding in the*
7 *affirmative.]*

8 PRESIDING OFCR. SCOTT: Okay. If
9 you -- I'll ask for a show of hands for those
10 who don't feel these two doctrines apply?

11 *[Unanimous show of hands by*
12 *Subcommittee members.]*

13 PRESIDING OFCR. SCOTT: Okay. The
14 record can show at least the straw vote is
15 unanimous.

16 Based on that, what I'd like to do
17 next is one of the things we do have to review
18 is the status of the various state permits that
19 are required for the Project. I'm going to run
20 through the ones at least that I jotted down.
21 And then I've asked Attorney Monroe, as the
22 Administrator for the SEC, to elaborate. And,
23 again, we may or may not wish to add conditions
24 beyond, assuming we issue a certificate, add

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1 conditions beyond what are in the state
2 permits.

3 And, again, I'll pick on
4 Mr. Iacopino. If we were to deviate, I know
5 the new rules now have some language that would
6 tell us what to do if we deviate from a state
7 permit from another agency?

8 MR. IACOPINO: Yes. If you're going
9 to -- if the Committee chooses to impose
10 conditions that are different than the
11 conditions required by a state agency, there is
12 a process in the statute. I'll pull it right
13 up for us here, so that I can read it exactly
14 to you. It's in RSA 162-H: --

15 *[Court reporter interruption.]*

16 MR. IACOPINO: RSA 162-H:7(a), which
17 says "If the Committee intends to impose
18 certificate conditions that are different than
19 those proposed by state agencies having
20 permitting or other regulatory authority, the
21 Committee shall promptly notify the agency or
22 agencies in writing to seek confirmation that
23 such conditions or rulings are in conformity
24 with the laws and regulations applicable to the

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1 project and state whether the conditions or
2 rulings are appropriate in light of the
3 agency's statutory responsibilities. The
4 notified state agency shall respond to the
5 Committee's request for confirmation as soon as
6 possible, but no later than ten calendar days
7 from the date the agency or agencies received
8 the notification described above."

9 That is a new part of the statute
10 since -- well, certainly since the last Antrim
11 Wind docket. We've only had one docket since
12 this particular portion of the statute has come
13 into effect. That was the Merrimack Valley
14 Project. There was no issues in that that
15 needed to be forwarded to a state agency for
16 review.

17 However, that is a process that,
18 obviously, adds a tail onto your process here.
19 And it's a tail that you -- that you would have
20 to notify the state agency at the appropriate
21 time. You all would decide when the
22 appropriate time is. Whether you would do your
23 entire order first, or whether you would, as
24 part of your deliberations, prepare a notice to

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1 a state agency and ask for their response. I'd
2 leave that up to the Committee as to the actual
3 procedure. There is nothing in the statute or
4 the rule, as I recall them, that specifically
5 governs, whether you can do that as part of
6 your deliberations, or whether it is better
7 done, not concluding, but coming to a final
8 order and then sending the final order to the
9 state agencies for review.

10 PRESIDING OFCR. SCOTT: So, if I
11 could paraphrase that. So that the law says
12 "if it's different". So that could be either
13 more stringent or less stringent. If we make
14 any change to a specific condition,
15 effectively, we have to go through this
16 process.

17 MR. IACOPINO: Certainly, if it's
18 going to be less stringent, you absolutely have
19 to. There's been no -- obviously, no
20 interpretation of this statute as to what
21 happens if you impose additional conditions
22 that are considered to be more protective.
23 However, given the fact that there is no
24 interpretation of the statute, I would

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1 recommend that the Committee invite the
2 participation of the state agency in either
3 direction.

4 And, again, remember, it's only those
5 state agencies that have permitting or other
6 regulatory authority. It's not every single
7 suggestion or comment that has come from a
8 state agency in a docket. It's only those that
9 have been identified as having regulatory
10 authority -- I'm sorry, permitting or other
11 regulatory authority.

12 PRESIDING OFCR. SCOTT: Thank you.
13 And, with that stage set, I'll go through as I
14 recall.

15 I know we have, from the Department
16 of Environmental Services, there's a Wetlands
17 Permit, the Section 401 Water Quality
18 Certificate. And my understanding is that
19 there was a final decision from DES, Department
20 of Environmental Services, on August 30th,
21 2016, and that they determined compliance with
22 the Water Quality Certificate issued in 2012.
23 And they stated basically "they provide a
24 reasonable assurance that the construction and

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1 operation of the Project will not violate
2 surface water quality standards".

3 The next one, again, before I'll go
4 to Attorney Monroe, there was also an
5 Alteration of Terrain Permit from the
6 Department of Environmental Services. And,
7 from that, they mention there's -- there will
8 be approximately 2,487,956 square feet of total
9 disturbance. And, with that, there will be
10 495,292 square feet of impervious cover as a
11 result of the construction and operation. And,
12 again, they issued a final revised decision on
13 August 30th of 2016.

14 The Department of Environmental
15 Services also issued a approval for a
16 individual sewage disposal system. I believe
17 that was for their operations and maintenance
18 building.

19 And I assume this will be discussed
20 later with Dr. Boisvert, under historic
21 resources, from the Department of Cultural
22 Resources, Division of Historical Resources,
23 there was the Section 106 review. And, with
24 that, there was some input with the Army Corps

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1 of Engineers. So, I assume Dr. Boisvert will
2 discuss that in a bit also.

3 For the Department of Transportation,
4 on November 17th of this year, we received the
5 final report from DOT addressing requests for a
6 temporary laydown yard drive and driveway. And
7 they granted the permit with conditions.

8 And, then, as far as more official
9 determinations, I note that the Federal
10 Aviation Administration issued a Determination
11 of No Hazard to Air Navigation regarding the
12 nine turbines, stating that they will not
13 create a hazard to air navigation, if the
14 Applicant implements requirements in the
15 notice.

16 We also have some back-and-forth with
17 the Fire Marshal's Office. Well, why don't
18 I -- I'll pass it on to Ms. Monroe right now.
19 Again, I was paraphrasing, but perhaps you
20 could elaborate, and particularly, if there's
21 anything we need to do as far as open items.

22 ADMINISTRATOR MONROE: Okay. Yes.
23 You mentioned the Fire Marshal's Office. My
24 understanding is that there are plans required

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1 for the fire suppression system that must be
2 submitted for the nacelles. It must be
3 submitted for review and approval. My
4 understanding, from corresponding with the Fire
5 Marshal's Office last evening, is that they
6 don't have that final approval. So, that would
7 need to be a condition of any certificate, if
8 one was granted.

9 I would also note, relative to the
10 environmental permits that, in the Alteration
11 of Terrain, proposed conditions include
12 conditions regarding blasting and monitoring,
13 to ensure no impact on water quality.

14 You mentioned the DHR. In addition
15 to the correspondence, there was a Memorandum
16 of Understanding that was submitted to the
17 Subcommittee, and that's there.

18 And, relative to Fish & Game, which
19 under -- this will probably come up under the
20 natural resources components, but there are two
21 letters in the record. One was submitted on
22 July 1, and that was from Director Normandeau,
23 and it stated that the Fish & Game concur with
24 the findings of the Natural Heritage Bureau in

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1 the Department of Resources and Economic
2 Development, that they will likely not have any
3 adverse impact on three identified species,
4 which are the Ebony Boghunter -- Boghaunter,
5 the Wood Turtle, and the Marsh Wren. But they
6 did recommend "monitoring in the laydown
7 areas...for the Wood Turtle movement while the
8 project is under construction in the summer".

9 Then, on September 9th of 2016, we
10 received another letter that was -- I believe
11 that was submitted as a cover letter from the
12 Applicant. But what they stated in -- what
13 Fish & Game stated in that letter is that they
14 recommended that modifications to the bird and
15 bat conservation strategy include monitoring
16 mitigation for the state-endangered common
17 nighthawk. And this was recommended by the
18 Audubon. So, that's something you may also
19 want to consider.

20 And I believe that covers the state
21 agency correspondence and approvals that we've
22 received. There is -- there was noted in the
23 Application that there is a requirement to get
24 a special permit to move a load in excess of

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1 the legal limit from the DOT. That's for
2 transporting the turbine equipment. And that
3 there's also the requirement to obtain a
4 blasting permit prior to construction.

5 Any questions?

6 PRESIDING OFCR. SCOTT: Any questions
7 before I move on?

8 *[No verbal response.]*

9 PRESIDING OFCR. SCOTT: So, one thing
10 I'd like us also to kind of look at as we go
11 through issues is, under the assumption, you
12 know, if we were to issue a certificate,
13 typically, to address more granular issues, the
14 Committee will put conditions in the
15 certificate. So, I'd like to, you know, kind
16 of have us all keep a mental slate in the
17 background of things that we may want.

18 But what I think I heard from
19 Ms. Monroe is three, no -- yes, three potential
20 conditions; one on the Fire Marshal's Office,
21 one on, from Fish & Game, its recommendation
22 regarding monitoring of laydown areas during
23 the summer, and this last issue brought up from
24 Fish & Game, at the suggestion of Audubon, I

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1 think you said, was modifications to the bird
2 and bat study. So, that would be three
3 conditions.

4 Would you -- one of the challenges, I
5 think anyways, having sat on the SEC for a
6 while, is to get conditions from being
7 verbalized to actual language that would be
8 effective. We're fortunate that we have
9 Attorney Monroe now as part of the SEC process.
10 One of the tasks that she has is to actually
11 inspect and ensure compliance. So, one of the
12 other things perhaps we should have always been
13 doing, but especially now is, to the extent we
14 put conditions in a certificate, we need to
15 make sure they're actually enforceable and can
16 be monitored and acted upon. So, that can be
17 easier said than done, I think.

18 So, with that in mind, can you -- I'm
19 going to put you on the spot again, Attorney
20 Monroe, the Fire Marshal's Office condition,
21 can you give us an outline of what that would
22 look like?

23 ADMINISTRATOR MONROE: I believe what
24 you would require is that the plan for the fire

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1 suppression system be submitted, reviewed, and
2 approved prior to construction.

3 PRESIDING OFCR. SCOTT: And that
4 would be approved by the Fire Marshal's Office?

5 ADMINISTRATOR MONROE: Yes. There's
6 also a -- and the Antrim Fire Department as
7 well.

8 PRESIDING OFCR. SCOTT: I'm
9 interested in having that be a condition. I
10 didn't know if anybody else had any thoughts?
11 Again, we're at the tentative spot right now,
12 we haven't decided anything yet. But does
13 anybody have any thoughts that a condition like
14 that should be -- does that kind of capture
15 what we want?

16 *[Multiple members nodding in the*
17 *affirmative.]*

18 PRESIDING OFCR. SCOTT: Any
19 objections to something like that?

20 *[No verbal response.]*

21 PRESIDING OFCR. SCOTT: Okay.
22 Hearing none.

23 Ms. Monroe, maybe you could take a
24 stab at the next one, regarding the monitoring

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1 of the laydown area? I didn't tell her I was
2 going to do this. So, she's being put on the
3 spot.

4 ADMINISTRATOR MONROE: See if I can
5 tap dance at some.

6 Well, I think it would be a condition
7 that would require, you know, and I haven't
8 looked at the natural -- the wildlife report in
9 depth. So, there may be something in there
10 that addresses this. If somebody knows that,
11 they might want to pipe up. But there would be
12 monitoring of the laydown and staging areas
13 identified on the Project map as parcels
14 #222-003, which is a gravel pit, and #212-027,
15 that both of these locations be monitored for
16 Wood Turtle movement.

17 I don't know if that would take some
18 type of independent monitor to carry that out.
19 I don't know if that crosses over into the
20 water/wetlands permits or not. I know,
21 generally, some of those conditions get wrapped
22 up into the wetlands conditions.

23 CMSR. ROSE: Mr. Chair?

24 PRESIDING OFCR. SCOTT: Commissioner

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1 Rose.

2 CMSR. ROSE: Thank you. I just
3 wanted to point out that this is -- that
4 recommendation is consistent with the letter
5 that Director Normandeau wrote, and that is in
6 the Applicant 19 is the -- is the Applicant
7 number -- exhibit number, I'm sorry. And, in
8 that July 1st letter, it does state that
9 language that Ms. Monroe just referenced, in
10 terms of the recommended monitoring of the
11 proposed Project laydown/staging areas.

