

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 December 9, 2016 - 1:10 p.m.
4 Public Utilities Commission
5 21 South Fruit Street - Suite 10
6 Concord, New Hampshire

7 DELIBERATIONS
8 DAY 2 AFTERNOON SESSION ONLY

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

14 PRESENT FOR SITE EVALUATION SUBCOMMITTEE:

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

17 Cmsr. Jeffrey Rose Dept. of Resources &
18 Economic Development

19 Dr. Richard Boisvert Dept. of Cultural Resources/
20 (Designee) Div. of Historical Resources

21 John S. Clifford Public Utilities Commission/
22 (Designee) Legal Division

23 Dir. Eugene Forbes Dept. of Environ. Services/
24 (Designee) Water Division

Patricia Weathersby Public Member

Also Present for the SEC:

Michael J. Iacopino, Esq. (Brennan...)

Pamela Monroe, SEC Administrator

COURT REPORTER: SUSAN J. ROBIDAS, NH LCR NO. 44

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P R O C E E D I N G

(Hearing resumed at 1:10 p.m.)

PRESIDING OFFICER SCOTT: Welcome back everybody. We'll see if I can remember where we are. So we had a lot of discussion on a couple additional conditions. And, again, we had a discussion on what does that mean. And, again, we'll presumably put something together and have it in writing before we finalize conditions.

Any more discussion on that before I ask Attorney Clifford to go to the next section?

MS. MONROE: Did we resolve the post-construction noise compliance issue?

PRESIDING OFFICER SCOTT: I'm not sure what you mean by "issue." In my mind, what I was advocating for was a required condition by which we require the Applicant to retain a third-party expert that would provide assistance to both the Town and your office, Attorney Monroe, as far as the administrator for the SEC, in answering to any -- answering any complaints regarding sound.

Okay. Any additions to that or

1 comments before we move on?

2 MR. CLIFFORD: I just had one since
3 I'm leading the next section, anyway. I just
4 want to caution the Committee about going beyond
5 the bounds of the rules. Just for purposes of,
6 in my own mind, for purposes of future
7 applicants, I think people would like to know
8 what is required under the rules. And having,
9 for example, myself sat on planning and zoning
10 boards, you get into very sticky situations in
11 the future when you start making conditions in
12 one area on specific applications and then
13 having subsequent applications come in and say,
14 well, you did things in this case, why aren't
15 you doing them in that case. So I just want us
16 to be very cautious of that, having experienced
17 exceptions in the planning/zoning process where,
18 for example, one Applicant will come in, make an
19 exception, and then another one comes in two
20 years later, well, you did this and I want you
21 to do that. Before you know it, the exception
22 becomes the rule and you don't know how you got
23 into it. I think we got a pretty good set of
24 rules here to guide us. That's the one caution

1 I wanted to raise.

2 Next thing we need to talk
3 about, I thought, was shadow flicker. So, in
4 connection with the shadow flicker, we needed
5 to -- for purposes of the Application, we're
6 supposed to look at the assessment that
7 identified the astronomical -- God --
8 astronomical maximum, as well as the
9 anticipated hours per year of shadow flicker
10 expected to be perceived at each residence,
11 learning space, et cetera, within a minimum of
12 one mile of any turbine, based on shadow
13 flicker modeling that assumes an impact
14 distance of at least one mile from each of the
15 turbines. And under -- that was under site
16 plan -- excuse me -- SEC Regulation
17 301.08(a)(2). And for purposes of determining
18 whether there's unreasonable adverse effects
19 on public safety, I'm pointing to
20 301.14(f)(2)b, which defines shadow flicker as
21 "shadow flicker created by the Applicant's
22 energy facility during operations shall not
23 occur more than eight hours per year at or
24 within any residence, learning space,

1 workplace, healthcare setting, outdoor or
2 indoor public area or other occupied
3 building."

4 (Court Reporter interrupts.)

5 MR. CLIFFORD: And the Applicant did
6 submit a shadow flicker analysis that was done
7 using the WindPro software system, which is
8 generally accepted practice in the industry.
9 They submitted a shadow flicker analysis that
10 replicated the worst-case scenario that was with
11 the sun shining, I think, all year during
12 daylight hours and that the wind was strong
13 enough to have the turbines on. And under our
14 rules under 301.08, it required the analysis at
15 one mile.

16 They also did sunshine
17 probabilities, wind estimates over a year's
18 period. They used, I think, over 150
19 receptors. I may be a little off on that.
20 And there were 24 receptors that showed shadow
21 flicker to be in the range of over the
22 eight-hour mark, which was 8 hours and 13
23 minutes to 8 hours and 24 minutes; 77 sites
24 showed no flicker within the required radius,

1 and 49 showed under 8 hours per year. And
2 then they have offered a plan by which they
3 would -- they, working together with the
4 manufacturer, would install components into
5 these turbines that would actually get the
6 shadow flicker down at identified sites below
7 the eight hours per year.

8 There was a lot of discussion
9 about what that system looked like, be like.
10 We understand it's in the -- for proprietary
11 reasons -- and it's apparently in use overseas
12 but not the -- that the methodology -- not the
13 methodology but the proprietary aspects of it
14 needed to be -- actually, I'm getting ahead of
15 myself. That's a different issue. The point
16 is they were going to limit the shadow flicker
17 to less than eight hours a year, working
18 together with Siemens.

19 And I want to open it up to
20 discussion on this topic. And there were a
21 lot of discussion about what flicker was and
22 wasn't, the percent. Mr. Ward had issues
23 about percentage days of sunshine or not. My
24 understanding from use of the analysis here

1 was that there were meteorologically-based
2 data from the ND -- the National Data
3 Collection Center. I can't remember exactly
4 what it was. It's in my notes -- that
5 identified percentages of -- I mean days with
6 maximum amount of sunshine. And that was
7 included in the model. So I want to open the
8 floor up to discussion on this issue.

9 PRESIDING OFFICER SCOTT: Any
10 comments?

11 [No verbal response]

12 PRESIDING OFFICER SCOTT: Okay. I'll
13 speak then. So, to me, this is somewhat similar
14 to the sound issues, in that the post --
15 assuming it happens, the post-construction
16 monitoring is important to me. And I'm not
17 clear on -- we've heard testimony regarding the
18 Siemens technology and being able to program the
19 sites to prevent the exceeding of eight hours.
20 But we also have testimony that there is really
21 nothing on the other end. So that's a concern
22 for me. How do you verify compliance? And I
23 bring it up in this -- at this juncture because
24 that weighs heavily to me, on the comfort level

1 I would have ensuring compliance with this
2 shadow flicker. So I don't know if that helps
3 the discussion or not.

4 MR. CLIFFORD: I'll just jump in
5 really quick. I just remember at one point that
6 there was testimony by Mr. Kenworthy that there
7 was no objection to a condition of filing a
8 report on shadow once a year, summarizing the 24
9 receptors, and would provide that to the Town as
10 well. There were 24 locations, I believe --
11 yeah, there was the 24 receptors with 8 hours or
12 more. And so they'd have to meet the rule.

13 And Mr. O'Neal discussed this
14 as well, that perhaps there would be a
15 third-party vendor. In other words -- and we
16 know, I think, based on the signs and
17 technology, that the shadow flicker is
18 designed to -- can only occur, you know -- the
19 geography of it and the angle have all been
20 pretty well flushed out. The question is the
21 monitoring point. So we know when it's going
22 to occur, how it's going to occur; it's just
23 what's the duration, and how many times does
24 it occur. And so that's what I found helpful

1 in reviewing the testimony here.

2 PRESIDING OFFICER SCOTT: Anybody?
3 Attorney Weathersby.

4 MS. WEATHERSBY: I was going to point
5 out the same point that Mr. Clifford pointed
6 out, that the Applicant agreed to the annual
7 reports concerning the monitoring of the
8 flicker. But I note that those reports are just
9 for the previously identified receptors and
10 don't include any newly constructed residential
11 properties or residential structures. And I
12 think we have to have a discussion as to whether
13 there should be monitoring of the flicker at new
14 residential structures and what others have to
15 say about that.

16 DR. BOISVERT: Yes. I raised this
17 issue during testimony, and there was an
18 exchange between myself and Mr. Kenworthy and a
19 representative of the Town to develop a means to
20 address shadow flicker at newly constructed
21 properties, and it entailed keeping track of
22 building permits and so forth. This was on
23 Day 7 afternoon session.

24 And I believe that the

1 Applicant has developed a condition addressing
2 that. I think there might be some need to
3 further refine that condition. But in my
4 mind, clearly the rules state the effects on
5 the properties. Doesn't say when they were
6 built. That was discussed in testimony. And
7 I think that we need to develop that -- take
8 that condition and refine it, if necessary,
9 and move forward.

10 MR. CLIFFORD: I'm going to say I
11 agree. I recall Mr. Kenworthy's testimony on
12 that. I think one of the ways we address that
13 is, because it's geometric-based, maybe there's
14 a requirement that was -- permits. Somehow we
15 factor in the latitude, longitude of the
16 structure, and then you can run that back
17 through the location in the software used for
18 each turbine.

19 I think if you're given a
20 building permit or a footprint, you will be
21 able to figure out, based on lat and long,
22 whether flicker is going to occur or not, and
23 if so, how much, and then it can kind of be
24 readily dispensed with from the get-go without

1 having somebody go out to a particular
2 location. It may be that simple, I think.

3 DR. BOISVERT: I think you can set the
4 parameter -- and here I'm just estimating
5 because this is certainly not my area of
6 expertise. But I think in the real world, yes,
7 you have shadow flicker here. But when you get
8 on the site, you may find that the vegetation is
9 such that it cuts it off, or the model is just
10 not as precise as you would hope it to be.
11 There's always some variation when you use GPS
12 coordinates and so forth. But I think that it
13 may be that you can set the parameters quickly
14 and then do a field check. Maps are wonderful,
15 but the real world is the test.

16 PRESIDING OFFICER SCOTT: So,
17 elaborate on that if you could, Dr. Boisvert.
18 So what I was getting at is a concern I have
19 with the existence or adequacy of any field
20 test. How do you test this?

21 DR. BOISVERT: I'm not entirely
22 certain. I think having a test during those
23 times of the year when there would be shadow
24 flicker, because obviously with movement of the

1 sun across the horizon, where the shadow flicker
2 lands will shift through the seasons. And it
3 depends on what day of the year you're talking
4 about. And it may also be that if one goes to
5 the property and sites, to the turbines in
6 question, if they cannot be seen at all because
7 of vegetation, that would indicate that there'd
8 be no shadow flicker. I am not entirely certain
9 myself of how you would do that, but there
10 should be a way to address this. And there is a
11 proposal from the Applicant for a condition to
12 start the process. And having started it then,
13 the owner, the occupant of the property, would
14 then be in a position to say, yes, we're getting
15 shadow flicker and it's in excess of eight
16 hours, and they can proceed from there.

17 So, to elaborate, if I'm
18 putting myself in the SEC administrator's
19 role, I mean, one thing I think was discussed
20 that could be looked at is the data logs from
21 the SCADA system. So that's certainly one
22 concrete thing, I think, that could be looked
23 at. And I guess grappling with it, I'm not
24 sure I know the answer to be yes. But is

1 there -- we discussed on sound, okay, let's
2 have them contract a third-party person to go
3 out in the field and evaluate this. And it's
4 unclear to me there is such an animal that
5 would work --

6 MS. WEATHERSBY: It seems to me as
7 though we were -- we have to place a lot of
8 credence in the SCADA system. I don't think
9 that there is actually another way to measure
10 the cumulative hours of flicker. If someone
11 questions the amount that they're getting, I
12 think you do have to go back and look at data,
13 go back into the system and look at the data
14 logs, perhaps ask for specific analysis for a
15 property. But I don't really see another way to
16 measure cumulative hours of flicker at a
17 property, unfortunately.

18 DR. BOISVERT: I may have too much
19 confidence in science, but I think the SCADA
20 system probably is very good. Scientists were
21 figuring this out long before there were
22 computer systems available. That's how they
23 figured out Stonehenge: Position of the sun on
24 the horizon on certain days, where the shadow

1 would fall. This is simply a much more
2 sophisticated computer-assisted system, and I
3 think it's probably quite accurate.

4 MR. CLIFFORD: Kind of went to my
5 point, which I think if you get a building
6 permit and you require them to submit the
7 latitude and longitude, then at least you have
8 some basis for saying there may or may not be
9 some shadow flicker at this particular building
10 lot location, and then maybe we need to go out
11 and evaluate: Well, where is the structure?
12 How is it going to sited? You know, for
13 example, is there intervening tree coverage,
14 foliage coverage that may make it unnecessary?
15 But at least there's a benchmark. You know a
16 building permit's been pulled or a lot
17 subdivided somewhere within, you know, the town,
18 and then these guys go look at the -- run the
19 latitude/longitude through the system
20 referencing whatever turbine happens to be
21 nearest to, or turbines, and then at least you
22 have some frame of reference to say, yes,
23 explore this further, or, no, we have no
24 concerns at all given what this is.

1 DR. BOISVERT: Yeah, and it would
2 probably be sequence of turbines. So you might
3 get Turbine 2 for one part of the year and
4 Turbine 7 at a different time of the year.

5 MS. WEATHERSBY: And to that end, if
6 the data shows that it's likely there will be
7 more than eight hours of flicker, it seems to me
8 the rules require the curtailment so that the
9 new structure does not receive that much
10 flicker. But perhaps an opinion of our
11 attorney, or if someone else would like to weigh
12 in on that?

13 MR. CLIFFORD: I will since I seem to
14 be following this pretty closely.

15 I think the notifications
16 probably are enough. I'm not convinced
17 there's -- and other members can disagree.
18 But I think that's what we're supposed to
19 consider as a committee under Public Health
20 and Safety is eight hours. I don't know -- we
21 could obviously discuss this further, but I
22 think that's what's for our consideration.
23 But it's not what's required going forward.
24 In other words, because I can envision a

1 situation where what happens if -- what if
2 this were a growing community all of a sudden,
3 right, and they find gold in the Antrim hills.
4 All of a sudden people start flocking to
5 Antrim and the wind turbines are in sight.
6 But all of a sudden they find themselves with
7 40 new structures surrounding 9 turbines, and
8 every one of those starts coming in and
9 saying, Wait, wait, no flicker, no flicker, no
10 flicker. And I would argue, perhaps, no, it's
11 there. If you come, you need to know that
12 there is a potential for flicker.

13 But we're supposed to take
14 this -- our siting responsibilities is as it
15 sits now. I don't view -- I mean, that's my
16 view. I mean, if I want to build a house in
17 Antrim later, I take it with the full
18 knowledge -- and maybe there needs to be a way
19 of knowing the Antrim wind farm is in
20 existence. I agree with that somehow. But I
21 take it with my eyes wide open. I don't get
22 to go in later, buy a piece of property and
23 then tell these guys what they can do with
24 their piece of property. It's already in

1 existence. That, to me, that's where I get
2 hung up on this. I mean, if I buy -- if
3 there's a farm, a pig farm in town, and I go
4 ahead and decide to go buy a lot next to the
5 pig farm, I take the lot next to the pig farm
6 knowing there's a pig farm there. Then what
7 am I supposed to do? Tell him he can't feed
8 his pigs now because the smell's too obnoxious
9 to me? I mean, he's there.

10 I'm not going to put my lawyer
11 hat on. But if there's something out there
12 and you move into it, you take it as it sits.
13 So I'm kind of reluctant to go with the -- if
14 we're talking about curtailment requirements
15 down the road, it just doesn't sound right to
16 me.

17 PRESIDING OFFICER SCOTT: So that tees
18 up a legal issue I talked about earlier. So we
19 have some controversy over the application of
20 the rules. And you were kind of going there, I
21 think. My read of the rules, which is based on
22 the testimony early on of the Applicant, is
23 different than the Applicant's, I think in that
24 both for shadow flicker and sound, the rules are

1 based on the properties that are impacted. So
2 unless there's a -- unless we waive, for
3 instance, for a participating landowner, even if
4 it's built in the future and it's not property
5 controlled by the Applicant, they're bound by
6 the rules for shadow flicker and noise.

7 I'll ask Attorney Iacopino to
8 weigh in, but that's my understanding of their
9 requirements of the rule.

10 MR. IACOPINO: Site 301.14 in your
11 rules is the one that will apply with respect to
12 shadow flicker. And it's subsection (f)(2)b.
13 And that rule says that, with respect to shadow
14 flicker, shadow flicker created by the
15 Applicant's energy facility during operations
16 shall not occur more than eight hours per year
17 at or within any residence, learning space,
18 workplace, healthcare setting, outdoor or indoor
19 public gathering area, or other occupied
20 building. Does not say that that is limited to
21 the current structures. It is a regulation that
22 is in the rules, something that the Applicant
23 will have to follow. And there's nothing within
24 the rule that limits that to existing structures

1 at the time the certificate is granted.

2 I will point out to you that
3 there has been a proposed -- I believe it's in
4 the context of a proposed condition from the
5 Applicant dealing with -- it's really kind
6 of -- I assume this goes with the agreement
7 with the Town which lays out a process that
8 the Applicant and the Town are willing to
9 pursue with respect to new structures. It
10 pertains primarily to sound, if I read it
11 correctly. It's called the "Proposed
12 condition for future structures," filed with
13 the Committee on November 8th, 2016. And I do
14 believe there was an objection filed by the
15 abutters shortly thereafter. And it lays out
16 a process. I'll briefly go through that
17 process just to remind the Committee.

18 First bullet in it is that the
19 Applicant has to provide the Town with paper
20 and electronic copies of post-construction
21 sound monitoring reports, which are required
22 by our rules, including a map or diagram
23 showing layouts, locations and distances.

24 The second bullet point in the

1 agreement is that the Town will maintain those
2 paper and electronic copies for the benefit of
3 all potential owners and developers applying
4 for either a building permit to construct a
5 new residential structure or planning board
6 approval for subdivision of land for
7 residential use within one mile of any turbine
8 associated with the Project. And in addition,
9 they will make a copy available at the town
10 hall, along with the post-construction sound
11 monitoring reports. The Applicant will also
12 make them all available on their web site.
13 And they will be available to people who walk
14 in or people who request it by the mail.

15 The third bullet point is --
16 requires -- and I'm paraphrasing because I'm
17 not reading word for word. In addition to the
18 filing of the post-construction sound
19 monitoring reports, anybody who applies for
20 new development within the town have the right
21 to obtain from the Applicant or its
22 successors, requested by e-mail, additional
23 information regarding the expected sound power
24 levels and shadow flicker associated with the

1 Project within the one-mile radius.

2 And the next bullet point is 14
3 days after receiving such request, the
4 Applicant shall provide to the property owner
5 and the Town the expected maximum sound power
6 level at the location of the new development
7 and expected amount of shadow flicker at that
8 development.

9 And finally, once that has been
10 provided to the property owner, the Applicant
11 shall cooperate with and provide reasonable
12 assistance to the property owner in evaluating
13 potential mitigation measures if requested by
14 the property owner.

15 So that is a proposed condition
16 that has been presented by the Applicant that
17 addresses the issue. And that's for your
18 consideration. There is an objection to that.
19 But, again, I point out that the rule itself
20 does not limit the eight-hour limits for
21 shadow flicker to existing structures.

22 PRESIDING OFFICER SCOTT: Before I go
23 to Director Forbes, you know, just for me
24 personally, having sat on the creation of the

1 rules, we were looking at potential impacts to
2 health and safety, at least in my view, in
3 creating those rules. We weren't
4 differentiating -- in fact, another legal
5 discussion we need to have is, to me, the
6 application of the rules applies to the
7 Applicant and for all parties. So, maybe in the
8 parking lot of things to do, not for conditions,
9 is we have some participants that have agreed to
10 waive these. I think we need to waive those
11 also, and I support doing that. But taking it
12 to the next step, that's how far I think the
13 rules apply. But for a waiver from us, even
14 participating landowners would -- the
15 Applicant -- the Project would have to meet the
16 conditions on their property also. So that's
17 the way I'm viewing it.

