

[DELIBERATIONS]

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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

December 9, 2016 - 9:00 a.m.
Public Utilities Commission
49 Donovan Street
Concord, New Hampshire

DELIBERATIONS

DAY 2
MORNING SESSION
ONLY

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

PRESENT FOR
SUBCOMMITTEE:

SITE EVALUATION COMMITTEE:

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

Also Present for the SEC:

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

COURT REPORTER: Cynthia Foster, LCR No. 014

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1 PRESIDING OFFICER SCOTT: Good morning,
2 everybody. This is Day 15 of our meetings, but
3 this is Day 2 of our deliberations. If memory
4 serves, when we left off we had just finished
5 with a straw vote, and, again, these are
6 nonbinding. So for the Committee members, this
7 is just, those votes are to get a sense of where
8 we are. We'll do a binding vote at the very,
9 very end after we've gone through everything.

10 So, and, again, I'll remind people, the
11 Committee members, to the extent you want to
12 discuss conditions, I've asked Attorney Monroe
13 to kind of be keeper of the "parking lot" of
14 conditions, and we'll need to refine any
15 language. My intent is, assuming we get that
16 far, is at the end we kind of go through those
17 all again and make sure the language is
18 workable, make sure that it says what we want
19 and the intent is what we want, and, again, I'll
20 ask for feedback from Attorney Monroe on some of
21 the compliance, verification of that. We'll
22 follow up with her, her office, to make sure
23 it's workable on that end so with that -- hold
24 on a second.

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1 So Attorney Iacopino reminds me again since
2 we are reconvening, we do have a quorum of the
3 full Subcommittee with no absences. So where we
4 left off was coming back to our order. Director
5 Forbes was leading us or going to lead us, he
6 already walked us through the unreasonable
7 adverse effects side of air quality. The next
8 issue under that, next subtopic under that issue
9 is Water Quality so that includes the Wetlands,
10 DES Wetlands Permit, Section 401 Water Quality
11 Certificate, the Alteration of Terrain Permit
12 and the sewage disposal authorizations.

13 So with that, I will given the microphone
14 to Director Forbes.

15 MR. FORBES: Thank you. I'd like to start
16 by pointing to RSA 162-H:16,IV(c) which points
17 out that in order to issue a certificate, the
18 Committee shall find that the site and facility
19 would not have an unreasonable adverse effect on
20 water quality. And to that point, our rules
21 301.14(d) states that in determining whether a
22 proposed energy facility will have an
23 unreasonable adverse effect on water quality,
24 the Committee shall consider the determinations

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1 of the New Hampshire Department of Environmental
2 Services, the United States Army Corps of
3 Engineers and other state or federal agencies
4 having permitting or other regulatory authority.

5 So I thought I'd start off with the Final
6 Decision and Recommended Conditions that was
7 issued by the Department of Environmental
8 Services August 30th, 2016.

9 I should point out that while I serve as
10 the Water Division Director, I have not been
11 involved with the development of this Final
12 Decision on this matter. The Technical Review
13 and the Decision was managed by our Assistant
14 Director.

15 This Final Decision begins with focus on
16 the Alteration of Terrain Permit. The
17 recommendation from the Department of
18 Environmental Services is to approve with
19 conditions. There are 22 conditions listed.
20 They do point out that as part of the processing
21 of the Application, DES granted approval to
22 waiving specific requirements of Rule Env-Wq
23 1504.09(b)(2)b regarding site specific soil
24 mapping with the finding of granting a waiver

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1 would not have an adverse impact on the
2 environment, public health and public safety or
3 abutting properties, and that granting the
4 request is consistent with the intent and
5 purpose of the rule waived.

6 So the project, I won't go into the details
7 of what the project is. I think we've heard
8 enough of that, but I would like to point to a
9 few of the conditions that I think the Committee
10 should be aware of and consider.

11 The conditions that are recommended are
12 mostly standard conditions. There are some
13 specifics to this project, I think that are
14 sensitive to some of the issues we've heard in
15 testimony.

16 Permitting, it's recommended that the
17 Permittee be required to employ the service of
18 an environmental monitor. The Monitor should be
19 a certified professional in Erosion and Sediment
20 Control or Professional Engineer licensed in the
21 State of New Hampshire and should be employed to
22 inspect the site from the start of the
23 alteration of terrain activities until the
24 alteration of terrain activities are completed

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1 and the site is considered stable.

2 I think it's helpful to point to the
3 condition relating to blasting activities. For
4 those activities, the contractor should be
5 required to follow the best management practices
6 contained in the Attachment A of the DES
7 document "Rock Blasting and Water Quality
8 Measures That can be Taken to Protect Water
9 Quality and Mitigate Impacts."

10 I'd like to also inject some ideas or
11 concepts here that I think are worth
12 considering. There has been on other projects,
13 particularly Groton Wind, a concern for wells
14 that are in the proximity to blasting
15 activities. In this particular case, there are
16 no additional requirements that have been listed
17 by the Department for monitoring of individual
18 drinking water wells.

19 It has been the policy of the Department of
20 Environmental Services to consider projects that
21 have greater than five thousand cubic yards of
22 ledge removed, blasting activities, and in
23 addition to that, wells within 2000 feet as
24 situations where they would require a monitoring

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1 plan for wells, for individual water supply
2 wells.

3 That is not the case here. I think it's
4 worthy to point out because there are some
5 homes, I think, that are in that range of
6 distance from the activities, particularly down
7 at the entrance, not exactly sure if the
8 Committee has any different opinion than the
9 DES, but I think it is worth bringing that to
10 your attention.

11 There is some additional sampling required
12 through this project and turbidity sampling plan
13 to address erosion control measures and ensure
14 that they are not causing or contributing to
15 water quality violations.

16 There is a requirement for Spill
17 Prevention, Control and Countermeasures plan for
18 the activities. That's in accordance with
19 Federal regulations 40 CFR part 112, and that
20 plan I'll bring to your attention because it
21 requires that the plan include but not limited
22 to operating procedures to prevent oil spills,
23 control measures installed to prevent oil from
24 entering surface waters, countermeasures to

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1 contain cleanup and mitigate the effects of an
2 oil spill and facility inspections.

3 I bring this to your attention because
4 there have been concerns raised during the
5 testimony and later recommendations as well that
6 there be some monitoring in regard to potential
7 oil spills from equipment and such on the site.
8 I think it's an area where we probably need to
9 consider whether this requirement covers that or
10 not or if something else should be included.

11 There is also a recommended condition
12 regarding the use of herbicides. Again, the
13 testimony on this case from the Applicant
14 indicated that there would not be herbicide use.
15 However, this requirement requires minimization
16 of that use should they intend to use a
17 herbicide.

18 Similarly, there are requirements to
19 prevent water quality violations due to
20 discharges of concrete wash from construction,
21 to minimize deicing materials that contain
22 chloride and to minimize the use of fertilizers.

23 So those are the primary conditions I think
24 that are noteworthy on the Alteration of Terrain

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1 Permit.

2 I'll move on then to the Individual
3 Subsurface Disposal System. An Application for
4 an Individual Sewage Disposal System was
5 submitted to provide for capacity of 300 gallons
6 per day. That Application was reviewed by DES
7 Subsurface Bureau who recommended approval, with
8 the only condition being that the Applicant
9 construct the work in accordance with that
10 revised plan which was submitted on October
11 30th, 2015, and received by DES on November 1st,
12 2015.

13 Next, the Wetlands Bureau reviewed the
14 Applications regarding dredge and fill and
15 recommended approval with some 18 permit
16 conditions. These conditions, again, are fairly
17 standard and provide for compliance with the
18 Water Quality Certification issues that relate
19 to dredge and fill and the federal permit
20 actually is part of the federal authorization
21 under the Clean Water Act Section 404.

22 The proposed activity requires that the
23 work be done in compliance with that Section 404
24 of Clean Water Act permit, the general permit

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1 that had been issued by the Army Corps of
2 Engineers back in 2012. This is a general
3 permit relating to activities of this nature.

4 On February 24th the Core indicated that
5 the Section 404 general permit, Programmatic
6 General Permit, applies to this proposed
7 activity. Therefore, the Water Quality
8 Certification requirements that are known as
9 Section 401 Water Quality Certification issued
10 by the Department of Environmental Services,
11 those permit conditions or Section 401 Water
12 Quality Certification permit conditions apply to
13 the general permit issued by the federal
14 government and covers this project. Those
15 requirements allow for additional permit
16 conditions to be applied on a project by project
17 basis, and there were no additional requirements
18 added for this project. So in the view of the
19 Department of Environmental Services, they have
20 recommended approval for all water quality
21 related activities.

22 The Applicant addresses the impacts on
23 water quality in his Application beginning on
24 page 81, and I think consistent with the review

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1 of the Department of Environmental Services
2 these water quality impacts while certain to
3 occur relative to dredge and fill in the view of
4 the Department are not unduly adverse. So I
5 would open it to up questions and conversation,
6 if any.

7 PRESIDING OFFICER SCOTT: Anybody?
8 Commissioner Rose?

9 COMMISSIONER ROSE: Thank you. Just one
10 comment with regards to the condition that you
11 referenced on the well monitoring. I thought
12 that I had read somewhere in there that there
13 was that requirement to monitor wells up to 2000
14 feet of the blasting location, but if it's not
15 there, I certainly agree with your
16 recommendation that it should be a condition
17 that is placed within any certificate, if you
18 will, to such grant.

19 PRESIDING OFFICER SCOTT: Anybody else?

20 DIRECTOR FORBES: I would in reference to
21 that comment from Commissioner Rose point out
22 that the language that is often included I have
23 here in front of me if it is something that the
24 Committee would like to consider, and it points

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1 to the plan must include pre- and post-blast
2 water quality monitoring and be approved by New
3 Hampshire DES prior to initiating blasting. The
4 ground water sampling program must be
5 implemented once approved by the New Hampshire
6 DES. For any blasting activities, the plan must
7 at a minimum require the Best Management
8 Practices contained in Attachment A of the DES
9 document "Rock Blasting and Water Quality
10 Measures That can be Taken to Protect Water
11 Quality and Mitigate Effects. Ground water
12 monitoring of private wells must be performed
13 prior to and throughout the duration of and
14 following completion of blasting activities
15 pursuant to the ground water monitoring plan
16 prepared for the project.

17 PRESIDING OFFICER SCOTT: Could you clarify
18 for me, Director Forbes, what you were just
19 reading, is that in the AOT permit, the
20 Operation and Training Permit, or was that a
21 proposed condition?

22 DIRECTOR FORBES: That would be a proposed
23 condition, I think, if the Committee deems it
24 appropriate. I was reading from a condition

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1 that we have used on other similar projects.

2 PRESIDING OFFICER SCOTT: Thank you.

3 DIRECTOR FORBES: With large blasting
4 activities.

5 PRESIDING OFFICER SCOTT: Any suggestion on
6 that proposed condition? Any objection if we
7 put that in the parking lot? I see everybody,
8 I'll take from people's body language that we
9 agree to put that there.

10 Director Forbes, you mentioned oil spill
11 protection, and if I remember right, I think
12 Ms. Block mentioned in her, I think it was her
13 closing memorandum a concern regarding like a
14 third party monitor or something like that. Is
15 that, what's your thought on that? Does that
16 need a special condition?

17 DIRECTOR FORBES: I think it is covered
18 already. Again, I could read that condition in
19 the entirety for the Committee to consider.
20 Certainly the intent is there to require the
21 Applicant to be diligent in their housekeeping
22 and management of potential oil spills. I'm not
23 sure how further you might want to take it. If
24 that is the will of the Committee.

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1 Again, I'll read the entire recommendation
2 if you'd like. "The Applicant shall prepare and
3 submit a Spill Prevention, Control, and
4 Countermeasures plan for the activity in
5 accordance with federal regulations 40 CFR Part
6 112. The plan shall include a certification by
7 a professional engineer licensed in the State of
8 New Hampshire. The Applicant shall submit the
9 plan to New Hampshire DES Watershed Management
10 Bureau for review and approval at least 90 days
11 prior to the installation of the first turbine.
12 The SPCC plan shall include, but not be limited
13 to operating procedures to prevent oil spills,
14 control measures installed to prevent oil from
15 entering surface waters, countermeasures to
16 contain cleanup and mitigation effects of an oil
17 spill, and facility inspections. The Applicant
18 shall then implement the approved plan and
19 maintain records demonstrating compliance with
20 the plan. Such records shall be made available
21 to New Hampshire DES within 30 days of receiving
22 the written request by New Hampshire DES."

23 I don't know what you would add to that.

24 PRESIDING OFFICER SCOTT: So I guess my

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1 question would be, maybe we can clarify for the
2 record, so who monitors that for compliance? So
3 they file the plan, Department of Environmental
4 Services approves the plan?

5 DIRECTOR FORBES: There would be some
6 certainly flexibility in how the Applicant
7 provides for that, but it does specify that
8 there shall be inspections. Keep in mind that
9 there already is an environmental monitor on the
10 site required for the turbidity and other
11 potential water quality impacts. So it would be
12 a plan that would need to be submitted. I would
13 expect that most cases I see the same person
14 doing the type of environmental monitoring for
15 turbidity and erosion protection and that sort
16 of thing would also be charged with the
17 requirement to inspect and monitor for oil
18 spills.

19 So, again, this condition does not specify
20 how it is done. It does specify that
21 inspections are done, and it specifies
22 requirements for review and approval by the DES.

23 PRESIDING OFFICER SCOTT: So I read some of
24 Mrs. Berwick's concern to be there should be

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1 involvement from an independent agency, and I
2 would view that, obviously, Department of
3 Environmental Services, in view anyways, are
4 they tasked with the after-the-fact inspections,
5 spot checks, that type of thing? How does that
6 work?

7 DIRECTOR FORBES: The DES does conduct
8 routine inspections, regular inspections might
9 be an overstatement, but we do tend to go out on
10 sites, and we don't get them all, we're not
11 there every day, but we do inspect and oversee
12 large construction activities to make sure that
13 they're following the plans that are required,
14 and this would be inspected on this particular
15 project.

16 PRESIDING OFFICER SCOTT: Any other
17 comments? So before we move on, a little bit of
18 a non sequitur, but I think it is germane to all
19 these things, and in particular the discussion
20 we just had, one condition that I'm interested
21 in, assuming we issue a certificate, and, again,
22 the context here is with the new law, the new
23 rules, and now staffing of the Office of the
24 Administrator of SEC, which is something we've

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1 not had in the past, again, they're tasked with
2 compliance and ensuring compliance and actually
3 inspect these facilities for compliance.

4 So what I'm interested in more globally is
5 a condition, again, assuming the certificate is
6 issued by which we would require annual
7 certification and submission of a report to the
8 Administrator. So what I'm envisioning this as,
9 in fact, Attorney Monroe and I both have
10 experienced in our world, we have under federal
11 jurisdiction, we have Title V air permits, and
12 in that situation there's a certification done
13 on an annual basis by which a responsible party
14 at the facility would send in to the State
15 proactively, it's a requirement, but not the
16 State asking for it, but being required to
17 submit their compliance data. They certify,
18 here's our compliance status. If there's
19 exceptions or things that have changed, that's
20 required to be reported also. I think that
21 would be useful for giving both the Committee,
22 the Administrator and the public an assurance
23 that things are being proactively looked at, and
24 I would want to include in that kind of

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1 condition reporting on complaints received and
2 resolution to any of those.