12 And perhaps the only other element
13 that we might add is, you know, for that
14 monitoring to be reviewed and approved by the
15 New Hampshire Fish & Game, that might be the
16 best direction, in terms of the actual
17 technical elements, to make sure that they
18 review whatever that plan might be.

19 PRESIDING OFCR. SCOTT: That's the
20 suggestion I was going to make also, both for
21 that and the bird and bat study. That I was
22 curious to get the sense of the Committee, if
23 we kind of put the burden on Fish & Game and
24 require this, before construction commences,

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1 require that submission of a plan to Fish &
2 Game, and approval from them, before -- for
3 these plans, before -- obviously, with the
4 understanding that they would be implemented
5 before construction began, I was curious if
6 anybody had any thoughts on that?

7 [No verbal response.]

8 PRESIDING OFCR. SCOTT: That seems to
9 be in line with what you were suggesting,
10 Commissioner Rose?

11 CMSR. ROSE: Correct.

12 PRESIDING OFCR. SCOTT: And, Ms.
13 Monroe, that seems like something that would be
14 fairly easily checked on compliancewise by you,
15 is that --

16 ADMINISTRATOR MONROE: Yes. And I
17 imagine I will be working closely with DES and
18 Fish & Game or any other agencies to work
19 together to review compliance with the
20 conditions in the Certificate.

21 PRESIDING OFCR. SCOTT: And the
22 third, regarding the bird and bat study, again,
23 I would suggest that we would have similar
24 language, require the submission and approval

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1 of a plan before construction were to start.

2 Would you care to elaborate on what
3 else you might want in there, from your
4 perspective, if you're going to check on
5 compliance, Ms. Monroe?

6 ADMINISTRATOR MONROE: Well, I
7 believe the recommendation was that the -- that
8 the bird and bat conservation strategy include
9 modifications to the monitoring and mitigation
10 provisions for the common nighthawk.

11 So, I believe those would -- the
12 recommendation would be to, to the extent that
13 that hasn't already been done, that those would
14 be added into that larger plan, and approved by
15 Fish & Game.

16 PRESIDING OFCR. SCOTT: Any comments
17 on those three conditions, potential
18 conditions?

19 *[No verbal response.]*

20 PRESIDING OFCR. SCOTT: Any, before I
21 move on from the state agency permits, anybody
22 have any other discussion before we move on?

23 CMSR. ROSE: Mr. Chairman, I'll just
24 reiterate that those conditions are consistent

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1 with the recommendations, the bird and bat
2 conservation study recommendations by the
3 Audubon Society as well.

4 PRESIDING OFCR. SCOTT: Okay. Thank
5 you for that. So, seeing no other comments,
6 I'll move on.

7 I also want to, for those of us, and
8 perhaps some in the audience, that have been
9 around, prior to the 2014 law changes, we did
10 spend a lot of discussion typically in these
11 proceedings talking about alternative analysis.
12 That statute's changed since then, so that
13 won't be the lengthy discussion that we've had
14 in the past.

15 But the Subcommittee does have to
16 look at, you know, and give due consideration
17 for all relevant information regarding the
18 potential siting or routes of a proposed
19 facility, including the potential impacts and
20 the benefits. So, it's a little bit more vague
21 right now. But I just want to point out that
22 the alternatives analysis that we used to go
23 through and discuss is no longer a requirement,
24 for those who have been around for a while, and

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1 a habit for me.

2 All right. With that, as we start to
3 move into the more substance area, what I plan
4 to do is generally follow the outline that we
5 find in the rules, which is a little bit
6 different order than the law. Obviously, the
7 rules are based on the law, but I'm just
8 talking about the order of how we'll address
9 things.

10 I've designated a Committee member to
11 lead the discussion for each of the areas that
12 we'll discuss. The burden of the discussion is
13 not just on the one person, obviously. Then,
14 we'll entertain discussions by the whole SEC.
15 Depending on the flow, similar to what we did
16 with the two legal doctrines we discussed, I
17 may suggest a straw vote also, to see where
18 we -- get a sense of the Committee to see where
19 we are.

20 And, as I mentioned, we'll want to
21 keep in mind conditions as we go through this.
22 Are there issues we have, but a condition could
23 address? That may be -- which is why it's
24 called a "condition", you know, "but for this,

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1 we would allow" or "not allow". So, keep in
2 mind potential conditions and the language.

3 And also just remind that we need to
4 be able to support on the record our ultimate
5 discussion, so the discussion is all on the
6 record also.

7 So, with that, the first issues we'll
8 discuss are based on the setting in the rules,
9 which is Site 301.13(a) through (c), which is
10 reflected in RSA 162-H:16, IV(a), is we're
11 required to make a finding of financial,
12 technical, and managerial capability.

13 I've asked Attorney Weathersby to
14 kind of lead off on that. And, again, you
15 know, we should basically get ourselves
16 comfortable with that, to the extent we can.
17 And, if it looks like we have some consensus, I
18 may ask for a straw vote.

19 So, with that, and, Ms. Weathersby,
20 you get to start off, so you can kind of set
21 the tone for the whole proceeding here. So,
22 the floor is yours.

23 MS. WEATHERSBY: Okay. Thank you.

24 Yes. I've had the pleasure of diving deep into

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1 the technical, managerial, and financial
2 capability of the Applicant and their
3 affiliates. And I think it's important for
4 both of -- for all three of those areas to
5 understand the structure of Antrim Wind and its
6 owners, partners, etcetera.

7 So, when the Application -- because
8 it's different than when the Application was
9 first filed. The Eolian piece has gone away,
10 as Eolian was purchased. So, instead of it
11 kind of going off in a V, if you imagine the
12 corporate structure, it kind of reconnects.
13 So, there's Antrim Wind Energy is the bottom
14 box, and then that is owned by Walden Green
15 Energy Northeast Wind, LLC, and is also now
16 owned by Walden Antrim, LLC. But both of those
17 Walden entities, Walden Antrim and Walden Green
18 Energy Northeast, are now owned by Walden Green
19 Energy, LLC. So, it kind of -- it reconnects
20 into more of a diamond shape. And, then,
21 Walden Green Energy, LLC, is in itself owned by
22 the Walden Founders and RWE, principally the
23 RWEST, the RWEST, Principal Investments Walden,
24 which seems to be the investing arm of RWE.

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1 So, that's kind of the overview of
2 how the Company is structured.

3 Getting into the technical
4 capability, our Rule 301.13(a) indicates we
5 must look at two factors. It reads: "In
6 determining whether an applicant has the
7 technical capability to construct and operate
8 the proposed facility, the committee shall
9 consider: First, the applicant's experience in
10 designing, constructing, and operating energy
11 facilities similar to the proposed facility;
12 and (2) The experience and expertise of any
13 contractors or consultants engaged or to be
14 engaged by the applicant to provide technical
15 support for the construction and operation of
16 the proposed facility, if known at the time."

17 So, looking first at the Applicant's
18 experience, Antrim Wind Energy is an entity
19 that was created specifically for this Project.
20 It has not constructed any wind projects. But
21 its owners, Walden Green Energy Northeast Wind,
22 Walden Antrim, Walden Green Energy, LLC, does
23 have experience. It's developed, financed,
24 constructed renewable generation assets in New

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1 England, Massachusetts and Vermont. It's
2 currently developing over 200 megawatts of
3 solar, wind, hydro projects, including this
4 Project, here in the United States, Latin
5 America, and in Europe.

6 More important, RWE, the guy at the
7 top there of the chart, it's developed,
8 financed, and launched projects -- projects
9 worldwide. It's a very old company, founded in
10 the late 1800s in Germany. They have over
11 49,000 megawatts of electric generation
12 projects throughout Europe. They have over
13 2,500 megawatts of wind assets. It's got
14 market capitalization, we'll get into the
15 finances, but like almost \$13 billion,
16 operating revenues of over \$60 billion. And
17 some of the principals have a lot of experience
18 in developing, investing, and selling their
19 energy projects.

20 But, that said, Antrim Wind Energy is
21 the entity that's responsible for the overall
22 management of this Project. To assist it in
23 its technical -- technical challenges here,
24 Antrim Wind has hired a fairly impressive, in

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1 my opinion, group of contractors and
2 consultants. It's hired DNV-GL as its Owner's
3 Engineer. The Owner's Engineer advises the
4 Applicant in finalizing the Balance of Plant
5 construction, the turbine supply and service
6 and maintenance agreements.

7 And DNV-GL has been around for over
8 30 years. It's the world's largest consultant
9 to on- and offshore wind industries. It
10 operates in more than 100 countries. It's been
11 the independent engineer on approximately 30
12 projects in New England. And it's going to
13 help in all aspects of the construction,
14 including safety.

15 And, then, it's hired or is in the
16 process of hiring Reed & Reed as the Balance of
17 Plant Contractor. It's got a Pre-Construction
18 Service Agreement -- Services Agreement signed
19 with Reed & Reed. That PSA will be replaced by
20 the Balance of Plant Contract, assuming a
21 certificate is issued. And that contract
22 provides that Reed & Reed is going to provide
23 the electrical design, the procurement,
24 technical construction services. It's going to

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1 do all of the things that are required to
2 complete and turn over the fully commissioned
3 and operational project. There's certain costs
4 and schedules, safety requirements, *etcetera*,
5 are all wrapped into the Balance of Plant
6 Contract. So, basically, Antrim Wind is going
7 to rely on its contractual arrangement with
8 Reed & Reed to construct and commission and
9 deliver to Antrim Wind the fully operational
10 project.

11 Reed & Reed has got a good amount of
12 experience, including installing Siemens
13 turbines. It's been around for about 88 years
14 providing heavy civil construction. It's done
15 a lot of wind project development, including
16 project design, scheduling, budgeting, project
17 management. It's installed more than 95
18 percent of the wind -- the larger wind projects
19 in the Northeast, including the Lempster
20 facility, Jericho, and Groton Wind. It's
21 installed more than 280 wind turbines.

22 And, then, they have also hired --
23 Antrim Wind is also going to contract with
24 Siemens Energy. It's going to be the turbine

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1 supplier and the service and maintenance
2 provider. Siemens is a global company,
3 supplies large energy projects and services for
4 power generation. It's got over 35 years of
5 experience in wind turbines. It's a subsidiary
6 of the Siemens -- the larger Siemens company
7 based in Germany that was founded in the mid
8 1800s. They're a -- they're ranked number 58
9 on the Fortune Global 500. It's a big company.

10 So, Antrim Wind and Siemens have
11 entered into a Turbine Supply Agreement, the
12 TSA that we've heard about, and a Service and
13 Maintenance Agreement, SMA.

14 The TSA governs Siemens'
15 responsibilities to deliver the turbines to the
16 Project, where Reed & Reed will then install
17 them, and Siemens will assist, if necessary,
18 with some of the technical aspects. Siemens
19 will also work with Reed & Reed for the turbine
20 commissioning. The TSA also has the warranty
21 provisions, etcetera.

22 The Service and Maintenance Agreement
23 with Siemens is that two-year agreement we've
24 heard about, that covers all servicing of the

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1 turbines. Then, after two years, they're
2 either going to extend the SMA with Siemens, or
3 perhaps go to another company to do the service
4 and maintenance. They have referred to perhaps
5 that being with either UpWind or EDF
6 Renewables. And they -- my review of those
7 companies indicates that they are also
8 experienced. They both operate about
9 3,000 megawatts of wind energy facilities in
10 the U.S. UpWind is owned by Vestas. EDF is a
11 large utility, a big renewables branch,
12 *etcetera*.

13 I can give you more information on
14 the contracts and all that, if you'd like. But
15 my opinion that, while Antrim Wind doesn't have
16 a lot of technical experience, it's surrounded
17 itself by those that do.

18 I can, Commissioner Scott, I can move
19 onto managerial and financial, or we can talk
20 about technical if you'd like?

21 PRESIDING OFCR. SCOTT: Why don't we
22 see if anybody has any questions or more
23 comments on the technical side. I'll start
24 myself. And maybe I can't talk right now, so

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1 maybe I shouldn't be talking, but the -- I
2 think your last statement is something I was
3 going to add though. Perhaps Mr. Kenworthy
4 himself doesn't have experience in building and
5 operating, but it appears from the construct
6 that, through either their parent relationships
7 or the people they have contracted with to
8 build and operate, that it's -- arguably,
9 there's plenty of experience there that would,
10 in my opinion, that would support that there is
11 the technical capability there.