18 But Director Forbes.

19 DIR. FORBES: Yeah, I'd just like to
20 follow up on what you read out of the rules.
21 The section with respect to shadow flicker is
22 headed up by the sentence under (f), "In
23 determining whether a proposed energy facility
24 will have an unreasonable adverse effect on

1 public health and safety, the Committee
2 shall..." to me, what -- is there a distinction?
3 My question is: Is there a distinction between
4 making a determination and what would be
5 construed instead as an operating requirement?

6 Today, to get to Mr. Clifford's
7 point, if there is no adverse effect, we would
8 make a determination of such. But now it
9 seems that there's a conversation leaning
10 towards creating a rule for operating in the
11 future. And I guess I'm kind of curious. Is
12 there a distinction here, in terms of timing
13 and the rights of the initial property owner
14 versus subsequent property owners who might
15 build at a later date?

16 MR. IACOPINO: The rule says that --
17 it does say it in determining that, but it also
18 says, "shall apply" the following standards.
19 And that's the concern. That's a standard that
20 you're applying, that you're required to apply.

21 DIR. FORBES: So you view that as an
22 operating requirement well beyond the
23 determination, which is what this section (f) is
24 all about.

1 MR. IACOPINO: I think you have to
2 determine that. But that would be my advice,
3 yes.

4 MR. CLIFFORD: So I'll jump in and
5 I'll say we're here as the Site Evaluation
6 Committee, not the site enforcement committee.
7 So these rules, as I understand them, were
8 written to planned sites. I mean, there is a
9 monitoring component here. But as I said, I'd
10 be -- I think the reporting requirement's fine.
11 But as I said, if I'm -- if I decide to go buy a
12 lot in Antrim within one mile after this
13 installation is put in place, I'm really
14 reluctant to then require that that particular
15 piece of property be required to have less than
16 eight hours of flicker.

17 I mean, you see what I'm saying
18 here? Where does it stop? Because then I
19 could see the next challenge being someone
20 does decide to buy a parcel, or parcels within
21 the one-mile radius of the turbines and there
22 is flicker because it's within a mile, then
23 the effect of the certificate that they
24 received becomes virtually worthless. See

1 what I'm saying?

2 I mean, we're siting a
3 facility. And the facility is sited, and then
4 you're asking them to comply -- we're giving
5 them potentially a certificate to produce
6 power with nine turbines in this location.
7 Circumstances can change so much that enough
8 properties or buildings are constructed or
9 sited near them that makes this whole thing
10 completely unfeasible because now we're
11 locking ourselves into a continuing eight-hour
12 requirement. We're taking the -- we should be
13 taking this Application as it sits now, not on
14 what we can speculate might happen in the
15 future. That's where I may disagree with
16 others or --

17 MR. IACOPINO: And ultimately it's not
18 me, by the way. I'm not a member of the
19 Committee. I was just asked to give my opinion.
20 It's you all that will interpret your own rules
21 and make your decision.

22 PRESIDING OFFICER SCOTT: So let me
23 take a counterpoint again. So, my view is the
24 rules are put in effect to ensure health and

1 safety. To change your premise a little bit, so
2 I'm a property owner. I don't have a structure
3 within a radius that would either fall within
4 the -- currently within the sound or shadow
5 flicker restrictions. If we were to rule that,
6 if I do build later, after we issue a
7 certificate, and those are exceeded, is that not
8 a taking of my property right? So I own the
9 property now. I may or may not plan to put
10 another structure in the back or front,
11 depending where you are. Where I get hung up
12 is, it was under the guise of health and safety
13 that we established these criteria. So that's a
14 little bit different than some other
15 requirements, in my view.

16 MS. WEATHERSBY: I would agree with
17 Commissioner Scott. I think that -- I don't
18 think we even need to talk a lot more about this
19 because I think the rule says what the rule
20 says, in that there can't be any more than eight
21 hours of flicker on any residential structure or
22 learning space, workplace, et cetera, as the
23 rule states.

24 I also think we need to -- it's

1 not about new people coming to Antrim and now
2 they're buying into the problem. It's this
3 land exists. This land is owned by someone.
4 Antrim Wind has not purchased it, although
5 they may have had the opportunity or they may
6 wish to in the future. But right now it's
7 owned -- the land we're speaking of that could
8 potentially have a new structure is owned by
9 private citizens. And those private citizens
10 may wish to build other structures on their
11 property. They may wish to leave them to a
12 child or grandchild or cousin. They may wish
13 to subdivide and sell it to a new person
14 coming into Antrim. If that property is not
15 subject to the same health and safety
16 standards, the value of that property would
17 decline, I think, fairly substantially if it's
18 for residential use. I think we have to be
19 sensitive to that fact. But that said, I'm
20 not sure that we really need to talk much more
21 about it because I think the rule says what
22 the rule says.

23 PRESIDING OFFICER SCOTT: Dr.
24 Boisvert.

1 DR. BOISVERT: I agree with Ms.
2 Weathersby and what she says. And in terms of
3 future growth and development, that's sort of an
4 unknown variable, as is the weather and how
5 often the wind blows and how hard it blows. It
6 is a variable that the Applicant is taking into
7 consideration. It's part of the risk as any
8 business operation takes going forward. And the
9 rule is there. I don't see that we're creating
10 a new rule; we're simply applying a rule that
11 exists.

12 PRESIDING OFFICER SCOTT: Commissioner
13 Rose.

14 MR. ROSE: Yeah, so I'm struggling on
15 this one a bit because I do believe that one of
16 the fundamental things that are needed is to
17 have a level of predictability on all ends of
18 this. But, you know, when you have -- you don't
19 want to be changing the parameters by which a
20 business is looking at trying to make, you know,
21 an investment into the state. I don't believe
22 that it's healthy to be changing the parameters
23 by which they -- and the conditions by which
24 they evaluated whether or not it makes financial

1 business sense for them to make that strategic
2 investment. So, generally speaking, I believe
3 that you need to have a level of predicability
4 and consistency so that they can make a prudent
5 business decision.

6 I am persuaded by Ms.

7 Weathersby's comment that they also certainly
8 have a high level of deference and respect to
9 private property rights and the notion that
10 that could be a potential, you know, undue
11 taking.

12 So I'm kind of wrestling out
13 loud in my mind right now as to ultimately,
14 you know, that decision. I mean, I guess in
15 looking at the rule, it does sort of state
16 what it states. And I do recall, at least in
17 the dialogue and some of the questions and the
18 testimony, you know, questioning, you know,
19 whether or not the curtailments for shadow
20 flicker were taken into consideration as they
21 determined their, you know, seven outputs.
22 And the discussion was, well, you know, you're
23 talking about, you know, a matter of, you
24 know, minutes or hours within the course of a

1 calendar year. And so, you know, it made it
2 sound like it was really within a rounding
3 error.

4 So, thinking that through a little bit
5 more, I guess, you know, I feel as though that
6 rounding error is probably just that for the
7 Applicant; whereas, the impact on either the
8 property rights owners is going to be, you
9 know, at a higher level of impact to their
10 person and their property.

11 So, with that being said, I think I just
12 wrestled it out loud in my mind that you all
13 had to witness, that I would likely believe
14 that the rule speaks for itself and that that
15 would be inclusive on future structures.

16 PRESIDING OFFICER SCOTT: So if I
17 could, to your point on business certainty, my
18 read of the rule would be that it does apply
19 prospectively. And as far as business
20 certainty, what I would expect is the Project
21 would take that into account in deciding to move
22 forward. So, obviously, different projects,
23 they'll encumber, for wont of a better word,
24 control property to the extent they need to. To

1 the extent there's participating landowners and
2 non-participating landowners, they take that
3 into account. And that, to me, is something
4 they need to decide moving forward. But that's
5 why I want to clarify this point now is to
6 provide them with that business certainty.

7 So one question I have is I've
8 heard three of you now say, well, the rule
9 says what it says. What that implies to me,
10 if there's a controversy, that we're expecting
11 perhaps somebody will challenge the rule and
12 there will be a ruling on that at another
13 time. Or are we -- which is what I'm
14 suggesting -- if we just -- if this is what we
15 mean, that it is prospective, even if it's
16 redundant to the rule, it may be doing -- you
17 know, for clarity's sake, it may be wise to
18 put it as a condition. So now we've clarified
19 it: This is what we as this convening council
20 authority means. So that's the suggestion I
21 have. I don't know. It sounds like maybe Mr.
22 Clifford may not vote for that one, but...

23 Mr. Forbes.

24 DIR. FORBES: Yeah, I would say again

1 that I agree that the rule says what it says.
2 To me, what I read is we need to make a
3 determination on this Application, on this set
4 of facts. From there, I'm a little
5 uncomfortable because I'm not sure of the
6 wording and what might be said in additional
7 criteria that might be added to a certificate,
8 if we were going to have a condition that
9 somehow addressed future structures and
10 construction. If we were to go beyond what the
11 Applicant has offered, I would worry that we're
12 going beyond what the rules allow. Is it really
13 up to us to make a decision on a future
14 situation, on a future unknown building? Is it
15 up to us to decide whether or not there is a
16 harm done to any property proactively by adding
17 to the Applicant a condition that goes beyond
18 the rules?

19 What the rule tells me is we
20 need to make a determination on whether or not
21 this Application creates unacceptable adverse
22 impact to health and safety. So I'm very
23 comfortable making that determination within
24 the context of these structures and this

1 analysis here in front of us, and I'm
2 certainly willing to go along with a condition
3 that the Applicant suggests. But I worry
4 about where you might go in creating a rule,
5 in a sense, or an interpretation of a rule by
6 adding a condition prospectively that
7 addresses an unknown.

8 MR. CLIFFORD: I agree with Mr.
9 Forbes. I'm going to look at this and I'm not
10 going to interpret the rule. I'm going to
11 apply in this fashion. I'm going to apply the
12 rule. And in my determination, we are to look
13 at unreasonable adverse effects on public health
14 and safety, period, as the Project sits now.
15 And I would be hesitant to, as Dr. Forbes said,
16 go beyond the rules, create new rules. I think
17 I said this earlier on the record. I'll leave
18 it for someone else to figure out what these
19 things actually may mean to certain individuals
20 in the future, but I'm going to apply the rules
21 in my vote before this Committee based on what I
22 see in print. And I'm kind of reluctant to go
23 beyond them for reasons stated earlier.

24 PRESIDING OFFICER SCOTT: Attorney

1 Weathersby.

2 MS. WEATHERSBY: I think we're just
3 having a disagreement as to what the rule say.
4 And I read it differently, of course. You know,
5 when determining unreasonable adverse effects,
6 we shall apply the following standard, and that
7 standard is that there shall be no more than
8 eight hours of flicker on any residence. So I
9 interpret it as any residence existing or in the
10 future. Others don't. I would just concur with
11 or accept our lawyer's view that it is
12 prospective. And I'm not sure we need to have a
13 special condition, but maybe we just make a
14 finding or straw poll or something that we --
15 that the Committee either agrees or disagrees
16 with that "prospective" component of the rule.

17 MR. CLIFFORD: I don't think there's a
18 vote on that because I'm not here to interpret
19 the rules. What I will say is, having just read
20 the rule, I don't see the word "future" in that
21 component of the rule. So I'm going to look at
22 the rule as it sits and leave it for others to
23 decide. If we want to make a condition, fine.
24 But I'm not going to try to interpret the rules

1 here. I'm going to let someone else do that.

2 PRESIDING OFFICER SCOTT: Dr.

3 Boisvert.

4 DR. BOISVERT: Going out into legal
5 grounds, it says that it "shall not occur more
6 than eight hours at or within any residence."
7 And I read "any residence" as being independent
8 of now or future. "Any residence" may include
9 one that's in the future.

10 But going to what we vote on, I
11 see the condition as a way of implementing
12 this part of the rules. I think that it
13 addresses that. It was offered by the
14 Applicant. So I don't think it's an unduly
15 burdensome condition if there was one that
16 they had crafted. I believe that it's
17 workable as it sits. I might have done it
18 differently, but I'm not the Applicant. I'm
19 not a lawyer. As I read it, it looks pretty
20 good to me, and it does address the issue of
21 any residence, learning space, et cetera.

22 So, in terms of what we're
23 going to decide among us with a vote, it is
24 this condition. And I would support that

1 condition because I believe it implements the
2 rule as it was intended.

3 PRESIDING OFFICER SCOTT: So, just to
4 clarify, that's the -- trying to remember the
5 date here. That is the November 8 suggested
6 condition regarding future structures. There's
7 your word "future," by the way.

8 DR. BOISVERT: I believe that's what
9 Attorney Iacopino read into the record, yes.

10 PRESIDING OFFICER SCOTT: So your
11 suggestion is we adopt that condition with the
12 certificate, if we do.

13 DR. BOISVERT: Yes.

14 PRESIDING OFFICER SCOTT: And remind
15 me, Attorney Iacopino. We did have an objection
16 to that; correct?

17 MR. IACOPINO: Yes, Ms. Berwick
18 objected. And I had it here, but I don't have a
19 date right now. Shortly, within a few days. It
20 was within a few days of the condition being
21 filed.

22 MS. BERWICK: Same day.

23 MS. MONROE: It was the same day,
24 November 8th. It's on the web site.

1 MR. IACOPINO: November 8th, 2016.

2 It's a short objection.

3 MS. WEATHERSBY: I would point out
4 that the proposed condition does not contain any
5 curtailment. It simply offers to cooperate and
6 provide assistance to the property owner to
7 evaluate potential mitigation measures, if
8 requested by the property owner. So I think
9 that last piece needs to be, if we're going to
10 adopt this, which I'm not opposed to if we
11 change that, that AWE will take the mitigation
12 measures, such that it complies with the shadow
13 flicker regulations.

14 PRESIDING OFFICER SCOTT: That's the
15 crux of why I brought the issue up, because the
16 way I read the last sentence of the Applicant's
17 suggestion, and I'll read it out loud, it
18 effectively says -- well, I'll read the whole
19 thing.

20 "Following property owner's
21 receipt of their forecast of expected maximum
22 sound power level and expected amount of
23 shadow flicker" -- and I believe the
24 implication is that it would exceed the limits

1 is how I'm reading this, and someone correct
2 me, please -- "the Project shall cooperate
3 with and provide reasonable assistance to the
4 property owners in evaluating potential
5 mitigation measures if requested by the
6 property owner."

7 So my issue with that -- and
8 again, it's my view that the rules apply
9 prospectively -- is that that puts the onus on
10 the property owner in this. In my view, in
11 the eventuality of a violation of one of these
12 standards, it puts the onus on the property
13 owner. That's my concern. I don't think
14 that's appropriate.

15 Director Forbes.

16 DIR. FORBES: I would agree. I think
17 it's helpful to have in that condition a
18 requirement to comply with the rules. Again, I
19 don't feel we need to opine on future structures
20 today, in this group. But whatever conditions
21 occur in the future can be debated by a future
22 committee that might interpret the rules as they
23 see on that particular condition.

24 PRESIDING OFFICER SCOTT: And again,

1 we can go that way. But I fear all we're doing
2 is laying it in Attorney Monroe's lap at the end
3 of the day. So I want to be careful.

4 So, to pick up on your last
5 comment, Director Forbes, are you suggesting
6 that we accept the Applicant's language and
7 then add -- add what regarding the rules?

8 DIR. FORBES: I didn't quite write
9 down exactly the wording that Attorney
10 Weathersby suggested. But to basically -- what
11 concerns me is that I would not want this
12 condition to establish an out, if you will, or a
13 way for the Applicant to avoid complying with
14 the rules should there be any future structure.
15 I do expect that if there is an argument between
16 a property owner and the Applicant about a
17 future structure, they would bring it to this
18 Committee. And if such an argument were to be
19 heard by this Committee, they could make the
20 interpretation under the rules at that time.

21 MS. WEATHERSBY: So, how about this
22 for the last condition: Strike everything after
23 "AWE shall." So it would read, "Following such
24 property owners' receipt of the

1 above-referenced" --

2 (Court Reporter interrupts.)

3 MS. WEATHERSBY: Sorry. "Following
4 such property owners' receipt of the
5 above-referenced forecast for expected maximum
6 sound power level and expected amount of shadow
7 flicker, AWE shall" -- and then this is the new
8 language -- "take such mitigation measures, if
9 requested by the property owner, to comply with
10 applicable rules."

11 PRESIDING OFFICER SCOTT: Do that one
12 more time for me.

13 MS. WEATHERSBY: So, AWE -- the last
14 clause is, "AWE shall take such mitigation
15 measures, if requested by the property owner, to
16 comply with applicable rules."

17 PRESIDING OFFICER SCOTT: Anybody?

18 MR. CLIFFORD: I'm happy with that.

19 DR. BOISVERT: I think it sounds good.

20 PRESIDING OFFICER SCOTT: Okay.

21 Sounds like you have a winner here. Okay.

22 So my other -- and again,
23 sounds like we have somewhat of a
24 disagreement, but I would -- the other part of

1 this is to -- my suggestion is, again, with
2 nothing else for clarification, for many of
3 these conditions the Applicant has entered
4 into agreements with the participating
5 landowners. And I would think -- my view is
6 we should allow those landowners, you know,
7 and the Applicant to do what they will
8 voluntarily, which would, in my view, require
9 that we proactively waive rule requirements.
10 So I would suggest we do that as a condition.
11 Even to the extent there's a disagreement, I
12 think what that does is add clarity and
13 certainty to the participating landowners.
14 Any thoughts on that?

15 MS. WEATHERSBY: I'll chime in again.
16 I too was involved in the rule-making, and I
17 remember there was discussions concerning
18 whether participating landowners should be
19 included or not. And there was a decision to
20 not exclude them. So I do believe that these
21 rules apply to participating landowners.

22 That said, those landowners, in
23 my belief, have taken the voluntary step to
24 subject themselves to perhaps different

1 environmental conditions as a result of the
2 Project. And I would be in favor of having
3 them -- waiving the rules with respect to
4 the -- concerning shadowing -- shadow flicker
5 and sound concerning those property owners.

6 PRESIDING OFFICER SCOTT: Anybody
7 else? I guess that's not really a condition.
8 It's really something we would add in the
9 certificate. So, given that's a waiver of the
10 rules, I think I'll ask for a vote on that to
11 make sure everybody is comfortable with that for
12 the record, and then, assuming we are, that
13 would go in the certificate, assuming one is
14 issued.

15 So, all in favor of waiving
16 rules for participating landowners.

17 [Members raise their hands to vote.]

18 PRESIDING OFFICER SCOTT: So that's
19 unanimous.

20 MR. IACOPINO: Can I just ask a
21 question for clarification? When you say
22 "rules," are you talking about the rules for
23 noise and shadow flicker?

24 PRESIDING OFFICER SCOTT: That's

1 what I was --

2 MR. IACOPINO: Limiting it to those
3 two.

4 PRESIDING OFFICER SCOTT: Yeah.

5 MR. IACOPINO: Thank you.

6 PRESIDING OFFICER SCOTT: So, where
7 are we now, Attorney Clifford?

8 MR. CLIFFORD: Well, seems like we've
9 gotten down to description of plan setbacks,
10 indicating distance between each wind turbine
11 and the nearest landowner's existing building
12 and property line, and between each wind turbine
13 and the nearest public road and overhead or
14 underground energy infrastructure, of which
15 there are none, or energy transmission pipeline
16 within 2 miles of each such wind turbine, and
17 explain why the indicated distances are adequate
18 to protect the public from risks associated with
19 the operation of the proposed wind energy
20 facility.