3 So I don't know if the Committee had any
4 thoughts on that, but to me that would make
5 Attorney Monroe's life a little bit easier. We
6 would be requiring the Applicant to the project
7 to give her the information by which she can now
8 evaluate and prioritize her visits to different
9 sources and that type of thing. So any thoughts
10 on that?

11 DR. BOISVERT: I certainly would support
12 efforts to streamline the work on the part of
13 the Administrator. There's an awful lot to be
14 done and anything we can do to package it so
15 it's easier to execute, I would certainly
16 support.

17 PRESIDING OFFICER SCOTT: Any other
18 comments? So are we okay with putting that in
19 the parking lot also? We get head nods again.
20 So head nods are probably hard for the court
21 report, but I'll interpret.

22 Any other issues on Water Quality that the
23 Committee would like to discuss? Do we want a
24 straw vote? Do we feel comfortable that the

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1 Applicant has met their burden of proof that
2 there's no Unreasonable Adverse Effects from
3 Water Quality? I'm seeing a universal head nod
4 so that will be our straw vote.

5 Okay. So now again, trying to somewhat
6 follow the order of our Administrative Rules
7 Site 301.14, we're still under the broad topic
8 of Unreasonable Adverse Effects, and now we'll
9 go to the subtopic of Natural Environments that
10 includes wildlife species, rare plants, rare
11 natural communities and the like.

12 So given his day job, we thought
13 Commissioner Rose would be a good one to talk to
14 these issues.

15 COMMISSIONER ROSE: Sure. Happy to do so.
16 Bear with me just one moment as I transition to
17 my documents here.

18 Okay. Natural Environment. When
19 determining whether construction and operation
20 of the project will have an unreasonable adverse
21 effect on the natural environment, the
22 Subcommittee is required to consider the
23 project's effect on wildlife species, rare
24 plants, rare natural communities and other

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1 exemplary natural communities. Per our rules,
2 Site 301.14(e), the Subcommittee shall consider
3 the following:

4 1, the significance of the affected
5 resident and migratory fish and wildlife
6 species, rare plants, rare natural communities,
7 and other exemplary natural communities
8 including the size, prevalence, dispersal,
9 migration and viability of the populations in or
10 using the area;

11 2, the nature, extent and duration of the
12 potential effects on the affected resident and
13 migratory fish and wildlife species, rare
14 plants, rare natural communities, and other
15 exemplary natural communities;

16 3, the nature, extent and duration of the
17 potential fragmentation or other alteration of
18 terrestrial or aquatic significant habitat
19 resources or migratory corridors;

20 4, the analysis and recommendations, if
21 any, of the Department of Fish & Game, the
22 National Heritage Bureau, the United States Fish
23 & Wildlife Service, and other agencies authored
24 to identify and manage the significant wildlife

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1 species, rare plants, natural communities or
2 other exemplary natural communities;

3 5, the effectiveness of measures undertaken
4 or planned to avoid, minimize or mitigate
5 potential adverse effects of the affected
6 wildlife species, rare plants, rare natural
7 communities, and other exemplary natural
8 communities and to the extent which such
9 measures represent best practical measures;

10 6, the effectiveness of measures undertaken
11 or planned to avoid, minimize or mitigate
12 potential adverse effects of terrestrial or
13 aquatic significant habitat resources and the
14 extent to which such measures represent best
15 practical measures;

16 And, 7, whether conditions should be
17 included in the certificate for postconstruction
18 monitoring, the reporting and adaptive
19 management to address potential adverse effects
20 that cannot reliably be predicted at the time of
21 application.

22 The Applicant asserts that the project will
23 have no unreasonable adverse effects on the
24 natural environment and the region. The

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1 Applicant performed a natural community survey
2 in June of 2011, and 14 different natural
3 communities were identified.

4 The New Hampshire Natural Heritage Bureau
5 provided a letter in August of 2012 that they
6 determined that it is unlikely the proposed wind
7 facility will impact exemplary natural
8 communities.

9 In October of 2014, a field biologist
10 visited the site and determined that the
11 companies of the site remained unchanged. And,
12 again, the Natural Heritage Bureau stated that
13 it does not find it likely that it will impact
14 the natural communities that were found on the
15 property.

16 The Applicant conducted a survey for rare
17 plants in August of 2011 and determined that no
18 rare plants or species of concern are present at
19 the site.

20 And in an August 2012 letter, the New
21 Hampshire Natural Heritage Bureau confirmed that
22 it is unlikely that the proposed wind facility
23 will impact rare plant species.

24 The Natural Heritage Bureau found that it

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1 is unlikely that rare plants will be found on
2 that property, and that was again stated in a
3 letter as recently as June 2015.

4 The Applicant agreed to implement and filed
5 with the Subcommittee an invasive species
6 management plan. That plan contains invasive
7 species monitoring program and invasive species
8 control program.

9 According to the monitoring program, the
10 Applicant will retain a qualified botanist or
11 ecologist who will conduct field surveys of the
12 project area to determine whether invasive
13 species are present and will provide
14 recommendation concerning control options for
15 three years.

16 The results of the survey will be included
17 in annual monitoring reports that will be
18 provided to New Hampshire Fish & Game and New
19 Hampshire Department of Environmental Services.
20 The Applicant also agreed that based on the
21 results of this monitoring to schedule invasive
22 species control efforts annually.

23 The Applicant also conducted the following
24 wildlife surveys. They conducted several

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1 surveys to evaluate potential effects on the
2 natural environment as it relates to birds and
3 bats, wildlife, wildlife habitat, and plants in
4 natural communities.

5 The Applicant worked closely in
6 consultation with the U.S. Fish & Wildlife
7 Service, the New Hampshire Natural Heritage
8 Bureau and the New Hampshire Fish & Game
9 throughout the process and completed all the
10 studies that the state and federal agencies
11 requested.

12 The Applicant executed a Memorandum of
13 Understanding with the New Hampshire Fish &
14 Game, New Hampshire Audubon to address concerns
15 regarding the state endangered common nighthawk.
16 In addition to the testimony of Mr. Valteau, and
17 Mr. Gravel, the Applicant incorporated all the
18 conditions proposed by the SEC in the prior
19 docket as well as by the other agencies into
20 this Application as part of the mitigation
21 strategy for wildlife and the natural
22 environment.

23 The Bird and Bat Conservation Strategy
24 proposed for this project was well acknowledged

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1 by multiple participants during the proceeding,
2 and Mr. Gravel who has worked on many of the
3 wind projects in the region testified that the
4 proposed Bird and Bat Conservation Strategy is
5 the best plan out there today. One of the key
6 elements to that is that it did not predetermine
7 any particular recommendations ahead of time,
8 and that it will promote adaptive management
9 which will allow for any uncertainty and enables
10 the project to adjust operations in monitoring
11 based on what's actually found to be on site.

12 The Applicant also stated that the
13 conservation of approximately 908 acres of land
14 will have additional benefits to the birds, bats
15 and wildlife. The Bird and Bat Conservation
16 Strategy identifies methods and techniques for
17 conducting postconstruction bird and bat
18 mortality studies, an acoustic bat monitoring
19 study, a curtailment study, a wildlife
20 monitoring program, and immediately alert
21 procedures and a consultative process.

22 According to the Bird and Bat Conservation
23 Strategy, the postconstruction bird and bat
24 mortality monitoring efforts will be performed

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1 for three years and entered into an electronic
2 database, summarized and provided to the U.S.
3 Fish & Wildlife Service and New Hampshire Fish &
4 Game.

5 During the first year of the project's
6 operation, the Applicant will conduct a
7 curtailment study to determine its effectiveness
8 as a method of reducing impacts to the bats.
9 The study will include a higher cut-in study as
10 well as operational control limitations from
11 July 15th through September 30th during the
12 nighttime hours, approximately a half hour
13 before and after sunset and sunrise.

14 Other effects of the project associated
15 with fragmentation or as to the effects of the
16 project associated with fragmentation, the
17 Applicant asserts that such effects will be
18 minimized considering the limited footprint of
19 the project and that there is no known species
20 of particularly sensitive habitat fragment that
21 is sensitive to habitat fragmentation at that
22 site.

23 As to the concerns that we heard regarding
24 the glacial boulders, the Applicant did propose

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1 the condition for certification that I'm sure
2 we'll discuss. The Applicant proposed that they
3 shall use commercially reasonable efforts to
4 relocate any boulders located inside the limits
5 of disturbance for the construction of the
6 project rather than demolish them. So I'm sure
7 we'll talk more about that in a moment.

8 And then the Applicant concluded that the
9 construction and operation of the project will
10 not significantly alter the wildlife populations
11 within the region.

12 We did hear extensive testimony from many
13 of the Intervenors. Mr. Jones on behalf of the
14 Stoddard Conservation Commission argued that
15 construction and operation of the project will
16 have a profound impact on the interconnected
17 conservation lands and adjacent conservation
18 lands in Stoddard and will fragment important
19 high elevation habitats and splinter wildlife
20 corridors.

21 Mr. Jones also asserted that the
22 development of Tuttle Hill and the surrounding
23 lands will result in habitat loss that will make
24 it vulnerable to invasive plants and pests.

[DELIBERATIONS]

1 Mr. Jones, however, did acknowledge that the
2 Applicant's invasive species plan is as good as
3 it can be.

4 Mr. Jones also testified about his visit to
5 the site and his observations to the presence of
6 deer and bear, and Mr. Jones referenced that he
7 was surprised that there were not a request to
8 do additional studies on impacts to large
9 mammals, particularly based on his belief or
10 studies that he referenced in terms of
11 confirmation of bobcats being on site.

12 Ms. Foss on behalf of New Hampshire Audubon
13 referenced that the roads associated with
14 construction and the operation of the project
15 will fragment the landscape and will expose the
16 forest floor to opening up of increased light
17 and wind, potentially drying the soil and
18 changing habitat conditions for the forest
19 floor, and these conditions may reduce food
20 sources for birds and small mammals.

21 Ms. Foss further expressed concerns that
22 cut and fill slopes associated with road
23 construction will change the soil hydrology and
24 may impact small mammals', reptiles' and

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1 amphibians' ability to move across the
2 landscape.

3 Ms. Foss referenced that the project will
4 not impact large mammal wildlife and expressed
5 her concerns about the project will require
6 destruction of the substantial glacial boulder
7 piles which do provide denning areas for mammals
8 for winter.

9 Ms. Foss indicated that the Memorandum of
10 Understanding that was signed with the Applicant
11 eliminates the concerns of the Audubon regarding
12 the impact of the common nighthawk.

13 We also heard testimony from Mr. Block
14 expressing his concerns that the project will
15 cause destruction of the boulders and associated
16 habitat, and there were concerns expressed by
17 multiple Intervenors associated with the impacts
18 of blasting on the natural environment in
19 general and animal species specifically.

20 So, hopefully, that gives a little bit of a
21 recap and perhaps as a way to launch off into
22 further discussion about the impacts to the
23 natural environment, and perhaps if we were to
24 grant the certificate various conditions that

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1 the Committee might want to consider.

2 So I guess going back to the beginning
3 portion, and, again, looking at this as it
4 pertains to the requirements of our rules, I
5 think the first section that we should consider
6 is impacts to the wildlife. I think it's fairly
7 established, and please correct me if anybody
8 thinks differently with regards to the impacts
9 to the rare plants and the natural communities
10 and based on the letters that we have from the
11 New Hampshire Heritage Bureau, I feel as though
12 we're in a good spot in terms of recognizing
13 that it will not have adverse impacts to the
14 various plant communities and any exemplary
15 natural communities. Does anyone think
16 different?

17 MR. CLIFFORD: I'll just say I agree with
18 that. That's my recollection of the testimony
19 and the submissions. I think the concern was on
20 the revegetation portion of the Application of
21 the potential invasives, but my recollection was
22 that there was no harm to rare plants, rare
23 animals, that kind of thing as stated in the
24 Application and testimony.

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1 PRESIDING OFFICER SCOTT: Ms. Weathersby?

2 MS. WEATHERSBY: I guess I have a question,
3 and it might turn into a proposed condition.
4 The Applicant will be required to do a number of
5 studies, the bird and bat study, monitoring
6 programs, invasive species study, et cetera. Do
7 we know if those studies require the Applicant
8 to provide the results to the SEC, and if not, I
9 think that would be a good condition to impose.

10 PRESIDING OFFICER SCOTT: Thank you for
11 that. I was going to raise the same issues. To
12 again, globally there's different conditions
13 which will be they'll go into consultation with
14 Fish & Game, they'll report to Fish & Game. I'm
15 wondering more globally, first of all, I agree
16 with that sentiment. I would ask particularly,
17 again, not that she gets a vote here, but Ms.
18 Monroe is, notification of those triggers, we
19 started the consultation process or we've now
20 submitted a report, to be copied on those
21 things. Is that helpful to the Administrator
22 before we talk about is it helpful to us?

23 ADMINISTRATOR MONROE: Yes, and I think
24 also sending in the reports and the results of

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1 whatever those studies are I think is
2 appropriate.

3 PRESIDING OFFICER SCOTT: So maybe to amend
4 your suggestion, I'm thinking maybe a global
5 condition that effectively any required
6 correspondence with state or federal agencies
7 that the Administrator get copied on. Does that
8 work for you?

9 MS. WEATHERSBY: Yes, that would be a good
10 idea.

11 PRESIDING OFFICER SCOTT: Anybody else?
12 Does that overreach? My guess is a lot of these
13 would be copied most likely anyways but just
14 make it a requirement that -- Attorney Clifford?

15 MR. CLIFFORD: I would say that I don't
16 think we want "any correspondence." The
17 Administrator would be overwhelmed. I think we
18 want the final reports or documents submitted
19 pursuant to a state or federal regulatory body,
20 but I don't think we need all the back and forth
21 that's going to go on because that would, I
22 think, just inundate Ms. Monroe who is already
23 buried in paper.

24 ADMINISTRATOR MONROE: That's a good point.

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1 COMMISSIONER ROSE: I would tend to agree
2 with that. I mean, the reports are all going to
3 be reviewed over a three-year period of time
4 with the appropriate federal and state agency so
5 I feel very comfortable that they will be in a
6 position to work with the Applicant to make sure
7 that the adaptive management plan that they are
8 reviewing based on the results of those studies
9 are adequately addressed, the impact to the
10 natural environment and any of the species that
11 are being referenced or considered in that
12 particular study. I think if we're just copied
13 on what the final correspondence or report might
14 look like, I think that would be satisfactory to
15 meet the Committee's needs.

16 PRESIDING OFFICER SCOTT: Thank you. I
17 think I'm okay generally with that. My only
18 concern would be, and, again, my guess is we'll
19 get copied anyways even if we didn't ask for it,
20 but if there's a triggering event so something
21 that they don't have the final report yet, but
22 it triggers some action that they have to start
23 dealing with the federal and state agency, I
24 think I would want us to know about that

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1 generically, and my only concern if we limit it
2 just to final reports, are we going to preclude
3 the requirement to get to those type of things.
4 Does anybody have any thought on that or
5 Attorney Monroe?

