STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 12, 2016 - 9:39 a.m.  DELIBERATIONS
Public Utilities Commission
21 South Fruit Street  Suite 10
Concord, New Hampshire

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

PRESENT FOR
SUBCOMMITTEE: SITE EVALUATION COMMITTEE:

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

Cmsr. Jeffrey Rose  Dept. of Resources &
Economic Development

Dr. Richard Boisvert  Dept. of Cultural Resources/
(Desigee)  Div. of Historical Resources

John S. Clifford  Public Utilities Commission/
(Desigee)  Legal Division

Dir. Eugene Forbes  Dept. of Environ. Services/
(Desigee)  Water Division

Patricia Weathersby  Public Member

Also Present for the SEC:

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

COURT REPORTER: Steven E. Patnaude, LCR No. 052
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PRESIDING OFCR. SCOTT: Good morning, everybody. It's now 9:39 a.m. on the 12th of December. We're starting a little bit later as the Committee just came out of a consultation with our counsel, Attorney Mike Iacopino.

Following up, first, I'll notice we have the full Committee is here for the record, with no absences.

I'll try to bring us back to where we left off. I think we were discussing, under the topic of "orderly development of the region", led by Commissioner Rose, and assisted by Attorney Weathersby. We had discussed "land use", I believe, and were discussing the "economy" and "employment". We left off with a discussion of a potential condition on some sort of property value guarantee as raised by Attorney Weathersby.

So, what's the will -- I'll throw it back to Commissioner Rose, since he was leading the discussion anyways. Were we done with land use, am I correct on that?

CMSR. ROSE: I believe that we had
reached a consensus on the land use. But, certainly, I would be willing to acquiesce to the will of the Committee.

PRESIDING OFCR. SCOTT: Before we go back to the economy and employment, did anybody have any final concerns regarding land use?

[No verbal response.]

PRESIDING OFCR. SCOTT: Okay. Seeing none, I think we're back on the economy and employment.

CMSR. ROSE: And here, I believe we had agreed, at least with regards to the economic impact of the Project, and there was a report that was produced by Mr. Magnusson that referenced the direct benefits associated with the Project, in terms of the employment during the construction phase of the Project, as well as the post-construction phase of the Project.

And, so, I feel as though we discussed that, and I felt reached some level of comfort with the outcome, in terms of the overall impact to the economy, as pertaining to direct impact and number of employment, as well as the payment in lieu of taxes that was going...
to be a direct benefit to the Town.

But, again, I would be happy to

further discuss, if any of the Subcommittee

members felt differently?

[No verbal response.]

PRESIDING OFCR. SCOTT: Seeing none.

CMSR. ROSE: Okay. So, we

concluded -- we started talking a bit about

some of the concerns that were referenced by

some of the intervenors that had explicitly

requested some level of value guarantees,

property value guarantees, or buy-back

provisions to such. And that seemed to be

where we had concluded our conversation on

Friday. And I don't know that we had reached

any sort of resolution or conclusion, but there

was the question asked about whether or not

that such a provision had been included as a

previous condition in any previous dockets, of

which we were informed by our counsel,

Mr. Iacopino, that there had been such a

provision in a docket with the AES energy

facility in Londonderry back in the later ’90s.

So, that was at least some level of precedent
established within the SEC proceedings.

And that seemed to be about where we concluded, recognizing that we were -- I think the Chairman had requested a bit of a homework assignment for people to do a little bit of thinking around the topic and what options might exist or what are people's thought might be in terms of whether or not this was a condition that we should be considering within the orderly development impacts for this particular docket.

PRESIDING OFCR. SCOTT: So, with that, do we -- is there a desire to pick up where we left off and discuss a property value guarantee? What are people's thoughts on that, or suggestions?

Attorney Weathersby.

MS. WEATHERSBY: I think the concept should be explored further. I don't know that we want to do it right now or we want to kind of shelve it, get through the rest and kind of come back.

PRESIDING OFCR. SCOTT: Anybody?

Director Forbes.
DIR. FORBES: I would agree. Let's put it off a little bit later. We will be talking about the cumulative -- other criteria relative to the finding of public interest. And that does give us an opportunity to talk about impact on private property, and I think we can take it up again there.