12 So, that's my thought on the issue.
13 Does anybody else have any comments?

14 Mr. Clifford.

15 MR. CLIFFORD: I think Ms. Weathersby
16 summarized it rather succinctly. That there
17 was credible testimony, I thought, on behalf of
18 the Applicant about the people that it would
19 surround itself with. And at least they
20 appeared in the papers to demonstrate the kind
21 of capability one would be looking for, either
22 from the Applicant's position or even from an
23 outsider's position. That you seem to want
24 people to either have done this before or, if

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1 they haven't done it before, that they would
2 have surrounded themselves with people who have
3 done it before, you know, have installed
4 turbine farms and actually looked at these
5 issues.

6 So, I think, to that extent, I think
7 there was plenty of information in the record
8 and testimony that we did hear that the people
9 that would be involved in this Project seemed
10 to have satisfied that element, at least in my
11 opinion. I didn't hear any specific testimony
12 to refute those particular points.

13 PRESIDING OFCR. SCOTT: Excuse my
14 cold. Anybody else, any other comments you'd
15 like to raise or concerns we'd like to voice?

16 *[No verbal response.]*

17 PRESIDING OFCR. SCOTT: It sounds
18 like, Attorney Weathersby, you can move onto
19 the next subtopic.

20 MS. WEATHERSBY: Okay. So, we'll
21 move onto managerial capability.

22 So, Rule 301.13(c) states that: "In
23 determining whether an applicant has the
24 managerial capability to construct and operate

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1 the proposed facility, the committee shall
2 consider: (1) The applicant's experience in
3 managing the construction and operation of
4 energy facilities similar to the proposed
5 facility; and (2) The experience and expertise
6 of any contractors or consultants engaged or to
7 be engaged by the applicant to provide
8 managerial support for the construction and
9 operation of the proposed facility, if known at
10 the time."

11 So, again, you look at the Applicant,
12 and then you look at those that it surrounded
13 itself with. And it's a similar situation that
14 kind of plays out, whereas Antrim Wind doesn't
15 necessarily have a lot of experience in
16 managing the Project, but those that it
17 surrounded itself have much more.

18 So, Antrim Wind, we've heard about
19 and from Mr. Kenworthy, he's the head of
20 project development at Walden and the Executive
21 Officer of Antrim Wind. He's leading and
22 managing the Antrim Wind Project, and also some
23 other projects in Pennsylvania. He was the
24 founder of Eolian Renewables for seven years,

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1 before that was bought by Walden, and he has
2 about ten years experience in the industry.

3 But then you go up a level where
4 Walden -- or two levels, Walden Green Energy,
5 that's owned by Mr. Weitzner who we heard from,
6 and George -- George and Sarah, we're going to
7 call them that, too, and those three work full
8 time for Walden Green Energy. They have
9 developed solar projects, and they're presently
10 developing three wind projects.

11 The Walden management team has
12 combined about 45 years of experience, in more
13 the sort of the financial part of it; the
14 structuring of the Burgess Power Purchase
15 Agreement, hedging strategies, financing the
16 facilities. They have some expertise specific
17 to the wind industry. Mr. Weitzner has about
18 25 -- more than 25 years experience in the
19 energy and commodities business, worked at
20 Barclay's, JP Morgan, etcetera.

21 But then the real managerial
22 experience, aside from sort of the financing
23 components and the contract components, is RWE.
24 RWE, I've already commented on them a bit, but

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1 they have over 3,500 megawatts of wind power,
2 onshore/offshore, throughout the world. You
3 know, a large company, got over \$6 billion
4 worth of renewable projects. But RWE does not
5 appear to have built any wind in the United
6 States.

7 RWE is going to provide the
8 managerial support as Walden Green Energy's
9 board is 50 percent -- 50 percent of the board
10 seats are held by RWE persons. So, those key
11 persons are in contact with Walden Green
12 Energy. So, this Project will get the benefit
13 of their education and their support.

14 Then, again, we have DNV-GL, the
15 Owner's Engineer. They have got the service
16 agreement that I've already referred to, to
17 provide support during construction and through
18 operation. They have managerial experience.
19 They have done the Maple [Maple Ridge?] wind
20 farm in upstate New York, and over 30 projects
21 in New England.

22 Reed & Reed we've already talked
23 about. So, they have -- Antrim Wind, again,
24 doesn't have particularly deep managerial

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1 experience, but they have engaged some
2 qualified contractors in Reed & Reed, DNV-GL,
3 and Siemens, and then their affiliates, the
4 expertise of the Walden entities and RWE,
5 suggest that they have the managerial
6 capability to construct and operate this
7 facility.

8 PRESIDING OFCR. SCOTT: Thank you for
9 that. Any discussion? Or questions?
10 Concerns?

11 *[No verbal response.]*

12 PRESIDING OFCR. SCOTT: And, again,
13 I'll reiterate, similar to the technical
14 capability, it appears to me that the -- I'll
15 make a similar statement for managerial
16 capability, the whole mix seems to, whether
17 it's the people contracted with, including
18 Siemens, of course, who I can't imagine who
19 would be better equipped to address the Siemens
20 turbine, or the hierarchal -- hierarchal, is
21 that a word? No. The parent company's
22 involvement with other projects, it gives me a
23 level of comfort regarding managerial
24 capability than just AWE alone.

[DELIBERATIONS]

1 Any other comments? Director Forbes.

2 DIR. FORBES: Yes. I was struck by
3 the term of the operational contract. That
4 kind of leaves in question what happens after
5 the first couple of years. And I was wondering
6 what the rest of the Committee felt about that.
7 I certainly would trust that the managerial
8 capacity is there to ensure that that
9 operational contract is either extended or
10 substituted with other operational strength.
11 But it is a concern that I thought was one that
12 we should be thinking about.

13 PRESIDING OFCR. SCOTT: Were you
14 thinking of some kind of condition?

15 DIR. FORBES: Yes. I just wonder if
16 it would be within the realm of, you know,
17 something we could do at this point to define
18 or maybe have the Applicant provide some
19 additional assurance after a couple of years
20 after that contract is over.

21 Is that something that is appropriate
22 or not? I'm kind of thinking out loud on this.
23 But I do have that concern about "what happens
24 when that expires?"

[DELIBERATIONS]

1 PRESIDING OFCR. SCOTT: Well, I'll
2 let Attorney Iacopino correct me if I'm wrong.
3 I think that we have a fair purview here to put
4 conditions in if we have a concern.

5 One thing I would raise is, depending
6 on how you structured the condition, who is
7 it -- who would be -- are you suggesting they
8 would require a full Committee approval to do
9 something? That seems kind of --

10 DIR. FORBES: I wouldn't want to put
11 that work -- that burden on us at all.

12 PRESIDING OFCR. SCOTT: Or would it
13 be something we -- I don't know if we could
14 delegate something like that to the
15 Administrator? So, that would be one question
16 I'd have. Going back to my earlier statement
17 on conditions, you know, I want to make sure,
18 whatever we do, to the extent we ultimately
19 issue a certificate, the conditions are
20 something that Attorney Monroe can look at and
21 say "okay, I know how to see if that's been
22 implemented or not."

23 DIR. FORBES: Well, I think it might
24 be helpful to have some kind of report back to

[DELIBERATIONS]

1 us from the operation -- from the group,
2 describing what they have taken for steps to
3 ensure continued operation. I don't know where
4 you go from there, if, in fact, we felt it was
5 inadequate. But at least it would put some
6 pressure on the Applicant to put down in
7 writing a commitment that would be hopefully
8 reasonable.

9 PRESIDING OFCR. SCOTT: Well,
10 perhaps, and Attorney Monroe is going to wish
11 she hadn't come today, I think, one thing we
12 could do, for instance, as you suggested, a
13 condition that the Applicant would be required
14 to report to the Administrator the follow-on,
15 you know, "after that two-year period, what are
16 the arrangements that are being made?"

17 And, in theory, if there's a concern
18 raised in her mind, she could bring it to us, I
19 suppose.

20 DIR. FORBES: That would make sense.

21 PRESIDING OFCR. SCOTT: Attorney
22 Iacopino, did you have a concern?

23 MR. IACOPINO: The only thing I would
24 point out is, if you look at our rules, Site

[DELIBERATIONS]

1 301.17, is the rule which authorizes you to, as
2 a Subcommittee, to issue conditions for a
3 proposed certificate. There are several of
4 them there. But everything that you've just
5 talked about is included in those.

6 You might -- but, as a subcommittee,
7 you might want to take a look at that rule, as
8 that might give you other ideas, in terms of
9 the types of things that you can do under these
10 types of circumstances.

11 PRESIDING OFCR. SCOTT: Could you
12 give us that cite again.

13 DIR. FORBES: Would you repeat that
14 cite.

15 MR. IACOPINO: Site 301.17, entitled
16 "Conditions of Certificate". And I think
17 there's ten subsections to it -- I'm sorry,
18 nine subsections to it.

19 PRESIDING OFCR. SCOTT: While we're
20 looking at that, Attorney Clifford, did you
21 have something?

22 MR. CLIFFORD: Yes. I just wanted to
23 add, I recall I had some questions on that
24 area, either of Mr. Marcucci or Mr. Kenworthy

[DELIBERATIONS]

1 or Weitzner, or all three. And I would -- and
2 there was some discussion about what would
3 happen after the Siemens contract ran out. And
4 maybe the simple answer would be that, at the
5 end of the third year or second year, I can't
6 remember exactly what it was, that that
7 subsequent contract for the service and
8 maintenance just be required to be submitted to
9 Ms. Monroe. I mean, I wouldn't view it that
10 we'd have, for example, if the Application were
11 approved, that we'd have any purview or
12 responsibility to alter or change that
13 contract. But just that there was some
14 assurance going forward that there was a
15 service and maintenance contract in effect for
16 years 3 through, say, 25, whatever it happened
17 to be. And maybe more along the lines of a
18 reporting requirement, that people could feel
19 satisfied that "Yes. There's an entity out
20 there that would be taking care of these
21 things, responsible for maintenance, etcetera."
22 And that's where I would be looking, and maybe
23 that would help alleviate your concerns as
24 well.

[DELIBERATIONS]

1 PRESIDING OFCR. SCOTT: Commissioner
2 Rose.

3 CMSR. ROSE: Thank you. Yes. I'm
4 hesitant to tell a contractor who they should
5 be doing business with. But, as I recall, and
6 I'm just going back in my memory here, that I
7 believe Mr. Kenworthy even referenced two other
8 I think fairly well-established entities by
9 which he might consider viable for the
10 maintenance after that two-year period. So, I
11 don't think he was precluding any particular
12 company, but that it would be a highly
13 reputable entity.

14 So, I think that the idea of making
15 the Committee aware via the Administrator, who
16 the active, you know, company is that is doing
17 that maintenance, I think that is worthy of
18 consideration. But I wouldn't want to be too
19 prescriptive as to what company the contractor
20 could actually do business with.

21 PRESIDING OFCR. SCOTT: What I was
22 trying to suggest is perhaps just a reporting
23 requirement to the Administrator.

24 CMSR. ROSE: Yes.

[DELIBERATIONS]

1 PRESIDING OFCR. SCOTT: And, then, as
2 Attorney Iacopino points out, in 301.17, we can
3 delegate certain things to either the
4 Administrator or state agencies. So, again, I
5 would rely on her, her judgment. First of all,
6 that would allow her to be aware of the change,
7 which I think is important, since she has a
8 mandate to look at compliance. And, in doing
9 so, obviously, if she saw an issue, she could
10 raise it to us. So, I would be comfortable
11 with that.

12 CMSR. ROSE: Likewise.

13 PRESIDING OFCR. SCOTT: Anybody else?
14 Is that a condition that people will generally
15 support?

16 MS. WEATHERSBY: So, is the condition
17 that the Applicant is required to maintain a
18 service and maintenance agreement with a
19 qualified third party, and copies of those
20 contracts are provided to Commissioner Monroe?
21 Or did I -- I'm trying to understand exactly
22 what the condition is.