6 ADMINISTRATOR MONROE: What we possibly
7 could do is put within "X" days of in the event
8 you decide to issue a certificate, that they
9 would provide some type of report of the status,
10 and then once the final report, you have some
11 kind of increments of reporting in there. That
12 may work.

13 PRESIDING OFFICER SCOTT: Dr. Boisvert?

14 DR. BOISVERT: The underlying premise of
15 these reports is that it will make known
16 information that might be of concern that there
17 are a spike in bat mortality or whatever.
18 Implicit is that something will happen after
19 that. Some steps will be taken. I appreciate
20 the limited resources that the Administrator
21 will have. Perhaps it might be useful to also
22 send notice of receipt of these reports to the
23 various individuals or organizations that as
24 Intervenors have expressed interest and concern

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1 about wildlife, whatever. Not that they receive
2 a copy of the report but they know that the
3 report has been received by the SEC, and because
4 it's a public document, they might look at it
5 and their efforts to look at it and provide some
6 feedback might be useful so it would not fall
7 exclusively upon the SEC to go through what
8 could be extensive and sophisticated reports to
9 note that there may be a problem that might need
10 addressing. I think that might be useful to
11 have some additional eyes available to look at
12 these reports and simply let the organizations,
13 Audubon, I'm just picking this out of the air,
14 might be notified that the reports have been
15 received, if they want to look at it, fine, if
16 they don't, fine, but they would at least know
17 it's there and available.

18 PRESIDING OFFICER SCOTT: In that proposal,
19 whose responsibility is it to notify?

20 DR. BOISVERT: Unfortunately, that would
21 have to go through the Administrator. I mean,
22 I'm trying to find a way such that the public
23 will know that the reports have been indeed
24 filed, and I'm well aware that sometimes there

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1 are delays in filing and so forth, and just to
2 know that they've, the report on the monitoring
3 for the birds and bats has been filed, and my
4 concept is an email that goes out to a list of
5 however many individual organizations that such
6 and such report has been received.

7 PRESIDING OFFICER SCOTT: I have two
8 concerns with that. One is I'm loathe to put
9 the burden of that on the Administrator. If
10 we're going to go down that road, I'd just as
11 soon put that on the Applicant.

12 DR. BOISVERT: Okay. That sounds fine.
13 And it does take some of the burden off of the
14 Administrator and they would simply notice those
15 individuals that they have submitted the report.
16 That sounds perfectly reasonable to me.

17 PRESIDING OFFICER SCOTT: How would,
18 assuming it was, assuming we did this and the
19 project was required to do that, my concern is
20 three years from now, I'll pick on Ms. Berwick
21 because she's in my viewsight right now, she
22 changes her internet service provider so her
23 email changes, whose responsibility is that?

24 DR. BOISVERT: It would certainly be the

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1 recipient's responsibility. Having indicated
2 they wanted to receive it, they need to take
3 responsibility for making sure they're able to
4 receive it. If they change their address, be it
5 U.S. Postal Service or internet, it would be
6 incumbent upon them to make that change known.
7 That seems reasonable responsibility put on
8 those people who say they want to see the
9 reports.

10 But I think going back to the underlying
11 motivation, reports are being submitted so that
12 the public will know that everything is going
13 properly and if there's a problem that's been
14 addressed. To leave it simply going into the
15 SEC alone creates a significant responsibility
16 to the SEC then to ferret out if there's indeed
17 a problem that has not been addressed. Let
18 those who say that they are concerned about this
19 also have a look at it. I think if it raised
20 the issue, they want to take on the
21 responsibility, let them have a look at it, and
22 they certainly have the right anyway, but let's
23 just facilitate the process by having the
24 Applicant as you suggest simply send out a

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1 notice that these reports have been completed
2 and filed.

3 PRESIDING OFFICER SCOTT: Ms. Weathersby?

4 MS. WEATHERSBY: I think this is going to
5 come up with all kinds of studies. We're going
6 to have followup noise reports, flicker reports,
7 all these wildlife reports. There's going be a
8 number of reports, and I think it becomes rather
9 unwieldy if the people who want to know about
10 the birds and bats are on one list and flicker
11 on another list, et cetera. So I just envision
12 that people who are interested in any of these
13 issues have certainly shown a lot of interest by
14 participating in this docket, and they will know
15 to go to the SEC. If all of these things are
16 filed with the SEC, I think that these folks
17 will continue to remain in touch with
18 Administrator Monroe and will look to the SEC as
19 sort of the clearing house for these documents,
20 and I personally don't find it necessary to have
21 separate contact lists for reports. I think
22 that sooner or later someone will get left off
23 and that will be a problem or it might be a
24 timely notice or I think if there's just sort of

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1 one location that everyone knows, hey, I can
2 check with her monthly to see if that study has
3 come in yet. I see that working better.

4 ADMINISTRATOR MONROE: I think what I could
5 definitely commit to is that in the event we
6 would require the Applicant to submit those
7 reports electronically and we can put them up on
8 the website, maybe in a -- the website needs
9 some work. It's one of the things on my list,
10 but certainly we could have an area once for
11 those facilities that have certificates to put
12 those reports up so they're readily available
13 for the public to review. That would not be a
14 difficult thing to do at all.

15 PRESIDING OFFICER SCOTT: Other thoughts?
16 Commissioner Rose.

17 COMMISSIONER ROSE: I tend to agree that if
18 we make the information available to the public,
19 I think that is what really is paramount, and
20 for those entities that have an interest for
21 them to know that they can access it in an
22 organized and succinct and clear location I
23 think is what most important, and I think if we
24 post that to the website, I think that should

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1 satisfy the need. I tend to be more of a pull
2 versus a push as it pertains to providing
3 information, but as long as it's made available
4 to the public, I think that's what's most
5 important here.

6 PRESIDING OFFICER SCOTT: Anybody else?
7 Director Forbes?

8 DIRECTOR FORBES: I would also agree with
9 that. I think it's the responsibility of each
10 interested party to find the information on our
11 site.

12 MR. CLIFFORD: I'll just echo Commissioner
13 Rose's concern. My biggest concern is imposing
14 additional regulatory burdens on both the
15 Applicant and the SEC, and to the extent to
16 these documents are required to be submitted,
17 they ought to be searchable or findable on
18 either the SEC or the individual agency's
19 website for someone who is interested in
20 following it, but as is Commissioner Rose, I'm
21 not inclined to then require the SEC
22 Administrator to push these things back out.
23 Just adds to the burden of the SEC.

24 PRESIDING OFFICER SCOTT: I concur, too,

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1 and to Attorney Monroe's comment maybe the
2 website isn't the best, whether the website is
3 the best or not, I would gather that pretty much
4 everybody in the audience here has reconciled to
5 be able to figure out how to find this project
6 on our website. I think through all the
7 duration of this the interested parties that we
8 have here certainly understand where to find
9 that.

10 ADMINISTRATOR MONROE: I'd be interested in
11 how many Google hits my name has received in the
12 last year.

13 COMMISSIONER ROSE: You're definitely
14 trending. But I do want to commend you on the
15 website. I think you and the team do a nice job
16 of getting the information up on the website in
17 a timely fashion and an organized fashion, and
18 I'm more than confident that you'll be able to
19 continue to do that so that those interested
20 parties that would like to see those studies
21 which, again, will be taking place over a
22 three-year period of time and implementing
23 adaptive management measures will be made
24 available to those parties.

[DELIBERATIONS]

1 PRESIDING OFFICER SCOTT: Dr. Boisvert,
2 sounds like you're not feeling the love right
3 now.

4 MS. WEATHERSBY: So to that, it sounds as
5 though we probably want to require the Applicant
6 to submit things electronically as well as a
7 paper copy? So that would be sort of a
8 requirement of all filings?

9 ADMINISTRATOR MONROE: Yes.

10 MS. WEATHERSBY: Would that be helpful?

11 ADMINISTRATOR MONROE: That is currently
12 the process that I ask, that everything be
13 submitted electronically, and I do maintain one
14 paper copy in the office.

15 PRESIDING OFFICER SCOTT: From my end, I'm
16 willing to amend my suggestion that reminding
17 myself, assuming we agree to a condition where
18 we have this annual certification and reporting
19 process for the project, I think I can, I am
20 suggesting that certainly not, I didn't mean all
21 correspondence, but I was suggesting that
22 triggering events, but I think reports is
23 probably sufficient. Unless you wanted to add,
24 and I don't know how to characterize it, you

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1 know, globally, you know, submit all copies of
2 all reports to state and federal agencies and
3 any other significant findings. That's pretty
4 nebulous. I don't know if there's a thought
5 there.

6 ADMINISTRATOR MONROE: I think we can
7 probably identify which reports we're talking
8 about, right? We've got the bird and the bat
9 study, fire suppression systems. I think we may
10 be able to identify them at the end.

11 COMMISSIONER ROSE: And for the purpose of
12 the natural environment, I think those two key
13 ones were the bird and bat conservation study
14 and various studies associated with that
15 strategy that's been outlined as well as the
16 basis species monitoring. So those are really
17 the two key studies, and there may be
18 subsections within each of those studies, but
19 they'll roll up into those two studies.

20 PRESIDING OFFICER SCOTT: So they'll be,
21 we'll have that in the parking lot as I'm
22 calling it, and we'll need to refine the
23 language before we finish, assuming we issue
24 something.

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1 ADMINISTRATOR MONROE: I did want to add
2 just one item. I don't know if this showed up
3 in your research, Commissioner Rose, regarding
4 the wood turtle and the construction measures
5 that may be need to be taken during construction
6 for monitoring of the wood turtle.

7 COMMISSIONER ROSE: Yes. I thought we had
8 addressed that on Wednesday, but there was a
9 condition requested in the New Hampshire Fish &
10 Game's letter that did ask for, and I can pull
11 that up, but it did ask for specific monitoring
12 for summertime activity in the laydown areas and
13 I apologize. I don't have it in front of me
14 immediately, but I thought we had addressed that
15 as one of the conditions that we were going to
16 put on when we were discussing that on
17 Wednesday.

18 ADMINISTRATOR MONROE: Yes. I did raise it
19 earlier on. I just wanted to raise it here
20 while we were talking about the natural resource
21 issue.

22 COMMISSIONER ROSE: Belt and suspenders.
23 Good thinking.

24 PRESIDING OFFICER SCOTT: So Commissioner

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1 Rose, can you get us back on track since I feel
2 I've taken us off track maybe?

3 COMMISSIONER ROSE: I don't want to
4 preclude any other elements within this because
5 there was a lot of information and testimony
6 provided on this through the course of the
7 proceedings, but I did feel it was worth
8 spending a moment on the Applicant's proposed
9 condition regarding the boulders, and I didn't
10 know if that was something that others wanted to
11 specifically speak to or not, because I think
12 that was, there was quite a bit of comment on
13 that, and quite honestly, seeing some of the
14 pictures that during the course of the hearings
15 I would feel as though every practical measure
16 should be made to try to preserve those
17 boulders.

18 I know there was discussion about exactly
19 what the path of the road was going to be, and
20 it didn't necessarily seem that that was an
21 affirmed final. So I might want to just relook
22 at that language and just encourage to the
23 extent practical that the boulders be made,
24 every effort be made to avoid the boulders, and

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1 then maybe the other elements in terms of, if
2 they are not avoidable, perhaps try to find ways
3 of relocating them, but I'll turn that over to
4 the Committee for their perspectives.

5 PRESIDING OFFICER SCOTT: So just for
6 clarification maybe as a starting point, the
7 language that the Applicant agreed to for
8 condition is the Applicant shall use
9 "commercially reasonable efforts" to relocate
10 any boulders located inside the limits of
11 disturbance for the construction of the project
12 rather than demolish them. So maybe if I could
13 help, I guess, are we comfortable with
14 commercially reasonable efforts?

15 DR. BOISVERT: I find that very vague. I
16 don't know of any organization that has moved
17 glacial boulders to set them aside. Are they
18 have being moved for aesthetic purposes? Being
19 moved for habitat purposes for fauna that might
20 use them to den in the winter and so forth?
21 It's awfully vague.

22 I wish I knew more about what constitutes
23 "commercially reasonable efforts." I just don't
24 know what the definition of that would be. What

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1 it would look like. And it's a nice sentiment,
2 but I'm not sure how you would implement it.

3 MR. CLIFFORD: I was just going to say
4 initially, first blush, you don't really even
5 know if they're boulders, okay? Because no one
6 knows where the bottom of the rock actually is.
7 It could be an extension of ledge so I'd
8 hesitate at first blush to call them boulders
9 until someone could tell me that there's a
10 bottom to the boulders. I have trouble with the
11 commercially reasonable because in my mind
12 what's commercially reasonable means just get
13 them out of the way. Okay? Because that's what
14 I would do.

15 So maybe the solution would be to put, if
16 there's a condition or some mitigation offered
17 by the Applicant it would be to try to site the
18 roadway around them to the extent possible.
19 Because I think that's what the step that a
20 commercially reasonable person would take
21 anyways. Why would I undertake all this
22 blasting if I can move the road five feet and
23 not have to undertake additional excavation
24 efforts.

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1 I mean, that's just my thought but I'm not
2 in construction, but if I could go around
3 something, I'd rather go around it than through
4 it so maybe that's a component of the solution.
5 Because I agree, they're nice features, and I've
6 been on plenty of hikes in the Whites and in the
7 North Country and come across some great boulder
8 features, and it would be nice to still have
9 those available for people to enjoy as well as
10 for the animals that like to use it as shelter
11 and places to den.

12 So it would seem to me it would be more
13 appropriate to talk in terms of the site
14 location of the roadway and the excavation
15 rather than trying to preserve or move boulders
16 because I think that's just probably not
17 commercially feasible. Feasible or even
18 reasonable.

19 PRESIDING OFFICER SCOTT: So Dr. Boisvert's
20 earlier point when he was questioning, I think,
21 the why, my recollection is that the biggest
22 reason for concern over the boulder field was
23 protection of habitat. That's my recollection.
24 Somebody can correct me.

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1 To Attorney Clifford's point, I've got to
2 assume to the extent that the route of the road
3 is, whether it was planned, I think obviously
4 there's some conditions where they are going to
5 have to do some blasting. So I mean that's
6 readable. I'm not sure, I'm not convinced we
7 need to put that into a condition. I think
8 that's going to, if they can find a better route
9 that doesn't require that I think it's a given
10 but maybe not. So that could be discussed more.

11 I'm wondering, first of all, I'm not sure
12 we get to language that's specific. I mean, in
13 my mind we can take reasonable efforts to the
14 extent possible. You know, there's some broad
15 language which ultimately lands in Attorney
16 Monroe's lap no matter what we do, I think, if
17 there's a compliance dispute.