PRESIDING OFCR. SCOTT: Okay. If there's no objections, let's do that.

Commissioner Rose.

CMSR. ROSE: Okay. So, within our administrative rules, again, Site 301.15, we were in the process of addressing the components of Subcategory (a). I believe we have addressed the land use requirement. We have, I think, addressed the employment requirement. And we're, I think, in the process of coming to a close on the economy of the region. While we did explore the impact on private property valuation, and sounds like we're going to push that into the last criteria, in terms of the public benefit component, where we're required to address private property.
I think the other element within the economy of the region is impacts that the Project may have on tourism, and that was something that was discussed. The Applicant did provide information within the study conducted by Mr. Magnusson, a document that suggested that the impacts were modest or no direct correlation between impacts of -- adverse impacts to the tourism industry as a result of the Project in Lempster.

There was specific references made to the Rooms and Meals Tax revenues, traffic count within the area, as well as revenues to the State Park that was in close proximity of the Project. There was discussion that Mr. Magnusson wasn't fully aware of some of the other attractions in the region, such as the motocross track. And, you know, quite honestly, there was, I think, a pretty high-level review, without perhaps going into great details. And I think the study said what it did. And whether or not there was any other concerns from the Committee, you know, we could certainly discuss it.
I don't believe there was a lot of evidence to suggest that there was an adverse impact to the regional orderly development, particularly to the tourism industry. But, again, you know, I think the study itself certainly left a few holes, and perhaps wasn't as complete or thorough as what one might expect.

I don't know if other members of the Subcommittee have any comments.

PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: Thanks. My recollection was on the Lempster matter, that there was some discussion with regard to -- actually, I think it was a Mr. Iacopino reference, remembering that there was sort of a farm stand or something where people were coming out and hiking up to these things. They were actually kind of an attraction for a while early on when they were installed. I kind of recall that testimony at some point.

CMSR. ROSE: I think it was referenced that there was some, you know,
particularly shortly after they were installed, that there was perhaps an initial push where people might bring busloads up to view the turbines. And, you know, it was the first of the wind projects in the state. So, I think there was perhaps a novelty component of it that did draw people to the area.

I will reference, in terms of the impacts to the state parks, well, or Pillsbury State Park, which is in close proximity of the Lempster Project, I think there was a slight increase, or about five and a half, six percent increase the year after the wind turbine came into operations. So, I think, you know, there was a statement made about that it had a positive impact to the State Park.

I think that, you know, I think that was an accurate statement from a one-year perspective. But, if you looked at it over a longer perspective, it was relatively a push. There was no real net growth at Pillsbury State Park in the subsequent years. But it did have about a 6 percent increase the year after its initial operations.
So, I do agree. I think there might be some initial draw or attraction. But, I think, over the long term, I think it's relatively a push.

PRESIDING OFCR. SCOTT: Attorney Weathersby.

MS. WEATHERSBY: When I think of people who are coming to Antrim, as tourists, and not as residents, I think they're coming primarily to explore the mountains and the lakes. There's no racetrack. There's no camp ground. So, they're coming to fish, they're coming to kayak, and they're coming to hike. And, so, I think we need to think of "will they still come to the same extent or will they come more or will it be significantly less due to the installation of the wind project?"

I take some comfort in the fact that, in Lempster, Pillsbury State Park has some of those same opportunities, with the lakes and wilderness, and that that hasn't -- visitorship to that park hasn't been negatively affected. In fact, the website I noticed even has wind turbines in the background in a lot of the
pictures.

And not that he was a tourism expert, but certainly we heard testimony from Mr. Raphael about the fisherman's experience is focused on the water and the hiker experience is focused on the trail, and then, of course, the views when they get to the top.

And a little bit of the same from Ms. Connelly, although certainly a different perspective on the lakes.

But my feeling is there probably will not be an adverse effect -- an unreasonable adverse effect on tourism to Antrim as a result of the Project.

PRESIDING OFCR. SCOTT: Anybody else? Anything else on the economy?

[No verbal response.]