21 MR. ROSE: And I'm sorry. I don't
22 mean to pull us back at all, but I did just have
23 one or two other points with regards to shadow
24 flicker that I would just like to tee up for

1 discussion, or at least offer some perspective
2 on before we move to the next section.

3 MR. CLIFFORD: Yeah.

4 MR. ROSE: And that is, you know, I
5 understand and recognize what shadow flicker is,
6 but I'm not sure I know, you know -- I think,
7 you know, with sound it's relatively simple.
8 It's a one or a zero. It either is or it isn't
9 out of compliance. But I think with shadow
10 flicker we're talking about a cumulative effect
11 over a long window of time. And I think that's
12 a hard thing for one to be able to quantify what
13 that is. And so, you know, it was referenced
14 that there's an expectation that there are 24
15 locations currently that are going to experience
16 somewhere between 8 hours and 13 hours and 48
17 minutes, but then there's another 49 locations
18 that are going to experience between some level
19 of shadow flicker and 8 hours.

20 And I guess, you know, when we
21 talk about the monitoring, and recognizing
22 that they need to go to those identified
23 sensitive receptors where they're going to
24 exceed 24 hours, I'm just wondering out loud

1 here if we should be considering at least the
2 monitoring of all those properties that are
3 experiencing shadow flicker so that they have
4 some level of understanding of what the
5 cumulative amount of flicker that they've been
6 subjected to, so that they can try to
7 determine some level of evaluation, whether or
8 not that is, you know, in compliance with what
9 they're experiencing.

10 So, you know, I guess I'm
11 trying to just wrestle -- let me know if maybe
12 it's there and I just missed it. But the
13 report that's going to be provided regarding
14 shadow flicker, that's going to be for all the
15 properties that experience it, or is it just
16 for those 24 properties that are anticipated
17 are going to exceed the rule?

18 MR. CLIFFORD: My recollection was
19 that it was talked about on Day 2 and there was
20 an agreement as to the 24. I mean, seems to me
21 those are the ones we're most concerned about,
22 because if you're under 8, then you're in
23 compliance with the rules. I mean, I know it
24 may be nice --

1 (Court Reporter interrupts.)

2 MR. CLIFFORD: It may be nice and the
3 Applicant may want to do it, but the rule -- I
4 mean, we're really concerned about the 8 hours,
5 aren't we? And you're suggesting that we might
6 want to do a -- to have this as part of a
7 reporting requirement, to collect information as
8 a -- sort of to build a body of statistics that
9 we can rely on in the future?

10 MR. ROSE: Correct. I'm thinking
11 about it more from the reporting requirement,
12 not necessarily for any sort of mitigating
13 measures. I'm just thinking about it from a
14 reporting requirement. I would be interested in
15 knowing, if I had a home that was experiencing
16 somewhere between that zero and 8 hours, what
17 the cumulative impact of that flicker might be.
18 So I guess what I just -- I'm thinking more on
19 reporting, not necessarily the corrective
20 mitigating measures that would be required for
21 the Applicant. So I just want to make sure
22 that, you know, all those properties that are
23 experiencing flicker will have the opportunity
24 to see the amount of flicker that they've been

1 subjected to.

2 PRESIDING OFFICER SCOTT: Director
3 Forbes.

4 DIR. FORBES: I don't know if it would
5 help, but would it help to consider not the 24
6 properties being impacted, but consider the
7 report from each of the 9 turbines? What I
8 would expect from the report would be to tell me
9 where the shadow flicker was present, when the
10 turbines might have been shut down, when the
11 sunlight levels were below a certain point, and
12 to ask them to report on each of the 24 for each
13 of the 9 turbines. I think that it's not just a
14 receptor, but it's also what's happening at the
15 turbine. What's happening with the weather?
16 What's happening with the shutting down? That
17 report I view coming from the source more than
18 coming from the target. And so I want them to
19 report all targets, so to speak.

20 PRESIDING OFFICER SCOTT: So, maybe
21 somebody could help me because maybe I need to
22 do some homework here. But my concern, what I
23 thought I was understanding is, lacking any kind
24 of measurement technique at the target side, the

1 only data that would be available is the SCADA
2 data from the turbine system itself. So I'm not
3 sure we're going -- my fear is I'm not sure
4 we're going to be able -- A, the Applicant's
5 going to be able to provide us and we'll be able
6 to see that breadth of data you're talking
7 about. I think all we'll be able to see is
8 some -- this time, this date, this time, this
9 date, Turbine X, Y, Z just for those 24, because
10 that's all, my understanding, that would be
11 programmed in to start. Am I missing something?
12 Have I missed something in --

13 DIR. FORBES: No. But what I'm saying
14 is just extend it beyond -- I mean, we can -- we
15 would be getting, I believe, the information for
16 those initial structures where they are expected
17 to see shadow flicker. And why not extend
18 beyond that? I'm all for that. But I view it
19 as probably a simple -- maybe I'm mistaken, but
20 I would think it would not be difficult to
21 identify more properties, as Commissioner Rose
22 suggests.

23 PRESIDING OFFICER SCOTT: So, to
24 clarify for my -- what I was thinking, so in

1 that context, the Applicant would actually be
2 required to put in more than 24 locations into
3 their system, but they would only be required to
4 act on those 24?

5 DIR. FORBES: They only need to act on
6 the ones that -- I mean, when we say "act," I'm
7 referring to shutting down a turbine. They only
8 act on those that are beyond eight. But they
9 would report on some number. And I would
10 suggest we ask for a report for any impacted
11 structure within a mile radius.

12 PRESIDING OFFICER SCOTT: So, I
13 understand. I don't know how many structures
14 there are, but it wouldn't be 24. It would be,
15 again, a larger number they programmed in.

16 MR. ROSE: It would be the 73
17 structures that have been identified that will
18 experience some level of flicker. Again, not to
19 curtail behavior, because you would only need to
20 do that if you exceeded the threshold within the
21 rules, but to make sure that that data was
22 available to all of those property owners so
23 that they would understand what the amount of
24 flicker was that they were subjected to.

1 So that's all. I just wanted
2 to make sure that that information was made
3 available, because if I was at, you know,
4 whatever the amount was under eight, I would
5 be curious to know what that amount was, you
6 know, under eight.

7 PRESIDING OFFICER SCOTT: That was
8 helpful for me.

9 Attorney Weathersby.

10 MS. WEATHERSBY: I agree that the data
11 for the 73 locations would be just useful
12 information. But it also kind of begs another
13 question, if we're -- I sort of assume that is
14 somewhat settled -- and it's the amount of
15 flicker per year. And I know there was some
16 discussion during the testimony as what is a
17 year. Is it a calendar year, and then on
18 January 1 they start over at zero and go to
19 eight again? Or is it a cumulative year,
20 rolling year, you know, any twelve-month period?
21 To me, it sort of makes more sense for the
22 purpose of the health and safety that it's a
23 rolling year. But I'm interested in other's
24 thoughts.

1 MR. ROSE: I mean, I believe as I read
2 through it was cumulative. So, yeah, it's a
3 good question. But I think it was going to be a
4 cumulative thing, and then once it hit that 8
5 hours is when the curtailment was going to
6 occur. So it wasn't going to be -- that's how
7 it was going to be measured.

8 DR. BOISVERT: As I understand how it
9 would be constructed, there would be no
10 difference between a cumulative year and a
11 calendar year starting on January 1st, as you
12 take off one day and you add another and it's
13 going to total up the same all over. And I
14 think we need to remind ourselves that this is
15 the maximum hypothetical amount of shadow
16 flicker. This assumes there are no cloudy days
17 in New England during those times when the sun
18 is close to the horizon. So we're talking about
19 a hypothetical maximum. And I believe -- and I
20 could be wrong, but I believe the way it works
21 is it would be the same total number, no matter
22 what day it started on.

23 PRESIDING OFFICER SCOTT: So, is that
24 a condition?

1 DR. BOISVERT: I thought the condition
2 had to do with looking at 73 versus 24.

3 PRESIDING OFFICER SCOTT: I'm sorry.
4 That's what I was referring to.

5 DR. BOISVERT: I would be surprised if
6 they did not already have that information.
7 It's just a matter of making it available. And
8 it doesn't seem like that's a burdensome
9 condition at all.

10 PRESIDING OFFICER SCOTT: So what I'm
11 suggesting is that be a reporting condition that
12 we provide them. By doing that, that would
13 ensure they programmed it in so they could
14 provide it to us. Any discussion on that
15 further?

16 MS. MONROE: Okay. So they're
17 reporting the shadow flicker on a 365-day
18 rolling basis for 24 properties? Is that --

19 MR. ROSE: All of those properties
20 which experience flicker. So that number today
21 in the Application says 73. What that is in the
22 future, I don't know. But I would just say
23 "those properties which experience flicker."

24 MR. CLIFFORD: I want to jump in. I

1 think Mr. Kenworthy talked about the report for
2 the 24, but then there's also discussion that
3 the SCADA system could issue a report for each
4 turbine that shows you what time of the day
5 flicker is going to occur or has occurred. So I
6 think that report, it's just a matter of running
7 a printout for each turbine, okay. So if you
8 want to make that -- at least that's the
9 testimony that I recall reading was that every
10 turbine, the nacelle measures flicker at every
11 turbine. We determined that some of the time
12 the shadow flicker isn't going to affect anyone
13 at all. Even though the flicker occurs, it's
14 just not going to affect someone within that
15 one-mile radius. But what we're really
16 concerned about are the 24.

17 So I think we should agree to
18 the condition that they submit the report for
19 the 24, and then maybe the other condition is
20 that you just give us the report for all 9,
21 because then you could build your so-called
22 statistical body of when does shadow flicker
23 occur, how often, you know, what's the
24 percentage.

1 MR. ROSE: Well, I think their
2 behavior, meaning the Applicant's, you know,
3 they're going to have to take proactive
4 mitigating measures in order to ensure that
5 they're in compliance with the 8 hours. So
6 that's well established for those 24.

7 I guess, again, my point is, if
8 I'm a property owner of those 49 properties
9 that's having, you know, between some level of
10 flicker and less than 8 hours, I would like to
11 know what the amount of shadow flicker is in a
12 way that is digestible, that you don't need,
13 you know, to develop some sort of spreadsheet
14 mechanism by which you determine what that
15 number is. And I think it is, to your point,
16 just a matter of producing a report by the
17 Applicant of what the amount of shadow flicker
18 is to the properties that are experiencing
19 some level of shadow flicker.

20 Quite honestly, I also think
21 that that report should be produced more than
22 just once a year. I think it should be
23 produced twice a year, so that, you know, the
24 property owners, again, can understand what

1 the level of flicker is that they're being
2 subjected to.

3 And during the course of the
4 testimony, I recall Mr. Kenworthy referencing
5 that it really wasn't a burdensome request for
6 them to be able to produce that level of
7 information in a digestible fashion that can
8 be provided to the Town so they can post it on
9 their web site and perhaps share a copy of
10 that with the Committee.

11 PRESIDING OFFICER SCOTT: Is that
12 clear enough?

13 MR. CLIFFORD: About as clear as mud
14 because now I'm wondering what's the -- the
15 twice-a-year report is essentially meaningless
16 as well because, again, we had the testimony
17 that talked about there could be, for example, a
18 year when it's been extremely cloudy on those
19 times when shadow flicker could occur, such that
20 for that entire one-year period -- I would view
21 a year as the date the thing goes into operation
22 until the anniversary date, you know, 365, or if
23 it's a leap year, 366. And we haven't discussed
24 that yet. But there could be a year when no

1 shadow flicker -- theoretically, no shadow
2 flicker occurs at a given turbine because of the
3 specific angle and time of day at which it's
4 supposed to happen it's always been cloudy,
5 okay. So you got that.

6 Then you throw in a report
7 that's generated -- you want reports twice, on
8 a bi-annual basis. So it's like comparing
9 apples and oranges, because then I have a
10 six-month report. I've got a partial report
11 for one year comparing it to a partial report
12 for another year, and then we're trying to
13 parse out what's the shadow flicker. I think
14 for consistency's sake, it's got to be -- and
15 seems to me -- I mean, again, we talked about
16 this right after lunch, and everyone was
17 reluctant to impose -- go beyond the rules as
18 they sit.

19 So, here we have other
20 conditions. We're going to get a pile of
21 information that Pam's going to get and people
22 are then going to be asked to interpret. And
23 I think for right now we've identified, or
24 there's been self-identification of 24

1 locations which are probably going to
2 experience that shadow flicker slightly over
3 the eight hours. Right? And for the ones
4 that don't, we know -- I mean, the rules
5 already said eight hours is the maximum. So
6 if you're under eight, you've already
7 satisfied the public health and safety
8 concerns. So I'm just, you know...

9 MR. ROSE: I don't think we're
10 suggesting anything with the rules here. The
11 rules are what they are. I think what I am
12 interested in, though, is the SCADA system will
13 provide the information as to the amount of
14 flicker. It will curtail certain behaviors in
15 order to ensure that they're in compliance with
16 the rules. Period. Great. I would like to
17 know, if I was a property owner and I was one of
18 those other 49 property owners within this
19 current Application that is under that 8 hours,
20 I would like to know to what degree I was
21 subjected to shadow flicker. And I think that's
22 not difficult information. It's not asking
23 anything -- any change in behavior within the
24 rules. All it is, is asking for information

1 that is readily available by the Applicant to be
2 made available to the public. I think that's a
3 pretty straightforward request. And I don't
4 think that whether it's once a year or twice a
5 year, you know, I'm not steadfast on that. I do
6 think, though, there is a benefit to getting
7 that information out to the public. And during
8 the testimony, that is not -- it was not
9 suggested that that would be an overly
10 burdensome request of the Applicant.

11 PRESIDING OFFICER SCOTT: If I could
12 add to that, the 24 is based on the Applicant's
13 expert's estimate; right? So, their predicted
14 modeling. So what Commissioner Rose is
15 suggesting, that would help validate that also
16 in my mind, okay. So if it happens, that would
17 basically ensure for us that the Applicant's
18 looking at, okay, what if it's actually 27 that
19 were impacted or need mitigation. That
20 ensures -- to me, that ensures and gives me more
21 assurance that they're watching that. Attorney
22 Monroe, when she's asked by a property owner,
23 can say, yeah, we have the data, here it is.
24 Again, to me, that helps give me assurance and a

1 more comfortableness that allows me to then say,
2 okay, I think there's not an unreasonable impact
3 here of shadow flicker.

4 Any other comments or -- so
5 where are we on that? Is there a condition?
6 Do we want to get a sense of the Committee?

7 [No verbal response]

8 PRESIDING OFFICER SCOTT: Okay. We
9 have -- any objections?

10 Mr. Clifford, you object?

11 Okay. We have an objection.

12 All right. Let's raise hands
13 if you support the condition.

14 [Members raising their hands to vote.]

15 PRESIDING OFFICER SCOTT: Okay. I
16 can't see it. Okay. So, one against and the
17 rest for. Okay.

18 PRESIDING OFFICER SCOTT: All right.
19 So, under the guise of being thorough, we did
20 have some controversy, if I remember right, over
21 there was a hunting camp as a structure and
22 whether that should be considered in or out for
23 shadow flicker. Do we need to opine on that at
24 all? Or put another way, Commissioner Rose, is

1 that one of the 73?

2 MR. ROSE: I wasn't thinking of that
3 being one of the 73.

4 PRESIDING OFFICER SCOTT: Okay. I'm
5 happy not to go down that road then.

6 All right. Attorney Clifford,
7 did you have more?

8 MR. CLIFFORD: Yup.

9 (Court Reporter interrupts.)

10 PRESIDING OFFICER SCOTT: Okay. We'll
11 take a quick break.

12 (Pause in proceedings)

13 MR. CLIFFORD: So I guess the next
14 topic for consideration is going to be setbacks,
15 from my understanding under 301.08(a)(3). The
16 description of setbacks indicate distance
17 between each wind turbine, nearest landowners
18 building, property line, et cetera, and the
19 nearest public road and overhead or underground
20 energy infrastructure, energy transmission
21 pipeline within 2 miles of such wind turbine,
22 and explain why the indicated distances are
23 adequate to protect the public from risks
24 associated with the operation of the proposed;

1 wind energy facility.

2 This is where I think it
3 dovetails back into things like probably the
4 ice throw we talked about. I kind of put that
5 into that category -- into the next category.
6 We might as well talk about these in tandem
7 because the next item is 301.08(a)(4), which
8 is, an assessment of the risks of ice throw,
9 blade shear, tower collapse on public safety
10 and then a description of the measures taken
11 or planned to avoid or minimize the occurrence
12 of such events, if necessary, and alternative
13 measures considered but rejected by the
14 Applicant.

15 So I could just tick off what I
16 found in the record. There was, you know,
17 significant discussion, as well as the
18 Application was accepted showing the required
19 setbacks. We know where the towers are going
20 to be. We know where the nearest property
21 lines are, or else we probably wouldn't be
22 having this discussion about shadow flicker
23 and noise, et cetera, one mile from the
24 turbines.

1 They've provided all the
2 information about the nearest infrastructure
3 within the range. For example, there is no
4 energy pipeline they've located. The
5 Application does contain distances between
6 each wind turbine. We talked about it on
7 Day 2 and in the Application. Nearest
8 landowner's building, property lines, they
9 outline the public roads. I think even all
10 the members of the Committee are pretty
11 comfortable, at least I am, that they've met
12 that.

13 I don't know if you want me to
14 go on and talk about ice throw, or should we
15 just talk about the setbacks themselves, if
16 people are comfortable with the setbacks that
17 are proposed in the Application or whether you
18 think they're -- they meet the regulatory
19 guidelines?

20 PRESIDING OFFICER SCOTT: Anybody?

21 [No verbal response]

22 PRESIDING OFFICER SCOTT: I think
23 you're good.

24 MR. CLIFFORD: Okay. So now I'll talk

1 about ice throw, blade shear and tower collapse
2 and public safety.

3 Considerable discussion about
4 ice throw. There was discussion that property
5 owners potentially within 250 meters could
6 experience ice throw. And there's some
7 property lines within 820 feet of the turbine,
8 but the nearest property owner is 589 feet. I
9 gather there was a 589 setback adjacent to a
10 300-acre wood lot.

11 Turbine 8 was located 378 feet
12 from the McKelly land or their participants.
13 Mr. Stovall talked about ice throw. He said
14 that the 250-meter ice throw distance was
15 accepted in the industry, and it took all
16 known factors into account. Mr. Kenworthy
17 talked about there's something like 60 -- I
18 don't think this number is right, but 67,000
19 turbines that are located in conditions where
20 ice can occur. I think that's a typo on my
21 part. It's probably more like 670. And there
22 have been no reported, documented injuries
23 based on ice throw.

24 We had testimony by Mr.

1 Marcucci, who talked about the SCADA system is
2 going -- and that's S-C-A-D-A -- is going to
3 sense ice through anemometers -- A-N-E-M-O-M,
4 you got it. And with a turbine monitoring
5 system that detects abnormal vibration, it
6 would cause these turbines themselves to shut
7 down. There was no situation where Mr.
8 Marcucci signed a -- recognized any damages to
9 abutters or other structures using this
10 particular Siemens turbine in snow conditions.