18 Having said all that, I'm just wondering if
19 to the extent that the main point of this is to
20 maintain habitat that may be disrupted or
21 eliminated due to the relocation of boulders,
22 maybe add that in here. So to the extent
23 possible they would in order to maintain habitat
24 so that's the focus. If a large outcropping is

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1 moved, destroyed, I like the idea of rather than
2 demolish the remnants they would try to use that
3 in a way to create, replace the habitat, that
4 type of language. I don't know anybody's
5 thoughts to that.

6 MR. CLIFFORD: I'm just going to speak
7 procedurally, how do we or at what point, maybe
8 this is a question for Mr. Iacopino is how do we
9 wrestle with conditions and when do we put pen
10 to paper and review that. Because I can, the
11 Applicant's offered a proposal, we've discussed
12 various proposals about conditions, but at what
13 point do we get to craft those and actually look
14 at the variety. Because it's easier, it's very
15 simple to talk about them. It's much more
16 difficult to put pen to paper and see how that's
17 going to actually function, too.

18 Because I agree. I think we can reach some
19 agreement and the Applicant's professed some
20 interest in working on this issue. But if we
21 could put that down in some kind of workable
22 framework that makes sense because I think
23 there's two extremes. One would be to keep them
24 in their entirety under all conditions and

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1 figure out a way to get your road around it, and
2 others are well, if you have to demolish some of
3 them, that may be okay, can you use those on
4 site. Or if they find that they are boulders,
5 can they just push some of them out of the way
6 so that they're still there. But we don't know.
7 It's hard to envision a workable condition
8 without something on paper.

9 PRESIDING OFFICER SCOTT: So Attorney
10 Iacopino can weigh in, but before we finish if
11 we're going to issue certificate conditions, we
12 have to agree on the language. My thought in
13 establishing the parking lot with Attorney
14 Monroe is she would be able to, A, make sure
15 she's captured all of the preliminary discussion
16 we've had on conditions, but my intention was
17 that we can do it at any time, but that would be
18 towards the end, but with the general thoughts
19 of the conditions before we go to a final vote,
20 I would want to work through all the conditions'
21 more precise language because that will impact
22 how comfortable we are with the final vote.

23 So my intention was to have the parking lot
24 and then readdress the parking lot with exact

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1 language towards the end but we can do that at
2 any time. I know the one that I've experienced
3 in the past where we've had the most work on
4 conditions happens to be another wind farm.
5 That was Lempster. And we had members come in
6 and say here's the language I suggest. Again,
7 we have to do this all, deliberate in public,
8 and then we worked on drafts of that. Would you
9 have any other thoughts, Mike?

10 MR. IACOPINO: In answer to Mr. Clifford's
11 question, it can be done at any time, but more
12 importantly, the conditions have to be the
13 product of the Committee. We can obviously
14 remind you what conditions you indicated you
15 wanted to park and talk about. However, the
16 actual determination of what the language of
17 those conditions will be is up to you all as a
18 Committee and it's up to you how you want to do
19 it.

20 I generally recommend to various
21 subcommittees they that they do it on a
22 condition by condition basis at a time that the
23 Presiding Officer finds to be reasonable during
24 the course of the deliberations. There may be

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1 some conditions that you want to address right
2 away like you have done to some extent in this
3 case with respect to some of the conditions, for
4 instance, that the various state agencies have
5 provided to you which tend to be their standard
6 conditions.

7 But, ultimately, it's up to the Committee
8 to create the language of the condition. Staff
9 can assist you in getting something printed up,
10 whatever, things like that, but, ultimately, I
11 recommend that you all deliberate on the exact
12 language for each particular condition.

13 PRESIDING OFFICER SCOTT: Attorney
14 Weathersby?

15 MS. WEATHERSBY: So to that end, I have a
16 suggestion, having worked up here in the five
17 minutes we've been discussing.

18 PRESIDING OFFICER SCOTT: Excellent.

19 MS. WEATHERSBY: The Applicant shall use
20 all reasonable efforts to avoid any boulders
21 located inside the limits of disturbance, and if
22 not feasible, or if such avoidance would result
23 in more destruction to the natural environment
24 to relocate any such boulders rather than

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1 demolish them.

2 PRESIDING OFFICER SCOTT: Could I get you
3 to read that one more time?

4 MS. WEATHERSBY: If I can read my notes.
5 The Applicant shall use all reasonable efforts
6 to avoid any boulders located inside the limits
7 of disturbance, I guess I'd add for the
8 construction of the project, and if not
9 feasible, maybe you want to say reasonably
10 feasible, or if such avoidance would result in
11 more destruction to the natural environment to
12 relocate such boulders.

13 PRESIDING OFFICER SCOTT: Dr. Boisvert?

14 DR. BOISVERT: There are a lot of boulders
15 out there, and I wouldn't be surprised if
16 there's some at the lower elevations that were
17 not the topic of conversation in the hearings.
18 I don't know if it's necessary, but I would like
19 to assume that we're talking about those that
20 are on the ridge on Tuttle Hill, not ones in
21 other areas. If it's "all boulders" it might
22 sweep in others, and I don't want to have a
23 condition so broad as to be unworkable, and,
24 therefore, I don't know if it's getting too fine

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1 grain, but to somehow indicate the boulders that
2 were identified in the process, and I don't even
3 know if we can say between tower 4 and 12 or 8
4 or something like that. But not make it so
5 broad as to all disturbance because it does go
6 all the way down to lower elevations and that
7 seems to be a bit reaching, but maybe we just
8 leave it at that, and I just want to point out
9 that we're thinking about the ones in the
10 photographs. The language here may extend it a
11 lot further. There's a lot of rocks up there.

12 PRESIDING OFFICER SCOTT: So do we have
13 proposed language? Attorney Weathersby?

14 MS. WEATHERSBY: We might want to better
15 define boulders. Maybe all boulders larger
16 than, I don't know, maybe 15 feet or what is a
17 boulder. So it gets tricky.

18 DR. BOISVERT: There is a geological
19 definition of boulder, but it goes down to
20 relatively small, but there is a scientific
21 definition of boulder.

22 PRESIDING OFFICER SCOTT: I'm trying not to
23 cross my eyes. Director Forbes?

24 DIRECTOR FORBES: I have some trouble with

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1 this. I guess I was thinking the same thing.
2 What is a boulder. I think you'll find multiple
3 definitions for that depending on the source.
4 And certainly some of them are aesthetically
5 pleasing, provide habitat, there's no shortage
6 of them. It's not been identified as a
7 particularly critical resource by Fish & Game.
8 There's no documentation of how rare they are in
9 the path of this roadway.

10 It just seems to me that going beyond a
11 reasonable effort, going beyond an attempt by
12 the Applicant to take reasonable care, we could
13 potentially create some very significant
14 problems. As that was worded I can imagine that
15 there might be sacrifices in the safety of the
16 road, making it steeper or making a route that
17 is more dangerous. At what point do you
18 sacrifice safety to save a boulder. We have
19 constant issues. You can move off boulders.
20 Certainly the size of the boulder is going to be
21 reaching some point to be so great to, as
22 Attorney Clifford pointed out, you may only see
23 the tip of the boulder in the plan in designing
24 the roadway. At what point in time do you

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1 adjust for a boulder to be moved out of the way
2 as opposed to blasting through.

3 So I think going with the general language
4 that was proposed by the Applicant poses a lot
5 of potential unintended consequences that I
6 think are probably unwarranted. We've not seen
7 evidence, I don't think, that demonstrates a
8 rarity or a need to preserve every boulder along
9 the roadway. So I'm not sure I go along with
10 this type of added constraint.

11 PRESIDING OFFICER SCOTT: Can I ask also,
12 Director Forbes, so the concept of relocating
13 the planned route, how does that comport with
14 the alteration or all the different permits that
15 DES has? Does that require them to repermit
16 everything?

17 DIRECTOR FORBES: Absolutely. There could
18 be additional wetland impacts. Glad you brought
19 that up. Again, my point of changing the route,
20 I mentioned safety, which you're absolutely
21 right. There could be issues of potential added
22 water quality impacts, added permitting burden,
23 revised permitting might be required. It's a
24 very subjective goal here to avoid all boulders,

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1 and I just, again, I think that there's not a
2 real compelling case for me to impose additional
3 constraints regarding the protection of
4 boulders.

5 PRESIDING OFFICER SCOTT: Any other
6 comments? That discussion leads me to perhaps
7 where we started which is the Applicant's
8 language but any comments, any thoughts?

9 MR. CLIFFORD: I'll just say I think it
10 leads me back to where we were at the beginning
11 of this that they just make reasonable efforts
12 to avoid them if they can, and if they can't, I
13 mean, they've got to go. These aren't, for the
14 reasons really eloquently spoken by Dr. Forbes,
15 I mean we're ending up in a quagmire here, and
16 this isn't Fred Flintstone's bedrock. They've
17 permitted the road. They would have to go
18 through an entirely new process if they were to
19 go around it, it seems to me, and if they make
20 their best efforts to avoid it, should we
21 approve the Application, then so be it.

22 PRESIDING OFFICER SCOTT: I will point out
23 if we left the Applicant's language but I'm not
24 sure that this is avoidable, to the extent there

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1 is a dispute, probably just puts it back to us.
2 I think. Commercially reasonable if you, you
3 know, it's pretty loose language, but I'm not
4 sure, sounds like from the discussion, we're
5 going to get much better than that. It puts, to
6 the extent that it's a dispute it puts Attorney
7 Monroe in an awkward position, I think.

8 So just be aware that if it becomes, which
9 I guess anything could go through Attorney
10 Monroe and could come back to us as far as is
11 this appropriate or not. So any other thoughts?

12 COMMISSIONER ROSE: Just looking back at
13 the Applicant's suggested language, I'm not sure
14 what the word "commercially" means so I'd be
15 fine striking that word, and then perhaps where
16 it says reasonable efforts to, just add the word
17 "avoid" or "relocate" and then perhaps after
18 that, to the extent practicable, any boulder
19 located inside the limits of the disturbance for
20 the construction of the project. Rather than
21 demolish them. I think that kind of captures at
22 least where my head's at. You know, to avoid or
23 relocate, but to the extent that's practicable.

24 MR. CLIFFORD: I'd like to give that a

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1 little more thought because it seems to me the
2 ones we're looking at are strictly limited to
3 Tuttle Hill, right? So I wouldn't want to get
4 that any more expansive than that particular
5 area, that particular photograph of those
6 particular features that were presented by
7 Mr. Block. I think those are the only ones
8 really at issue here. And I don't know if there
9 were GPS calls or if anyone recalls or we could
10 reference that document. I don't know. That
11 would be the only limitation. Otherwise, I
12 think we've scooped up all the boulders and then
13 they're trying to figure out was this one big
14 enough, should I move it, should I not move it.

15 COMMISSIONER ROSE: I don't know, you know,
16 if we know all the boulders, but perhaps to
17 quantify it to suggest that those boulders which
18 were identified during the course of the
19 proceeding. That would be referenced back to
20 the specific articles or testimony or evidence
21 and photographs that we have seen.

22 MR. CLIFFORD: I would definitely be more
23 comfortable with that because I think those are
24 the ones that were clearly identified, talked

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1 about and referenced in the testimony. Maybe at
2 a break we could figure out exactly which ones
3 we're talking about and what photograph and then
4 we'd have, we'd have some idea and the
5 Application potentially would have some idea of
6 which ones they're to try to avoid.

7 DR. BOISVERT: I agree. That's what I was
8 sort of getting into at the onset. That we
9 don't be too expansive and the boulders that
10 were identified during the proceedings that are
11 a concern and I wouldn't want to see a condition
12 written that went well beyond it and then made
13 the whole condition irrelevant.

14 MS. WEATHERSBY: I think it was Tuttle Hill
15 and Willard Mountain slopes, but I think the
16 condition of just ones that were the subject of
17 testimony would capture it, and we can get more
18 specific if we need to, but I think just
19 referring back to the ones that concern was
20 raised about during the testimony is fine.

21 PRESIDING OFFICER SCOTT: From my point of
22 view, I'm not opposed to trying to limit it a
23 little bit more, put some scope around it. That
24 perhaps would help Attorney Monroe. But I would

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1 just note that to the extent we're pretty close
2 to the Applicant's suggested language, they've
3 said they're okay with this, so I'm not sure how
4 far we are have to go, but I am, so you can give
5 me a Christmas card later, I am interested in
6 trying to minimize the pain for Attorney Monroe
7 later.

8 Okay. So where did we leave that? So
9 we're, are we wanting to take a break and work
10 on some language or do we want to park it? I
11 know I could use a break. So why don't we do
12 that and take a break.

13 (Recess taken 10:20 - 10:40 a.m.)

14 PRESIDING OFFICER SCOTT: We're back on the
15 record. We were, before we left we said we
16 would, at least some of us would take a stab at
17 some language that we could discuss. So who
18 would like to go? Attorney Monroe?

19 ADMINISTRATOR MONROE: I'll take a stab
20 with the assistance of Commissioner Rose.
21 Antrim Wind Energy shall to the extent
22 practicable use all reasonable efforts to
23 relocate rather than demolish any boulders, and
24 this is where I, identified during the

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1 proceeding is what I have now, that are located
2 on Tuttle Hill within the limits of disturbance
3 area in the construction zone.

4 PRESIDING OFFICER SCOTT: Any comments?

5 MS. WEATHERSBY: Did I miss the word avoid?
6 I thought we were going to use that as well.

7 ADMINISTRATOR MONROE: I had relocate but
8 not avoid, but we can certainly add that.

9 MS. WEATHERSBY: Commissioner Rose, wasn't
10 your suggestion to use reasonable efforts to
11 avoid or relocate?

12 COMMISSIONER ROSE: Yes. That was my
13 thought.

14 ADMINISTRATOR MONROE: Okay.

15 PRESIDING OFFICER SCOTT: So I just
16 question on avoid, I'm not opposed to it but,
17 again, I want to make sure what direction we're
18 giving the Applicant. So are we saying that
19 they should get revised DES permits to route
20 around the particular boulder or something like
21 that? Is that what we're suggesting?

22 MS. WEATHERSBY: I personally think that
23 would result in unreasonable effort if they had
24 to redo their permits, but if it, you know, move

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1 it over two feet or something that doesn't
2 trigger the repermitting would be reasonable.

3 PRESIDING OFFICER SCOTT: So if that's the
4 Committee's will, would we want to say within
5 the scope of permitting permits or something
6 like that?

7 MR. CLIFFORD: I'd be more comfortable with
8 that because I think if we, and Dr. Forbes knows
9 probably better than I do, but if they start
10 excavating outside the permitted area that opens
11 this whole thing up to a resiting, another water
12 permit, it could be neverending, and we could
13 end up being back here.

14 PRESIDING OFFICER SCOTT: Any thoughts on
15 that, Dr. Forbes?

16 DIRECTOR FORBES: I think it's okay to
17 include the word avoid with the understanding
18 that Attorney Weathersby has made it clear that
19 we're not talking about changes that would
20 impact permits. If they're working in an upland
21 area where they can limit their disturbance and
22 avoid a boulder, I think that's okay, but
23 certainly we would not want to put them in a
24 position where they are going to increase the

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1 disturbed area of a wetland or impact their
2 storm water designs or any of the other
3 facilities that have been permitted.