CMSR. ROSE: So, I believe that gets us through the Provision (a) within 301.15 of our administrative rules.

And we did have some extensive conversation on Friday with regards to Provision (b), which was really addressing the financial assurances for the decommissioning
plan. And, so, I feel like we're in good order on that. But I'll, again, if any member of the Subcommittee would like to further explore that conversation, we certainly could do so.

And I'd like to actually look to Ms. Weathersby, who generously agreed to take the lead on addressing the third element within this Subcommittee -- excuse me -- within this section within the rules as it pertains to the municipal and regional planning commissions. So, I'll look to Ms. Weathersby to lead that portion of the discussion.

MS. WEATHERSBY: Sure. Thank you. I can turn my mike on.

So, Site 301.15(c) requires "the Committee to consider...the views of municipal and regional planning commissions and municipal governing bodies regarding the proposed facility." So, it's something we need to consider, not something we are governed by, as there's been, I think, much discussion about.

So, I took a look at all those different views, and some, of course, are much easier to sort out than others. The Antrim
Board of Selectmen certainly support the construction and operation of the Project. They have been an active intervenor supporting the Project.

The Antrim Planning Board, they opposed the project in Antrim 1, in 2011; they take no position in this docket. However, they did support the SEC taking jurisdiction over this. The Chairman of the Planning Board, in his personal capacity, has expressed support of the Project. But, again, the Planning Board itself takes no position.

Similarly, the Antrim Conservation Commission also takes no position concerning the Project.

The Antrim Zoning Board also takes no official position. We did get a public comment, again, in his personal capacity, from the Vice Chair of the ZBA, Ronald Haggett, in support of the Project.

The Zoning Ordinance itself does not allow the construction of a large wind energy facility on the site. The project is located primarily in the town's Rural Conservation
District, which doesn't allow large scale wind. There's been numerous attempts to amend the Ordinance so that it allows construction and operation of the Project, which were not successful. There's also been attempts to revise the Ordinance to prohibit -- specifically prohibit projects like this that also failed to pass.

I can go through those votes, if it's helpful. But my conclusion is it's pretty much -- it's pretty difficult to draw any firm conclusions concerning the will of the people from the votes about amending the Ordinance, except to say that the townspeople of the Town of Antrim will not be pushed around.

The Antrim Master Plan, like most master plans, contains competing goals; some of which support the Project, some of which don't. The Master Plan contains a section that addresses climate change, energy efficiency, and renewable energy, and calls for the Planning Board and the Planning Department to encourage renewable energy uses, specifically including wind.
But it also speaks of preserving open space, rural character of the town, and cites overwhelming support for protecting Antrim's scenic views. It also specifically refers to the Quabbin to Cardigan cooperative, the Loveren Mill swamp preserve, and the DePierrefue-Willard Pond Wildlife Sanctuary, all of which will be affected by this Project. The Master Plan also discourages forest fragmentation and supports wildlife in the rural conservation zone.

In 2005, the Town of Antrim had a -- developed an Open Space Conservation Plan for Antrim. Now, Mr. Levesque -- Intervenor Levesque chaired that project. And that identified land where the Applicant seeks to construct the Project as desirable for permanent conservation.

Outside the Town of Antrim, the Southwest Regional Planning Commission identified the lack of local, renewable energy alternatives to conventional energy sources as a substantial risk to future growth in the region. However, we did receive a recent
comment from them where they urge us, this Board, to carefully consider the impacts of the Project on wildlife habitat, noise levels, views, and conservation lands.

We've also received comment from the Town of Deering, where it expressed deep concern about the cumulative visual impact of the Project on three critical viewsheds in the western section of the Town of Deering.

We've also heard from Stoddard. The Stoddard Conservation Commission is opposed to the Project. They have been an active intervenor in this docket. And the Stoddard Selectmen have written a comment urging the SEC to consider the negative impacts the Project will have on Stoddard's quality of life, which it derives from having large tracts of land voluntarily set aside -- in part, derived from having large tracts of land voluntarily set aside for conservation purposes.