11 What else did we have? Oh,
12 these turbines are actually going to be
13 outfitted with what Mr. Marcucci called a
14 "cold-weather package" which was designed for
15 this climate. It was going to have sort of
16 redundant monitoring systems in it that would
17 detect ice build-up both on the blades and on
18 the nacelle itself. And the reason they would
19 install such a system is 'cause these -- if
20 there were to be an imbalance apparently
21 within the turbine itself caused by ice, it
22 could actually cause damage to it. So these
23 things are going to shut down. There
24 aren't -- we talked about -- or the Applicant

1 talked about the potential for throwing --
2 excuse me. The abutters talked about the
3 potential for ice being thrown onto their
4 property. I think we concluded that there was
5 no structure of any abutter close enough to
6 cause -- to actually receive any ice throw.

7 And with respect to -- I think
8 we were talking about tower collapse or blade
9 shear. There's simply -- based on the
10 setbacks that have been described to the
11 Committee, I didn't find where, even if, for
12 example, the blade fell off or the turbine
13 actually collapsed, it's going to affect any
14 adjoining land. So I'll leave that for any
15 further discussion.

16 Let's see if I have anything
17 else in my notes to tell you about.

18 PRESIDING OFFICER SCOTT: While
19 you're looking, I think you might have mentioned
20 this. So the Applicants also already agreed to
21 place warning signs, correct, around access
22 roads, both formal and informal access roads; is
23 that correct?

24 MR. CLIFFORD: Yes. There was

1 discussion -- I believe there was -- I don't
2 want -- don't quote me on this. But just from
3 recollection, I think it was 750 feet from a
4 road and 500 feet from a blade there was going
5 to be signs placed, because we had testimony
6 about whether we should fence these structures
7 in or not. But they're not going to be fenced,
8 but there's going to be signage that would
9 notify someone who happened to be in the area
10 that they were approaching the presence of a
11 wind turbine. And this was, I think, also going
12 to be placed on, you know, trails that they've
13 already identified in the area where people were
14 hiking. I'll go find that after we open it up
15 for discussion.

16 Oh, they also talked about
17 whether the system could be overridden in the
18 case of ice. And there were no overrides in
19 the system, no actual, physical, I mean
20 in-person overrides. In other words, if the
21 SCADA system would tell the turbine to shut
22 down because of icing, there's no way of
23 physically overriding that. The turbines
24 would not turn back on until that icing

1 condition subsided to the point where the
2 system itself was safe to operate again.

3 PRESIDING OFFICER SCOTT: Anybody? So
4 I'll ask a question. So, to the extent there
5 should be an ice throw -- I guess I'm thinking
6 out loud -- what's the process by which people
7 would know and address it, I guess? I guess it
8 could be a complaint, I suppose.

9 MS. WEATHERSBY: I don't think most of
10 the time people would know. I think ice gets
11 shed and it falls in the forest and nobody
12 hears; right? It doesn't make a noise. So I
13 don't think there's any reporting requirements,
14 that kind of thing.

15 I mean, to me, given -- I think
16 it's pretty unlikely that ice throws are going
17 to be a problem at this site, given the
18 technology that's involved and the distance
19 between the turbines and residences. There
20 are some properties, private properties, that
21 perhaps could have ice thrown on them, and
22 that's a concern. But I think it's highly
23 unlikely that a structure or a person would be
24 injured. And I suppose if someone or

1 something was damaged or injured, I'm guessing
2 just the general rules of property and
3 personal liability would apply, which I guess
4 raises the issue -- which I don't think we've
5 heard any testimony on -- of whether there's a
6 comprehensive general liability insurance
7 policy in place.

8 Putting that aside, I think
9 there's also the issue of fencing, which we
10 discussed and I think Ms. Berwick advocates,
11 but I probably wouldn't be in favor of based
12 on the testimony we've heard about
13 fragmentation and wildlife corridors. I think
14 that could probably be an impediment there.

15 Concerning signs, I think it's
16 a great idea. But I think it might also be
17 great if the Applicant could provide signs to
18 nearby property owners that they could post on
19 their properties if they so desired. So,
20 maybe a condition, or perhaps just be nice to
21 have that the Applicant, upon request, would
22 provide signs to adjacent property owners.

23 PRESIDING OFFICER SCOTT: Commissioner
24 Rose.

1 MR. ROSE: I tend to agree that the
2 risk is minimal. The Siemens safety features
3 are designed to help prevent shedding. You
4 know, I think we heard the furthest there's ever
5 been, ever, ice throw was, you know, 820 feet.
6 I recall a conversation with Ms. Linowes. The
7 likelihood of having an ice throw even equal
8 650 feet in the winter heavy conditions was once
9 every thousand years. Again, I think the system
10 and the technology is in place that -- and the
11 backup systems are in place, that the risk is
12 very minimal. And I think, to Ms. Weathersby's
13 point, I'm sure that there's liability insurance
14 in place. I know, you know, there are other
15 turbines in other public locations that are far
16 closer than what we're talking about from
17 setbacks than this situation.

18 So I feel, you know,
19 comfortable with the information provided by
20 the Applicant, that ice throw is not a risk
21 based on the conditions that have been
22 outlined.

23 PRESIDING OFFICER SCOTT: Dr.
24 Boisvert.

1 DR. BOISVERT: I agree. I don't think
2 there is a significant risk with ice throws.
3 They do exist. As the wind turbines get larger
4 and larger, the distance that they can throw the
5 ice will become longer and longer. That has
6 been a trend.

7 Oh, by the way, I did a quick
8 check on the Internet, going to an industry
9 source, and there are about a quarter of a
10 million wind turbines in existence in the
11 world today. So I think having that number as
12 originally printed in cold areas is probably,
13 in order of magnitude, correct. So that is
14 some indication of the risk involved. I think
15 there may also be some cases where there was
16 wind-throwing damage, but no one reported it.

17 But I think overall,
18 particularly for Antrim Wind, which is the
19 situation before us now, that ice throw is not
20 a significant risk. It's not an unreasonable
21 adverse effect. And I think that the measures
22 that they have to employ will be adequate for
23 the job.

24 PRESIDING OFFICER SCOTT: And I'll

1 note to my original out-loud thinking, to the
2 extent we do adopt the condition that requires
3 annual reporting, including complaints, if there
4 was a complaint about ice throw, we would be
5 able --

6 DR. BOISVERT: Clearly. And if this
7 particular kind of turbine in this environment
8 does throw ice more often than others, that
9 would be something that we would want to know.
10 You know, probability and possibility are two
11 different things.

12 PRESIDING OFFICER SCOTT: Any other
13 discussion on this issue?

14 MR. CLIFFORD: Just want to thank Dr.
15 Boisvert for verifying my number was correct.

16 And I did find the reference
17 that there are going to be signs and warning
18 signs on all roads and electrical areas that
19 warn of icing within 750 feet of the base of
20 any turbine and on informal trails within
21 500 feet. And, yeah, I verified there was
22 testimony that the ice throw was 820 feet.
23 And there was no structure within a half-mile.
24 So the risk here, I think, is minimal to

1 structures. And the likelihood of any one
2 person being in the midst of an ice throw, it
3 would probably be more likely someone who's
4 working at the facility than someone on the
5 adjacent property.

6 And then, lastly, they talked
7 about the ability of the system to shut down
8 in the event there was such an imbalance. In
9 other words, this system is pretty proactive,
10 in that it would sense imbalancing conditions
11 and would shut down; A, to prevent ice throw
12 and B, to prevent damage to the towers --
13 excuse me -- to the system itself.

14 PRESIDING OFFICER SCOTT: So are we to
15 the next on our list under that Public Health
16 and Safety topic?

17 MR. CLIFFORD: Well, we can also talk
18 about public -- I gather we should still stick
19 to the public safety aspect in that component.
20 They talked about going to the Town, having
21 discussions with the fire marshal, having
22 agreement in place about maintenance of the
23 roads, the ability for fire safety equipment to
24 get up there in the event there was a problem.

1 We heard testimony, and it was actually more
2 than testimony, but there's a fire-suppression
3 system within the blades themselves, smoke
4 detectors.

5 I guess this leads me to the --
6 there's also turbine -- the turbines would
7 contain the lightning receptor systems that
8 are going to be integrated into them to detect
9 lightning strikes, which, again, is a
10 component of the tower collapse and public
11 safety.

12 There was testimony about
13 having sort of an on-site facility manager or
14 someone who's local that could respond to
15 things, because the system essentially, once
16 installed, is not going to have people walking
17 around staring at wind turbines all the time.
18 But there was going to be someone in place in
19 and near Antrim, or in very close proximity,
20 that could get there in the event there was a
21 problem.

22 They submitted a formal fire
23 plan, I believe, with the Town. And some of
24 this is also going to bleed into

1 decommissioning which we may get to later.

2 But I think we can just stop.

3 I mean, I think they've met
4 five, in that there's a description of the
5 lightning protection system in the Application
6 itself. And I believe that's probably going
7 to be to their satisfaction as well. I mean,
8 they want that in there. So I'll just stop
9 here and see if you want to have any
10 discussion in this area.

11 PRESIDING OFFICER SCOTT: So, say one
12 more time your last point because I was
13 distracted coughing. I apologize. On lightning
14 protection.

15 MR. CLIFFORD: Oh, my last point was I
16 don't think there's a lot to discuss about the
17 lightning protection system, in that there's a
18 lightning protection system that is going to be
19 installed as a component of the Siemens system.
20 I don't think we have jurisdiction over it, but
21 it's going to be installed and identified.
22 That's also in connection with the component of
23 the fire-suppression system. I mean, there's
24 not -- to begin with, there's not a lot of

1 flammables here. I guess there may be some
2 items that are particular to the turbine, but I
3 don't think there's going to be a lot of oil or
4 gasoline or something on site.

5 So I was pretty satisfied that
6 the smoke-detection systems that they were
7 going to put in place, the fire-suppression
8 system, and that the agreement that they were
9 going to meet with the -- they would put in
10 place with the Town to provide the types of
11 equipment and have the roadways accessible
12 through the wintertime, et cetera, in the
13 event there was any problem there, satisfied
14 the rules.

15 I just wanted to add, in terms
16 of safety, I think they also talked about
17 having no objection to having a member or
18 someone from the SEC come out periodically to
19 check out the safety compliance. So this is
20 another Pam "bucket list" item, perhaps. But
21 I know there was some discussion about that
22 during the course of the Applicant's
23 testimony.

24 And, also, we're talking about

1 safety. This site is going to be accessed off
2 of Route 9. But during -- at all times there
3 was going to be a padlocked gate there that no
4 one -- that the Applicant or the Applicant's
5 agents would have access to during working --
6 you know, for work purposes. But otherwise,
7 people weren't going to be able to just go up
8 and wander up next to these blades -- excuse
9 me -- the turbines.

10 PRESIDING OFFICER SCOTT: So what are
11 your points? At least in my mind, it's not a
12 negotiation whether the SEC administrator has
13 rights to inspect. But if anyone feels we need
14 to add something, I'm happy to do that.

15 Early on in our discussion
16 about state permitting, I think there was a
17 request by the fire marshal. I don't know if
18 you remember that. Or maybe Attorney Monroe?

19 MS. MONROE: What's the question?

20 PRESIDING OFFICER SCOTT: Director
21 Forbes.

22 DIR. FORBES: Yeah, there was a letter
23 on November 10, 2015, from the State Fire
24 Marshal pointing out that there would be a

1 requirement for a fire-suppression system and
2 that the plans for the suppression system must
3 be submitted for review and approval to the
4 office of the State Fire Marshal and to the
5 Antrim Fire Department. I think that's what
6 you're referring to.

7 MS. MONROE: Right.

8 PRESIDING OFFICER SCOTT: I suggest we
9 add that to the conditions.

10 MS. MONROE: So what I have, the plans
11 for the fire-suppression system in the nacelle
12 shall be submitted, reviewed and approved by the
13 state fire marshal and the Town of Antrim Fire
14 Department prior to construction of the Project.
15 AWE shall submit one hard copy and an electronic
16 version of the final approved plan to the
17 administrator.

18 MS. WEATHERSBY: Attorney Monroe,
19 didn't we already have a condition concerning a
20 whole safety study that was being done and
21 submitted to the State Fire Marshal? Didn't we
22 talk about that a bit on Wednesday? Or was it
23 only the fire-suppression system?

24 MR. CLIFFORD: I can jump in. There

1 was -- Mr. Kenworthy said there's going to be a
2 specific plan developed in connection with the
3 state fire marshal, Town of Antrim, and that we
4 were going to have access to that plan. So I
5 think that's what was talked about. I think
6 that plan is still in the works and being
7 developed and probably would not be finalized
8 until they get closer to having some sense of
9 what it would look like. But...

10 MS. WEATHERSBY: I was thinking we had
11 a condition already that they would develop that
12 plan in consultation -- or for approval by the
13 fire marshal. Is that -- do I -- am I
14 remembering incorrectly?

15 MS. MONROE: I know in that letter
16 that Mr. Forbes referenced, it talks about the
17 fire marshal said I'm glad it's included in the
18 safety plan. But what it said is it needed to
19 be reviewed and finally approved. So I guess I
20 took that a little bit differently.

21 PRESIDING OFFICER SCOTT: So I started
22 to get lost myself. Are you talking about the
23 emergency response plan that's in the
24 Application?

1 MS. WEATHERSBY: Yes, I think that's
2 what I'm referring to.

3 MR. IACOPINO: Can I just point
4 something out, Mr. Chairman? Generally when you
5 have taken the final vote, you take a vote on
6 the Project as presented in the Application.
7 So, to the extent there are -- unless you change
8 some things and require other conditions. So,
9 to the extent that, for instance, there are
10 blueprints or maps or things like that that are
11 part of the Application, those are requirements
12 of the Applicant, so that if they give us a
13 blueprint that shows a turbine is going to be
14 400 feet tall, they can't go build one that is
15 either 300 feet tall or 500 feet tall. They
16 have to comply with what was presented in the
17 Application, because generally that's how you --

18 (Court Reporter interrupts.)

19 MR. IACOPINO: -- that is how you have
20 approved the certificate.

21 PRESIDING OFFICER SCOTT: So, if I can
22 elaborate more to the exact point we were just
23 discussing, the Applicants agreed in the
24 Application, my understanding, to prepare an

1 emergency response plan prior to commencement of
2 construction, in consultation with the state
3 fire marshal and the Antrim Fire Department.
4 Since that's a statement in the Application, by
5 approving the Application we are effectively
6 requiring them to do that. Is that not correct?

7 MR. IACOPINO: Yes.

8 PRESIDING OFFICER SCOTT: How we
9 feeling? We need a break, or do we want to
10 press on?

11 MR. CLIFFORD: I just want to say
12 before you go on the break, I would estimate
13 that since we talked about that under the guise
14 of safety, that we've also touched on
15 301.08(a)(9), which is a plan for fire
16 protection prepared by -- is that -- I just want
17 to make sure do we believe we've covered that
18 under those auspices? And there's also a plan
19 the Applicant referenced, too, that Siemens had
20 put forth that showed safety. And that plan, I
21 take it, would be incorporated as part of our --
22 part of any such approval process as well, just
23 so I'm clear.

24 MR. IACOPINO: It's part of the

1 Application.

2 MR. CLIFFORD: Right.

3 PRESIDING OFFICER SCOTT: I concur
4 with your assessment of that.

5 Anybody else before we take a
6 break? Let's take a break.

7 (Brief recess taken at 2:58 p.m. and
8 hearing resumed at 3:12 p.m.)

9 PRESIDING OFFICER SCOTT: Okay. We're
10 back on the record. All right. So I'm going to
11 bring us back to make sure we do not miss
12 anything. So I'm showing still to be
13 discussed -- and correct me if I'm wrong,
14 Mr. Clifford -- I'm showing decommissioning, the
15 FAA lighting issues, risk of interference with
16 radars and weather radar and that type of issue.
17 Does that all sound right to you?

18 MR. CLIFFORD: Yes, it does. And I
19 just want to make sure, from Mr. Iacopino's
20 perspective, I thought when we were talking
21 about safety, we covered -- I thought I finished
22 with the discussion about the fire protection
23 plan. So, having finished that, we should talk
24 about the FAA Administration regarding hazards.

1 I know there's a submission in
2 the Application, I believe it was
3 October 15th, that talked about the no hazards
4 determination from, I believe, six of the nine
5 wind turbines. But I have to go look at that
6 submission to be precise. And there was a
7 description of the lighting and other
8 requirements for the turbines. I might have
9 to go to the Application itself. But my brief
10 recollection of having reviewed the record was
11 that they did comply with this. The FAA did
12 respond, and it's our understanding that
13 there's six of the nine that are going to
14 require lighting.

15 And I guess this would also
16 trigger the discussion we had about the
17 warning system. Remember, there was a FAA --
18 this may or may not be the right or
19 appropriate place, but we should probably talk
20 about the FAA lighting, pursuant to their
21 December 2015 advisory circular that was
22 issued on the Application that they were
23 expecting to get approval from. This is,
24 again, the system by which, instead of having

1 lights on constantly at night, they were going
2 to install a system that would essentially
3 light up the turbines if and when aircraft --
4 approaching aircraft came within close
5 proximity to the wind farm.

6 So I think this is probably a
7 chance to have a discussion about that. I
8 think that was, again, another area where we
9 were going to put at least some kind of
10 condition or conditional reporting requirement
11 on the Applicant because they have not, as of
12 yet, received formal approval, and they're
13 still waiting for approval of that system.
14 So...

15 PRESIDING OFFICER SCOTT: If I could,
16 I raised this issue during the first day of
17 deliberations under Aesthetics. And I misstated
18 or misremembered -- I stated there was no -- not
19 a full discussion of lighting, even as it would
20 apply without the ADLS system. And the record
21 does have that in there. I guess I'd be willing
22 to -- I'd like to re-engage in that discussion.

23 So I think I left it that, if
24 they don't get the certification, they

1 wouldn't be able to build. And that's -- you
2 know, I just want to make sure that's what we
3 want.

4 Another way to act with that
5 would be basically a requirement that, should
6 and when they get that authorization to use
7 the ADLS system, clearly they would be
8 required to operate with it. So, thinking
9 beyond that, that would mean if ADL -- once
10 it's approved, the ADLS system, if it goes
11 down or is inoperable would mean they can't
12 operate. Maybe that's a compromise. I just
13 want to readdress that because I started on
14 the premise for aesthetics, that I didn't feel
15 there was enough discussion about lighting
16 without the ADLS system. So I just want to
17 make sure I didn't gloss over something.

18 Dr. Boisvert.

19 DR. BOISVERT: Does it make a
20 difference if the turbines operate or not if
21 there's a FAA emergency, an aircraft emergency?
22 It seems to me that the danger is of aircraft
23 hitting it, and it might be a little more
24 dangerous if the blades are moving, but it's

1 still dangerous.

2 PRESIDING OFFICER SCOTT: I think your
3 point is a good point. It probably wouldn't
4 matter to the aircraft that hit it.

5 MS. WEATHERSBY: I think -- I seem to
6 recall on Wednesday we agreed to a condition
7 that the Applicant would have to install the
8 radar-activated ADLS system, and if they somehow
9 were denied approval for that from the FAA, they
10 would have to come back to us for a waiver and
11 we'd have a hearing on the waiver. Am I
12 remembering correctly?

13 MS. MONROE: So the way I have it
14 written from the meeting on Wednesday was Antrim
15 Wind shall install a radar-activated lighting
16 control system, called Aircraft Detection
17 Lighting System, or ADLS, as approved by the FAA
18 prior to operating the Project, which means if
19 it never got approved, they couldn't operate.
20 So you are correct.

21 PRESIDING OFFICER SCOTT: So are you
22 suggesting we leave the certificate as is --
23 meaning, if they are not able to obtain the
24 original authorization, they would need to come

1 back before us?