23 PRESIDING OFCR. SCOTT: That wasn't
24 exactly what I was suggesting, but we could

[DELIBERATIONS]

1 certainly do that.

2 I think I was -- I was thinking more
3 generically that they presented that they have
4 a two-year -- or, will have a two-year
5 contract. Anything they do subsequent to
6 change that status, I'd just like it reported.

7 So, my only -- I don't have an issue
8 with the way you phrased it. But I'm not sure,
9 in perpetuity, as they develop experience and
10 maybe hire their own staff, that they wouldn't
11 be able to do some of this on their own, and
12 I'm not sure that would be a bad thing. You
13 know, ten years from now, maybe that -- I'm not
14 sure I'm at the point of saying "they shouldn't
15 be allowed to do that." But I would like some
16 reporting, so the Administrator can at least
17 evaluate whether what they're doing is
18 appropriate, if that makes sense?

19 (Ms. Weathersby nodding in the
20 affirmative.)

21 PRESIDING OFCR. SCOTT: Any other
22 discussion?

23 *[No verbal response.]*

24 PRESIDING OFCR. SCOTT: Is that

[DELIBERATIONS]

1 something you could frame up for us for a
2 later -- at the end, what I've asked is
3 Attorney Monroe to kind of keep a tally of all
4 the potential conditions, and we'll have to
5 make sure we're comfortable with the wording
6 before we finish up this proceeding, assuming
7 we issue a certificate.

8 So, where were we on --

9 MS. WEATHERSBY: So, I think we're
10 finishing up managerial capability. And I can
11 go into financial, if we -- if the Committee so
12 desires?

13 PRESIDING OFCR. SCOTT: Sounds good.

14 MS. WEATHERSBY: Okay. So, turning
15 to their financial capability. So under
16 301.13(b) [301.13(a)?]: "In determining
17 whether an applicant has the financial
18 capability to construct and operate the
19 proposed energy facility, the committee shall
20 consider: (1) The applicant's experience in
21 securing funding to construct and operate
22 energy facilities similar to the proposed
23 facility; (2) The experience and expertise of
24 the applicant and its advisors, to the extent

[DELIBERATIONS]

1 the applicant is relying on its advisors; (3)
2 The applicant's statement of current and pro
3 forma assets and liabilities; and (4)
4 Financial commitments that the applicant has
5 obtained or made in support of the construction
6 and operation of the proposed facility."

7 So, I think it might be helpful here
8 to just go into how they're proposing to
9 financially structure the Project. The Project
10 is expected to cost 63 to \$65 million. The
11 construction is anticipated to be funded with
12 approximately \$54 million of debt and tax
13 equity, and then about \$11 million of equity
14 that will be supplied via Walden Green Energy,
15 flowing through from RWE.

16 The Project financing is going to use
17 what seems to be the standard in the United
18 States for wind industry development, the
19 two-phase financing; with the construction
20 financing phase and the permanent financing
21 phase. The construction financing is a
22 combination of a construction loan and then the
23 construction equity. And, then, once the
24 facility is complete, the construction loan

[DELIBERATIONS]

1 converts into a permanent "term loan".

2 So, of those four factors we need to
3 look at, the first one is the financial
4 experience of the Applicant in securing
5 funding. And, again, Antrim Wind Energy is the
6 newly created entity just for this Project. It
7 really doesn't have experience securing
8 funding, other than what it's secured so far
9 for this Project.

10 But the experience and expertise of
11 its advisors is more substantial. The Walden
12 management team, they have got combined 45
13 years of experience structuring power purchase
14 agreements, hedging strategies. They have
15 financed over \$5 billion worth of power
16 generation. The Walden Founders have worked
17 together for many years at leading financial
18 institutions.

19 And, then, RWE, which is where the
20 equity is ultimately coming from, I've already
21 told you about them, but they have got market
22 capitalization of almost \$13 billion, operating
23 revenues of 60 -- mid \$60 billion range, a
24 publicly traded company, etcetera.

[DELIBERATIONS]

1 The Counsel for the Public did raise
2 issues about RWE's financial stability due to
3 changes in Germany's energy production market.
4 And those were dismissed by Mr. Shaw in his
5 testimony. And he indicated that the
6 \$11 million is really largely immaterial, if
7 you can believe it, to RWE, with such a
8 large -- a company that's so largely
9 capitalized. It's, you know, sort of the
10 proverbial "drop in the bucket". It's got a
11 BBB -- it still has a BBB-, I believe, credit
12 rating, 118 or 120 years old. And, basically,
13 he said there's no danger of the company going
14 under or not being able to finance the
15 11 million that's needed. They're still being
16 lent money at good rates, and their, you know,
17 stock prices is holding. So, that concern of
18 Counsel for the Public, that was what Mr. Shaw
19 had to say about it.

20 The Applicant's statement -- the
21 third factor that we are to consider is the
22 Applicant's statement of current and pro forma
23 assets and liabilities. That was confidential
24 information. I don't know if people want to

[DELIBERATIONS]

1 look at it, want to go into a private session,
2 but I guess I can say that, you know, it's been
3 looked at. And my layperson's look at it did
4 not -- did not raise any red flags for me.

5 The fourth factor is the financial
6 commitments that the Applicant has obtained or
7 made in support of the construction and
8 operation of the proposed facility. So, the
9 construction loan, it's a non-recourse loan,
10 meaning it's not guaranteed by the parent
11 companies, but it's secured by the Project
12 assets. But Antrim Wind does have letters of
13 interest from both Key Bank and Bayerische
14 Bank. They're not commitment letters at this
15 point, they're letters of interest.

16 They also have letters of interest
17 for the tax equity portion of the Project from
18 Citigroup, State Street Bank, and CCA Group.

19 A lot of prerequisites had to be
20 satisfied before the lending is finalized, most
21 of which are satisfied or very close to being
22 satisfied. Obviously, they needed the
23 Certificate to be issued and permits in place.
24 They needed power purchase agreements, and that

[DELIBERATIONS]

1 they have signed a power purchase agreement
2 with New Hampshire Electric Co-op for
3 25 percent of the energy, and they have a
4 letter of intent from Partners HealthCare for
5 the remainder.

6 They have also been selected to be
7 part of the New England Clean Energy Pool --
8 Clean Energy RFP. Another prerequisite was the
9 Turbine Supply Agreement, and that they have a
10 binding Memorandum of Understanding for the TSA
11 with Siemens. They needed a Balance of Plant
12 Contract, the BOP Contract, and that's -- they
13 have a pre-construction -- the pre-construction
14 agreement with Reed & Reed that would be
15 replaced by the Balance of Plant (BOP) Contract
16 after the final Certificate is issued. They
17 need an O&M Agreement for ongoing maintenance
18 of the Project, and they have negotiated a
19 binding MOU for the SMA agreement with Siemens.
20 And that will be finalized, again, after the
21 Certificate is issued.

22 And there's also an agreement with
23 DNV-GL to be the Owner's Engineer. So, most of
24 the -- I would say that the prerequisites for

[DELIBERATIONS]

1 lending are kind of teed up.

2 The construction equity, they have a
3 commitment from RWE to provide 100 percent of
4 the construction equity to construct the
5 Project. RWE is going to provide it to Walden,
6 which would, in turn, invest it into RWE
7 through Walden Green Energy Northeast. It's
8 expected to be about 11 million. There was
9 some concern that "What if it's more than
10 11 million?" And there was testimony that
11 basically said "If it's more, they'll kick in
12 more. It's not an issue."

13 The secured cash flow from the PPAs
14 basically determines the amount of the debt,
15 and the amount of the debt then determines how
16 much equity RWE will need to contribute.

17 AWE has agreed to a condition, if we
18 desire to impose it, which I would recommend,
19 that it will provide evidence to the Committee
20 that the debt and equity financing required for
21 the Project -- for construction of the Project
22 is in place prior to commencement of
23 construction. And I can't imagine commencing
24 without that in place, but I think it is a good

[DELIBERATIONS]

1 condition to have, just to be sure.

2 And, then, when the Project is
3 complete and AWE has accepted the facility from
4 Reed & Reed, then the Production Tax Credits
5 are sold, and the remaining debt of the
6 construction loan converts into the term loan
7 for the permanent financing.

8 I can get into the P99 and the P50
9 and all of that for financial tests for
10 repayment of the loan, if desired. But I guess
11 I would say that, to summarize, they need --
12 they're anticipating a 37 percent capacity
13 factor, the P50. The banks are lending the
14 money based not on that 37 percent factor, but
15 on the P99 factor, which is the 26 percent.
16 And there was an issue raised by Counsel for
17 the Public, I believe, that the wind isn't
18 going to be blowing as hard or as steady,
19 *etcetera*, and the Project won't be generating
20 as much energy and, therefore, the financing
21 may not work out. But the financing is based
22 on that 26 percent capacity factor.

23 There was also a concern by
24 Ms. Linowes that, if the tax credits are not

[DELIBERATIONS]

1 reapproved, the Project finances don't work. I
2 don't necessarily understand where that -- the
3 tax credit reauthorization and all that stands.
4 So, I really -- I'm not sure I could speak to
5 that.

6 There was also some issues about
7 curtailment and how that would affect the power
8 and the financing for curtailment due to noise
9 or shadow flicker. And there was testimony
10 that they could not really -- the Applicant
11 really couldn't see a situation where the
12 curtailment would have a material financial
13 impact on the Project, again, I think going
14 back to that 26 percent capacity factor.

15 PRESIDING OFCR. SCOTT: Thank you for
16 that. Any discussion?

17 *[No verbal response.]*

18 PRESIDING OFCR. SCOTT: Well, I guess
19 I'll start then.

20 You've kind of alluded to it. The
21 one thing that gives me some confidence
22 regarding the financing is the fact that, if
23 anything, I think the Project's oversubscribed,
24 as far as, you know, they have either locked in

[DELIBERATIONS]

1 purchase power agreements or letters of intent,
2 the Three-State (Massachusetts, Connecticut,
3 Rhode Island) Clean Energy Solicitation, the
4 fact that they have been asked to participate
5 in that. That indicates there's a strong
6 demand for this type of power, at least in my
7 mind. So, that helps a lot in being
8 comfortable.

9 You know, I do take some pause in RWE
10 and their financial position, I don't know
11 where that all ends up. But, again, seeing
12 that there's a market, if you will, that would
13 then derive confidence from investors in being
14 able to sell a product, to me, gives a better
15 assurance that that's less of an issue, if you
16 will.

17 Any comments from anybody? Director
18 Forbes.

19 DIR. FORBES: I would just support
20 the condition that was mentioned relative to
21 securing financing. I think that's very
22 important, and should be a condition that we
23 impose, should we approve this Application.

24 PRESIDING OFCR. SCOTT: I support

[DELIBERATIONS]

1 that also. Anybody else?

2 *[No verbal response.]*

3 PRESIDING OFCR. SCOTT: How about on
4 the condition? Any objections to that?
5 Anybody concerned with that kind of condition?

6 *[No verbal response.]*

7 PRESIDING OFCR. SCOTT: Okay.

8 Ms. Monroe will add it to the list, I think.

9 ADMINISTRATOR MONROE: Can she just
10 rearticulate it please. I got some of it,
11 but -- thank you.

12 MS. WEATHERSBY: Basically, a
13 condition -- let me find it. Basically, a
14 condition that it will provide evidence to the
15 SEC that the debt and equity financing required
16 for the construction of the Project is in place
17 prior to commencement of construction.

18 PRESIDING OFCR. SCOTT: How about the
19 overall issue? Attorney Weathersby has laid
20 out a lot of background on the finances. Are
21 there any concerns? Comments?

22 Commissioner Rose.

23 CMSR. ROSE: Thank you. Just one
24 clarification. First, thank you for that well

[DELIBERATIONS]

1 thought out and thorough presentation.

2 I thought I heard you, when you were
3 referencing the management team's experience,
4 and you referenced the combined 45 years of
5 experience, and I wasn't sure if I heard this
6 right, but I thought you may have mentioned
7 "successfully financed \$5 million" in
8 generation and infrastructure. And, at least
9 in my notes, I had as with a "B", as in
10 "billion dollars". Just wasn't sure if I heard
11 that correctly, but I thought that was a pretty
12 significant change.