I thought we had a comment from the Town of Windsor, but I couldn't find it as I was going through things. So, I'll leave that alone.
Getting back to Antrim, I guess the
townspeople, best I can tell, they seem
divided. There's certainly conflicting
evidence about the support and the opposition
of the residents of Antrim. There's the Zoning
Ordinance change attempts that I mentioned.
There was also a straw poll, the results of
which suggest support. There was also the
research survey done by American Research Group
sponsored by Antrim Wind. And Antrim Wind
indicates that the surveys were sent unfiltered
to the residents of the Town of Antrim
identified from voter and taxpayer lists.
There was testimony from several intervenors
that said they, and others that were opposed to
the Project, never received the surveys. Of
those who did receive the surveys and replied,
approximately 77 percent indicated support of
the Project.

There's been other surveys of the
townspeople. There was an opinion survey in
2010, in which 84.4 percent of the Town's
residents voted in favor of commercial wind
energy, and 68.8 percent voted in favor of
construction of wind turbines in the Rural Conservation District.

There was an unofficial ballot in 2011 where 63.2 percent of the voters voted in favor of the Project.

We've received numerous complaints -- comments from Antrim residents, both in favor and in opposition to the Project. I think we've probably received more in opposition than in favor, but I'm not certain of that, but that was my sense from reading all of the comments, which I have.

Of the elected officials, those that currently represent Antrim in the State Legislature, all five of the five legislators have given their written support for the Project. Two recently elected representatives have expressed their opposition to the Project, and suggest that that is one reason that they were elected.

However, the Selectboard of the Town of Antrim has supported the Project over about seven years of elections. So, we can discuss what we draw from that.
My personal take is the Town is divided, but we're basically just to -- we need to consider all of these views when we are determining what to do with the Project.

PRESIDING OFCR. SCOTT: I see nobody else, I'll start, I think.

Certainly one thing that's compelling to me personally is the Antrim Board of Selectmen themselves clearly are supportive. They've -- obviously, I'm assuming he's being paid for his work, but they have retained, you know, counsel for all these proceedings. So, you know, they have not only stated their support, they're actively advocating, including spending the funds to have an attorney represent them. That, to me, is -- I don't think is in dispute. I mean, that -- you know, so, I agree there are voices within the Town. It gets back to -- to me, it gets back to who's the governing body of the Town and what are they saying.

So, to me, the fact that the Board of Selectmen has been doing that, that to me is the voice of the governing body of the Town.
And I'm not suggesting for a moment there aren't dissenting voices.

Anybody else?

CMSR. ROSE: I tend to agree with that assessment. I also found that the Board has been consistent in their support of the Project over the last seven years. And the fact that there is an election every year within the Town, at least one of those three members is up every year, and there continues to be unanimous support from the Council -- or, from the Selectmen, I do think is an important factor.

And, clearly, the voters know the position of the different candidates for selectmen, and have continued to return members who are supportive of the Project, who, again, are acting in a supportive capacity during this, the course of this docket. So, I do find that rather compelling.

I do agree that there's certainly a mixed, you know, I think a diverse group of opinions within the community, and we've seen evidence on both sides of that. I do think
that, while it's clear that this is not an activity that would be permissible under the ordinances of the Rural Conservation District, it is something that is outlined as a priority within the Master Plan, from the perspective of trying to encourage additional renewable energy, as an effort to try to address climate change issues and to reduce greenhouse gas emissions.

And I do feel as though the overall mitigation package, which includes the 908 acres of conservation lands, which is -- protects the ridge tops is contiguous of the different conservation lands, does provide a benefit within the orderly development in the community.

And, as it pertains to impacts on wildlife, while there was concerns raised that the 11.3 acres of impacts to -- the 11.3 acres of impact on the Project was in the Tier 1 of the Wildlife Action Plan, that there was going to be over 600 acres of that 900 acres that's going to be conserved, that will also be of that highest wildlife habitat that will be
permanently conserved. So, I think that also
was consistent with something that's outlined
as a priority within the Town's Master Plan.

PRESIDING OFCR. SCOTT: Dr. Boisvert.

DR. BOISVERT: Yes. In looking at
the response from the governing bodies, at a
town meeting the community is the governing
bodies. There are elections of selectmen, and
selectmen are elected for a variety of reasons.
It's not the single issue that gets one elected
usually. It's usually a combination of things.