2 MS. WEATHERSBY: They would need to
3 come back to us and ask for a waiver to the
4 condition of the certificate.

5 PRESIDING OFFICER SCOTT: Any other
6 thoughts? Comfortable with that?

7 MR. ROSE: Correct me if I'm wrong,
8 but my recollection was that there was no
9 nighttime modeling or simulation done, and it
10 was because they felt as though they were going
11 to have that ADLS system in place, so that it
12 became somewhat of a moot point. So I felt as
13 though that was something that they were
14 suggesting, that that was the reason why they
15 didn't do that nighttime simulation as outlined
16 in the rules.

17 PRESIDING OFFICER SCOTT: Okay. I'm
18 being directed to the LandWorks Visual Impact
19 Assessment. And that would be, if we go to --

20 MR. IACOPINO: It's Page No. 94.

21 Bates Stamp page --

22 (Court Reporter interrupts.)

23 MR. IACOPINO: It's Page 94. It's in
24 the PDF documents, Page 100.

1 PRESIDING OFFICER SCOTT: That's what
2 I was looking for, PDF, the word "PDF." Give me
3 time to get there since I'm not there yet
4 either.

5 (Members reviewing document.)

6 PRESIDING OFFICER SCOTT: I don't know
7 if that helps. Again, there is not a lot there,
8 I guess. Certainly we didn't see -- not that
9 I'm requesting it, but we didn't see visual
10 simulations, obviously.

11 MR. ROSE: But to the point, it is
12 addressed in the VIA from LandWorks, so that is
13 part of the overall Application.

14 PRESIDING OFFICER SCOTT: Having said
15 that, I think it is fair, to your point, that
16 what we're presented with is effectively the
17 ADLS system, the expectation is that would be in
18 place.

19 MR. ROSE: And I believe the AMC would
20 expect that as well as part of their MOU with
21 the Applicant.

22 PRESIDING OFFICER SCOTT: So are we
23 still comfortable with the condition as we left
24 it, or do we want to alter that or move on to

1 other topics?

2 [No verbal response]

3 PRESIDING OFFICER SCOTT: Okay. We'll
4 move on.

5 MR. CLIFFORD: So I propose we move --
6 the next topic talks about decommissioning. But
7 before we go through that, since that's the
8 heaviest one, I'd just like to move on to
9 301.08(a)(10), which is the assessment of the
10 risks that the proposed facility will interfere
11 with weather radars used for severe storm
12 warning or any local weather radars. This was
13 part -- to dispense with, they did deliver a
14 report prepared by a company called Comsearch
15 that was dated January 2016, and that they
16 were -- the report was that there was no
17 interference with any local or government
18 radars. And I think, based on that submission,
19 that they've engaged the appropriate people.
20 And I don't -- I didn't see anything there, so
21 I'm opening that to discussion.

22 PRESIDING OFFICER SCOTT: Anybody?
23 Any concerns?

24 [No verbal response]

1 PRESIDING OFFICER SCOTT: Sounds like
2 that was an easy one.

3 MR. CLIFFORD: Okay. So the next
4 topic's going to be a little lengthier. We're
5 going to talk about decommissioning under
6 301.08(a)(7). So the Applicant's required to
7 submit a decommissioning plan prepared by an
8 independent, qualified person with knowledge and
9 experience with wind generation projects, with
10 cost estimates -- excuse me -- with demonstrated
11 knowledge and experience in wind generation
12 projects and cost estimates, which plan shall
13 provide for removal of all structures and
14 restoration of the facility site. That being
15 said, they did submit a decommissioning plan
16 prepared by a company called TRC. That's
17 Applicant's 21.

18 And then, to go on, this just
19 leads us to the next one. We can talk about
20 that plan, but the discussion will probably
21 lead us to the next section of the rules,
22 which is 301.08(a)(8), which talks about
23 what's required in that decommissioning plan.
24 And so, again, I talked about this earlier in

1 the presentation. But basically, and I'll
2 summarize it rather quickly, it talks about
3 the funding to implement that plan, the types
4 of financial assurances that are required
5 under our rules to make sure that that plan is
6 implemented and carried out in the future.
7 Talks about the removal -- the plan has to
8 talk about the removal of the blades, the
9 nacelles and the towers. It talks about the
10 removal of the transformers. The plan is also
11 to talk about the removal of overhead power
12 collection conductors and power poles. And
13 that plan is also supposed to discuss the
14 removal of infrastructure below grade and how
15 that's to be treated. I've already identified
16 that earlier, about that less than 4 feet are
17 removed and depths greater than 4 feet are
18 abandoned in place. And we'll talk about that
19 and the components of the plan.

20 And then, finally, areas where
21 subsurface components are removed are supposed
22 to be filled and graded and matched with --
23 and reseeded and stabilized appropriately.

24 So, there was extensive

1 discussion about the decommissioning, both by
2 Mr. Weitzner, who talked about the letter of
3 credit that would be available, and there was
4 discussion by the Town of Antrim. There's
5 also an agreement with the Town, which I think
6 we'll probably need to go through, since that
7 agreement was entered into under the old
8 Application and may require some updating, at
9 least on our part, so everyone's clear on
10 what's required under the new rules. And then
11 there was significant testimony by abutters,
12 Audubon and a lot of other folks about the
13 types of vegetation that were going to be put
14 in place, what the roads were going to look
15 like. We had some discussion about that
16 earlier, the footprint that was going to be
17 left behind once the decommissioning took
18 place, who would be responsible for it, who
19 would be responsible for it if Antrim were no
20 longer around and the burden fell on the Town
21 and how that would operate.

22 And having said all that, I
23 think it's probably time to open it up for
24 further discussion. And I'm available to --

1 I've got a pretty good summary of the plan
2 itself and the places where people talked
3 about it if anyone has questions.

4 PRESIDING OFFICER SCOTT: Any
5 comments?

6 MR. CLIFFORD: Well, maybe the first
7 part we should talk about is the funding. Does
8 that make sense?

9 PRESIDING OFFICER SCOTT: Yeah. In
10 fact, that's what I was just going to ask you
11 about. I remember some controversy over would
12 the funding level be sufficient.

13 MR. CLIFFORD: Well, it's talked about
14 being \$2.5 million, and there was a performance
15 bond. Well, excuse me. Let me back up.

16 There was discussion that the
17 decommissioning was going to come from either
18 an irrevocable letter of credit, with the Town
19 named as beneficiary, so that if AWE is not
20 there, Antrim can have access to that money,
21 or a performance bond, which is similar, and
22 that Antrim would agree -- I mean, the Town
23 agrees if AWE is not there, the Town's going
24 to be the beneficiary of this instrument. So,

1 in other words, if the Town has to perform --
2 if AWE is out of the picture for whatever
3 reason, the Town's going to be able to draw on
4 those funds and perform the decommissioning.

5 I know there was some other
6 discussion about, well, what if the
7 decommissioning costs more. And there was
8 some discussion and I think an agreement to
9 have a continually updated and re-evaluative
10 process, because we know trying to forecast a
11 decommission -- for example, today's dollars
12 may differ very much with what may be required
13 in 25 or years even longer.

14 Again, remember there was
15 discussion by the Applicant that there is the
16 potential to extend the life of this project
17 further. So that right there tells me the
18 potential decommissioning costs would go
19 higher in the future. So there's got to be
20 some way of keeping that updated.

21 MS. WEATHERSBY: I can probably jump
22 in a little bit because I also reviewed this
23 section because it's one of the financial
24 assurance pieces as part of the Orderly

1 Development of the area tests that we need to go
2 through as well, I guess on Monday.

3 So, originally -- so, AWE has
4 contracted with Reed & Reed to review its
5 decommissioning plan that was prepared by TRC.
6 And that estimate originally was \$2,525,000.
7 And then there was discussion about the --
8 removing the foundations of the turbines to
9 the depth down to 4 feet. And Mr. Kenworthy,
10 I believe, testified that that would bring the
11 cost up to \$2,775,000. So that's where that
12 new number came from. And Mr. Kenworthy
13 stated that Antrim Wind would remove all
14 underground facilities down to a depth of
15 4 feet. Then he requested the Committee to
16 waive the requirement if the removal was not
17 possible.

18 Following that, the Applicant
19 and the Town of Antrim worked out language
20 concerning this, and that was Applicant's
21 Exhibit 39. It has two pieces. One is that
22 they're going to provide the decommissioning
23 funding assurance in the new amount of
24 \$2,775,000, or whatever amount the SEC

1 determines, and they will not cause that
2 assurance to become less than that amount at
3 any time throughout the term of the agreement
4 with the Town of Antrim. That's that
5 March 8th, 2012, agreement. And then they've
6 agreed to increase the amount of
7 decommissioning funding assurance as reflected
8 in, again, that 2012 agreement.

9 The assurance, they have agreed
10 to have it be in the form of an irrevocable
11 letter of credit issued by a major financial
12 institution with a credit rating of BBB from
13 Standard & Poor, or BAA2 from Moody's, as that
14 rating is determined on the effective date,
15 which is probably the effective date of the
16 2012 agreement, but it probably should be the
17 certificate date. The letter of credit would
18 be extended without amendment for one-year
19 periods. This is, of course, the condition --
20 sorry -- the agreement between the Applicant
21 and the Town.

22 And then, 45 days prior to the
23 extension of the irrevocable letter of credit,
24 the owner is going to provide documentation to

1 the Town indicating the extension complies
2 with the decommissioning requirements of that
3 agreement and of the SEC for the upcoming
4 annual period. And that's going to be given
5 to the Town annually until decommissioning
6 obligations are complete and approved by the
7 SEC.

8 I have a couple issues with
9 the -- first, I guess, do we want to get into
10 all the funding now or get into it later?

11 PRESIDING OFFICER SCOTT: I don't have
12 a preference. Anybody? I just don't want to do
13 it twice.

14 MR. ROSE: Yeah, I was just going to
15 say keep going. Body in motion is in motion.

16 MS. WEATHERSBY: So, you know, I
17 thought this would be really simple. And when
18 we divvied it up, I'm like, oh, this will be a
19 paragraph, I'll take this one. But it got a
20 little more complicated because of the agreement
21 between the Town of Antrim and the developer.
22 And part of the concern is the term of that
23 agreement.

24 The agreement is effective as

1 of March 8th, 2012, and it ends at the end of
2 the useful life of the wind farm. And the
3 "end of the useful life of the wind farm" is
4 determined when the wind farm hasn't generated
5 electricity for 24 months, and then they have
6 another 24 months to do the decommissioning.
7 So this agreement actually ends before
8 decommissioning starts. So it's not
9 particularly effective, and these provisions
10 don't neatly fit in.

11 So I think there are some
12 really good components of this. I think that
13 the -- one of the suggestions in this
14 agreement is that the amount be adjusted.
15 That's 14.1.1. Let me look at it.

16 (Pause in proceedings)

17 So, the estimates for the
18 decommissioning activities are to be updated
19 and submitted to the Town every three years.
20 I think that's an important component. I
21 think there's some check that -- of course,
22 costs go up, and something that's two and
23 three-quarter million today may not be that in
24 20, 30, 40 years. So I think the estimate

1 should be updated. Every three years seems
2 fine to me, but we'll throw that out for
3 discussion. And, again, that would be done by
4 a third-party independent consultant.

5 There is an issue raised of
6 whether the -- that line of credit should be
7 the amount of the estimate, or in one section
8 of this agreement it was to be 25 percent over
9 the estimated costs. In my mind, if it -- it
10 may not be necessary if the estimates are
11 continually updated and that the amount the
12 experts say, I think you have to be able to
13 put some trust in that. That said, if we want
14 to do something that's 5 percent, 10 percent
15 over, that would not be unreasonable, in my
16 opinion.

17 In addition, the Town of Antrim
18 in its post-hearing brief asked us to approve
19 the condition concerning decommissioning, and
20 that was that the, prior to construction, that
21 the Antrim Board of Selectmen would retain an
22 independent engineer to review the
23 decommissioning plan. And there was timing
24 involved. And that would help determine the

1 amount of the decommissioning cost estimate.
2 To me, that probably isn't necessary if we go
3 with the cost estimate and do periodic review
4 of that by an independent third party.

5 So, to me, if we have an
6 irrevocable letter of credit or performance
7 bond in the amount of the estimate that's
8 done -- issued by a financial institution with
9 an investment-grade credit rating, and that's
10 reviewed by an independent third -- the cost
11 estimate is reviewed by an independent third
12 party every, say, three years, and that letter
13 of credit or performance bond is adjusted to
14 reflect those new figures, in my opinion, that
15 could get us into an acceptable place for
16 decommissioning funding. But I'm no expert.

17 PRESIDING OFFICER SCOTT: I apologize
18 for this. I'm going to rehash a little bit.

19 So we have the suggested
20 language from the Applicant originally, which
21 was an upgrade to the estimate due to the
22 4-foot burial; correct?

23 MS. WEATHERSBY: Correct.

24 PRESIDING OFFICER SCOTT: Then we have

1 language in the agreement with the Town -- or
2 actually, is the agreement with the Town?

3 MS. WEATHERSBY: Right. There's
4 language in the 2012 agreement with the Town.

5 PRESIDING OFFICER SCOTT: But
6 actually, I'm thinking about --

7 MS. WEATHERSBY: And there's --

8 PRESIDING OFFICER SCOTT: -- the
9 Town's post-, you know, closing brief, they
10 had --

11 MS. WEATHERSBY: Different language,
12 right.

13 (Court Reporter interrupts.)

14 PRESIDING OFFICER SCOTT: Sorry.

15 MS. WEATHERSBY: And there's also
16 language that the Town worked out with the
17 Applicant that was submitted as Applicant's 39,
18 Exhibit 39.

19 PRESIDING OFFICER SCOTT: Okay. And
20 your suggestion is to add to that.

21 MS. WEATHERSBY: My suggestion is to
22 sort of do a compilation of what has been
23 proposed because they're contradictory in some
24 manners. But I think if we take the key

1 components of what I sense they were trying to
2 get to, which was get the new cost estimate
3 based on removing facilities down to a depth of
4 4 feet, which is the \$2,750,000 -- \$2,775,000
5 figure; have them get the irrevocable letter of
6 credit as they've suggested -- they could do a
7 performance bond, but I'm not sure it matters --
8 but if they get an irrevocable letter of credit
9 in that amount as a condition of the certificate
10 issued by a financial institution with an
11 investment-grade credit rating or better --
12 well, investment grade -- and that that cost
13 estimate gets reviewed periodically and the
14 letter of credit gets adjusted, I would say
15 upward only based on the new estimates as
16 provided by an independent third party --

17 MR. CLIFFORD: I was just going to say
18 I find that inherently reasonable because it
19 takes into account cost of inflation, and it's
20 not unreasonable for the Applicant to think that
21 \$2.7 million today is not going to be \$2.7
22 million later, but it allows everyone to plan
23 for that eventuality and make sure that the
24 money is there and the plan is in place to make

1 this happen at some point in the future.

2 And, yeah, I think a three-year
3 valuation is probably closer -- you know, I
4 think that it should be a pretty simple
5 process to take forward because Reed & Reed
6 looks like they've already done most of the
7 estimates. So maybe it seems to me like
8 they'd basically just be doing an updating --
9 an updated cost estimate based on, for
10 example, wages in place, you know, three years
11 from now, that kind of thing, trucking costs,
12 whatever.

13 MS. WEATHERSBY: Right. Labor and
14 materials kind of thing.

15 MR. CLIFFORD: Right.

16 MS. WEATHERSBY: Although I would ask
17 Attorney Iacopino if you have any insight into
18 what's been done for decommissioning of other
19 facilities and whether what we're thinking of is
20 new and different or kind of in line with what's
21 been done before.

22 MR. IACOPINO: No, I think this is --
23 (Court Reporter interrupts.)

24 MR. IACOPINO: I believe that what

1 you've just suggested is in line with what has
2 been done before and what has been suggested in
3 other dockets as well. So it's not off the
4 reservation here.

5 PRESIDING OFFICER SCOTT: So I'm
6 getting the sense the Committee believes that's
7 a reasonable approach, but we're going to need
8 to have firm language I think.

9 MS. WEATHERSBY: I can try, and we may
10 just, you know, fine-tune this. But that the
11 Applicant shall provide, prior to commencement
12 of construction or -- an irrevocable letter of
13 credit in the amount of \$2,775,000 to secure
14 decommissioning costs issued by a financial
15 institution with an investment-grade credit
16 rating. The cost estimates for decommissioning
17 shall be reviewed by an independent third party
18 every three years. Actually, it should be --
19 I'm sorry. I would say it should be reviewed by
20 an independent third party, yes, every three
21 years thereafter at the cost to the Applicant
22 and provided to the SEC, and the amount of the
23 letter of credit adjusted upward in the event
24 the decommissioning costs rise. And that letter

1 of credit should be in place until
2 decommissioning is completely done, whatever
3 that term is.

4 What's the certification that
5 the decommissioning plan is completed
6 adequately? Is that -- could someone help me
7 out there?

8 MS. MONROE: Maybe "just fully
9 implemented and completed."

10 MS. WEATHERSBY: Yeah, I didn't know
11 if there's any certification that is done or --
12 decommissioning plan is fully implemented,
13 satisfactorily and fully implemented.

14 MR. CLIFFORD: And do we want to -- I
15 think the Applicant's language captured most of
16 this and we just want to get the three -- it
17 sounds like you just want to get the
18 "three-year" component in. But otherwise, we're
19 going to still require submission, sort of this
20 annual certificate -- is the ILOC in place --
21 then check off the box, make sure that they're
22 not in violation of that.

23 And then, is the component --
24 are you suggesting that the Town does or does

1 not have continual input in this? Because I
2 think there's some component of that in what
3 the Applicant was proposing, because the
4 Town's got to be involved in this to some
5 respect because they're the beneficiary of the
6 ILOC. So I think we need to --

7 MS. WEATHERSBY: Right. Maybe we
8 should work with the language that's been
9 submitted already --

10 MR. CLIFFORD: Right.

11 MS. WEATHERSBY: -- which is probably
12 much better than what I just invented.

13 MR. CLIFFORD: Well, no, you've done a
14 great job. My question is -- use this, and then
15 basically you're adding the "updated every three
16 years" component to that --

17 MS. WEATHERSBY: Right.

18 MR. CLIFFORD: -- with an amount for
19 whatever the amount is at the end of that
20 three-year analysis is incorporated into the
21 next letter of credit when they go back to the
22 bank and say, oh, by the way, you need to update
23 this letter of credit from 2.7, for example, to
24 2.9, just picking any old number.

1 MS. WEATHERSBY: Right. Yeah, so we
2 can probably work with the language. We can try
3 it now or try to do it later with these
4 concepts.

5 I just have a question. Is it
6 typical for the resident town to be the
7 beneficiary? It is. Okay. I didn't know if
8 the state needed to get involved or anything
9 else, but --

10 MR. IACOPINO: In the past, these
11 things have generally come in the form of an
12 agreement between the Town and the Applicant.
13 And that's generally -- my recollection, at
14 least, in cases like this in the past, that's
15 what's been approved, or some version of it.

16 Ms. Monroe, do you have
17 Exhibit 39 available to you? It was an add-on
18 exhibit after the proceedings started. I have
19 a copy here if you need it. So we'll have to
20 amend the language from this.

21 MS. MONROE: I have it.

22 PRESIDING OFFICER SCOTT: Okay. That
23 sounds like progress.

24 Mr. Clifford, are we ready to

1 move on from the financial part of the
2 decommissioning?

3 MR. CLIFFORD: I think so. I think,
4 correct me if I'm wrong, but so we talked about
5 the funding and the assurances. So I think
6 we've covered 301.08(a)(8)a and b.

7 Then I also think the plan that
8 they submitted and talked about, unless anyone
9 misunderstood the testimony as presented, the
10 nacelles, the towers and the turbines, were
11 going to be removed off site. I didn't hear
12 anything to the contrary. Right?