4 So I think as long as we're clear that we
5 consider it unreasonable for avoidance to
6 trigger that kind of change, I'm okay with it.

7 PRESIDING OFFICER SCOTT: So my friendly
8 amendment then would be to add the language
9 within the scope of existing permits. Would
10 that accomplish that? What I'd like to do is
11 avoid any controversy to have to go back to this
12 transcript to know what we meant, you know, we
13 stated we mean you don't have to go get
14 different permits, but I think it's cleaner just
15 to put that type of language in the certificate
16 condition. Anybody object to that? Does that
17 work for everybody? Did you capture that?

18 ADMINISTRATOR MONROE: No.

19 PRESIDING OFFICER SCOTT: I was just
20 suggesting we add, regarding the avoid language
21 we add "within the scope of existing permits."

22 ADMINISTRATOR MONROE: Okay.

23 PRESIDING OFFICER SCOTT: Any other
24 discussion on this potential condition?

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1 MR. CLIFFORD: Can we add within the scope
2 of existing and federal and state permits?
3 Would that be acceptable? Because there are
4 other permits in the Application that aren't
5 related to, for example, might be a fire safety
6 permit. We're not referring to that. We're
7 referring to the state and federal permits. And
8 at issue here would be particularly the water,
9 the disturbance.

10 PRESIDING OFFICER SCOTT: Any other
11 comments? Any objections to that? Attorney
12 Monroe, do you think you've captured that?

13 ADMINISTRATOR MONROE: Yes.

14 COMMISSIONER ROSE: So am I correct that at
15 some point we'll actually have, I guess,
16 language for us to look at for all these
17 conditions to sort of just make sure that we
18 wordsmith them in a way that meets our
19 satisfaction?

20 PRESIDING OFFICER SCOTT: Yes. That was my
21 intent. One of the homework assignments for
22 Attorney Monroe in having the parking lot is to
23 capture the language that she thinks we've
24 agreed to. What I propose is that at some point

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1 before we finish, can you write, maybe printing
2 it out is probably the best way to do that, but
3 we'll have to articulate on the record, but
4 that's probably the best way to do it.

5 So where did we leave off, Commissioner
6 Rose?

7 COMMISSIONER ROSE: I think we have hit the
8 key areas within the natural area. I don't know
9 if there were any other elements that members of
10 the Subcommittee wanted to discuss. The only
11 one that we hadn't really gone into a deeper
12 level of conversation was some of the concerns
13 that were referenced regarding fragmentation of
14 the natural environment. You know, there will
15 be some impacts. That's not something that I
16 think, that's undeniable, but there were no
17 references or concerns from the various state
18 and federal agencies to that end, and it is
19 relatively modest in its overall impacts within
20 the larger community in terms of the 11 and a
21 half acres of the roadways and where the base of
22 the turbines would be.

23 And then, again, of course, there would be
24 the 908 acres of additional conservation areas

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1 that would be adding to the overall matrix of
2 conservation land which would have a benefit
3 back to the natural environment and the habitat,
4 but I think that was the last of the elements
5 that we hadn't really dug into as a Committee.
6 So I don't know if there was other questions or
7 comments from members of the Subcommittee.

8 PRESIDING OFFICER SCOTT: Anybody? So for
9 filling out the record, maybe Commissioner Rose,
10 you could opine a little bit on fragmentation.

11 COMMISSIONER ROSE: Sure. Fragmentation is
12 sort of the bifurcating of a natural environment
13 so that you take one environment and making it
14 into multiple, and, again, I think there will be
15 impacts as a result of the road in particular,
16 but there was, as it pertained to mammals, there
17 was no concerns other than, I think that we had
18 testimony on the record that stated that they're
19 adaptive and there would be no impediments for
20 them to be able to still be able to have the
21 ability to either den or forage in their natural
22 state.

23 So there were concerns raised by some of
24 the Intervenors in terms of the impacts,

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1 particularly as it pertained to sort of the Q2C
2 that was referenced in the SuperSanctuary and
3 recognizing that it is a region that by and
4 large does make a concerted effort to value and
5 to place emphasis on conservation lands, and I
6 think that's well-documented and appreciated,
7 but I do believe that the mitigation of the 908
8 acres is very significant.

9 I think most recognize that that would have
10 a direct benefit back to the natural environment
11 and the habitat as well as I just reference
12 that, you know, within the Q2C corridor there
13 are other wind farms that are in existence. As
14 I looked through that map I recognized both
15 Lempster and Groton within that overall
16 corridor. So it's not without precedence to
17 have a wind farm within that overall corridor,
18 but I think there is a value that is placed on
19 that natural environment and the conservation
20 lands. So I don't know if there's other
21 thoughts that other members of the Committee
22 would like to reference.

23 PRESIDING OFFICER SCOTT: At least from
24 Attorney Weathersby?

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1 MS. WEATHERSBY: I think during
2 construction and decommissioning there would be
3 more fragmentation with the roadway wider and
4 there being more activity which will probably
5 change some wildlife patterns temporarily, but I
6 take some solace in the fact that once
7 construction is complete, the roadway is going
8 to be narrowed, I think to 16 feet, give or
9 take, which does fragment the forest. I don't
10 find that that would result in unreasonable
11 fragmentation. It's not all that much wider
12 than a logging road and some other activities
13 that have gone on in those mountains.

14 PRESIDING OFFICER SCOTT: I know from my
15 end this is an area where the mitigation package
16 gives me a little bit of solace also. That
17 definitely weighs on my evaluation of that
18 issue. Anybody else on fragmentation?

19 So Commissioner Rose, I'd just ask that on
20 some of this, for instance, the postconstruction
21 acoustic bat survey, are we comfortable we have
22 enough definition of for how many years that
23 will be done and the reporting criteria on that?
24 Is that clear enough, do you think, for the

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1 record?

2 COMMISSIONER ROSE: I do. It is included
3 in the Bat and Bird Conservation Strategy. It
4 does state that it shall occur one year after
5 operation, and that will take place over the
6 course of three years which was the
7 recommendation of the previous Subcommittee
8 during Antrim 1, for what it's worth, but I do
9 feel as though three years was referenced for
10 the Bat and Bird Conservation Strategy as well
11 as the Invasive Species Monitoring Plan. So I
12 think both of those, and there was the added
13 benefit of the ability to have adaptive
14 management as a result of the conditions or the
15 findings of those reports in consultation with
16 various agencies that have jurisdiction over
17 those matters. So I feel as though if three
18 years is a legitimate amount of time, I think we
19 did hear testimony that suggested that that was
20 when, at least as it pertains to invasive
21 species is when the greatest level of risk would
22 occur. So I feel fine with that.

23 I wouldn't mind having a little bit of
24 conversation, there was some discussion during

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1 the course of the testimony with regards to
2 using approved native seeds for the
3 revegetation, and I think there was also a
4 discussion about ensuring that the forestry
5 management elements occur within the Best
6 Management Practices and so I think those are
7 things that we could further discuss as a
8 Committee, but I feel as though the reporting
9 timeline seemed to be reasonable from my
10 perspective.

11 PRESIDING OFFICER SCOTT: Any other
12 comments or discussion? Are we ready for a
13 straw vote on this issue? Or do you want to
14 raise any other issues? Anybody? I guess then
15 the straw vote would be, again, we feel the
16 Applicant has met the burden of proof that there
17 will be no unreasonable adverse impact regarding
18 the natural environment. So if people can give
19 me an indication if they feel that's a true
20 statement, not a binding at this point. Okay.
21 So we have unanimous hands with that sentiment.
22 Again, it's a nonbinding. Just to get a sense
23 of the Committee.

24 So unless there's any further discussion on

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1 that subtopic, we will move on to an even larger
2 topic which is, again, we're in the broad topic
3 of unreasonable adverse effects, and this is
4 public health and safety. So I'd say it's a
5 larger topic. Lot on here, obviously, as well.
6 Sound, shadow flicker, setbacks, ice throw,
7 physical failure of a turbine, fire, lightning
8 protection, decommissioning, the FAA or the
9 interference with aviation traffic and perhaps
10 interference with the weather radars and the
11 like.

12 So it's a pretty broad area, and I believe
13 Attorney Clifford's prepared to talk on that for
14 us. Is that a fair statement?

15 MR. CLIFFORD: That's a fair statement.
16 Pretty large, all-encompassing topic, but we
17 were charged with looking at the public health
18 and safety under RSA 162-H:16,IV(c) as well as
19 under our SEC rules which are at SEC 301.14(f)
20 which also ties in with, it ties you back into
21 the siting rules submitted under SEC Rule 301.08
22 so I'll try to be succinct here.

23 301.14(f)(1) talks about determining
24 whether the proposed facility will have an

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1 unreasonable adverse effect on public health and
2 safety, and for an energy facility we're
3 supposed to consider all information submitted
4 pursuant to the Site 301.08, other relevant
5 evidence submitted pursuant to 202.24, which is
6 the potential adverse effects of construction
7 and operation of the proposed facility on public
8 health and safety, the effectiveness of measures
9 undertaken or planned to avoid, minimize or
10 mitigate such potential adverse effects, and the
11 extent to which such measures represent best
12 practical measures.

13 And (f)(2) talks about wind energy systems
14 which is applicable here. We're also supposed
15 to apply the following standards. With respect
16 to sound standards, the A-weighted or equivalent
17 sound levels produced by the Applicant's energy
18 facility during operations shall not exceed the
19 greater of 45 dBA or 5 dBA above background
20 levels measured at the L-90 sound level between
21 the hours of 8 a.m. and 8 p.m. each day, and the
22 greater of 40 dBA or 5 dBA above background
23 levels measured at the L-90 sound level at all
24 other times during each day as measured using

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1 microphone placement at least 7.5 meters from
2 any surface where reflections may influence
3 measured sound pressure levels on property that
4 is used in whole or in part for permanent or
5 temporary residential purposes at a location
6 between the nearest building on the property
7 used for such purposes and the closest wind
8 turbine;

9 And, (2)(b), with respect to shadow
10 flicker, the shadow flicker created by the
11 Applicant's energy facility during operations
12 shall not occur more than 8 hours per year at or
13 within any resident's learning space, workplace,
14 health care setting, outdoor or indoor public
15 gathering area or other occupied building;

16 And then (f)(3) is for wind energy systems,
17 consider the proximity and use of buildings,
18 property lines, public roads and overhead and
19 underground energy infrastructure and energy
20 transmission pipelines the risks of ice throw,
21 blade shear, tower collapse and other potential
22 adverse effects of facility operation, and the
23 effectiveness of measures undertaken or planned
24 to avoid, minimize or mitigate such potential

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1 adverse effects and the extent to which such
2 measures represent best practical measures.

3 So before I go any further, without going
4 further, I wanted to say this section, public
5 health and safety, is also tied back in with
6 Site 301.08 which I'm just going to briefly
7 summarize because that really talks about what
8 the Applicant is supposed to put in their
9 Application. So we're also supposed to consider
10 the things in their Application.

11 So 301.08(a) for proposed energy systems,
12 and I'm going to summarize this as opposed to
13 reading each individual section, but
14 301.08(a)(1) is the sound assessment, impact
15 assessment;

16 (a)(2) is assessment that identifies the
17 astronomical maximum as well as the anticipated
18 hours per year of shadow flicker within one
19 mile;

20 (a)(3) is going to be a description of the
21 plan setbacks which indicates distance between
22 each wind turbine and the nearest landowner's
23 buildings and property lines and between the
24 turbines and the nearest public roads;

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1 (a)(4) is going to an assessment of the
2 risk of ice storm, blade shear and tower
3 collapse on Public Safety;

4 (a)(5) is a description of the lighting
5 protection system;

6 (a)(6) is a description of any
7 determination made by the FAA or Federal
8 Aviation Administration regarding hazards to
9 aviation;

10 (a)(7) is a decommissioning plan to be
11 prepared and submitted in connection with the
12 Application.

13 And (a)(8) talks about the decommissioning
14 plan is to include each of the following:
15 Description of sufficient and secure funding to
16 implement it, the provision of financial
17 assurances. Excuse me. 8b. is financial
18 assurance. 8a. was a description of the
19 sufficient and secure funding. 8c. is that all
20 turbines including blades, nacelles and towers
21 be disassembled and transported off-site. 8d.
22 would be that all transformers be transported
23 offsite. 8e. is that the overhead power
24 collection conductors and power poles are

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1 removed from the site. 8e. is that all
2 underground infrastructure at depths less than
3 four feet below grade shall be removed from the
4 site, and that all underground infrastructure at
5 depths greater than four feet are abandoned in
6 place, and 8g. is areas where subsurface
7 components are removed or to be filled and
8 graded to match adjacent contours, reseeded,
9 stabilized, et cetera.

10 301.08 (a)(9) relates to a plan for fire
11 protection for the proposed facility. And
12 (a)(10) talks about an assessment of the risk
13 the proposed facility will interfere with
14 weather radars used for severe storm warning or
15 any local weather radars.

16 So this is a pretty hefty area to cover.
17 There was a lot of testimony. I guess I'll
18 start with the first. We should probably start
19 with sound and we'll walk through. That seemed
20 to be one of the more difficult areas that we
21 had. There was testimony by the Applicant that
22 it met all sound criteria under the SEC rules.
23 There were some conflicting testimony by
24 Mr. James about whether you would or would not

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1 apply this three decibel factor. I got the
2 sense at least -- and I think we should probably
3 approach this by each separate topic. I don't
4 know how the Chairman feels, but there's a lot
5 to bite off so I don't know how you'd like me to
6 proceed or whether we take -- because I did
7 thoroughly go through each testimony and
8 submission. I think maybe we can go, my
9 preference maybe is just to walk through the
10 Application criteria first if that works, but I
11 want to leave that to you because there's a
12 whole lot to go through here.

13 PRESIDING OFFICER SCOTT: That makes sense
14 to me. I'll note that small bites is the way to
15 eat the elephant so that's fine with me.

16 MR. CLIFFORD: So then under 301.08 we need
17 to talk about the sound impact assessment, and
18 we had a sound impact assessment submitted by
19 Mr. O'Neal which purported to meet professional
20 standards. He had also submitted a sound
21 assessment in what I'll call Antrim 1. He
22 stated he followed all the SEC criteria. His
23 report gave a pretty thorough analysis, and we
24 reached the conclusion that perhaps some sound

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1 mitigation may be required in the future, but in
2 general, I'm trying to find my notes here which
3 are pretty extensive. They use the ISO 9613-2
4 rules for modeling. He professed he had high
5 confidence in the modeling. He stated it was
6 most important to get this sound monitoring
7 right. There was discussion about the accuracy
8 of corrections under the ISO theory. They did
9 assume worst case directions, wind speeds.

10 Again, I talked about testimony by
11 Mr. James. He thought that there should be an
12 additional three dB used. I came out, I read
13 both reports and I think there was a question
14 of, and my recollection was that because these
15 towers will be above any inversion, you wouldn't
16 need to add that three decibel factor, and I
17 also saw conflicting testimony as to whether
18 canopy cover is reflective or absorptive, if
19 that's the proper term, and I don't know where
20 the science shakes out, but it seems to me that
21 there's some, it's subject to some dispute.
22 What we have is sort of a battle of the experts
23 on the sound and noise issue.