13 MS. WEATHERSBY: The Walden
14 management team has a combined 45 years of
15 experience structuring PPAs, hedging
16 strategies. They have financed more than
17 5 billion --

18 CMSR. ROSE: Okay.

19 MS. WEATHERSBY: -- of power
20 generation and oil and gas supply.

21 CMSR. ROSE: Thank you. I thought I
22 might have heard "million", but I had "billion"
23 in my notes as well.

24 And, then, I would just concur with

[DELIBERATIONS]

1 the Chairman's comments about the assurance --
2 the "reassurance", I should say, of having the
3 PPAs in place and the interest in the output of
4 the energy, and how that is reassuring, from a
5 financial perspective.

6 PRESIDING OFCR. SCOTT: Any other
7 comments? Ms. Weathersby.

8 MS. WEATHERSBY: I'm not sure
9 Commissioner Rose's condition and the other
10 condition are the same. They have agreed to a
11 condition to show the construction financing,
12 basically, the money coming from RWE, the tax
13 credits, and the bank financing. Knowing about
14 the PPAs is another piece, but it's not -- I
15 don't think it falls into the condition as was
16 proposed.

17 So, I think we -- are you saying you
18 also want to see the power -- the signed PPAs
19 for 100 percent of the power?

20 CMSR. ROSE: No. That's not what my
21 intent was, other than to reference the fact
22 that they appear to be in a much -- the demand
23 for the output seems to be at a higher level
24 than perhaps during the previous docket that

[DELIBERATIONS]

1 came before the Committee.

2 MS. WEATHERSBY: Thank you.

3 PRESIDING OFCR. SCOTT: That's what I
4 understand, too. So, I thought you were
5 basically agreeing with me.

6 CMSR. ROSE: Yes.

7 PRESIDING OFCR. SCOTT: Which I
8 always like to hear.

9 CMSR. ROSE: Yes. All right.

10 PRESIDING OFCR. SCOTT: Any other
11 comments?

12 *[No verbal response.]*

13 PRESIDING OFCR. SCOTT: Any concerns
14 that we should -- that we haven't talked about
15 that we should talk through? Anybody?

16 MR. CLIFFORD: I just had one. This
17 doesn't really go to any specific requirement,
18 but it just raises a question. Should the
19 permit be granted is, I know, for example, as a
20 regulator, the Utility Commission monitors, you
21 know, the output of electric companies. I just
22 was wondering if there was a way we would know
23 what they're contributing to the grid into the
24 future, and whether that's something we might

[DELIBERATIONS]

1 want to talk about or think about later. I
2 don't know where that fits. But it was just
3 a -- not that it's a reporting requirement or
4 it's a condition of the permit, but it would
5 just be something informationally to know "what
6 is this thing contributing overall to the New
7 Hampshire power system?"

8 The thought just crossed my head. It
9 may be completely irrelevant. But it's just
10 something that came up into my head now. And
11 it's not really a reporting requirement. It
12 probably doesn't even fit into this category.
13 But I figured, as long as things come up, we
14 should bring them out when they come up, so
15 that we can keep track of them as we go
16 forward.

17 PRESIDING OFCR. SCOTT: I can say
18 from my -- the work I do on regional market
19 issues, first of all, I'm not sure I'm
20 supporting a condition either, but I will say I
21 think, to the extent somebody wanted to have
22 some visibility, I believe, to the extent,
23 obviously, the Project would want to generate
24 renewable energy credits, those have to be

[DELIBERATIONS]

1 effectively registered, probably is the wrong
2 word, in the NEPOOL GIS System. So, there's a
3 tracking mechanism for the RECs. The RECs
4 don't get generated unless they produce
5 electricity also.

6 So, there is a way to figure that
7 out, at least in my mind, is my understanding.

8 MR. CLIFFORD: Right. And, as I
9 said, I'm not implying it as a condition. It
10 was just a question that came up as, well,
11 okay, so, it's just one of those "So, how are
12 we doing, you know, if we permit things?" I
13 don't know if there's -- if Lempster does
14 anything or Groton does anything that we can
15 look at and say "Oh, you're contributing, you
16 know, 3,000 kilowatt-hours yesterday, great.
17 You know, good job", or whatever.

18 PRESIDING OFCR. SCOTT: And, to that
19 extent, at least based on my knowledge of the
20 other wind projects that we have issued a
21 certificate for, we don't have any -- we don't
22 watch them in that capacity, is my
23 understanding. I'm not suggesting we couldn't,
24 but --

[DELIBERATIONS]

1 MR. CLIFFORD: No. I'm not
2 suggesting that we do either.

3 PRESIDING OFCR. SCOTT: Anybody else?

4 *[No verbal response.]*

5 PRESIDING OFCR. SCOTT: Are we, if we
6 lumped technical, managerial, and financial
7 together, are we comfortable with a straw vote
8 or do we feel still need to discuss it?

9 *[Multiple members nodding in the*
10 *affirmative.]*

11 PRESIDING OFCR. SCOTT: So, seeing a
12 lot of head nods for a straw vote. So, this
13 will be -- again, this is informal, we're not
14 binding anybody. So, to the extent you're
15 comfortable that they have demonstrated
16 technical, managerial, and financial
17 capability, as a straw vote again, I would ask
18 that you raise your hand if you think that's
19 the case?

20 *[Committee members raising their*
21 *hand unanimously.]*

22 PRESIDING OFCR. SCOTT: All right.

23 And, so, that's the straw vote, nonbinding.

24 Looks like the sense of the Committee is that

[DELIBERATIONS]

1 that has been accomplished.

2 So, at the request of the
3 transcriptionist, and my call of nature, which
4 I'll take care of, we're going to take a break.
5 So, thank you.

6 *[Recess taken at 10:51 a.m. and*
7 *the deliberations resumed at*
8 *11:06 a.m.]*

9 PRESIDING OFCR. SCOTT: Okay. We're
10 back on the record.

11 Next in the sequence, according to
12 the rules, we get into unreasonable adverse
13 effects. If we follow the rules exactly, we
14 would next go to aesthetics. But Mr. Boisvert
15 has suggested that looking at historical sites
16 may be logical, I don't want to put words in
17 his mouth, but particularly to avoid any
18 confusion regarding the crossover between
19 historic sites and aesthetics. Is that a fair
20 statement?

21 DR. BOISVERT: Yes.

22 PRESIDING OFCR. SCOTT: So,
23 Mr. Boisvert, the mike is yours.

24 DR. BOISVERT: Thank you. Historic

[DELIBERATIONS]

1 sites are a particular area that need to be
2 considered for potential adverse effects. And,
3 in many cases regarding wind projects, it is
4 visual, audible, and atmospheric effects that
5 might be the areas that would be the source of
6 adverse effects, and this is under the federal
7 regulations.

8 There's some confusion in the general
9 public as to the distinctions between the
10 federal and the state criteria. And I thought
11 it would be useful to address the historic
12 sites first, and proceed to then -- and that
13 might make it more clear when we get to the
14 aesthetics.

15 The "Effects on Historic Sites",
16 Section 301.06 in the rules, is required of the
17 applicant on their submission of the
18 application. And this requires that they
19 demonstrate that they have gone through the
20 project review regarding the Natural Historic
21 Preservation Act, which is a federal process,
22 which would require -- requires identification
23 of all historic sites and areas of potential
24 archeological sensitivity in areas, then to

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1 determine -- a finding or determination by the
2 Division of Historical Resources, the state
3 agency, if applicable, the lead federal agency,
4 that there are no historic properties that will
5 be affected or that there be no adverse
6 effects. And then to proceed, if there are,
7 descriptions of measures planning to avoid,
8 minimize or mitigate the potential adverse
9 effects on the historic sites and archeological
10 resources. And, then, a description of the
11 status of the applicant's consultations with
12 Division of Historical Resources of the
13 Department of Cultural Resources and the lead
14 federal agency.

15 What's important to understand is
16 that, under the Section 106 process, the
17 federal process, the effects to historical
18 resources are determined by the lead federal
19 agency and the State Historic Preservation
20 Officer, SHPO. Using rules defined in 36 CFR
21 800, federal regulations, and carried out by
22 the New Hampshire Division of Historical
23 Resources. This entails identification of the
24 historic properties, including buildings,

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1 structures, and archaeological sites;
2 determination of effects on those properties,
3 if there are adverse effects, then description
4 of measures to avoid, minimize or mitigate
5 these adverse effects. It is important to note
6 that, for the purposes of this application
7 process, the definition of "Historic Sites" in
8 the SEC rules follows the definition of
9 "Historic Properties" in the federal
10 regulations, i.e. eligible for listing on the
11 National Register of Historic Places. It is
12 also important to know that Unreasonable
13 Adverse Effects" in the SEC rules are not
14 defined in the same way as "Adverse Effects" in
15 the federal regulations.

16 For Section 106, adverse effect is
17 found: When the project alters any
18 characteristics of a property that make it
19 historic, which is to say eligible for the
20 National Register.

21 For determining an unreasonable
22 adverse effect, the SEC considers: That all
23 resources potentially affected have been
24 identified and considered; the number and

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1 significance of adversely affected resources,
2 especially considering the size and nature of
3 the energy facility; the extent, nature and
4 duration of adverse effects; the funding and
5 determinations made under Section 106 and RSA
6 227-C:9, the latter being the state regulations
7 for historic properties; and effectiveness of
8 mitigation efforts and do they fit the best
9 practices.

10 The Applicant conducted
11 archaeological and above ground resource
12 surveys as part of the identification process.
13 No archeological sites were identified. Five
14 properties or sets of built environment
15 properties were identified, two historic
16 districts, and two other properties were
17 identified, but were found to have received no
18 adverse effect. One historic property, White
19 Birch Point, was identified as having an
20 adverse effect if the Project were to be built.
21 The White Birch Historic District is
22 significant as a group of historic camps,
23 developed intentionally in the early to mid
24 20th century along the shores of Gregg Lake due

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1 to its scenic and recreational qualities.

2 Introduction of industrial turbines within its
3 viewshed alters this historic characteristic
4 and was therefore found to have an adverse
5 effect under Section 106.

6 We also need to consider unreasonable
7 adverse effects on historic properties under
8 Section 301.14, Subsection (b). The process to
9 consider the treatment of adverse effects under
10 the Section 106 process as applied by the NHDHR
11 is a consultative process. The NHDHR does not
12 issue or deny permits, rather it consults with
13 the lead federal agency, the applicant and
14 consulting parties to the Section 106 process.
15 This consulting party status is similar to but
16 not identical to that of intervenors in the SEC
17 process. The objective is, in order of
18 preference, to avoid, minimize or mitigate the
19 adverse effect. Negotiations for mitigation in
20 the Section 106 process represent that which
21 was mutually attainable among the parties and
22 not necessarily the optimal resolution from any
23 one of the parties' perspective of the DHR.

24 So, it is -- the end result was a

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1 Memorandum of Understanding developed between
2 the NHDHR and the Applicant. That Memorandum
3 of Understanding proposed that a kiosk could be
4 built, placed at the White Birch Point
5 Association's facility on the lake, described
6 how it might be done. And, if that proposal
7 were not acceptable to White Birch Point
8 Association, an alternative might be developed
9 of a website, and there was various criteria
10 there. And, then, a final, if neither those
11 worked, there would be a consultation process
12 between the Applicant and the New Hampshire
13 Division of Historical Resources to come up
14 with some other acceptable mitigation.

15 This is a melding of the federal
16 process and the SEC process. It becomes a
17 matter of delicate wording to associate it all.
18 The key here is to understand that the New
19 Hampshire Division of Historical Resources does
20 not issue or deny permits. But we are required
21 to be part of a consultative process with the
22 lead federal agency and other parties. The SEC
23 rules have absorbed that approach into its
24 rules. And, so, it is a unique kind of

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1 adaptation to the process.

2 And, with that, I would like to end
3 my part of the presentation and open it up for
4 discussion here.

5 PRESIDING OFCR. SCOTT: Thank you.
6 Does anybody have questions or comments? I
7 could start, if anybody -- unless somebody else
8 wants to?

9 *[No verbal response.]*

10 PRESIDING OFCR. SCOTT: Dr. Boisvert,
11 I'm interested in the, I'll call it, for want
12 of a better word, the mitigation for White
13 Birch Historical Society.