13 [No verbal response]

14 PRESIDING OFFICER SCOTT: If I
15 remember correctly, we did have a request for a
16 condition that would require the removal of all
17 construction debris. Is that --

18 MR. CLIFFORD: Before we get there --
19 right, there was. We talked about -- the next
20 section deals with overhead power collection
21 conductors and power poles removed from the
22 site. I didn't find any reference to "overhead
23 power poles."

24 PRESIDING OFFICER SCOTT: I'm sorry.

1 I got lost there.

2 MR. CLIFFORD: Well, the next section
3 we need to go to talks about the removal of
4 overhead power collection conductors. And I
5 don't recall seeing any overhead power, so
6 that's really not applicable here. But I know
7 they were going to remove the building. And
8 there's the building at the base. They were
9 also going to remove that structure. But I'm
10 saying, in terms of overhead poles, there wasn't
11 anything overhead to remove. So when we talked
12 about removal of other structures on the site, I
13 believe there was one maintenance -- you know,
14 the facility that's going to collect the energy
15 that's produced by this and turned into the grid
16 that's going to be removed also.

17 PRESIDING OFFICER SCOTT: Okay. So
18 what I was trying to bring up was we had a
19 request that -- a little bit of controversy, if
20 I remember, over whether, particularly when we
21 get to digging the 4 feet, would things be
22 ground up and buried on site, or would they be
23 required to be brought off site. That's what I
24 was trying to recollect.

1 MR. CLIFFORD: There was extensive
2 discussion about that. So that brings us to the
3 next, I think, section of the rule, which is the
4 underground -- you're talking about the
5 underground infrastructure at depths less than
6 4 feet below grade removed from the site, and
7 that all underground infrastructure at depths
8 greater than 4 feet below the finished grade
9 will remain in place.

10 And there was discussion about
11 whether in the process, when you create the
12 cone to create the base for the tower, whether
13 you could crush the concrete down 4 feet,
14 remove -- obviously there's going to be rebar
15 put in and reinforcing materials. There was
16 discussion that the rebar was valuable and
17 salvageable. That would be taken off site.
18 Anything that could be salvaged would be taken
19 off site. But there was considerable back and
20 forth about whether you could crush the
21 concrete and leave that in the cone you're
22 creating based on removal. And there was a --
23 I think there was a particular exchange
24 between, I think, Mr. Kenworthy and Ms.

1 Linowes on that point, as well as, I think,
2 Counsel for the Public had discussion on that
3 as well.

4 So I guess we need to discuss
5 that, whether -- what the -- maybe what the
6 interpretation of that means. But I think
7 it's pretty straightforward. Others may
8 disagree.

9 MS. WEATHERSBY: If I can jump in, I
10 think that issue was resolved with Mr. Kenworthy
11 agreeing to remove all of the underground
12 facilities down to the depth of 4 feet, and that
13 was what caused the cost estimate to go up by a
14 half-million dollars.

15 PRESIDING OFFICER SCOTT: If I may
16 clarify. I wasn't suggesting that 4 feet was
17 the controversy. It was what do you do with the
18 debris from that removal.

19 MR. CLIFFORD: Right, it was.

20 MS. WEATHERSBY: I'm sorry.

21 MR. CLIFFORD: That's what I was
22 alluding. In order to get the base down below
23 the 4-foot grade, you've got to pulverize it.
24 You are effectively pulverizing concrete. Then

1 the question became -- and there was some
2 discussion whether, you know, you needed an
3 on-site permit for basically conducting those
4 kind of operations, a waste permit, or whether
5 you needed to take the concrete that was
6 crushed -- can you just leave it in place and
7 bury that next to the structure. You know, what
8 does concrete become once it's crushed? Does it
9 need to be taken away or can it be abandoned and
10 put back in that cone? You know, when you dig
11 around the base in order to get to it, you're
12 going to have to expose considerably more area
13 than just right next to the poured concrete
14 facility. You're going to have to excavate
15 around it. So then the question became can you
16 chop up the concrete and leave it in that
17 backfill.

18 PRESIDING OFFICER SCOTT: I was hoping
19 the guy from DES would weigh in.

20 DIR. FORBES: I will. It's fairly
21 common practice to pulverize and leave concrete
22 in a place like that without a permit. We do
23 not require that, DES.

24 I'd bring up another related

1 concern. If you were to remove that material
2 after 25 years, you would probably need to
3 bring in some other material to establish the
4 same grade. Bringing in a foreign material
5 may not be as environmentally helpful as just
6 leaving that concrete that's there,
7 pulverized, of course. So I think it's in the
8 public interest to allow that concrete to be
9 broken up, as the Applicant has suggested, and
10 buried at the locations of each tower.

11 PRESIDING OFFICER SCOTT: I think
12 Commissioner Rose wanted to add something.

13 MR. ROSE: I was just going to mention
14 that during the course of the proceeding there
15 was an exhibit that was offered by the
16 Applicant -- it was Applicant Exhibit No. 36 --
17 that did reference a DES Best Management
18 Practice for removal of solid waste, where it
19 stated just what Director Forbes had referenced,
20 in terms of innate material that can be
21 processed and used as general fill without a
22 permit.

23 PRESIDING OFFICER SCOTT: Dr.
24 Boisvert.

1 DR. BOISVERT: I'm just thinking down
2 the road 40 years, maybe more. I'm sure it's
3 the desire of the Applicant to have the facility
4 in use for as long as possible. And I wonder
5 what the Best Management Practices would be in
6 40 years. They may change. I would be
7 surprised if they did not. And I don't know if
8 it's worth putting in as a condition, but to
9 simply dispose of it according to then current
10 Best Management Practices. I suppose it's
11 possible for them to -- for whoever is running
12 AWE at the time to simply ask for a waiver to
13 match the current Best Management Practices,
14 such that my suggestion is moot. But I think we
15 need to acknowledge that it may be entirely
16 different handling at that point in time. There
17 may be processes that can render the concrete
18 essentially neutral without having to go through
19 what are currently expensive processes. Don't
20 know. But I'd still like to get some thoughts
21 from other members of the Subcommittee about
22 trying to work with whatever will be the best
23 practice in the future.

24 PRESIDING OFFICER SCOTT: Well, I'd

1 certainly be fine with some general language,
2 which I'm not even sure is needed, that it would
3 be done according to Best Management Practices
4 at the time it was done. Having said that, I
5 think it's a given that they would follow any
6 laws and regulations in place at the time. It's
7 kind of redundant to say you'll still follow the
8 law.

9 I don't know if anybody else
10 had any comments.

11 MR. CLIFFORD: I would tend to just
12 leave it as it sits. I don't know what the Best
13 Management Practices are going to be in the
14 future. I mean, someone may say the Best
15 Management Practice would be leave the towers in
16 place. I don't know. I mean, it seems to me
17 that they're going to use whatever practices are
18 in their best interests as well. I mean, if it
19 makes sense in the future to cart concrete off
20 and bring new material in, then maybe they'll do
21 it. But I don't know. I've seen excavated
22 sites around the world for thousands of years,
23 and usually you abandon stuff in place, from
24 what I've witnessed. And I can't really say

1 that that's probably going to change much in the
2 next thousand years. That's just my general
3 observation.

4 PRESIDING OFFICER SCOTT: Commissioner
5 Rose.

6 MR. ROSE: I was just going to
7 reference, you know, we are talking just about
8 the concrete. And I know there was some
9 discussion, you know, if there was any rebar or
10 other materials in it, that that would be
11 removed off site. So we're really just talking
12 about the innate material, clean material that
13 could be utilized, you know, as purposeful fill,
14 you know, as they are going through that
15 decommissioning process.

16 MR. CLIFFORD: There was definitely
17 discussion about that. I think, I mean, that's
18 all salvage material in general. They'll
19 probably cut the rebar and take it to a salvage
20 yard. You got nine turbines in there. I would
21 imagine there's pretty extensive rebar, and it's
22 probably worth their while to cart it off. At
23 least if they don't want it, I'll take it. I
24 know there's plenty in there, as well as the

1 cable and the wires. You know, there's value in
2 that. As long as they're up there, they're
3 going to send it to a scrap yard and get some
4 money. But then there was testimony about that
5 by Mr. Cavanagh, I believe, as well, when he
6 talked about his plan.

7 But, yeah, this stuff,
8 generally speaking, we tend to take that to a
9 scrap yard. So I can't -- I mean, unless the
10 value is so low that it's going to be removed.
11 But he did specifically talk about in his
12 testimony cutting the rebar and removing that
13 from the base.

14 PRESIDING OFFICER SCOTT: We're
15 getting punchy now I think.

16 So it sounds like we're -- any
17 other decommissioning comments, issues,
18 suggestions?

19 [No verbal response]

20 PRESIDING OFFICER SCOTT: Sounds like
21 you got us through another one.

22 MR. CLIFFORD: I think this is the
23 last component of the topic. I thought we ought
24 to talk about -- we touched upon safety. So

1 let's just go on the record as saying there was
2 discussion, extensive discussion about the
3 blasting plan. And that, I think, falls under
4 the safety component rubric. But there's
5 testimony by Mr. Cavanagh and by the Applicant
6 that they were going to have a plan in place and
7 that -- I think we talked about some of that the
8 other day, too, that that was approved by the
9 state. They're going to use a licensed blasting
10 company. There's going to be sufficient
11 notification to the Town when this is to occur.
12 And while it might occur over an extended period
13 of time, there is going to be a notice provision
14 so that people do know that the blasting is
15 going on. And I think they've demonstrated it's
16 going to be undertaken in a safe and responsible
17 manner, much as been undertaken on other
18 projects of similar size and scale throughout
19 the state.

20 PRESIDING OFFICER SCOTT: And if I'm
21 remembering correctly, one of the conditions we
22 talked about introducing was -- or already was
23 monitoring, well monitoring for blasting. Am I
24 remembering correctly?

1 MR. CLIFFORD: Yes, but well
2 monitoring on the Route 9 corridor. That was
3 the only discussion that was brought up.

4 MS. MONROE: Well, on the well
5 monitoring, too. Wells within 2,000 feet of the
6 blasting activities.

7 PRESIDING OFFICER SCOTT: So, another
8 way of saying it, just correcting the statement
9 is it's not just within the Route 9 corridor;
10 correct?

11 MS. MONROE: That's not what I have,
12 no. This is -- Mr. Forbes, we agreed, covered
13 that this morning.

14 MR. CLIFFORD: All right. It says
15 2,000 feet from -- within 2,000 feet. Correct.

16 MR. ROSE: I do also recall discussion
17 about the regularity or frequency that the
18 Applicant would be communicating with the Town
19 and the abutters in advance of any blasting. I
20 believe that's part of the Department of Safety
21 requirements. But I think that was also an
22 important part, and I do recall the selectmen
23 also making a comment that they anticipated
24 knowing when all the blastings were going to

1 occur because, as I recall, the -- what we were
2 presented in testimony was that they were going
3 to provide a plan, and they were going to have
4 blasting over a duration of time. But I think
5 that, you know, those dates and specific times
6 may fluctuate based on the plan and the progress
7 that they make executing their plan.

8 So I think that was -- I don't
9 recall the specifics within the Department of
10 Safety application permit requirements. But I
11 do think that's an important point, that the
12 Town be made aware of the very specific dates
13 of any of the blasting plans.

14 MR. CLIFFORD: There's discussion
15 about that in the record, that Mr. Cavanagh said
16 they're going to disseminate these blasting
17 reports or plans to the Town of Antrim, who is
18 going to disseminate them. And then the
19 additional procedure that Reed & Reed was going
20 to put in place -- or not the additional, but a
21 procedure that they would put in place is that
22 they would notify the adjacent landowners the
23 day before the blasting was going to take place.
24 And I think that was something we were -- the

1 adjacent property owners were concerned about.
2 And it's something I think Mr. Cavanagh thought
3 was pretty easy to provide. Obviously, they're
4 going to give notice of the blasting plan to the
5 Town to inform the adjacent property owners if
6 they don't want to be around that day or if they
7 feel -- you know, hear or feel something in
8 the -- walking in their yard, they would know
9 what was going on.

10 PRESIDING OFFICER SCOTT: So my
11 understanding is, my recollection, under Public
12 Health and Safety, we've discussed sound, shadow
13 flicker, setbacks, ice throw, blade shear, tower
14 collapse, lightning protection, decommissioning,
15 fire protection. We briefly discussed potential
16 of any interference with the weather radars, and
17 we discussed the FAA circular and the lighting
18 issues around that and the ADLS system. Is
19 there anything else before we leave Public
20 Health and Safety that we should address? I
21 know we've had some discussions regarding
22 construction and traffic. Is that something we
23 want to discuss under this topic or put under
24 Orderly Development of the Region?

1 MR. ROSE: Yeah, could be either. I
2 know there was one other point that, and I don't
3 know if it's under this section or the next, but
4 just in terms of, you know, updating/modifying
5 the schedule, because as the plan that's in
6 the -- and the Applicant I think anticipated an
7 October start. So, obviously, as we sit here in
8 mid-December, if we were to issue a certificate,
9 that plan and the schedule of the Project would
10 need to be updated to reflect, you know, current
11 status. So I don't know, again, if that's
12 something that would be required, something we
13 should discuss at this point or at another
14 point. But I do think for the Town and the
15 community, you know, having an updated plan and
16 schedule would be relevant. I was just going to
17 say, you know, there were agreements that they
18 were going to do certain cutting during certain
19 times of year and such. So, you know, that
20 schedule is, I think, very relevant to some of
21 the conditions that were outlined within the
22 Application.

23 PRESIDING OFFICER SCOTT: So you're
24 suggesting we look now at the agreement with the

1 Town, or are you suggesting something different?

2 MR. ROSE: Well, I was thinking that
3 the schedule would need to be updated to provide
4 to the Town and others, and the Committee, to
5 reflect, you know -- I guess perhaps maybe
6 that's something we should discuss at a future
7 time, when and if we get to the point where we
8 issue a certificate. But there were conditions
9 that were dictated by the time of year, and so I
10 think that would be relevant in terms of when
11 something may or may not actually start.

12 PRESIDING OFFICER SCOTT: So you're
13 suggesting, assuming we issue a certificate,
14 that there be a requirement that they -- that as
15 they redo those plans, they submit them to us?

16 MR. ROSE: That's right.

17 PRESIDING OFFICER SCOTT: Okay. Thank
18 you.

19 MS. MONROE: I think I have that. I
20 captured it. In the event you were to issue
21 one, they would provide an updated plan for the
22 timing and sequence of construction of the
23 project.

24 PRESIDING OFFICER SCOTT: Okay.

1 MR. CLIFFORD: One item that I thought
2 we -- I didn't forget it because I haven't
3 forgotten yet. But we talked about the Doppler
4 radar. We also need to talk about the weather
5 radar. It's the same company. There was a
6 submission by Comsearch. The rules require we
7 talk about weather radar. And this Comsearch
8 provided, on behalf of the Applicant, a research
9 analysis report that assessed the impact of the
10 Project and the operation of the Doppler radar
11 weather systems. That was also part of the
12 component of the rule. And they indicated there
13 was essentially no significant impact --
14 paraphrase here -- that there was no impact on
15 line-of-sight radar systems caused by the
16 proposed installation of the Applicant's
17 facility. So I just wanted to clean that up.

18 PRESIDING OFFICER SCOTT: Thanks for
19 that. I was considering the Doppler a form of
20 weather radar. It's better that we cover
21 everything. I'm happy with that.

22 Anything else before we move on
23 to the Orderly Development of the Region?

24 [No verbal response]

1 PRESIDING OFFICER SCOTT: And again, I
2 don't know where we place it. I know we had a
3 discussion about the construction and traffic
4 issues for construction vehicles, that type of
5 thing. I don't know where that best fits. So
6 I'll table that unless somebody's prepared to
7 discuss.

8 MR. CLIFFORD: I have some information
9 about it, but I recall there was going to be --
10 I don't know if this is the right topic, but --
11 I mean, excuse me, right. If anyone else wants
12 to jump in, but there was a discussion about
13 that most of these turbines would arrive on
14 Route 9. There would be no effective road
15 closures and delays, that the affected area
16 could handle it. I think the turbines
17 themselves were going to be broken down into
18 three distinct deliverable parts. I don't think
19 there was any expected road closures or delays.

20 Another component of the siting
21 of the towers was going to actually be done by
22 helicopter installation later on is the way
23 these things are put together.

24 There was some discussion, and

1 I think the operation -- the hours of
2 operation were essentially scheduled to be,
3 like, six days a week. I have -- my
4 recollection was it was from 7:00 to 7:00,
5 Monday through Saturday. Don't quote me on
6 that yet, but I did find some discussion about
7 when they had planned on working on the
8 facility. I know Mr. Cavanagh did talk about
9 that there really would be -- you probably
10 wouldn't hear a lot of what was going on just
11 from a general sense most of the time. We're
12 talking about -- I think the rules talk
13 about -- well, back up.

14 There wasn't going to be any
15 unreasonable impacts based on the level and
16 amount of activity on the site. A lot of this
17 is going to take place early. I assume
18 chainsawing and cutting down trees and that
19 kind of thing are going to be quite noisy for
20 a while, but that will abate after a few
21 weeks.

22 PRESIDING OFFICER SCOTT: My
23 recollection is that much of this discussion is
24 within the agreement with the Town of Antrim.

1 And as we go to wade through again all the
2 conditions, we'll have to read that agreement
3 also to see if it needs, well, not the agreement
4 itself -- we're not going to affect that
5 directly -- but our adoption of that.

6 MS. MONROE: Which agreement are you
7 referring to?

8 PRESIDING OFFICER SCOTT: With the
9 Town, between the Applicant and the Town.

10 MS. MONROE: Just general.

11 PRESIDING OFFICER SCOTT: So, I was
12 just touching upon issues with the construction
13 and traffic related to the construction. So,
14 unless people want to elaborate more, I think
15 we're good to start moving into Orderly
16 Development of the Region. And I think
17 Commissioner Rose was leading that charge.

18 MR. ROSE: Orderly Development of the
19 Region, R.S.A 162-H:16,IV(b), requires the
20 Subcommittee to consider whether the proposed
21 project will unduly interfere with the orderly
22 development of the region due to -- with due
23 consideration given to the views of the
24 municipal and regional planning commissions and

1 municipal governing bodies.

2 Under our Administrative Rules,
3 Site 301.15, when determining whether the
4 Project will unduly interfere with the orderly
5 development of the region, the Subcommittee is
6 required to consider the following: A, the
7 extent to which the siting, construction, and
8 operation of the proposed facility will affect
9 land use, employment and the economy of the
10 region; B, the provisions of and financial
11 assurances for the proposed decommissioning
12 plan for the proposed facility; and C, the
13 views of the municipal and regional planning
14 commissions and municipal governing bodies
15 regarding the proposed facility.

16 For the land use, the Applicant asserts
17 that the Project represents a reasonable degree
18 of development that largely preserves the
19 status of the area that has long been
20 associated with open space, commercial timber
21 production and passive recreation. The
22 Applicant states that the Project is compatible
23 with the open space and conservation land usage
24 of the region because it will occupy

1 approximately 11.3 acres of permanent
2 development, will ensure the placement of
3 approximately 908 acres of land into permanent
4 conservation and will demotivate local
5 landowners from developing or subdividing their
6 lands by providing these revenues.

7 The Applicant acknowledged, however, that
8 one of the conservation easements provided
9 allows for the construction of an 80-foot road
10 and a house not to exceed 3500 square feet and
11 a cell tower.