24 Mr. O'Neal used this, we had extensive

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1 testimony about the G factor which was the
2 ground absorption. He used a G factor of .5
3 which was porous or hard ground plus a two
4 decibel uncertainty from the turbines. He said
5 it was accurate in calculating the results.

6 He also said that based on using this
7 similar methodology, he did postcompliance
8 testing using the exact same methodologies he
9 used here at Groton, and he actually, and under
10 snow and ice conditions there, and the sound was
11 less than what they had modeled, and he thought
12 that that G factor of .5 did a good job of
13 representing the conditions they're going to
14 experience here; and, again, the Applicant had
15 certified as well as Mr. O'Neal that if they did
16 the postcompliance testing postconstruction and
17 they didn't comply, there were efforts that they
18 could take to be in compliance, and the sound
19 decibel levels, I think the highest measured was
20 38.5 which was underneath our threshold of 40
21 during the day. Clearly, less than the 45 I
22 think we talked about at night. That there were
23 methods they could take to either, A, feather
24 the blades or that the Siemens documentation

[DELIBERATIONS]

1 which I reviewed in the record also talked about
2 the ability to ratchet down the decibel levels
3 by up to five and we talked about what an
4 increase in sound level would be. Excuse me.
5 We're going to strike that.

6 We also talked about what temperature
7 inversions were. There was testimony from
8 Mr. Ward about ducting and whether there could
9 be ducting, whether they're weak or large
10 temperature inversions. Mr. O'Neal also talked
11 about use of about three other places where he
12 observed, took sound measurements or talked
13 about this Stetson and I think in Maine, and his
14 conclusion on inversion was he didn't think
15 there was going to be any material effect on
16 sound.

17 See if I can find other references to sound
18 here. We also talked about that the Siemens
19 turbines themselves are rated at 107.5, I
20 believe, dB right out of the gate, in other
21 words, out of the box. And that they would use
22 an additional one that's three decibel sort of
23 fudge factor depending on the distance from the
24 source, but that this project and that's where

[DELIBERATIONS]

1 the testimony got kind of bogged down, not the
2 testimony but the conflicting areas, to whether
3 you included that 1 to 3 dB because it would be
4 improper to use that additional three decibels
5 in this situation, as I said, due to the height
6 of the towers and under the ISO standards and
7 the way the temperature inversions were
8 configured. I'm not a meteorologist, but we had
9 some discussion by meteorologists here about
10 what that means.

11 But at the end of the day, Mr. O'Neal
12 stated that they were confident that they could
13 easily meet their standards under the 301.14 and
14 they didn't think that there were any
15 temperature gradients or wind shear or
16 atmospheric conditions particular to Antrim that
17 were going to cause the sound to be any higher
18 than the predicted. And, again, he mentioned
19 that in his observations at other wind
20 facilities he found that using this methodology,
21 the sound was actually lower.

22 He also talked about Willard Pond and
23 opined on Willard Pond and Gregg Lake that he
24 used the G factor of .5 because almost all the

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1 intervening terrain was forested and porous and
2 that it's far enough away that you wouldn't hear
3 any measurable sound that would be above the
4 limit.

5 We talked about sort of what normal
6 conversation was even in this hearing room, and
7 he thought it was somewhere in the neighborhood
8 of 55 to 60 decibels with people in the room
9 having normal conversation, and that just with
10 the HVAC on it was about 35 decibels. So we
11 were trying to get an idea of just what the
12 sound level would be at a range of 40.

13 He looked at all nine turbines in his study
14 with all nine turbines operating and in looking
15 at the downwind aspect of that. In other words,
16 all the measurements were taken as if somebody
17 was downwind from the turbine. Again, we talked
18 about mitigation, that there were really two
19 steps to mitigating the sound. There's that
20 noise reduction option that Siemens has or
21 feathering the tip of the blades.

22 There was some testimony from Mr. Thurber
23 about Lempster, and we didn't have anyone in
24 Lempster confirming any serious noise complaints

[DELIBERATIONS]

1 other than that one where the house was
2 something like 300 feet from the base of a wind
3 turbine. There had only been two formal
4 complaints at Lempster since 2009 or 2010.

5 Mr. Kenworthy also had testimony himself
6 that there wasn't any unreasonable impacts from
7 noise, that the decibel level wasn't going to
8 exceed 38 decibels outside of any house.

9 We talked about outlining complaint
10 methodology, if there was a violation that there
11 would be a procedure in place perhaps to notify
12 the town in addition to the company, and, again,
13 we may have some discussion about that.

14 Mr. Kenworthy also talked about the
15 Applicant being open to some kind of ongoing
16 monitoring program, and I know there was
17 testimony from Mr. Enman who talked about taking
18 a measurement in Lempster with 30 mile-an-hour
19 wind at the base of the towers there and only
20 getting a 52 decibels reading on his phone.

21 There was a lot of discussion in this area.
22 I'm sure we're going to have a lot more. I've
23 got a lot more references to the record, but
24 that's sort of a thumbnail sketch of where we

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1 came out. I note that there was, again,
2 competing approach, not approaches, but there
3 was not -- Mr. O'Neal in my view of the
4 Application and the record and the testimony
5 seemed to indicate they were in compliance with
6 our SEC rules and that Mr. James was looking at
7 some differing ANSI standards, and while he
8 didn't do an independent sound assessment he did
9 more of a critique of Mr. O'Neal's testimony.

10 I'd open it up to either further
11 discussions or questions because I've got plenty
12 to talk about.

13 PRESIDING OFFICER SCOTT: There's a lot
14 there. I would add that and there was, again,
15 some discussion over potential health impacts of
16 noise, if I remember right, and then on the
17 guise of taking smaller bites, we should
18 probably decide whether we think the methodology
19 of the Applicant's consultant used, Mr. O'Neal,
20 was appropriate or not, I think, but I would
21 just want to put out there also, you're probably
22 going to get to this.

23 To me, there's two legal issues to be
24 discussed, too. One is are we comfortable that

[DELIBERATIONS]

1 at, this probably applies to shadow flicker
2 also, I think, but whether do our rules apply to
3 participating landowners, if there's an
4 agreement, and there was also controversy over
5 if within existing property a new home or new
6 residence, you know, new structure was built
7 does it or does it not apply. I think those are
8 legal issues we ought to discuss also. So
9 perhaps I would suggest we start with whether we
10 feel comfortable that Mr. O'Neal's assessment
11 was done properly. If that works for you,
12 Mr. Clifford.

13 MR. CLIFFORD: I'm not immune to taking any
14 bite of this we can, but I thought going through
15 this some of the threshold questions were, and I
16 think a lot of them have been answered in some
17 respects by virtue of has the Applicant filed
18 these things and do we believe that they, excuse
19 me, not that they filed them, but they've been
20 filed pursuant to Commission rules so they've
21 been accepted and the question is are they
22 sufficient for us to proceed further under the
23 guise of Public Health and Safety, and I would
24 state that I thought, at least in my opinion and

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1 others may differ, but sound assessment was
2 prepared in accordance with professional
3 standards by an expert in the field, and it
4 included preconstruction background study and
5 the sound modeling study that I thought met
6 generally accepted principles in the field.

7 PRESIDING OFFICER SCOTT: Director Forbes?

8 DIRECTOR FORBES: I would agree. I think,
9 you know, it's certainly easy to criticize
10 computer models and I think we heard a lot of
11 that. Professional judgment is often required
12 to make decisions on assumptions and what those
13 assumptions were in this case were challenged
14 quite a bit. I do think that I have a lot of
15 hope that we will include a post monitoring
16 requirement that will validate the compliance
17 with this sound requirement and I'm comforted
18 also to know that there is opportunity should
19 the model not be predictive accurately that
20 there could be changes to the operation to
21 reduce the noise levels.

22 So I think that the model in my view and
23 the challenges to that model are somewhat, I
24 think the word would be, not unimportant but

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1 ineffectual to the ultimate outcome. What
2 happens there we can measure in the field and we
3 can adjust or the Applicant, the operator, can
4 adjust operations to maintain compliance.

5 PRESIDING OFFICER SCOTT: Attorney
6 Weathersby?

7 MS. WEATHERSBY: It seemed like one of the
8 major points of disagreement concerning the
9 experts was the G factor. Whether that should
10 be zero, plus or minus three, 5, and Mr. O'Neal
11 used zero, but I think there was testimony that
12 even if he used 3, which seems to be more the
13 standard, that the sound levels would come
14 pretty darn close to 40. I think it was 41.
15 And that there were, if they were 41, there is
16 curtailment measures that can be induced and
17 that don't necessarily affect the viability of
18 the project. So I wasn't all that concerned
19 about that.

20 I did have a concern concerning Ms.
21 Berwick's observations of the sound level
22 testing at her property. I was convinced by her
23 testimony and her record keeping that perhaps
24 the sound level testing there was not accurate

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1 given the construction activity, et cetera,
2 weather that was occurring on her property at
3 the time of the testing. And the data from her
4 property and others is all inputted into the
5 models that help determine the sound levels that
6 are produced.

7 So I guess I would be in favor of, I think
8 a simple solution to that is just to go out and
9 retest at her property and the locations
10 previously tested to get the accurate background
11 noise for her property so that data can be
12 inputted into the models. So I would just kind
13 of throw that out there.

14 PRESIDING OFFICER SCOTT: So just to
15 clarify, are you suggesting that we suspend the
16 proceeding for them to be retested? What are
17 you saying?

18 MS. WEATHERSBY: No. I would just do a
19 condition that those places be retested and the
20 accurate data be inputted into the -- I
21 understand it all goes into the system on the
22 turbines. Am I understanding that correctly?

23 MR. CLIFFORD: What was your question?

24 MS. WEATHERSBY: I'm sorry. I'm getting

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1 mixed with flicker.

2 MR. CLIFFORD: Right. I think the issue
3 was, I know in Mr. O'Neal's report which, I've
4 got so many pieces of paper, he talked about --
5 and I also wanted to, my recollection, too, is
6 that there was actually sound modeling. It just
7 wasn't a model. There were five locations at
8 representative nearby residences of which the
9 Berwicks was one so it wasn't just the Berwicks'
10 property where they put the microphones out in
11 compliance with the rule, and then they overlaid
12 that over a two-mile radius, but my recollection
13 is is that, and I can do this at a break, but I
14 think that their structure other than the new
15 one that they talked about putting in in the
16 recent filing is outside the one-mile radius, to
17 my recollection, to the physical property, but I
18 have to go look at that. I would have to look
19 at that again.

20 MS. WEATHERSBY: I guess my concern then
21 could probably be addressed by the
22 postconstruction monitoring just to be sure that
23 the levels at the Berwicks and the other
24 residences are within the 40 to 45 decibels. It

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1 almost doesn't, it does, of course, matter for
2 the accuracy of the study, but the real point is
3 that after construction the people aren't
4 experiencing it, the noise from the turbines,
5 more than 40 or 45. So I think that can
6 probably be satisfied with the postconstruction
7 monitoring.

8 PRESIDING OFFICER SCOTT: I would add to
9 the extent that we, if we get there, we end up
10 in a position where we're taking solace in the
11 postconstruction sound monitoring or the noise
12 reduction, NRO mode, it's important to me that
13 we be as diligent as we can in ensuring that
14 those processes are appropriate. For instance,
15 we've heard, well, if this happens, they'll just
16 go to NRO mode. Okay. Well, how do you know
17 the NRO did what it's supposed to do, right? So
18 there's, I struggle with how do we ensure
19 compliance. So I think some of the sense of
20 what I'm getting is, okay, we have rules, so
21 that's a good thing. We don't have to
22 reestablish as a Committee what we think the
23 right sound levels are to the extent that we
24 feel the Mr. O'Neal's process was sufficient,

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1 but we're going to take solace with, okay, but
2 then there's going to be monitoring. I just
3 want to make sure if we get to a place if we're
4 going to go that way we're comfortable that
5 monitoring is sufficient, and that's certainly
6 been raised by others, and I think it's
7 evidenced by the Berwicks' concerns about what
8 they saw for monitoring going on. I don't know
9 if that's helpful or not.

10 MR. CLIFFORD: My recollection, too, is
11 that there was discussion, this was also in
12 terms of shadow flicker, was that if there's
13 going to be postconstruction monitoring that it
14 should be on site. In other words, there was
15 discussion about what they did in Lempster which
16 was to hand over a sound meter to the town and
17 no one knew how to operate it.

18 So I think in this instance it's either the
19 Applicant -- I think there was a discussion by
20 Mr. James that actually you'd have a permanent,
21 you know, some station out there that's going to
22 continually monitoring this to ensure
23 compliance. Because the thought was that or the
24 recollection was well, you hear it at night and

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1 then you come back during the day and you have
2 to try to replicate, well, what was the wind
3 last night, how strong were the turbines were at
4 full power, half power, what was going on. So I
5 know it was discussed in that context. But
6 also that there was discussion by the Applicant
7 and Mr. O'Neal about Siemens was going to
8 guarantee the sound levels as well because there
9 was, in other words, we have a sound limit in
10 place in New Hampshire, and if the Siemens
11 turbines cannot deliver, even with the
12 mitigation efforts, they'd have to shut down.

13 And so the recourse of the Applicant would
14 probably be to go back to Siemens and say, you
15 know, we got handed a bill of goods here because
16 if they exceed, if they can't mitigate it --
17 first of all, they're at 38.5. Assuming the
18 1.5, they're off by 1.5 and it's over at 41.5,
19 and they can't tamp it down, then those turbines
20 or that particular turbine doesn't run, doesn't
21 turn, and so that's kind of, that's the
22 Applicant's risk that they're taking by turning
23 to Siemens, and I assume Siemens would come out
24 with a sound measuring device and they'd hire a

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1 sound measuring guy and they'd figure out how to
2 get it in compliance or it would be another big
3 lawsuit.

4 PRESIDING OFFICER SCOTT: So I'm leaning
5 towards, I think, a discussion on conditions,
6 but Attorney Clifford, you just mentioned, you
7 know, the Applicant's agreed to provide the town
8 with the sound meter if I recollect, and I don't
9 have it in front of me, and some periodic
10 training. I guess I would wonder to start since
11 this is, you know, a threshold issue, would they
12 be in compliance or not with the rules for
13 sound. I'm just, I want to get people's
14 reaction if we required, for instance, as a
15 condition that the Applicant retained a third
16 party evaluator for sound measurement on
17 retainer that would be, effectively, on call to
18 the town, Administrator Monroe, certainly the
19 Applicant to answer complaints, can you do some
20 of this monitoring, does that make sense to
21 people?

22 COMMISSIONER ROSE: I do think if we get to
23 the conditions stage that that makes sense
24 having an independent evaluator to determine the

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1 sound. I would just like to reference that in
2 Mr. O'Neal's study that based on the actual
3 testing he did then do modeling to determine
4 sound levels at 344 potentially sound sensitive
5 structures. That was within the two-mile radius
6 of the various turbines.