But, when you get to something like
amendments to zoning and conservation
commission and so forth, those are specifically
directed towards a particular topic. I see a
trend of increasing opposition to wind farms in
the community. As the votes progressed, the
margin shifted from in favor to against. But,
at the same time, each one of those warrant
articles had its own wording and were judged on
for multiple reasons, they can be very
confusing sometimes.

I think one thing does stand out to
me, and that is the issue of the PILOT versus
ad valorem taxation. The financial impact to
the communities by way of taxation is always a
very important topic to the entire community.
And, if the community were really opposed to
the wind farm, I would have expected more
opposition comment and dispute in terms of the
ad valorem versus PILOT, or whatever you want
to call it. And that there is a reasonable
argument that a good deal more money would have
been collected under ad valorem, yet it doesn't
seem to have been an issue. And that's the
kind of thing that would come up with the
selectman's election and so forth.

So, I think that there is tremendous
support and opposition at various portions of
the community, and then there's a middle ground
that is not nearly as engaged in it. I think
that the heartfelt feelings have possibly
increased at either end of the spectrum, but
there's still a lot of movement back and forth
in the middle.

So, I think that the community has
expressed itself. I think that, you know, in
all likelihood, it will be acceptable to the
majority of the community. And I don't see
that the interests and the voice of the
community has been ignored. I think that going
forward with the Project would not violate
that.

PRESIDING OFCR. SCOTT: Dr. Boisvert,
you mentioned the Payment in Lieu of Taxes.
But, in addition to that, obviously, there's --
I think it's 2012 agreement between the Town
and the Project. In the passage of time, I
think a lot of those conditions, as they point
out, are kind of moot at this point, between
rulemake -- the rules that the Committee has
done and other things.

So, I recollect two things. There's
one, there's a suggestion that we would want to
look at the Town agreement and what conditions
would still make sense for us, I think. And,
then, if I recollect, maybe Commissioner Rose
or Attorney Weathersby, I think the Town did
suggest some additional requirements to be
conditions. Does that sound right?

MS. WEATHERSBY: They added the piece
concerning decommissioning that we've already
discussed. Is that what you're referring to?

PRESIDING OFCR. SCOTT: Actually, I was thinking about the -- if I remember correctly, they suggested some language regarding meetings with the Town Board of Selectmen -- tell you what, I'll read them, how's that?

MS. WEATHERSBY: Please.

PRESIDING OFCR. SCOTT: So, "Antrim Wind Energy shall participate in meetings to be scheduled jointly by the Antrim Board of Selectmen and Antrim Wind Energy to review and promote" -- provide -- excuse me -- "review and provide information to the public concerning construction activities, construction schedule, use of public highways, blasting, and other construction activities. The meetings shall be attended by persons knowledgeable within Antrim Wind Energy construction plans and responsible for managing construction activities. The meetings shall be public meetings under RSA 91-A moderated by the Board of Selectmen, except as provided by RSA 91-A:3.

There's two others. But, before I go...
on, my only concern with this suggested language is, as the Committee knows, we can't bind anybody -- my understandings is we can't bind anybody other than the Applicant. So that the -- I suppose that maybe we can tweak the language, but the fact that "the meetings held by the Town shall be under RSA 91-A", I guess that's -- my concern is that's not necessarily under the purview of the Applicant.

I'll go to the next condition as I recollect it. It was "Antrim Wind shall provide the Town with copies of its proposed condition plans" -- "construction plans, schedule, blasting, and other public information to be made available to the public. Construction plans, schedule, and other information provided to the Town shall be updated to reflect changes in the Project schedule and other changes during construction. The Project shall provide information concerning complaints during construction, if any, and their resolution, except that confidential, personal, and financial information regarding the complaint may be
And the final one was, "in the event of significant unanticipated changes or events during construction that may impact the public, the environment, compliance with the terms and conditions of a certificate, public transportation or public safety, the Project shall notify the Town Board of Selectmen or its designee in writing as soon as possible but no later than seven days after the occurrence. In the event of emergency conditions that may impact public safety, Antrim Wind Energy shall notify the Town and appropriate officials immediately. In addition, during construction, AWE shall copy the Town on any notices provided to the SEC, New Hampshire Department of Environmental Services or other applicable agency" — "regulatory agency pursuant to the Certificate or any other permit for the Project."