14 DR. BOISVERT: Uh-huh.

15 PRESIDING OFCR. SCOTT: One thing, if
16 I remember, was raised, to the extent that
17 there was either some kind of signage developed
18 or even a website, there was an implication
19 that that may not be enough. And I think we
20 saw, I can't remember the context, an exhibit
21 of some signs that were dilapidated and allowed
22 to deteriorate. So, to the extent that that
23 were to happen, as far as meaning a sign or
24 even a website be developed, I think I'm

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1 interested in some kind of condition that the
2 Applicant would be required to maintain the
3 condition of the sign or, to the extent there's
4 a website, to maintain that, you know, for a
5 website, for instance, to the extent that DHR
6 viewed that as an acceptable mitigation,
7 obviously, servers require upkeep, you know,
8 that there's ongoing maintenance to make it
9 viable and work, whether it's software upgrades
10 or whatever.

11 So, I'm just curious if you had any
12 thoughts on that?

13 DR. BOISVERT: I agree that the
14 impact of the turbines will be ongoing. So
15 long as the turbines are present, there would
16 be that adverse effect. And it is only logical
17 that the mitigation have the same tenure as the
18 impact. Depending upon how we decide
19 mitigation ought to be structured, I think that
20 needs to be incorporated into the mitigation
21 package. I think that's perfectly reasonable.
22 So, I entirely agree.

23 There is another aspect, and -- well,
24 let me hear from the rest of the Committee

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1 before I work weigh in with my own
2 observations.

3 PRESIDING OFCR. SCOTT: Anybody else?

4 *[No verbal response.]*

5 PRESIDING OFCR. SCOTT: How about on
6 the -- again, basically, I'm proposing a
7 condition. Is there any other comments on --
8 does that type of condition make sense? Is it
9 enforceable, Ms. Monroe? Is there something we
10 should be looking at on that end?

11 Ms. Weathersby.

12 MS. WEATHERSBY: I would just want to
13 make sure that that third alternative is still
14 viable. That I think it was a sign, if they
15 don't want a sign, maybe a website. If they
16 don't want a website, let's work something else
17 out.

18 So, I think that then the suggestion
19 by DHR, you know, be the condition with an
20 ongoing maintenance requirement for whatever is
21 ultimately selected.

22 DR. BOISVERT: And I'd like to point
23 out that the Memorandum of Understanding is
24 Applicant's Exhibit 26, if you want to look at

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1 it for the details. I hesitated to read it all
2 into the record. It's not terribly long, but
3 it would be a fairly lengthy recitation. I can
4 read it into the record, if you'd like?

5 PRESIDING OFCR. SCOTT: I don't think
6 you need to, unless the Committee needs to
7 refresh themselves. It is part of the record,
8 as you said.

9 DR. BOISVERT: Right.

10 PRESIDING OFCR. SCOTT: And I think,
11 Ms. Weathersby, you've alluded to another,
12 maybe it needs to be a condition, unless we
13 just accept the MOU, is we would delegate, in
14 this realm, we would delegate to DHR this third
15 alternative, right? So, if there's not an
16 agreement, we don't expect it, presuming,
17 again, we issue a certificate, we don't expect
18 it to come back to the SEC to reconvene. I
19 think that would be something within, you know,
20 at least I would suggest we would delegate our
21 authority to DHR to negotiate and/or approve.

22 What does DHR think of that?

23 DR. BOISVERT: I think that would be
24 appropriate. Those kinds of stipulations have

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1 been incorporated in the past, and we
2 particularly deal with these with easements,
3 where we have a longstanding relationship to
4 review on a regular basis effects on a property
5 and so forth. So, this is not unprecedented
6 for the Division.

7 One thing that I would like to
8 mention is that the Memorandum of Understanding
9 was developed without consultation of the White
10 Birch Point Association. And, just so that you
11 know, I have been kept separate from any
12 negotiations and discussions of Cultural
13 Resources throughout this entire process
14 regarding Antrim Wind. I feel that it would be
15 appropriate, up to the point of essential, to
16 at least request their input on anything that
17 would be either placed on their property or
18 even discussing the White Birch Association.
19 Not to say that they have a veto power, but
20 it's important to have that community engaged
21 in the development of a mitigation. They may
22 elect not to participate, and that's certainly
23 their right. But I think that there needs to
24 be an affirmative step to engage the White

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1 Birch Point Association.

2 I think that using a website by
3 itself, or even in combination with a kiosk,
4 has a very distinct appeal. Let us use 21st
5 century technology, frankly, 20th century
6 technology, to try to address the mitigation.
7 This is going to go forward for at least 20,
8 and quite likely many more years than that, as
9 a project, the turbines will be up, and
10 certainly their hope that it would be used for
11 longer. Let us not limit ourselves to
12 something that might have been useful,
13 acceptable, and standard practice many years
14 ago. Maybe using them in tandem, where you
15 have the equivalent of a QR code added to the
16 exhibit, the kiosk, so that someone could
17 simply take that and then follow it up. I can
18 see that being an advantage for people who are
19 handicapped, who can't easily get out of the
20 car or whatever, or were just interested in
21 general, they can access the information
22 without having to go to the location.

23 I think that we need to be looking
24 forward for these kinds of mitigations as we go

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1 through this process. And, not just for
2 historic preservation, but take into account
3 the length of time and how we can address how
4 these mitigation measures can be most usefully
5 applied over the long stretch of time.

6 So, I would say that this Memorandum
7 of Understanding as a condition would be
8 appropriate. I would think that we would -- I
9 would suggest that we add consultation with
10 White Birch Point Association as part of the
11 development of the mitigation solution. And,
12 if they elect not to participate, fine. That
13 would not prohibit -- should not prohibit
14 moving forward with the mitigation, because
15 mitigation is for the whole public, not just
16 for the association itself. We're looking at
17 the entire community, broadly defined as having
18 an interest in this historic place. And, forty
19 years from now, the people in the White Birch
20 Association are apt to be quite different
21 people, that people come and go.

22 So, I would say that we should make
23 this as a condition, and in consultation with
24 the White Birch Association, and try to develop

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1 a mitigation plan that is sensitive to the
2 depth of time.

3 PRESIDING OFCR. SCOTT: Any
4 discussion?

5 MR. CLIFFORD: I have a question.
6 How did -- was this particular area noticed in
7 the first application? Or it was only
8 discovered in this Application, is that
9 correct?

10 DR. BOISVERT: The first application
11 was in the process of identifying all the
12 properties. It is common with projects of this
13 sort that a programmatic agreement would be
14 developed so that identification and evaluation
15 of the resources can go forward even before the
16 final decision is made. This is because it can
17 take quite a long time, for instance, with
18 archeological sites, to carry out a mitigation
19 program. As you can imagine, investigation and
20 excavation of an archaeological site is usually
21 a fairly complicated process. And, so, the
22 identification of all the properties is not
23 necessarily going to be completed by the time
24 the hearings are held. It can be, in some

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1 projects, a very lengthy process.

2 This is a smaller footprint, a
3 smaller project, and they were closer, but it
4 was not completed. This was identified in the
5 interim between the hearings for the first
6 Antrim Wind docket and this one. And it's
7 simply part of that larger process.

8 MR. CLIFFORD: Thank you. And I
9 would tend to agree, to the extent there's an
10 association, if there is any kind of condition
11 put, that the people that live there should
12 ultimately have the say. And we shouldn't
13 impose any condition, if we were to require
14 one, on people who may not like -- may not want
15 anything on their -- in their association.

16 DR. BOISVERT: Right. And the
17 addition of something physical to their
18 property is certainly a consideration. But,
19 also, the discussion of their property done in
20 an official fashion is also something we should
21 seek their input. At the same time, I would
22 not say that they would have necessarily a veto
23 for something like that of content in a
24 website, there is the broader issue. But, when

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1 you get down to physical property, I think that
2 is on a separate ledger.

3 PRESIDING OFCR. SCOTT: Attorney
4 Weathersby.

5 MS. WEATHERSBY: Sure. So, I'm
6 having trouble distinguishing, separating
7 aesthetics from historic resources. Because
8 we've heard lots of complaints and we've seen
9 the visual simulations about the views and how
10 they're -- views of the -- how the views of the
11 residents of the White Birch Point area are
12 affected.

13 But is it fair to say, for the
14 purposes of this analysis, we're really more
15 taking -- not to consider the views -- the view
16 impact on the homeowners, but the effect of the
17 views of the Project on the historic resource
18 itself, and how it may affect its eligibility
19 for listing on the National Historic Register,
20 *etcetera*. And right now we're not really
21 considering the effect on the homeowners. And,
22 therefore, the mitigation of the website to
23 address the history piece may address the
24 historic component, even though it may not

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1 address the visual impact of the persons.

2 Is that a fair statement?

3 PRESIDING OFCR. SCOTT: You're
4 looking at me, that's my understanding. But I
5 think that's one of the reasons why
6 Dr. Boisvert asked to have this issue raised
7 before the aesthetics.

8 DR. BOISVERT: We have to understand
9 that, in considering the adverse effects, and
10 I'm speaking in the federal realm, it is for
11 those properties where a setting, landscape,
12 and a feeling are integral to the
13 identification of that property as being
14 historic.

15 Let me take the example of a 4,000
16 year old archeological site, where people were
17 carefully manufacturing their tools. And we
18 see evidence that this is a very important
19 process, and something that is important to the
20 understanding of that time period. That
21 particular archeological site might be within
22 200 feet of a turbine. But the characteristics
23 that make that property important are not
24 damaged in any way by the presence of the

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1 turbine, so long as the turbine doesn't cause
2 there to be disturbing events.

3 If a particular structure is
4 significant for its architecture, that this is
5 a absolutely pristine example of a craftsman
6 style bungalow, and it's sitting within a
7 quarter mile of the turbine, that architecture
8 is not damaged by the presence of a turbine.

9 But let us take an extreme example of
10 a property such as Canterbury Shaker Village.
11 Where the setting, the landscape, the feeling
12 is integral to the history of the Shakers. And
13 placing a large turbine right on the edge of
14 that, looming over the property, would be
15 considered to be an adverse affect, because it
16 would affect the setting and the landscape.
17 And it's that kind of parsing of the criteria
18 that makes the property significant that then
19 triggers into that part of the determination of
20 adverse effect. And, in fact, the Division of
21 Historical Resources has a matrix that lays out
22 all the criteria. And we go through -- or
23 not -- the architectural historians will go
24 through and determine whether or not there is

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1 adverse effect.

2 So, it is a subset of the aesthetics.
3 And there are portions of it that would clearly
4 come in under the same kinds of concerns with
5 the aesthetics. But there are going to be some
6 aspects that are not under that, and they
7 overlap. And this is one of the reasons why I
8 thought it might be useful to address historic
9 sites first, so that they get a clear
10 interpretation, hopefully as clear as I can
11 make it, it's difficult.

12 And I don't know if I've answered
13 your question. But it is also the impact on
14 the property, not on the owner of the property.
15 This is another aspect that needs to be
16 understood. We're looking at these properties
17 as the properties. The ownership will change
18 over time, usually. Sometimes they're owned in
19 the public domain, and the ownership may not
20 change for 200 years. But, with privately
21 owned properties, it's quite common that they
22 change over time. So, we're looking at the
23 effect on the characteristics that make that
24 property historic. And "historic" here means

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1 that whatever makes it eligible for listing on
2 the National Register.

3 MR. CLIFFORD: So, just so I'm clear,
4 this particular area does meet that criteria?

5 DR. BOISVERT: Yes, it does.

6 MR. CLIFFORD: So, we have to
7 consider it as such and how it would be
8 affected.

9 PRESIDING OFCR. SCOTT: Director
10 Forbes.

11 DIR. FORBES: And along those lines,
12 I'm curious how you would characterize the
13 impact to the White Birch properties' character
14 from the other development around Gregg Lake?

15 DR. BOISVERT: Which development?

16 DIR. FORBES: Well, just the
17 residential use that surrounds the lake, the
18 boating, the activities. The characteristic of
19 that historic site has been impacted by other
20 things. And, certainly, if we're considering
21 the reasonableness of an impact, I think it's
22 important to note that this isn't the first
23 invasion of that, that, you know, environment,
24 if you will, or that aesthetic.

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1 DR. BOISVERT: Uh-huh.