7 I also, I don't know if we want to spend
8 more time on this or not, but I think there was
9 a lot of discussion and Attorney Weathersby
10 referenced it with regards to the G factor which
11 really is about the ground absorption factor,
12 and my recollection was there's really three
13 elements that could be considered there, either
14 a zero which is completely reflective, .5 which
15 is sort of a mixed ground from an absorption or
16 one which would have the highest level of
17 absorption, and I know there was a lot of
18 testimony and discussion about what is the right
19 G factor to be utilizing based on the
20 requirements under the rules. So I don't know
21 if we want to touch on that at all.

22 I would just state from my perspective that
23 the G factor of .5 seemed to be reasonable. It
24 was mixed ground certainly between the turbines

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1 and any of those sensitive sound structures that
2 were considered. So I was comfortable with that
3 perspective, but I know that was also a point of
4 some of the testimony that we heard during the
5 course of the proceedings.

6 PRESIDING OFFICER SCOTT: Dr. Boisvert?

7 DR. BOISVERT: I like the concept of a
8 third party conducting the testing. I think
9 that's appropriate. You mentioned available to
10 the town. It gets, I'm not quite sure the role
11 of the town in this as opposed to the property
12 owner or the Applicant and that I think we need
13 to determine when we talk about conditions, but
14 having a third party expert follow up is much
15 better than giving an instrument to the town as
16 was done in another case and hoping that they're
17 going to be able to use it properly. Like so
18 many instruments, you have to use it routinely
19 to make sure you're using it right, and I think
20 it puts a responsibility and a burden on whoever
21 it is in the town to operate it and it's
22 probably not in their usual job description.

23 PRESIDING OFFICER SCOTT: Just to clarify,
24 as least from my suggestion, I wasn't suggesting

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1 that we instead of having the town have one
2 available to them, I was suggesting in addition.
3 I'm not suggesting at this point that we amend
4 the agreement with the town.

5 DR. BOISVERT: Okay.

6 PRESIDING OFFICER SCOTT: Are there
7 comments?

8 MR. CLIFFORD: Mr. O'Neal's testimony was
9 that the G factor was .5, porous or hard, and
10 they used a two-decibel uncertainty from the
11 turbines. That was from the manufacturer. And
12 that he agreed that even if you modeled a G of
13 zero versus one the difference might be anywhere
14 from 3 to 6 dB, and he thought that given Antrim
15 had generally mixed ground cover he thought a .5
16 was accurate.

17 So I take that to read in many respects
18 that he probably used his best scientific
19 judgment consistent with his prior research in
20 this area, felt that was appropriate, modeled it
21 that way and even with the uncertainty factor
22 there's still this potential to turn it down
23 another five decibels if he's horribly off.

24 And, again, the discussion centered around

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1 our statute or rules require you can't operate
2 it if it's over 40. So if postconstruction
3 testing shows it's over 40 they can't turn it
4 off. They can't even turn it on. And then I
5 wasn't suggesting either that the monitoring be
6 left on the town. I was just referring to what
7 the circumstances were in Lempster. I don't
8 think we want to leave it to town officials to
9 monitor sound.

10 But if there's a third party component it
11 might be more reasonable because at least there
12 would, it would probably give the SEC some more
13 comfort, and maybe, probably wouldn't give the
14 Applicant much comfort but the idea would be
15 there would be an independent party that
16 wouldn't be under the control of the Applicant
17 if you wanted to have testing done or if there
18 were complaints.

19 PRESIDING OFFICER SCOTT: Okay. And just
20 to clarify, I know you were paraphrasing, but if
21 we're registering above 40 but below 45 that
22 would allow them to operate during those 8 hours
23 during the day, according to our rules.

24 MR. CLIFFORD: Right. According to our

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1 rules. I'm sorry. I'm really speaking to the
2 40 at night. That's what I wanted to be clear
3 on. It's the night. When I refer to 40, it's
4 to that.

5 COMMISSIONER ROSE: Along those lines
6 though it's 40 or 45 depending on the time of
7 day and/or greater than 5 dBA for background.
8 So I guess that is another point of
9 clarification that it could be below 40 but if
10 it's above 5 dBA, then it would be, that would
11 still preclude it from being operational.

12 MR. CLIFFORD: We'll have to go to the rule
13 on that. You recall there was testimony, I
14 recall there was testimony about whether our
15 rule was absolute or with attenuated noise. For
16 example, some discussion that you screen it out
17 or you don't screen it out. I know Mr. James
18 talked about that on his day, for example, I
19 know he was referring to, well, for example,
20 noise ordinances in cities. Generally, you take
21 into account the background noise because you
22 know you're going have the trucks and the
23 airplanes and all that stuff so you can't exceed
24 a certain decibel limit above what's already

[DELIBERATIONS]

1 there, and I have to go back to our rules to
2 look at what our rules state.

3 PRESIDING OFFICER SCOTT: I'm looking at
4 the rule right now, and just to clarify, it's
5 the language, I'm kind of clipping out of it,
6 shall not exceed the greater of either the 40 or
7 45 or 5 dBA above background levels. I just
8 wanted to clarify. And again, measured at
9 L-90 sound level.

10 MR. CLIFFORD: So it's above the background
11 noise. So I think there was discussion around
12 like, for example, the Berwicks or maybe Mr.
13 Block's house there was 14 to 19 so there would
14 be another 40 or 45 above what's already there
15 so that's how I would figure it out.

16 PRESIDING OFFICER SCOTT: Attorney
17 Weathersby?

18 MS. WEATHERSBY: I think the rule is it's
19 greater of 40 or 45 or 5 above the background
20 level. So if you were right down at the Route
21 9, got a ton of traffic and that you may get
22 above 45, but for most of the Town of Antrim it
23 seems like, and I think we heard testimony from
24 Mr. James, that the sound levels are really

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1 pretty low, in the teens, typically, at night.
2 So I think the 40 or the 45 would be the maximum
3 threshold in most of the town.

4 PRESIDING OFFICER SCOTT: Anybody else?
5 While I agree myself that there's a lot of ways
6 to consider the F and G factors, I think I am
7 comfortable with what Mr. O'Neal did. Again,
8 that comfort is, for me anyways, would be really
9 predicated on, as I said, maybe filling out a
10 little bit more of a condition where we'd have
11 this post monitoring and how it would be done.
12 Again, in an example of if the company felt
13 compelled to go to an NRO mode, noise reduction
14 operation mode, I would want to see that
15 verified, too, and tested, right? So I'm like
16 in theory in shadow flicker where they can
17 program it in this is different so it's harder.
18 So any other comments on whether we're
19 comfortable with Mr. O'Neal's modeling in
20 itself?

21 I had brought up, in addition to
22 Mr. Clifford's comments, obviously, we did have
23 some testimony regarding potential health
24 impacts, and my concern with those is

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1 particularly I think the health candidate look
2 is, first of all, my understanding is not
3 finalized yet. So typically, these things get
4 peer reviewed and can change in that context.
5 So it's hard for me, though certainly of
6 concern, but I would also argue regarding the
7 health impacts we did have the rules that put
8 sound levels in. So it's not like this is
9 unfounded. But I was less moved by the spectra
10 of health impacts at this time. I don't know if
11 anybody had any other comments on that.

12 MR. CLIFFORD: My recollection was that
13 some of these rules came, I'd have to find it,
14 but I thought that our rules actually came out
15 of these World Health, I wasn't here for the
16 rule making, but the World Health Organization
17 study is kind of where we got the 40, 45 from?
18 And that those have been vetted by other
19 organizations and so I wasn't here, again, for
20 the rule making, but it seems like these rules
21 were adopted with those surveys and studies in
22 mind. I'm not a doctor, but well, I am,
23 different kind of doctor, but seems to me 40 or
24 45, you know, even 50 background don't seem to

[DELIBERATIONS]

1 me to lend themselves to at least obvious or
2 observable ill health effects. I think we've
3 all driven by people jackhammering in the
4 street, loud fire engines, that kind of things,
5 and those are very high levels, obviously, for
6 short periods of time. But 40 to 45, seems to
7 me, we were talking about that in the context of
8 what we are experiencing right now in the room,
9 we're at 45 to 60 right now. So that's not
10 making me ill. Yet.

11 PRESIDING OFFICER SCOTT: Of course, you do
12 have a microphone. Okay. Any other discussion?
13 On the sound, again, I don't know when the right
14 time is, but I do want to discuss again the two
15 legal issues I brought up with that as far as
16 participating landowners and affecting the
17 ability of a landowner to effectively waive our
18 rules and also the discussion which involves
19 shadow flicker also. There was some discussion
20 over whether this was prospective for buildings
21 on affected properties or not or is it as of the
22 time of this certificate, I think, for want of
23 better language.

24 So before we do any of that, does anybody

[DELIBERATIONS]

1 want to discuss anything else or do we want to
2 perfect the condition I propose? Are we
3 comfortable with the language on that condition
4 of third party monitoring?

5 MS. WEATHERSBY: Could you repeat your
6 proposal?

7 PRESIDING OFFICER SCOTT: I was hoping
8 Attorney Monroe would, but she's shaking her
9 head no. So what I was suggesting is that as a
10 proposed condition that the Applicant would be
11 required to fund a third party monitor that
12 would be available to the SEC Administrator,
13 ultimately, I think, but also the town and
14 certainly the Applicant to conduct sound studies
15 and be able to respond to sound-related
16 complaints. So perhaps Attorney Iacopino can
17 help me a little bit about what's already been
18 proposed.

19 MR. IACOPINO: Just as a reminder, there is
20 in the record at Appendix 17 A of the
21 Application the agreement between the Town and
22 the Applicant and the Section 11.3 of that
23 agreement has some language about
24 postconstruction noise measurements. I don't

[DELIBERATIONS]

1 know if that language satisfies the members of
2 the Committee or not. I would draw your
3 attention to it. I can read it if you'd like me
4 to.

5 "Within one year of the commencement of
6 commercial operations of the wind farm, the
7 owner shall retain an independent qualified
8 acoustics engineer to take sound pressure level
9 measurements in accordance with the most current
10 version of ANSI S12.18. The measurements shall
11 be taken at sensitive receptor locations as
12 mutually identified by the owner and town. The
13 periods of the noise measurement shall include,
14 as a minimum, daytime, winter and summer seasons
15 and nighttime. All sound pressure levels shall
16 be measured with the sound meter that meets or
17 exceeds the most current version of ANSI S1.4
18 specifications for a Type II sound meter. The
19 owner shall provide the final report of the
20 acoustics engineer to the town within 30 days of
21 its receipt by the owner."

22 That's contained in exhibit, well, it's in
23 the Application. Appendix 17 A. This agreement
24 was dated back on March 8, 2012.

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1 PRESIDING OFFICER SCOTT: Thank you. That
2 solves it for me. What that doesn't do and I
3 was trying to tease out a little bit more, it
4 doesn't provide a resource for the Administrator
5 should she have issues or a complaint and back
6 to Dr. Boisvert's comment, I think what he was
7 going to, where does the complaint go, to the
8 town or not, it could go either place or both or
9 many other places, but two primary places I see
10 a complaint going would be to the town,
11 certainly, and potentially at any time to the
12 Administrator. So I want that kind of resource
13 available to the Administrator.

14 The other thing that language doesn't
15 contemplate, at least in my eyes, is again, if
16 to the extent that the project is required to
17 operate with the NRO mode, I'm interested in not
18 just taking at face value that they changed,
19 they went to NRO 1, that, therefore, that must
20 mean that it dropped by a full decibel. I'd
21 want to see that verified through some kind of
22 testing. So that was one of my other concerns.
23 And I don't have it front of me but I was
24 looking at your screen, Attorney Iacopino, is

[DELIBERATIONS]

1 that seemed to be within a fairly constrict time
2 period, too, this language, and I would think I
3 would, I'm interested in having a little bit
4 longer time period also.

5 So those are my concerns with just that
6 language. I don't know if anybody had any
7 reaction to that.

8 DR. BOISVERT: I think that's reasonable.

9 COMMISSIONER ROSE: I agree.

10 MS. WEATHERSBY: I, too, think that a
11 period of longer than a year would be helpful.
12 Perhaps three years. Unless you really get a
13 sense of different conditions. I like the idea
14 of the third party monitor. I'm a little
15 concerned about that the sites that are selected
16 are determined between the Town and the
17 Applicant. I'm wondering if there should be a
18 mechanism where someone like, say, the Berwicks
19 could request that they be added to that list or
20 perhaps there's some merit in having sound
21 measurements be taken at the same sites where
22 Mr. O'Neal did his testing and predicted
23 postconstruction sound levels so there could be
24 analysis done of the accuracy of that modeling.

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1 I also think that whatever portfolio report
2 is generated also should be sent, with a hard
3 copy and an electronic copy to SEC
4 Administrator. But I agree that having a third
5 party sound engineer sort of on retainer, I
6 guess, to address complaints would also be a
7 good idea for the duration of the project.

8 PRESIDING OFFICER SCOTT: Dr. Boisvert,
9 were you going to say something?

10 DR. BOISVERT: I was looking to you. I
11 thought you were going to say something.

12 PRESIDING OFFICER SCOTT: Director Forbes?

13 DIRECTOR FORBES: I agree with those
14 comments. I think it is important to try to
15 validate the modeling. The language as proposed
16 does not have that step, and it should be part
17 of it. There's also weakness, I think, in that
18 it does not talk about the duration of sampling
19 and from what I read here you could have sensors
20 out there for one day and be done with it.
21 Those quiet nights, those conditions that occur
22 may not be captured. So I think adequate
23 sampling, postconstruction monitoring, I should
24 say, should be adequate to validate and

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1 determine the accuracy of the modeling.

2 COMMISSIONER ROSE: So as I view this or at
3 least the way I'm thinking of this is there are
4 two separate things. One is they're going to do
5 postconstruction noise measurements per their
6 agreement with the town, and they're going to do
7 that over four different seasons within one year
8 of commencement of commercial operations. So I
9 think that's one.

10 And then I think we're talking about having
11 a second component to allow for the ability of
12 noise complaints to be evaluated in an
13 independent fashion that are separate and
14 distinct from these postconstruction noise
15 measurements. So I think that's where we're
16 talking about trying to have a third party
17 independent capacity to evaluate some of those
18 noise complaints that may or may not come in.

19 So I think the postconstruction noise
20 measurement is, A, how accurate was this study
21 and that should be made available to people to
22 look at, and then the separate and distinct
23 element is how do we address or ensure that
24 there's a capacity to address noise complaints

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1 that may come in to either the town or to the
2 Committee or to the SEC.

3 PRESIDING OFFICER SCOTT: I concur with
4 that. The only thing missing out of that,
5 again, is I would want our conditions to also
6 reflect that in order to be in compliance,
7 should the project require NRO mode, I want
8 testing to verify that.

9 COMMISSIONER ROSE: Yes. I would concur
10 with that.

11 MR. CLIFFORD: I agree with everything
12 Commissioner Rose said. I think that's a
13 two-fold component. One is the agreement with
14 the town, and the two which I think has been
15 alluded to earlier is how do you handle
16 complaints, and I don't know right now, and this
17 is where I'm getting really uncomfortable in
18 this process is where we seem to be throwing
19 conditions in on the fly without any careful
20 thought.