12 The Applicant states that the Project will
13 have almost no effect on the public's ability
14 to use the general area for outdoor recreation.
15 The Applicant submits that there is only one
16 formal hiking trail within one mile of the
17 Project and that the Project will not affect
18 its usage. The Applicant further asserts that
19 the informal hiking -- that informal hiking and
20 hunting will not be affected by the Project,
21 with the exception of the immediate vicinity of
22 the Project. The Applicant also asserts that
23 the Project will have no direct impact on
24 wildlife and bird watching, boating and

1 swimming.

2 We did hear from Counsel for the Public,
3 as well as several intervenors in the docket,
4 that highlighted the fact that this project is
5 being proposed in the rural conservation
6 district within Antrim and that it is not a
7 permitted use within the local zoning
8 ordinances.

9 We also heard from intervenors, such as
10 Carol Foss with the Audubon, that testified
11 that the Project is within the regional
12 collaborative effort designed to conserve
13 wildlife habitat and managed timber lands
14 within approximately two million acres between
15 the Q to C Region, which spans from the Quabbin
16 Reservoir in Massachusetts to the White
17 Mountain National Forest in New Hampshire.

18 Chris Wells testified that the Project
19 will be constructed within the Q to C area that
20 was identified by the partnership as a core
21 conservation focus area. In addition, the
22 Project site will be abutting -- abutted on the
23 south and east by the Super Sanctuary with over
24 40,000 acres of permanently protected

1 conservation lands.

2 Multiple intervenors expressed concerns
3 that the Project will negatively affect
4 conservation attributes of the region; it is
5 inconsistent with the land use design to
6 conserve and preserve the natural environment
7 in forest and will have an adverse effect on
8 the orderly development of the region. Ms.
9 Foss also noted that one of the easements
10 granted the right to construct a house within
11 the high elevation and that the construction of
12 the house and associated road would cause
13 additional fragmentation.

14 The Schaeffers also argued that the
15 Project will have unreasonable adverse effect
16 on orderly development of the region by
17 permanently altering the town's rural
18 character.

19 And the Allen/Levesque group of
20 intervenors, in its post-hearing brief,
21 requested the Subcommittee place a condition of
22 any certificate requiring the Applicant to
23 remove any conditional language from the
24 easement that allows for any type of future

1 development on conservation land. The group
2 also requested the Subcommittee to require the
3 Applicant to conserve the entire set of leased
4 parcels, totaling over a thousand acres.

5 I could keep going or we could try to
6 chunk off the land use portion. Or I could
7 keep going on to the economy and employment
8 section.

9 PRESIDING OFFICER SCOTT: I think the
10 discussion on the land use side makes sense at
11 this juncture. Anybody like to discuss that? I
12 can tell we're getting late in the day. I think
13 we're slowing down. Anyone?

14 [No verbal response]

15 MR. ROSE: I guess I'll get things
16 started. You know, the land within the rural
17 conservation district currently allows
18 subdivisions of 3-acre lots. So there would
19 be -- I think there's certainly an overall value
20 associated with having those lands in a
21 conservation easement to prevent that
22 subdivision of those acres. Conservation
23 easements can take, you know, many different
24 forms, and they're generally negotiated by the

1 various parties. I haven't seen any that I
2 recall with a house, but, you know, that can be
3 a term that's negotiated. I have seen the
4 issuing of cell towers and such within
5 conservation easements. So that's not as
6 unusual. But, you know, it is what was
7 negotiated between the Applicant and one of the
8 landowners. And I think that was the issue that
9 was probably raised most frequently in terms of
10 the land use that caused people concern.

11 PRESIDING OFFICER SCOTT: On that
12 topic, I think, really, the 80-foot road and a
13 potential for a house that crosses the parcel I
14 think was one of the articulated concerns. I'm
15 trying to remember the property owner. Was it
16 Ott?

17 MR. ROSE: I believe that's right,
18 yes.

19 PRESIDING OFFICER SCOTT: Again, it's
20 late in the day. You know, it strikes me as you
21 can only -- these are property owners, and that
22 was a condition of the property owner. The
23 implication of that to me was, but for the
24 Project, that property owner still was

1 interested in doing that. Clearly they said
2 I'll grant you an easement, but I need these
3 things in it, you know, is an indication to me
4 that that risk is there, whether the Project's
5 there or not. So I understand the desire to
6 have unfragmented areas, but I'm not sure how
7 real it is in that particular location.

8 Anybody else? We're all
9 getting... Attorney Clifford.

10 MR. CLIFFORD: I just wanted -- I
11 thought we were talking about orderly
12 development, too, and I wanted to just reference
13 the part that I thought this was their rural
14 conservation district; right?

15 MR. ROSE: Correct.

16 MR. CLIFFORD: So I just wanted -- so
17 when we're speaking of that, there were a lot of
18 other uses that could be put there. I just
19 remembered ticking off many of them. So we
20 understand, this is completely out of character
21 with what could happen in that area. I think it
22 came down to manufactured housing. And I pulled
23 up the ordinance, just so --

24 (Court Reporter interrupts.)

1 MR. CLIFFORD: There were kennels,
2 boarding or breeding; public and private
3 recreational facilities; roadside stands;
4 stables and riding academies; manufactured
5 housing units. So I would think, for example,
6 you know, public and private recreational
7 facilities could include a gun range, for
8 example, or that motor sports park, something
9 similar to that that was talked about in the
10 Lempster area.

11 So, in general, in my view,
12 this is not entirely inconsistent with what
13 could happen in this particular area, so...

14 MR. ROSE: I think that's absolutely
15 correct. Right. From a land use perspective,
16 this is, you know, consistent -- well, at least
17 pertaining to the easement. I'm sure we'll talk
18 a little bit more in the orderly development
19 about, you know, the sentiment of the town and
20 municipality. But it was, you know, stated that
21 the actual towers themselves would not be
22 inconsistent with the ordinance for a rural
23 conservation district in the town of Antrim.

24 PRESIDING OFFICER SCOTT: And I'll

1 add, much like some other discussions we've had,
2 the mitigation package being proposed, again, to
3 me it helps in this realm also. So that's a
4 contributing factor to -- for me, that makes me
5 less worried about conflicts with the land use.

6 MR. ROSE: And I'll just reiterate.
7 The land will be held in private ownership and
8 will continue to be used for traditional uses,
9 such as forestry, hunting and other passive
10 recreation that's permitted or allowed within
11 those private lands.

12 PRESIDING OFFICER SCOTT: Director
13 Forbes.

14 DIR. FORBES: Yeah, I would just say
15 that, for me, I was influenced somewhat from the
16 fact that the town officials that were here and
17 testified all interpreted the Project as not in
18 conflict with their orderly development. And I
19 found that compelling.

20 MS. WEATHERSBY: I'd just like to say
21 that some of the uses that are permitted in this
22 section under the ordinance are highly unlikely
23 to ever go into the ridgetop location. I mean,
24 it's not going to support a racetrack. It may

1 support a horseback riding adventure, but most
2 of the things that are listed are highly
3 unlikely to ever go into that location.

4 That said, I would agree that I
5 don't feel as though this project has any
6 significant impact on the land use. I think
7 that the size of the footprint compared to the
8 amount of the conservation land that's being
9 offered and the fact that, although the
10 structures are, you know, rather industrial,
11 they're not -- there's not a lot of activity,
12 traffic, commercial vehicles, et cetera. It's
13 rather -- once it's built, it's a rather
14 passive neighbor and in a relatively small
15 footprint surrounded by lands that will now be
16 conserved that perhaps may not have been
17 otherwise.

18 PRESIDING OFFICER SCOTT: Dr.
19 Boisvert.

20 DR. BOISVERT: I think that, although
21 it's a low probability, that there could easily
22 be some of these activities in there. And
23 regarding the raceway, the people in Tamworth
24 have one on the north slope of the Ossipee

1 Mountains, which is a very large facility, and
2 this has actually attracted certain kinds of
3 motor sports, oddly enough.

4 I find that placing the
5 900-plus acres into conservation, such that
6 the other activities would not take place, is
7 highly desirable. And I am constantly
8 surprised at what people may propose to do on
9 property that we think is not logical or good
10 use, but they still do it anyway. So if this
11 helps forestall at least some of that, I think
12 it's positive.

13 PRESIDING OFFICER SCOTT: Anything
14 else on land use before Commissioner Rose moves
15 on?

16 [No verbal response]

17 PRESIDING OFFICER SCOTT: Hearing
18 none... before you start, let me ask you this:
19 What's the will of the Committee? It's 4:30.
20 How far do you want to go today? I will say my
21 desire would be, on Monday, which is, by the
22 way, back at the Public Utilities Commission,
23 would be that we come to some conclusion Monday,
24 even if we have to stay late. So, having said

1 that, what's your thought on how far we go
2 today? Anybody?

3 MS. WEATHERSBY: I'm fine to go a
4 while longer. We can certainly get through
5 employment and perhaps deal with, if we have
6 time, get through economy of the region. Or we
7 can skip and talk about the ordinances.
8 Whatever the chair would care to do.

9 DR. BOISVERT: I would like to take
10 advantage of at least some available time this
11 afternoon because that would probably mean that
12 much less time Monday, and we may get a late
13 start Monday if the weather turns particularly
14 bad.

15 PRESIDING OFFICER SCOTT: Sounds like
16 we should press on.

17 Do you know anything about the
18 economy?

19 MR. ROSE: Well, it's debatable, I
20 guess. But I also -- but as one who has to
21 drive to Pittsburg tonight, I'm also okay if we
22 touch out here. But I'll defer to the will of
23 the Committee.

24 [No verbal response]

1 MR. ROSE: Okay. Economy. No, I got
2 it, I got it.

3 The Applicant retained Matt
4 Magnusson to study potential impacts of the
5 Project on the economy and employment of the
6 region. Mr. Magnusson prepared and filed with
7 the Committee a report titled, "Economic
8 Impact of the Proposed 28.8-megawatt Antrim
9 Power Project in Antrim, New Hampshire." Mr.
10 Magnusson asserted that the Applicant has
11 already brought investment into the New
12 Hampshire economy by spending \$2.12 billion --
13 or a million dollars -- excuse me -- on
14 professional services and lease payments. Mr.
15 Magnusson outlined that the Project is
16 expected to bring \$53.4 million in increased
17 economic activity to New Hampshire over the
18 next 20 years. The greatest economic benefit
19 will be generated during the construction
20 phase of the Project and will generate 25
21 full-time-equivalent construction jobs and
22 will be supported -- and will support an
23 additional 59 full-time-equivalent jobs in the
24 local economy. In turn, the Project will

1 generate approximately \$5.9 million in wages
2 and earnings. And Mr. Magnusson further
3 highlighted that during construction, the
4 Project is expected to create -- excuse me,
5 during operation, the Project is expected to
6 create an estimated four-time -- four
7 full-time-equivalent new jobs in a -- of four
8 employees at Antrim Wind and support an
9 additional eight full-time-equivalent jobs in
10 the surrounding area.

11 Mr. Magnusson stated that the
12 Project will have a direct positive effect on
13 the town of Antrim by providing a total of
14 \$8.4 million to the town under the PILOT
15 agreement.

16 Mr. Magnusson further asserted
17 that he reviewed and updated the report
18 titled, "Impact of the Lempster Wind Project
19 on Local Residential Property Value Update,"
20 and determined that the Project will have no
21 impact on the residential real estate values
22 in the region.

23 Mr. Magnusson asserted that he
24 evaluated the effects of the Lempster project

1 on real estate values. Specifically, Mr.
2 Magnusson asserts that he reviewed 25 -- or
3 2,593 arm-length, single-family home
4 transactions from January 2005 through
5 November 2011 for all of the towns and cities
6 located in Sullivan County and determined
7 there was no relationship between the
8 proximity of the property of a wind turbine or
9 view of the wind turbines and the selling
10 process of properties.

11 He updated his studies and
12 confirmed his conclusion that the Project will
13 have no adverse effects on the values of the
14 properties in the region. It is noted,
15 however, that during the hearing, Mr.
16 Magnusson acknowledged that he did not conduct
17 any real estate studies specific to the town
18 of Antrim. Mr. Magnusson further acknowledged
19 that there were two assessments in Lempster
20 that indicated decline in property values due
21 to the wind project. He indicated, however,
22 that these assessments are outliers and not
23 indicative of the general effect of the wind
24 project on real estate values.

1 Mr. Magnusson concluded that,
2 based on the Lempster project, the Project
3 will have no effect on real estate values,
4 regardless of the proximity or visibility of
5 the Project.

6 Mr. Magnusson also reviewed a
7 report titled, "Impact of Wind Farms on
8 Tourism in New Hampshire." He noted that this
9 report made the following findings: Lempster
10 Wind Project appears to have had little or no
11 impact on the rooms and meals sales in the
12 region where the project is located; that
13 tourism-related employment in the project
14 region has been large or larger than it had
15 been in the majority of the regions around the
16 state; that the state park revenues have grown
17 more at locations closest to the Lempster wind
18 farm, and that weekend traffic volume suggests
19 that the presence of the wind farm did not
20 discourage visits to the region.

21 During Mr. Magnusson's
22 testimony, he acknowledged that he did not
23 study, analyze or compare tourist attractions
24 in Lempster and Antrim. He further testified

1 that he could not with certainty state that
2 the wind project in Lempster, as opposed to
3 other tourist attractions, caused the growth
4 in sales revenues and traffic. Based on the
5 review -- based on his review of the report,
6 however, Mr. Magnusson concluded there was no
7 evidence to indicate that a relationship
8 existed between the wind project and tourism.
9 Therefore, there is not expected to be any
10 tourism impact on the region from the Antrim
11 Wind power project.

12 Counsel for the Public noted
13 that the number of full-time jobs for the
14 Project was very modest. It was also pointed
15 out that Mr. Magnusson relied on a lot of
16 studies that he did not perform and that there
17 was no analysis of how long the properties had
18 been on the market in Lempster. It was also
19 noted that Mr. Magnusson was not aware of some
20 of the tourist attractions in Lempster, such
21 as the motocross track.

22 We did get comments from
23 several of the intervenors. We did hear
24 from -- we received comment from the IBEW that

1 argued that the Project will benefit the
2 orderly development in the region and economy
3 by generating 84 full-time positions during
4 construction and 12 full-time positions during
5 its operation. Mr. Edmund testified that the
6 Lempster project did not negatively affect
7 tourism in Lempster.

8 Mr. Levesque argued that the
9 PILT, or PILOT agreement is not beneficial for
10 the town of Antrim. In support, Mr. Levesque
11 asserted that the town would be better off
12 without the PILT, PILOT. I always call it a
13 "PILT." Seems like people were calling it a
14 "PILOT" during the proceedings here. But I
15 digress.

16 In this regard, the
17 Allen/Levesque group intervenors, in their
18 post-hearing brief, requested that the
19 Subcommittee nullify the PILOT agreement.
20 Based on Mr. Levesque's calculations, the town
21 would receive some \$5.5 million in additional
22 projected property tax revenue without the
23 PILOT.

24 Annie Law and Robert Cleland

1 and the Berwicks and the Longgoods and the
2 Schaeffers argued that the Project will have
3 an adverse effect on the value of their
4 properties. And Ms. Berwick opined that the
5 construction of the Project will decrease the
6 real estate appeal for the people who are
7 interested in residing in a rural setting.

8 Ms. Longwood -- Longgood
9 requested the Subcommittee to compensate her
10 for the enjoyment that she will lose as a
11 result of construction and operation of the
12 Project and a condition in the certificate of
13 some sort of value guaranty.

14 Ms. Berwick and Ms. Law
15 requested that the Subcommittee deny the
16 Applicant -- the Application, or in the
17 alternative, order the Applicant to purchase
18 the real estate that will be affected by the
19 Project. Ms. Berwick also requested the
20 Subcommittee, in the order to -- to order the
21 Applicant to provide a value guaranty. She
22 requested the Subcommittee to condition the
23 certificate upon requiring the Applicant to
24 pay the appraised value plus moving expenses

1 to the owners of a residence within two miles
2 of the Project.

3 Similarly, Ms. Law and Mr.
4 Cleland, in their post-hearing memorandum,
5 requested the Subcommittee to require the
6 Applicant to buy the properties from anyone
7 who is directly affected and willing to sell
8 at fair market value before construction of
9 the Project.

10 So, hopefully that refreshes
11 the Committee's memory and we can discuss some
12 of the points there that were referenced to
13 economy and employment.

14 PRESIDING OFFICER SCOTT: Anybody like
15 to make a comment? Director Forbes.

16 DIR. FORBES: I'll jump in on the
17 issue of the PILOT agreement. I think that the
18 Town is certainly within their rights to
19 negotiate with the Applicant directly. The fact
20 that, as Mr. Levesque pointed out, they would
21 not be taxing it at the value of the property
22 using that agreement, to me seems reasonable and
23 commonly done. And so I'm -- on that particular
24 issue, I would say that the Town is within their

1 rights to do with the agreement the way they've
2 chosen to.

3 MR. ROSE: I tend to agree with you.
4 I also recall, well, in the course of the
5 testimony from the selectmen in Lempster, the
6 uncertainty associated with not having a PILOT
7 agreement. And I believe that both from a
8 planning perspective for the town, as well as
9 the Applicant having some level of certainty and
10 harmony, it is a benefit to both parties. I
11 recall there was discussion about they were --
12 in Lempster, that they were going to be going to
13 court to try to resolve, or some sort of
14 mediation to try to resolve some of the
15 questions on the valuations. So, I think having
16 a PILOT does bring a level of certainty for both
17 sides. And while, you know, I understand Mr.
18 Levesque's perspective, it will still be, by a
19 large margin, the largest taxpayer in the
20 community. And so I think there will be some,
21 you know, benefit associated with being in a
22 20-year PILOT agreement.

23 PRESIDING OFFICER SCOTT: I guess I'll
24 concur that the payment in lieu of taxes -- you

1 notice I didn't pronounce it otherwise --

2 MR. ROSE: I did notice.

3 PRESIDING OFFICER SCOTT: -- even with
4 that, I still find that acceptable. And I'm
5 loathe to, frankly, get in the middle of a fight
6 between the Town and others on how best to do
7 that. So I'm comfortable that this is not --
8 the difference between the two doesn't sway me
9 significantly enough to say, look, I'll only
10 approve if you do it differently. So I'm happy
11 to not reach into that issue.

12 MR. ROSE: I think that's another very
13 sage point, that, you know, the Town has chosen
14 to -- that that's the best course of action for
15 the selectmen.

16 PRESIDING OFFICER SCOTT: And while
17 I'm speaking, a couple quick comments.

18 When I looked at Lempster, I
19 have to confess I had a little bit of a
20 jaundiced view of -- I don't doubt -- you
21 know, it was testified to that there were two
22 property owners who got a tax abatement
23 because of the Project; one of them is on
24 record as the owner of the property that the

1 Project's on, Kevin O'Nella. So I found it --
2 I won't characterize it. But it was -- to me,
3 he's the definition of a "participating
4 landowner." The only land it's on is his. He
5 was an advocate for it, but yet he has asked
6 for and received a tax abatement. So that, to
7 me, is a little bit of an outlier that I
8 wasn't really considering. So I have a
9 jaundiced view of that particular issue.

10 Having said that, and I have no
11 evidence to the contrary, but I always am a
12 little bit skeptical when I hear, in this
13 case, Mr. Magnusson opine that there's no
14 impact of property values of the abutting land
15 owners. You know, it's -- I don't know what
16 that is, but it's a concern to me certainly.
17 So I'm not saying I know what to do with that,
18 but it gives me pause.

19 Dr. Boisvert.

20 DR. BOISVERT: Regarding the payment
21 in lieu of taxes versus ad valorem, I think it
22 would be an overreach on the part of the
23 Subcommittee to tell the community that they
24 have made the wrong decision on how to tax the

1 Project. It would appear to me that the
2 selectmen have gone with a "bird in the hand"
3 versus "two in the bush." And that is a choice
4 that the communities make every year when they
5 look at their taxes and the assessments and so
6 forth. And while I might have looked at it
7 differently, I don't have the detailed
8 information that the selectmen have. And I
9 think that's perfectly reasonable.