2 DIR. FORBES: And, so, I just was
3 curious your thoughts on that.

4 DR. BOISVERT: Yes. This is getting
5 on the outer boundaries of my own personnel
6 expertise. But, to answer your question, on
7 Gregg Lake, there are other developments. But
8 many of them are of the same time period and
9 same nature as the properties within the White
10 Birch Point District. They were not
11 necessarily included in the district, maybe
12 because of physical location, maybe because
13 their time period of construction may have been
14 somewhat later and did not fit into White Birch
15 Association. There is also the aspect that the
16 White Birch Association was a -- sort of a
17 self-defined, voluntary group that pulled
18 together, and it is its own entity. But other
19 entities are out there, they're not necessarily
20 competing, but they may be, if you will,
21 compatible.

22 What about other utility
23 construction? That's a good question. They
24 would need to be evaluated, if there was a

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1 federal undertaking to look at that. And they
2 might indeed come forth with mitigation
3 measures, if there were to be some federally
4 associated construction. I say "federally
5 associated", federal funds, license or permits,
6 that's part of the trigger for a Section 106
7 process. They would be considered. And there
8 would be a similar process to identify the
9 resource, the effects, and propose a
10 mitigation, if necessary.

11 The aspect here is that that would
12 require some federal involvement. And that's
13 what our Division looks at. And we have --
14 that is our mission, and we try not to go well
15 beyond it, unless someone invites us give them
16 technical assistance. And we can certainly say
17 "This would be a good way to treat this
18 property" and so forth.

19 In short, we look at what is on the
20 table in front of us now, given the physical
21 environment, social environment, and legal
22 environment. And, as those change, then there
23 are adjustments to it, in the physical, social,
24 and legal aspects.

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1 PRESIDING OFCR. SCOTT: Mr. Clifford.

2 MR. CLIFFORD: And just so I'm clear,
3 if I actually -- if I'm a homeowner in White
4 Birch Point, there are no restrictions on what
5 I can do with my property, is that right?

6 DR. BOISVERT: Yes.

7 MR. CLIFFORD: So, if I want to tear
8 my house down, I can or I can't?

9 DR. BOISVERT: Absolutely. And this
10 is a common misconception that listing on the
11 National Register of Historic Places, or even
12 being eligible for listing, imposes limitations
13 on the property owner, and this is untrue. It
14 imposes limitations on federal agencies to
15 adversely affect the property. So, people
16 often pull out "Well, if I wanted to paint my
17 house purple, you know, you can't stop me."
18 You're absolutely right.

19 MR. CLIFFORD: Right.

20 DR. BOISVERT: And there have been
21 those kinds of events. There are no
22 restrictions.

23 You may have heard erroneous
24 descriptions that involved local historic

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1 districts, which, under their municipalities,
2 do have the authority to say what kind of
3 windows you have, how your property will look
4 and be used. Can you put certain additions on
5 your property? Those are local restrictions
6 created in that municipality, or whatever
7 governmental agency. Those are not the
8 National Register.

9 The National Register does not impose
10 any limitations on the property owner. And
11 there have been a large number of cases where
12 individuals have removed the property, on their
13 own, on their own dime, and that is perfectly
14 legal. It's a misconception in many cases, but
15 that authority does not exist.

16 MR. CLIFFORD: Thank you. Because I
17 was just familiar with those regulations, for
18 example, in Charleston, in Georgetown, and in
19 certain -- Alexandria (VA), certain districts
20 where there's local control on what you can do,
21 but there's not overriding federal.

22 DR. BOISVERT: Right.

23 MR. CLIFFORD: And I just want to
24 make sure there wasn't anything specific here.

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1 DR. BOISVERT: Right. Right. And
2 I'm pleased that you asked the question, so I
3 would have an opportunity to try to put that
4 explanation out there.

5 The confusion often arises in that
6 some localities will use the National Register
7 listing as a yardstick for whether or not they
8 want to consider the property historic in their
9 own regulations. And that, I think, may be the
10 cause of some confusion. But the short answer
11 is "no".

12 MR. CLIFFORD: Okay. Thank you.

13 PRESIDING OFCR. SCOTT: So, getting
14 back to our rules, we're required to determine
15 whether there will be an unreasonable adverse
16 effect on historical sites. And I guess I'll
17 ask for discussion purposes, Dr. Boisvert, my
18 read of that would be DHR and the applicable
19 federal agencies, have effectively, with the
20 caveat of mitigation measures for White Birch
21 Association has said they're okay with that.
22 Which would imply to me that those are the
23 agencies with the expertise in this, and
24 they're comfortable with this.

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1 Is that a fair assessment?

2 DR. BOISVERT: Yes, it is.

3 PRESIDING OFCR. SCOTT: Okay. And,
4 as far as, you know, the 301.14(b)(5) says we
5 also have to look at "The effectiveness of the
6 measures proposed...to avoid, minimize, and
7 mitigate unreasonable adverse effects".

8 So, am I also correct in that,
9 because DHR was basically suggesting these
10 mitigation measures, that that's obviously
11 acceptable, in their eyes? Those are
12 acceptable mitigation measures?

13 DR. BOISVERT: They negotiated that
14 with the Applicant. And it was what they
15 mutually agreed upon. You could surmise that,
16 if it were a decision made solely by the
17 Division of Historical Resources, it might have
18 been different. If it was devised solely by
19 the Applicant, it might have been different.
20 This represents the agreement that was
21 negotiated and mutually acceptable.

22 And, so, it's -- and, again,
23 fundamentally, the answer to your question is
24 "yes". But, also, as I mentioned, the decision

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1 about this is left up to the Committee. As a
2 Committee member, I would suggest that inviting
3 the White Birch Association to participate in
4 this, which didn't happen in the first
5 go-around, would be, I think, an important
6 addition to the condition, and let it proceed
7 from there.

8 PRESIDING OFCR. SCOTT: Any other
9 discussion?

10 MS. WEATHERSBY: I'm just going to
11 back up a little bit, so I fully understand the
12 process. There were a number of historic sites
13 identified within the area. The only one that
14 triggered an adverse effect was White Birch
15 Point, correct?

16 DR. BOISVERT: Yes.

17 MS. WEATHERSBY: And the federal
18 decision was that there was no adverse effect,
19 but the State felt there was an adverse effect.
20 Is that correct?

21 DR. BOISVERT: Yes. And this goes to
22 a very longstanding dispute between the Army
23 Corps of Engineers and the Advisory Council on
24 Historic Preservation and the State Historic

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1 Preservation Officers. The Advisory Council is
2 a federal level agency that basically is a
3 court of appeal, might be one way to look at
4 it, regarding historic preservation issues.
5 It's an independent agency appointed by the
6 President. And it reviews decisions that are
7 made at the state level, where the federal
8 agency help set policy.

9 The Army Corps of Engineers many
10 years ago developed their criteria for what
11 would be determined as the area of potential
12 effect, in other words, what will be affected
13 by a given project. Their interpretation is
14 vastly more narrow than that developed by the
15 State Historic Preservation Officers and the
16 Advisory Council on Historic Preservation. As
17 a consequence, there are situations where the
18 State historic Preservation Officers, there is
19 an adverse affect, because this is an area of
20 potential effect, the impact. Army Corps of
21 Engineers says "No, it's not." And this has
22 been a long-running dispute. It is often
23 resolved on a case-by-case basis. And it is,
24 frankly, sometimes determined as to what Army

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1 Corps district that you're in. So, that is why
2 the Army Corps of Engineers is not involved in
3 this particular mitigation development or
4 negotiations for the mitigation.

5 The Applicant decided that they would
6 cooperate and try to mitigate the adverse
7 effect as the State Historic Preservation
8 Office saw it. I think that's positive. And
9 it was the discussions -- consultation, excuse
10 me, from that. So, it followed the process as
11 defined in the federal regulations, absent the
12 presence of the Army Corps of Engineers at the
13 table for the development of this specific
14 mitigation proposal.

15 MS. WEATHERSBY: Okay. Thank you for
16 that. So, it sounds like there was a pool of
17 identified historic sites. The only one that
18 was found to have a possible adverse effect was
19 White Birch Point.

20 *[Dr. Boisvert nodding in the*
21 *affirmative.]*

22 MS. WEATHERSBY: Federal and State
23 disagreed on whether there was an adverse
24 effect. The State believes there was. But

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1 they have worked through a mitigation package
2 with the Applicant, which we're going to put a
3 condition on, that will satisfy the State, and
4 minimize or at least mitigate what they found
5 to be an adverse impact on the site.

6 DR. BOISVERT: Correct, except for
7 one -- except for one small point. The Army
8 Corps of Engineers did not conclude that there
9 was no adverse effect on White Birch Point.
10 Army Corps of Engineers said "we are" -- that
11 they were not going to consider looking at it
12 at all. That they would not include it in the
13 areas that they felt were associated with the
14 permit that the Army Corps was going to issue.

15 And, so, it wasn't that they said
16 "there was no adverse effect"; they said "not
17 our concern".

18 PRESIDING OFCR. SCOTT: Any other
19 discussion?

20 *[No verbal response.]*

21 PRESIDING OFCR. SCOTT: Are we
22 comfortable with a straw vote at this point?

23 I think we've -- if somebody can
24 correct me if I'm wrong, I think we've agreed

[DELIBERATIONS]

1 that there will be, to the extent we, again,
2 issue a Certificate, there would be conditions.
3 And let me start with that. Is the
4 Administrator, you already have notes on that,
5 so you're fairly comfortable?

6 ADMINISTRATOR MONROE: I was going to
7 ask.

8 PRESIDING OFCR. SCOTT: Okay. So,
9 why don't we clarify that before we vote.

10 So, my understanding is that we would
11 have a condition that would require, whether it
12 be signage on-site or a website or a third
13 yet-to-be-decided mitigation measure, that the
14 Applicant should be required to maintain that.
15 For instance, if it was a sign, it would have
16 to be maintained in good condition and legible,
17 that type of thing.

18 DR. BOISVERT: Uh-huh.

19 PRESIDING OFCR. SCOTT: The website
20 would still have to be active during the life
21 of the Project, as an example. And am I
22 also -- at least in my notes, we also discussed
23 delegating authority to DHR for authority to
24 develop this third potential outcome, should

[DELIBERATIONS]

1 the White Birch Association not agree to either
2 the sign or the website. And my
3 understanding -- my recollection also is
4 Dr. Boisvert, I agree, suggested that all this
5 should be done in consultation with the White
6 Birch Historical Association, to the extent
7 they wish to participate.

8 DR. BOISVERT: White Birch Point
9 Association, yes. They're not an historical
10 association. There is an historical society in
11 Antrim, but it's separate from White Birch
12 Point. And I want to make that clear. Yes.

13 And my comment that there is
14 improving technology and methods for such
15 things as kiosks and so forth, that there are
16 reasonable methods today that allow for much
17 longer lasting kiosks than what might have been
18 put up 20 years ago, 40 years ago. And there
19 are -- you know, they're not unreasonable, in
20 terms of costs and so forth. And I think that,
21 obviously, all parties would want to take
22 advantage of improvements in technology and
23 design.

24 PRESIDING OFCR. SCOTT: So, help me

[DELIBERATIONS]

1 out --

2 DR. BOISVERT: So, yes. It would
3 need to be maintained. I'm just saying that it
4 will probably be easier to construct one that
5 will need less maintenance over time, just
6 because we've improved our technology.

7 PRESIDING OFCR. SCOTT: So, you're
8 not suggesting yet another condition?

9 DR. BOISVERT: No, no, no. No. I'm
10 saying that all parties, I believe, would be
11 very interested in having a construction that
12 was going to last a long time and look good.
13 There's no incentive not to do that.

14 ADMINISTRATOR MONROE: Can I just ask
15 a point of clarification?

16 PRESIDING OFCR. SCOTT: Please.

17 ADMINISTRATOR MONROE: Perhaps
18 Attorney Iacopino could help out here. So,
19 there's a Memorandum of Understanding between
20 DHR and Antrim Wind that sets out all of this.
21 Couldn't we just have that as an addendum?
22 Because it covers the website, it covers --
23 what it doesn't cover, I guess, is consultation
24 with the White Birch Association.