21 So I'm going to actually request of the
22 Chair that if we're going to talk about, at
23 least in my opinion, if we're going to talk
24 about conditions, we ought to have what I call a

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1 conditions day, and we can put all the stuff in
2 the hopper and talk, give it over to Ms. Monroe
3 and she can have -- we've never done this
4 before, but this is getting kind of unwieldy and
5 uncomfortable for me because we hear conditions
6 flying around, the record is full of conditions
7 thrown out by 7 different people, and I don't
8 think any of us really can say with any degree
9 of specificity right now what those conditions
10 are or ought to be.

11 So I'm going to suggest that if we're going
12 to have conditions because I'm uncomfortable
13 with this that maybe Ms. Monroe keeps a list of
14 the categories of the conditions, and that
15 before there's any vote on the condition that
16 that condition be circulated amongst all the
17 Committee members in writing with whatever
18 versions they are, and we have sort of a
19 conditions deliberation day. Because,
20 otherwise, we're going to end up with 7
21 different recollections of what the condition
22 was and was supposed to be, and without having
23 anything in front of us to actually read and
24 agree to and sign off on, it's going to make a

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1 really messy sort of document if we approve this
2 thing at the end. That's my two cents.

3 PRESIDING OFFICER SCOTT: So from my point
4 of view with the exception of maybe the having a
5 separate day just for that, that was my concept
6 of what I was attempting to do. So what I want
7 to do is get language clear enough that Attorney
8 Monroe can try to memorialize it, her to put
9 together a list of conditions that we'll put
10 into the parking lot, and then have us rediscuss
11 that, reengage on that with the exact language
12 in front of us, wordsmith if necessary, and vote
13 on those conditions. So that would be, first of
14 all, nothing's final until we take a final vote,
15 but that was my intention to have a part two of
16 the condition process which I think is what
17 you're saying also.

18 MR. CLIFFORD: Right, and I know our
19 deliberations are in public, but I think the
20 conditions maybe ought to go through Mr.
21 Iacopino's office so that they're distributed in
22 a fashion that we can understand them and read
23 them for our own purposes because -- maybe I'm
24 venting my frustration, but I don't know where

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1 we're going, and we hear a lot of conditions
2 thrown out, but I don't know which ones we're
3 really, we hear a nod here and I agree with that
4 there, and I don't know what it looks like.

5 ADMINISTRATOR MONROE: That's what, I have
6 been putting actual language, I think, to what
7 I've been hearing.

8 MR. CLIFFORD: Right, but then what you're
9 hearing and what's in the transcript are two
10 different things, and we're going to wait for a
11 transcript to come out. So this is my
12 preference and I don't run this show, but if I
13 am going to agree to a condition, I want to see
14 it in writing. For example, we've had
15 conditions, proposed conditions, submitted by
16 the Applicant in this proceeding. We've had
17 MOUs submitted. I mean, sure, we can agree
18 conceptually to what the condition is, but I
19 don't think until it's reduced to a piece of
20 paper I'm not really comfortable with agreeing
21 to conditions on this basis.

22 PRESIDING OFFICER SCOTT: Again, I don't
23 think we're saying different things, at least
24 from me anyway. I want to hear from the rest of

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1 the Committee, but my thought was before we
2 agree to conditions we would have in front of us
3 in writing, and I thought I had said that before
4 so if that wasn't clear, I'm clarifying now. So
5 I don't think we're in a different place.

6 MR. CLIFFORD: No. I'm just saying I think
7 the boulders thing was easy, but we're talking
8 about setting up like third party monitoring
9 systems, complaint mechanisms, who does what.
10 That seems to me much more technical than using
11 best practices to avoid boulders. That was
12 pretty clear. We came up with a specific
13 reference, but this seems to be, it's much more
14 difficult, almost like rule making.

15 COMMISSIONER ROSE: I think we're kind of
16 on the same page because I don't think we're
17 suggesting that these conditions are final.
18 What we're using right now is what I'll use as
19 sort of rough draft language. I think we are
20 going to circle back around it, and I think the
21 only real difference is I think the Chairman was
22 referencing it as a parking lot and I think you
23 called it the hopper. So I think we're kind of,
24 I think we're in the same spot and we're going

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1 to circle back and come up with final language
2 so that it's clearly articulated in the record
3 what the various conditions will be before any
4 sort of final vote will be taken.

5 MS. WEATHERSBY: I do think it's really
6 important that while we're discussing a certain
7 topic and there will be a condition that may not
8 have the exact language but the components of
9 the condition be as specific as possible so that
10 language can be wrapped around those ideas and
11 that we're not sort of reopening, rediscussing
12 the exact terms of the condition or the major
13 terms of the condition, but we're really kind of
14 crafting and agreeing upon language on that
15 second pass, but we're getting as specific as we
16 can to the concepts during the topic discussion.

17 PRESIDING OFFICER SCOTT: And I'll say,
18 too, obviously, to the extent that we're trying
19 to get something in writing we have to obviously
20 articulate enough that it can get in writing so
21 that's hard, and my view is, as Attorney
22 Weathersby mentioned, it's hard not to discuss
23 at least the concept of the condition because at
24 least in my mind some of the things I'm okay

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1 with are only if those conditions happen.
2 Right? So that's why they're called conditions.
3 So it's hard to divorce the two.

4 Anybody else? Does that give you any more
5 comfort, Attorney Clifford?

6 MR. CLIFFORD: Well, it gives me comfort
7 now that hearing we're not actually trying to,
8 we're just painting it with broad strokes, but
9 then we'll actually see something that comes out
10 of this. I just was fearful that we're going to
11 go down where things, we're going to see stuff
12 in final form that we didn't talk about or
13 wasn't fully vetted, and I still think we have
14 to vet that final written language, paragraph,
15 whatever, with great, again, in public and with
16 a great degree of specificity because otherwise
17 it's pretty loose.

18 PRESIDING OFFICER SCOTT: That's correct.
19 And I don't think we can approve language
20 without having put it in the record. I think it
21 would be difficult.

22 ADMINISTRATOR MONROE: I just want to ask.
23 Does this whole section in the rules about, and
24 I don't think I was here for the sound expert

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1 discussion. I think I was here on Northern
2 Pass. But there's this whole section in the
3 rules about postconstruction noise compliance
4 monitoring as well as the validation of
5 complaints. I mean, perhaps it could be, could
6 this post compliance monitoring plan be
7 developed by a third party and submitted for
8 approval to -- I mean, I'm certainly no sound
9 expert but maybe that independent could be an
10 independent review to approve it, and then we've
11 got a framework by which you would then go out
12 and address complaints and do this
13 postconstruction noise compliance monitoring.

14 PRESIDING OFFICER SCOTT: Can you give us a
15 reference?

16 ADMINISTRATOR MONROE: It's in 301.18(e).
17 It's specific to there's a preconstruction
18 procedure wind energy systems and then a
19 postconstruction noise compliance monitoring
20 section in (e).

21 PRESIDING OFFICER SCOTT: So on that, what
22 I had assumed, and it's a good discussion to
23 have, is that the Applicant's agreement with the
24 town was an attempt to meet this.

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1 ADMINISTRATOR MONROE: But that was 2012.
2 These rules were adopted in December of 2015.

3 PRESIDING OFFICER SCOTT: Good point.

4 MR. CLIFFORD: Seems to me like we've got
5 this part covered, and then the question is,
6 that's what I thought. It's the complaint
7 aspect. That's the rub is how we do that.

8 ADMINISTRATOR MONROE: There's a provision
9 in (i) that talks about validation of noise
10 complaints shall require field sound surveys so
11 to the extent we could put some meat on those
12 bones that might be helpful.

13 PRESIDING OFFICER SCOTT: And maybe this
14 wasn't your suggestion, but I guess I will add
15 to this. So in Commissioner Rose's outline he
16 was suggesting, okay, you'd have what's
17 currently in the agreement with the town, thing
18 one. Thing two would be complaint and maybe NRO
19 validation. So would it make sense then that in
20 addition to what's been agreed to in the town we
21 would require that one-year study to include the
22 requirements of 301.18?

23 ADMINISTRATOR MONROE: Yes. The way I
24 read, this is required is the way I read this.

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1 PRESIDING OFFICER SCOTT: Right. That
2 would be the logical place to do it.
3 Four-season study.

4 ADMINISTRATOR MONROE: Yes. I haven't seen
5 what was agreed to with the town, but I don't
6 know how that comports with the specific
7 provisions that we have in the rules as they are
8 today. This would be the first project to
9 comply with that requirement.

10 MR. CLIFFORD: I just noticed, it sounds
11 like we talked earlier about who gets the
12 complaint? It looks to me like the SEC is the
13 complaint box. It's already written in the
14 rule.

15 PRESIDING OFFICER SCOTT: Right. I get it.
16 My point was that there's nothing precluding a
17 complaint from going to the town also. That's
18 the natural place.

19 MR. CLIFFORD: No, but in addition to
20 seeing the other things that Ms. Monroe is going
21 to have on her plate so somebody is going to be
22 registering complaints to the extent there are
23 any.

24 PRESIDING OFFICER SCOTT: So clearly the

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1 Applicant, assuming we issue a certificate, is
2 going to be required to meet all the rules. So
3 I guess Attorney Iacopino points out to me this
4 is, over the passage of time, I'm sure the
5 agreement with the town doesn't reference the
6 same ANSI standards that the rules do. So again
7 that doesn't mean the agreement with the town
8 can't be put into effect, but we, I guess my
9 question maybe is to Attorney Iacopino, do we
10 have to put in a clause that requires them to
11 meet the conditions of the rules? Is that
12 really needed?

13 MR. IACOPINO: If that's what you decide to
14 do as a condition, I would suggest doing that
15 because when we read this rule, it doesn't say
16 that there shall be postconstruction noise
17 compliance monitoring. It just says what
18 postconstruction noise monitoring, how it should
19 be conducted.

20 ADMINISTRATOR MONROE: Number 7 talks about
21 postconstruction monitoring surveys shall be
22 conducted once within three months of
23 commissioning, but there are some subjective
24 things in here like where the measurements would

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1 be taken.

2 MR. IACOPINO: You're correct.

3 PRESIDING OFFICER SCOTT: So perhaps
4 another condition would be a requirement for a
5 plan, the Applicant develop and submit a plan
6 for the implementation of 301.18, et al.

7 MR. IACOPINO: It does indicate that the
8 location shall be preselected where noise
9 measurements will be taken and shall be the same
10 locations at which predictive sound modeling
11 study measurements occurred. So there is some
12 indication of where the postconstruction
13 monitoring should be done.

14 PRESIDING OFFICER SCOTT: So I still think
15 maybe requiring that there's a condition
16 requiring the submission of a plan for approval
17 by the Administrator to implement, and,
18 obviously, we'd need them to meet the
19 requirements of the rule also. Is that a
20 logical condition? Anybody?

21 DR. BOISVERT: I want to make sure that we
22 haven't lost the connection to complaints
23 because I think that's what it's really all
24 about. The situation where specific individuals

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1 are experiencing greater sound pressure than was
2 predicted, and just want to make sure that in
3 this crafting, which we haven't, I really
4 appreciate the intent of being very clear and
5 specific about this and doing it in a thoughtful
6 manner, but I think it is to address issues of
7 complaint and make sure that when the testing is
8 done it's not as an added place that happens to
9 be not where the complaint comes from.

10 PRESIDING OFFICER SCOTT: I think I see two
11 different things. Three now. We talked about
12 the agreement with the town. We talked about a
13 condition for a third party to be available to
14 assist in answering complaints, and what I'm
15 suggesting is that part 3 now is a plan and
16 implementation, obviously, of the sound study as
17 required in the rules. So there's three
18 different things. So that doesn't preclude, you
19 know, I agree with your concern. I want to see
20 my point in suggesting a condition on complaints
21 was I want a resource available for complaints.

22 Attorney Weathersby, did you have
23 something?

24 MS. WEATHERSBY: You're starting to read my

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1 mind. My thought is this is really pretty well
2 laid out and detailed what's in the rules. My
3 concern is the amount of monitoring. It's once
4 after construction and then once during each
5 season. So it really is doing five days. Five
6 moments. And I'm not sure that's adequate. I
7 would be more comfortable with more monitoring
8 and for a longer period, 2 or 3 years, and maybe
9 once, twice each season and three times each
10 season for a period of two years. I'll throw it
11 out for discussion, but it doesn't seem, it
12 seems as though they could look at the weather
13 forecast and predict a certain type of weather
14 and go out and test that day, and that isn't
15 really what we're looking for.

16 MR. CLIFFORD: I didn't write the rules,
17 but these are the rules, and I'm really kind of
18 hesitant to then take the rules and say we're
19 going to put all kinds of conditions that go
20 outside the rules. I haven't read them with any
21 great degree of specificity, but there was a
22 process by which we got to these rules, I
23 assume, and this is what we've been handed. So
24 I'd like to kind of go through them, and maybe

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1 we need to go through them a little more slowly,
2 but, for example, there is discussion here
3 about, well, the sound measurements are omitted
4 when there's rain or temperatures are below
5 instrument minimum. They're pretty -- I don't
6 know where the rules came from because I wasn't
7 there, but it seems like someone went through
8 this and there must have been some back and
9 forth about the Application of these rules with
10 respect to wind farms.

11 I mean, while I agree maybe you might want
12 more monitoring or maybe you want to consider
13 additional monitoring, I think there's pretty
14 specific, at least specific enough for someone
15 to follow it.

16 I'm still really stuck about where you end
17 up with the noise complaints because that's
18 where it doesn't, it leaves it to the Committee
19 to require field sound surveys as determined by
20 the Administrator. I mean, to me that's really
21 the most, that's the area that we're getting
22 stuck down in which is who does all that. Who
23 will do that if there's complaints.

24 PRESIDING OFFICER SCOTT: So I'll say a

[DELIBERATIONS]

1 couple things then. To answer your last
2 question first, again, I think it's, first of
3 all, obviously the rules have to be met. That
4 doesn't preclude the Committee from, for
5 instance, if our determination of or our comfort
6 level on whether the sound will be met or not
7 would dictate that we'd feel more comfortable
8 with more monitoring, that's certainly within
9 our purview, I believe.

10 As far as, and bluntly, given the rules,
11 what's 301, let me back up here. 301.18(7)(a)
12 and (b) even anticipate that we can require more
13 monitoring so the rules don't certainly preclude
14 that, not that I would expect they would.

15 As far as complaints, again, to me, what I
16 was trying to do was have the Applicant fund a
17 third party tester that would be available to
18 assist the Town and Attorney Monroe on any
19 complaints that are received regarding sound.

20 Would this be a good time to take a lunch
21 break?

22 ADMINISTRATOR MONROE: Lunch is here if you
23 would like to break.

24 PRESIDING OFFICER SCOTT: Why don't we

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1 break for lunch.

2 (Lunch recess taken at 12:12
3 p.m. and concludes the
4 **Deliberations - Day 2**
5 **Morning Session.** The hearing
6 continues under separate cover
7 in the transcript noted as
8 **Deliberations - Day 2**
9 **Afternoon Session ONLY.**)

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