10 Regarding the outliers,
11 outliers to what? In some of the real estate
12 valuations, they were casting a net very wide
13 out, with hundreds and sometimes thousands of
14 properties. That sample size dilutes any
15 impact that might occur within close proximity
16 to the Project, notwithstanding Mr. Onela's
17 definition as "ironic," in that he owns the
18 property and claimed the abatement. An
19 independent assessor did indeed conclude that
20 there was a loss of the property's value.
21 That's independent of who owns it. It's the
22 situation of the property.

23 I think if one were to look at
24 real estate within a relatively close

1 proximity to projects such as wind farms, you
2 might have a far better understanding of the
3 potential impact of the real estate on the
4 economy. That was not done. The comparisons
5 were very broad, and we were sort of led to
6 believe that having a large sample size was a
7 very good thing. I think we need to have an
8 adequate or appropriate sample size. And I
9 don't know what the results would have been
10 had it been viewed much closer in to the
11 property, say within one mile of the turbines
12 or two miles, or using some sort of visibility
13 aspect. I think that there would have been an
14 appreciation for a decline in property values.
15 I really don't know how to assess and
16 recommend what we might do about this.

17 During testimony, I raised the
18 concept that if someone received an abatement
19 of \$10,000, that their property had lost that
20 amount of value because of the turbines, as
21 defined in Lempster, then maybe that money
22 would be owed to the property owner; that they
23 would be made whole, and then going forward
24 they would get the value of the property plus

1 whatever they did with the \$10,000. I don't
2 know that we could make that a condition. To
3 me, it has a certain logic. But I would like
4 to hear the opinion of the rest of the
5 Subcommittee members as to whether or not this
6 is logical, useful, appropriate, doable. I'm
7 really on uncertain ground. So that's the --
8 those are my observations.

9 PRESIDING OFFICER SCOTT: Attorney
10 Weathersby.

11 MS. WEATHERSBY: So I'll jump in. I
12 agree with what's been said concerning the PILOT
13 agreement. I think that's an issue between the
14 Town and the Applicant. Obviously, the jobs
15 that will be created are beneficial to the area
16 and to the state, certainly to the workers. The
17 tax revenues are of benefit. My issue is the
18 property values. And it sounds like there's
19 some consensus there.

20 I did not find believable Mr.
21 Magnusson's testimony that no property would
22 suffer a loss as a result -- a loss in value
23 as a result of this project. I've had the,
24 we'll call it "good fortune" of sitting on

1 other applications concurrently with this, and
2 I've heard professional expert testimony
3 suggesting, not for wind turbines but for
4 other types of large structures, that there is
5 some correlation between a change in property
6 value and the proximity to a project and if
7 that property has direct views of the site.
8 So I found that, that and common sense, I
9 think, sort of helped discredit Mr.
10 Magnusson's testimony.

11 In addition, we heard from the
12 gentleman -- I can't remember his name right
13 now -- who came in and testified, who owned
14 property near a wind farm, who had advertised
15 it, had a lot of interest, and then when
16 people found out that there were beautiful
17 views of the project, another wind farm, that
18 everyone went away. So I think that
19 particularly Mr. Magnusson did not study
20 properties, you know, days on market type of
21 evidence or the number of properties in close
22 proximity to the Lempster project that didn't
23 sell. I don't believe his testimony that no
24 property will have a -- will suffer no decline

1 in value as a result of this project.

2 The question in my mind is what
3 to do about it, because I don't find it fair
4 that a project can be built that will affect
5 others and then nothing -- that there's no
6 benefit to those that are -- there's no
7 compensation of some sort to those that are
8 affected.

9 One route that's been
10 suggested, that has been done with other wind
11 farms across the country, is the property
12 value guaranty. And where they're saying that
13 there's absolutely no change in value, there
14 is some consistency that they would stand
15 behind that with a property value guaranty.

16 A quick Internet search
17 revealed all kinds of these in existence in
18 the United States. Most of them share a
19 number of similar characteristics, where
20 there's an agreement by the Applicant and the
21 affected property owners, that properties
22 within a certain distance, maybe two miles,
23 whatever we may decide if we want to go this
24 route, that properties within a certain

1 distance have a certain period of time to
2 invoke the terms of the agreement, and that
3 basically when they go to sell, they get --
4 everyone agrees on the property -- the selling
5 price. Or if there's a disagreement, an
6 appraiser is hired that determines the price
7 of the -- the value of the property with and
8 without the Project. Obviously, licensing, et
9 cetera, qualifications of the appraisers and
10 certain -- so, then the property is listed,
11 and it has to be certainly listed with MLS and
12 a certified broker and all that, a qualified
13 broker. But basically, if it doesn't sell for
14 the value of the property prior to the
15 Project, the developer would make up the
16 difference. So, sort of that concept. We
17 could look into that further or not. But I
18 was trying to think of some way that the
19 Applicant would stand behind their promise
20 that no properties will be affected. Throwing
21 that out there.

22 PRESIDING OFFICER SCOTT: Commissioner
23 Rose.

24 MR. ROSE: While I appreciate what

1 you're saying, I guess I'm not -- maybe I have
2 to look at how such a guaranty might look. But
3 there are a lot of different conditions that
4 determine the value of a property, such as, you
5 know, we've seen a pretty significant roller
6 coaster in property values over the last 10 or
7 12 years that are -- through just various market
8 conditions. And the real estate market
9 certainly took quite a dive, you know, 8 or 10
10 years ago, and we're just now making -- you
11 know, getting back to where that point was. So,
12 while a project, you know, may or may not have a
13 direct impact on the value, there's just so many
14 other variables involved in that equation that
15 it's hard just to isolate one.

16 MS. WEATHERSBY: I think that these
17 guaranties seem to -- they don't look at the
18 value of the property today and then a value of
19 the property five years from now when the
20 homeowner goes to sell. They look at the
21 property, okay, five years from now or whatever
22 the date it is the homeowner goes to sell. If
23 the price -- if somebody is part of this
24 guaranty and they can't agree with the Applicant

1 on the price to list it at, then appraisals are
2 done based on the value of that property today,
3 in its present location, with whatever effects
4 the Project may have on it. And the appraiser
5 then also determines as of that same date what
6 the value of the property is if the Project was
7 not there by looking at comparable properties,
8 perhaps the next town over, perhaps down the
9 road that doesn't have a view. You know,
10 licensed appraisers would figure out how to do
11 all that and would look at that. So it's not
12 spanning market cycles but rather looking at one
13 point of time, project in, project out.

14 PRESIDING OFFICER SCOTT: Can I get
15 you to elaborate on that proposal? So let's
16 assume that hurdle's been done. So let's say
17 there is a difference. Then what happens?

18 MS. WEATHERSBY: So, again, I'm not an
19 expert. And I started looking at these
20 yesterday afternoon. But basically they seem to
21 go by -- so there's -- you get the appraisal by
22 the qualified professional appraiser. They set
23 an asking price. If they can't agree -- if the
24 Applicant doesn't agree with the asking price --

1 oh, so they can do 5 percent higher or lower,
2 according to this one. This is just an example.
3 They can increase the asking price or take
4 5 percent of the difference. If the Project
5 owner doesn't agree, they can also get another
6 appraiser and then do their own appraiser -- or
7 appraisal and come up with a price. If they
8 don't agree, then hire a third appraisal and you
9 average them out. And then there's certain
10 requirements for using at least three comparable
11 sale properties, et cetera, et cetera. Then the
12 property's listed with the broker. They list
13 the property at the asking price that's
14 determined by the whole appraisal process. The
15 property owner can accept any offer to purchase
16 at the asking price. The property owner lets
17 the guarantor know about the offer. The
18 guarantor can -- so the Project operator, they
19 can make a counteroffer. If they sell the
20 property for less than the asking price, the
21 property owner can then make a claim back to the
22 wind energy developer requesting payment for the
23 difference. If they don't get an offer despite
24 listing at that agreed price, within a certain

1 period -- and this one happens to be 180 days
2 that it's been on the MLS listing, et cetera, et
3 cetera, and it's more than the median marketing
4 time in the area, they can either extend the
5 listing, go with a different broker, go with a
6 different broker for another 180 days, and then
7 if it still doesn't sell, the guarantor I think
8 buys the property. Looks like the guarantor
9 buys the property at that asking price.

10 So that's, you know, one
11 agreement I just pulled. Most of them seem to
12 go similarly. Obviously, if we wanted to go
13 this route, we'd need to look into it a little
14 further and come up with what we feel is a
15 good structure. Maybe we'd want the Applicant
16 to make a -- I don't know how we'd want to do
17 it -- but make a proposal, work something out
18 with the Town. You know, I'm not really sure
19 what to do with this, but I think it's one
20 approach.

21 PRESIDING OFFICER SCOTT: If we could
22 get some more info from the Committee. What's
23 the sense of the Committee? Is this a course of
24 action we wish to consider? You two have been

1 quiet.

2 DIR. FORBES: Well, this is one of the
3 most difficult parts of this that certainly may
4 impact --

5 (Court Reporter interrupts.)

6 DIR. FORBES: I'm sorry. This is
7 certainly one of the more difficult issues to
8 resolve. I am intrigued by what I'm hearing. I
9 think there are a lot of questions I would have
10 about our authority to impose such a condition,
11 why we would do this. I'd be curious to know
12 what happens or what would prevent an owner from
13 accepting an extremely low offer from a friend
14 that's way out of touch with the appraisal,
15 knowing that they're going to get fully
16 compensated from the operator of the facility.
17 There are just a lot of questions I have. I'm
18 skeptical. But I truly do find it an
19 interesting concept. I'd like to hear more
20 about if there are solutions that can be
21 employed within the authority of our Committee
22 that makes sense. I would be interested in
23 learning more about it.

24 PRESIDING OFFICER SCOTT: Actually, I

1 was going to put Attorney Iacopino on the spot.
2 So, Director Forbes is questioning whether we
3 have legal authority on this.

4 MR. CLIFFORD: Before Mr. Iacopino --
5 I'm not going to answer that question, but I'm
6 just -- so the idea is intriguing. It's
7 interesting. I'm trying to get my arms around,
8 first of all, even if you go down the road
9 you're talk about, who qualifies? How do you
10 determine who qualifies? What's the basis? Is
11 it line of sight? Is it you have to see it? Do
12 you have to be a direct abutter; if so, what's
13 the distance? Is it a mile? A quarter-mile? A
14 half-mile? How do you determine the cutoff? I
15 mean, I'm just thinking of all these issues
16 you've got to think through. And we're talking
17 about -- we're now in the deliberative process.
18 I mean, if it's agriculture land versus someone
19 who lives on it, if it's a commercial piece, I
20 mean, I'm just -- I mean, there's all ways to
21 skin the cat. Because sometimes values wouldn't
22 change at all if there were -- if it was a
23 chicken farm. I'm just picking something out of
24 the blue. That might not -- no one may care if

1 there's a windmill in sight. But if I have a
2 home, that may be a valid concern.

3 I just wish -- in my view, it
4 just seems like -- I'm open to exploring it,
5 but it seems like this is the kind of thing
6 that we should have -- well, not "we." But it
7 should have been flushed out during the
8 discovery process. I mean, I didn't see it in
9 the record. I read almost everything,
10 including the Application, before I -- as soon
11 as I was appointed to the Committee. This
12 seems like something that should have gone on
13 much earlier in the process, because I don't
14 know how to get my arms around something
15 this -- you know, what Ms. Weathersby is going
16 through, which has a lot of moving parts, a
17 lot of components, and something that no one
18 saw coming. I'm still open. I just don't
19 know how as a committee we deal with all that,
20 because that sounds like -- I don't want to
21 draft that kind of agreement here. I'd
22 like -- I mean, I'd like testimony. I would
23 have liked to have had testimony on it or
24 presentations on it.

1 AUDIENCE MEMBER: It was in our
2 testimony.

3 MR. CLIFFORD: There wasn't a
4 presentation of a proposed agreement, okay.
5 There was some suggestion of it, but it was
6 never flushed out in the discovery phase of this
7 thing.

8 PRESIDING OFFICER SCOTT: So before I
9 turn to Attorney Iacopino, I will point out my
10 understanding -- I'm not saying we don't.
11 Obviously, I was kind of alluding to it. But in
12 some fashion this would be unprecedented. I'm
13 not aware of any other certificate having this
14 type of condition.

15 Does that ring true with your
16 memory, Attorney Iacopino?

17 MR. IACOPINO: Actually, no.

18 PRESIDING OFFICER SCOTT: Ah-ha.

19 MR. IACOPINO: In the Londonderry
20 combined-cycle gas plant case, which at the
21 time -- well, eventually it became AES -- in
22 that certificate, there wasn't a property value
23 guaranty, but there was a buyout provision for
24 local homeowners. It was agreed to by the

1 Applicant in that particular case. It was
2 agreed to by stipulation. It was not determined
3 by the Committee at the time on its own. But
4 there is a precedent for it, to answer your
5 question.

6 Do you want me to answer your
7 other question, too?

8 PRESIDING OFFICER SCOTT: That
9 probably would be helpful if we're going to
10 continue this discussion.

11 MR. IACOPINO: I believe you do have
12 the authority to require such a condition. The
13 legislature, in the most recent amendments of
14 the statute, has opened up or made clear,
15 however you want to consider it, the extent
16 of -- that the extent of your authority does
17 address things like the economy and local
18 economics and did sort of broaden the range of
19 criteria that you are to consider. You are not
20 putting any requirement on a third party. Oh,
21 well, it depends, obviously, on the terms of the
22 agreement. But in the general context that
23 we're talking about, the condition is a
24 condition on the certificate. So it's a

1 condition that burdens the Applicant and not
2 necessarily any third party. In other words,
3 you're not requiring any -- well, assuming how
4 you draft it, you wouldn't be requiring any
5 third party to engage in it. And obviously, I
6 would counsel you not to do that, if that was
7 your inclination to require a property value
8 guaranty or similar condition. The conditions
9 should be focused on the certificate and the
10 Applicant.

11 There was an exhibit, which I
12 don't believe actually was admitted, involving
13 property value guaranty, or a suggestion of it
14 from a Mr. McCann. That was in Massachusetts.
15 Right. And there was -- the exhibit was not
16 admitted, if I remember the order correctly,
17 because it dealt with property values in a
18 different place that didn't -- wasn't relevant
19 to Antrim, New Hampshire. And I know that
20 other than that there were some suggestions in
21 the record that a property value guaranty
22 should be used. But again, there was no --
23 Mr. Clifford is correct, in that there was no
24 here's how you do it --

1 (Court Reporter interrupts.)

2 MR. IACOPINO: -- this is what it
3 should contain.

4 PRESIDING OFFICER SCOTT: So, for
5 Monday we're going to tape the microphone to
6 Mike's mouth if we have to.

7 Okay. I was going to make a
8 suggestion, but Dr. Boisvert first.

9 DR. BOISVERT: Unless your suggestion
10 is to go to Monday, I was just going to observe
11 that what we're talking about in some ways is
12 very much in the realm of a view tax. People
13 usually object to a view tax. They say it adds
14 to their property assessment and they have to
15 pay more taxes because of the view. Here's a
16 case where there's been a reduction -- or people
17 are arguing there's a reduction in the value of
18 the property because of the view and,
19 potentially by extension, the sound. But we
20 operate in this state with the acceptance that a
21 view tax applies and sometimes people argue
22 against it. But there is that yardstick out
23 there. And I feel that in some instances
24 property values will decline because of

1 specifically the view of the turbines, possibly
2 the sound, and I would like to see if there's
3 some way that we can address this. We evidently
4 have the authority. And I think it needs to be
5 as simple of a process as we can find. But I
6 think that there's a very real prospect that
7 certain individual's properties will decline in
8 value because of construction, and I'd like to
9 see if we can find an acceptable way, acceptable
10 within the Subcommittee, to address that.

11 PRESIDING OFFICER SCOTT: Patty, were
12 you saying something?

13 MS. WEATHERSBY: Yeah. The view
14 tax -- in this case, reverse view tax -- how
15 does an existing view tax system work? Is it
16 based on a town-assessed value, or is it people
17 that get appraisals? Or how is the tax -- how
18 does that work?

19 DR. BOISVERT: And if someone has more
20 familiarity than I... but the assessor looks at
21 the various aspects of the property, not for
22 bedrooms, but driveway, quality or construction
23 of the house. And one of the categories they
24 put a value on is the view, and then it has a

1 dollar amount.

2 PRESIDING OFFICER SCOTT: So what I
3 was going to suggest, in the guise of a homework
4 assignment since we're getting close to quarter
5 past five, is a couple things. I think if we
6 can get the language that was actually done in
7 the Londonderry order for Monday, I think that
8 would probably help inform us, so at least we'd
9 have a guide for what was done. And as far as
10 the homework assignment for this component, it
11 would be to take the time to think about, hey,
12 is this something we want to do? What would be
13 the parameters if we were? You know, I think it
14 was Director Forbes, or maybe it was Mr.
15 Clifford. I apologize. You know, is this just
16 for abutters, everything within X-amount -- you
17 know, going down this road, no matter where you
18 go, somebody wins and loses. And finally, if
19 we're going to finish Monday, we need to --
20 assuming we issue a certificate -- we need to --
21 if this is going to be a condition, we need to
22 have language that is workable. So I don't know
23 what that means. I don't know if you wanted to
24 do that. Does that -- I'm not quite sure I see

1 a venue where we'd require a plan to be
2 developed and then approved. I'm not sure.

3 So I guess what I'm suggesting
4 is we take -- if we were to want to adjourn
5 now rather than finish this issue, that may
6 help us get to a just and reasonable
7 resolution on Monday. So, any thoughts on
8 that?

9 DIR. FORBES: I think that's a good
10 idea. Let's work on it and come back Monday.

11 PRESIDING OFFICER SCOTT: So, another
12 thing we'll have on for Monday. Attorney Monroe
13 is not looking at me, so --

14 MS. MONROE: I'm listening.

15 PRESIDING OFFICER SCOTT: She's going
16 to give us her rendition of what she thought we
17 said for conditions for us to go through also,
18 in addition. Obviously, we have some more other
19 work to do, but that will be one of the homework
20 assignments.

21 Is that your understanding,
22 too?

23 MS. MONROE: Yes. I will have them
24 ready and printed so you can Wordsmith them on

1 Monday.

2 PRESIDING OFFICER SCOTT: Okay. Any
3 other questions?

4 We're not taking questions from
5 the audience.

6 Anything else?

7 MR. ROSE: I just might ask, you know,
8 if there was any additional questions or
9 comments as it pertains to sort of the economy
10 impact, in terms of the jobs and the dollar
11 amounts and such. I'm assuming we're
12 comfortable? I mean, it's a pretty standard
13 input/output kind of model that was referenced.
14 And I think we kind of know where we are within
15 (a) of 301.15, so I didn't know if we have the
16 ability to sort of just move to I think kind of
17 the task at hand as it pertains to that
18 component within provision (a) of 301.15.

19 PRESIDING OFFICER SCOTT: I'm
20 comfortable with that. I don't know about
21 anybody else, if there's any more we want to
22 tease out on the rest of that issue.

23 [No verbal response]

24 PRESIDING OFFICER SCOTT: I'm seeing

1 head nods that everybody's comfortable. Going,
2 going, going.

3 Okay. We're adjourned for
4 today. Again, back on Monday, Hearing Room A
5 at the Public Utilities Commission. Thank
6 you.

7 (Hearing adjourned at 5:13 p.m.)

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