[DELIBERATIONS]

1 MR. IACOPINO: That's how I would
2 answer your response.

3 ADMINISTRATOR MONROE: Okay.

4 MR. IACOPINO: I think you've
5 answered it. Is that there is the MOU, you
6 could make that a part of your Certificate or a
7 condition of the Certificate. However, what
8 the Committee is now discussing has this
9 additional component of involving the White
10 Birch Association in there, if the White Birch
11 Association chooses to be involved.

12 ADMINISTRATOR MONROE: Okay.

13 PRESIDING OFCR. SCOTT: And I would
14 add, maybe it's inherent in adding the MOU to
15 the Certificate, but I would want to be -- my
16 intention would be the Committee would delegate
17 to DHR an acceptable negotiation of a third
18 outcome.

19 DR. BOISVERT: And I'd like to point
20 out that standard language in memorandums of
21 understanding include amendments, and this has
22 it. "This MOU may be amended when such
23 amendment is agreed in writing by signatories."
24 There are only two. So, it's anticipated there

[DELIBERATIONS]

1 would be opportunity for additions or
2 amendments to the Memorandum of Understanding,
3 it's standard.

4 ADMINISTRATOR MONROE: Okay. It also
5 has a reporting requirement, I believe.

6 DR. BOISVERT: That could certainly
7 become an additional condition, yes.

8 ADMINISTRATOR MONROE: It's actually
9 in the MOU. There's a monitoring and reporting
10 condition at number (3).

11 DR. BOISVERT: I would have to reread
12 it again. Yes. There is monitoring and
13 reporting, yes. So, that's part of it.

14 PRESIDING OFCR. SCOTT: Any other
15 discussion on conditions for historical
16 resources?

17 *[No verbal response.]*

18 PRESIDING OFCR. SCOTT: Are we
19 comfortable for a straw vote that we would --
20 I'll pose it this way, that the -- that the
21 Applicant has met its burden to show that there
22 are no unreasonable adverse effects on
23 historical resources? Could we have a hand
24 vote for that of all who agree with that?

[DELIBERATIONS]

1 DR. BOISVERT: With the condition.

2 [Unanimous show of hands by
3 Subcommittee members.]

4 PRESIDING OFCR. SCOTT: Understood.
5 That was assuming the conditions --

6 DR. BOISVERT: Yes.

7 PRESIDING OFCR. SCOTT: -- were added
8 in also. So, the record could show that, for
9 the straw vote, we were unanimous. Okay.

10 So, now, the next question for the
11 Committee is going back to the order that is
12 found in the rules, we would arrive at -- I say
13 that, because we took a little bit out of order
14 historical resources on the "unreasonable
15 adverse effects" portion of the rules, that
16 would take us now to 301.14(a)(1) through (7),
17 which is "aesthetics", and RSA 162-H:16, IV(c).

18 So, I'll add the obvious, that I
19 think this is the largest issue of contention,
20 and certainly it was at the last docket that's
21 been discussed quite a bit also.

22 So, what I would -- my intention is
23 is Dr. Boisvert and myself have kind of divvied
24 this up. My guess is this won't flow as quite

[DELIBERATIONS]

1 as smoothly as, for instance, your
2 presentation, Attorney Weathersby. But my
3 intention, from my end, was to basically
4 outline a little bit of some of the
5 back-and-forth in the testimony, there's been a
6 huge amount of testimony, on both -- many of
7 the aspects, and then identify what I see are
8 some key issues of contention, and then reflect
9 back on the seven parts of that rule. And
10 rather informally, Dr. Boisvert and I have
11 agreed to kind of divide those seven parts up.

12 So, my question to the Committee is
13 it's almost ten of twelve.

14 ADMINISTRATOR MONROE: Excuse me.

15 PRESIDING OFCR. SCOTT: Whoops.

16 ADMINISTRATOR MONROE: I don't think
17 lunch is here yet, --

18 PRESIDING OFCR. SCOTT: Okay. In
19 which case, --

20 ADMINISTRATOR MONROE: -- if that
21 factors into your decision.

22 PRESIDING OFCR. SCOTT: Hold on. Off
23 the record please.

24 *[Brief off-the-record discussion*

[DELIBERATIONS]

1 *ensued.*]

2 PRESIDING OFCR. SCOTT: Okay. All
3 right. So, we can break now, lunch won't be
4 here for another ten minutes. Or we can
5 proceed with this, break in the middle of the
6 discussion. So, I don't know if anybody has
7 any strong feelings either way?

8 MR. CLIFFORD: I think it's good. It
9 would be rather disjointed if we started for
10 ten minutes on what you've described as one of
11 the largest components of this, so that we can
12 have some continuity. I think it's kind of
13 disingenuous to spend ten minutes on it, and
14 then try to come back. Unless you just want to
15 outline what we can do. But, I think, to have
16 a debate, I think we should probably table that
17 till the afternoon.

18 PRESIDING OFCR. SCOTT: Any other
19 thoughts?

20 DIR. FORBES: I would also mention
21 that the next one up, next issue up is air
22 quality. I think that will be a brief
23 discussion. If you'd like to jump ahead to
24 that, we could probably wrap that up before

[DELIBERATIONS]

1 lunch?

2 PRESIDING OFCR. SCOTT: That's a
3 great suggestion. Why don't we do that then.
4 We'll go to air quality. And that's for
5 obvious -- you'll surmise that I've asked
6 Director Forbes to address that issue, at least
7 lead us off in discussion on that.

8 And, again, I'll refer you to our
9 rules, Site 301.14(c), as well as RSA 162-H:16,
10 IV(c). Again, this is under -- on the general
11 topic of "Unreasonable Adverse Effects", the
12 subcategory of "Air Quality".

13 So, Director Forbes.

14 DIR. FORBES: Yes. Thank you. I was
15 going to go over the citations. But, since
16 you've mentioned them, I will go directly to
17 the Application.

18 The Applicant, on Page 81, has
19 addressed air quality. Pointing out that "Once
20 constructed, the Antrim Wind Energy Project
21 will produce no air emissions; and therefore it
22 will not have an adverse impact on local air
23 quality."

24 And they continue to or also point

[DELIBERATIONS]

1 out that the Project as a source of renewable
2 energy, it's clean, it "will reduce reliance on
3 fossil fuel generation plants", and thus we'll
4 see a reduction in emissions.

5 They cite some credible scientific
6 studies in their Application that basically
7 point to the reduction of emissions from
8 natural gas and other fossil fuel fired
9 generation facilities.

10 And, so, there really has not been
11 any major debate on this issue. There have
12 been some suggestions by some of the testimony
13 that the indirect production of wind turbines
14 would create some pollution, if you will, from
15 mining activities and others. But I think that
16 focusing -- I think this Project would focus on
17 the aspect of what these turbines would do at
18 this location.

19 And I think that the facility does
20 not have any air emissions. So, it would not
21 be a concern here.

22 So, I welcome any thoughts. But
23 that's all I could find on the record relative
24 to air.

[DELIBERATIONS]

1 PRESIDING OFCR. SCOTT: Any
2 discussion?

3 Attorney Clifford?

4 MR. CLIFFORD: No. I was just going
5 to suggest that maybe we can dispense with that
6 and bring it to a vote, because I didn't really
7 see any adverse effects on air quality.

8 And the point you raised just was too
9 speculative. It was like dropping a rock in a
10 pond and saying "it causes a tsunami". I
11 didn't get the reach that it caused more mining
12 activity.

13 So, I don't see any air quality
14 effects.

15 DIR. FORBES: Yes. The point that
16 was missing for me was any quantitative, you
17 know, information relative to those indirect
18 activities, what it might be in terms of a
19 quantity. Or, whether or not, if this Project
20 went forward or did not go forward, those
21 mining activities would be affected in any way.

22 So, I think it's appropriate to focus
23 just on the turbines in question.

24 PRESIDING OFCR. SCOTT: Director

[DELIBERATIONS]

1 Forbes, your introduction, in my view anyway,
2 seemed to address emissions, if you will, or
3 lack thereof, once the facility is up and
4 running.

5 Are there concerns regarding
6 construction and, you know, that type of thing
7 that we should address?

8 DIR. FORBES: Again, I don't believe
9 there are. I have not seen any or heard any
10 testimony regarding that. That would, again,
11 be quantitative. Certainly, there would be
12 emissions from vehicles that were at the site,
13 both for construction and long-term. But
14 those, I think, are relatively insignificant
15 and do not require permitting.

16 PRESIDING OFCR. SCOTT: And, to the
17 extent blasting is an issue, as far as air
18 quality, there's some, you know, and this is
19 going to be addressed in other parts, I think,
20 but that there's a DES component, and there's
21 also a blasting agreement with the Town.
22 Correct?

23 DIR. FORBES: Well, I think the most
24 significant thing relative to blasting, which

[DELIBERATIONS]

1 I'll get into when we talk on the water issue,
2 is relative to the Alteration of Terrain permit
3 conditions. Administrator Monroe mentioned
4 that there is a proposed condition to follow a
5 "best management practices" memorandum that's
6 on the DES website relative to blasting. And
7 it does provide the best management practices,
8 but not -- does not have -- raise any concerns
9 relative to air emissions.

10 PRESIDING OFCR. SCOTT: Thank you.

11 Anybody? Discussion?

12 MR. CLIFFORD: Well, I just wanted to
13 raise the blasting issues, I've actually seen
14 it in progress, both on 93 and other parts of
15 the state. And, in an earlier career, I
16 actually worked with a company that was
17 involved peripherally in that line of work.
18 And, generally speaking, I mean, with the
19 matting that's down, there really are no air
20 quality concerns raised specifically by
21 blasting, unless you're talking about, you
22 know, just blasting with no coverage, you know,
23 just open spaces. And I didn't get the sense
24 that that was the way this was going to

[DELIBERATIONS]

1 operate.

2 So, I would hesitate to even
3 speculate that there were going to be any air
4 quality effects, you know, with the blasting.
5 And I think it was maybe they're proposing like
6 5,000 cubic yards or something like that. And,
7 so, it was significant, but it wasn't so
8 significant that I would think it would cause
9 any unreasonable effects.

10 PRESIDING OFCR. SCOTT: I'll also
11 note, from my prior life, that for -- whether
12 it's a gravel pit or other construction
13 activities, there's not a requirement for a
14 permit from the Air Resources Division with
15 DES, but there are rule requirements to
16 mitigate dust plumes, that type of thing. So,
17 those are, in effect, independent. Not to say
18 we couldn't put them in our certificate, but
19 those are requirements for that type of
20 activity regardless of whether there's a
21 certificate issued or not.

22 Any further discussion?

23 *[No verbal response.]*

24 PRESIDING OFCR. SCOTT: Do we want to

[DELIBERATIONS]

1 do a straw vote to get a sense of the
2 Committee?

3 *[Multiple members nodding in the*
4 *affirmative.]*

5 PRESIDING OFCR. SCOTT: Okay. So,
6 the straw vote would be on whether there's an
7 unreasonable adverse effect regarding air
8 quality caused by this Project. And I would
9 move that there -- it sounds like, from
10 Director Forbes, the motion should be that we
11 agree there is none. So, I'd make that the
12 motion, I think, for our straw vote.

13 So, all in favor, if you could raise
14 your hand?

15 *[Unanimous show of hands by*
16 *Subcommittee members.]*

17 PRESIDING OFCR. SCOTT: Okay. Again,
18 for the record, that was unanimous as a straw
19 vote.

20 So, again, the sense of the
21 Committee, do we want to continue with Director
22 Forbes or do you want to break for lunch now?
23 You were doing Water Quality next, is that
24 correct?

[DELIBERATIONS]

1 DIR. FORBES: I think Water Quality
2 might take a little longer to discuss.

3 PRESIDING OFCR. SCOTT: Okay.

4 DIR. FORBES: So, I would suggest
5 breaking for lunch.

6 PRESIDING OFCR. SCOTT: All right.
7 So, in keeping with tradition, I would argue
8 for a 45 -- no longer than a 45-minute lunch.
9 And we'll be back. Thank you.

10 (Lunch recess taken at 12:00
11 p.m. and concludes the
12 **Deliberations Day 1 Morning**
13 **Session.** The Deliberations
14 continue under separate cover in
15 the transcript noted as
16 **Deliberations Day 1 Afternoon**
17 **Session ONLY.**)

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