So, I read these conditions. Certainly, generally, I'm fine with them myself, these proposed conditions. And, really, they're most to do with construction
and notifying the Town and keeping good communication with the Town.

Does that help your memory?

MS. WEATHERSBY: I think conditions similar to that, those or similar, would be certainly of benefit to the citizens of the Town of Antrim.

PRESIDING OFCR. SCOTT: Do we want to pull up the -- in fact, I've lost it, so I need to bring it up, the agreement with the Town?

Commissioner Rose.

CMSR. ROSE: There was, in the summary document that was provided by the Town in the post-hearings period, at the conclusion of that, they did have an appendix that had four different conditions that they were requesting or offered for consideration to the Subcommittee.

MR. IACOPINO: It's on Page 27 and 28 of the Town's brief.

[Short pause.]

PRESIDING OFCR. SCOTT: And, again, I think I've read in the record some of those.

Do we want to, if everybody is on the
same page literally, do we want to go through these proposed conditions one by one? Is that a way to do this?

    [Multiple members nodding in the affirmative.]

MS. WEATHERSBY: Sure.

PRESIDING OFCR. SCOTT: Any discussion on Condition Number 1, Compliance with -- labeled "Compliance with Town of Antrim Agreement"?

I'm letting Attorney Clifford catch up.

    [Short pause.]

PRESIDING OFCR. SCOTT: And I'll read into the record what we have, what Condition Number 1 is. "Antrim Wind shall comply with the terms and conditions of the Agreement between the Town of Antrim, New Hampshire and Antrim Wind Energy dated March 8, 2012." Which is -- I'll want to talk to that in a moment. So, that's listed as "Exhibit 17a" to the Application, also known as the "Agreement".

"The Town and Antrim Wind may amend the Agreement consistent with the terms and
conditions of the Certificate of Energy Facility issued by the Committee", if we issue one. "In the event of a conflict between the requirements of the Agreement, as amended, and the requirements of a certificate, the certificate shall control." So, that seems reasonable to me.

Any concerns with that condition? Are people supportive of that?

MR. CLIFFORD: I'd say I read that provision. I tend to support that. That was a provision that was negotiated between the Town and the Applicant. And I think, my opinion, it's just really an enforceability clause that they're looking for here. So, I would tend to support that condition, since it's a condition that the parties stipulated to.

PRESIDING OFCR. SCOTT: Okay. Seeing head nods, we'll move on to Condition Number 2, unless, Commissioner Rose, were you about to say something?

CMSR. ROSE: No. I'm good.

PRESIDING OFCR. SCOTT: Condition Number 2, the condition is Item Number 2, as
proposed by the Town, are regarding
decommissioning and funding assurance.

I think we've addressed this already.
Is that correct, Attorney Weathersby?

MS. WEATHERSBY: Yes. We went
through this when we discussed decommissioning
funding.

My only comment concerning Condition
2, 3, and probably 1, is that, as I read
this -- as I mentioned when we went through
this, as I read this Agreement, it terminates
at the -- when the turbines stop spinning, and
it doesn't continue through the end of the
decommissioning. So, I just would, rather than
in accordance with 14.1.1 of the Agreement,
just to be sure that it goes through the full
implementation of the Decommissioning Plan.

Perhaps someone else, you know,
anyone else has come to a different conclusion.
But, as I read through it, that was a concern
that jumped out at me.

PRESIDING OFCR. SCOTT: So, maybe you
can draw my attention to the operable part of
the termination then?
MS. WEATHERSBY: Sure. So, the Agreement, in 1.1, the "Agreement" is defined, the term is actually in the definition of "agreement". So, it's "this Agreement, which applies from the effective date until the end of useful light of the wind farm". And, then, in Section 1.5 of the Agreement, "end of useful life" is defined, and that's "the point in time in which the wind farm or an individual wind turbine, as the case may be, has not generated electricity for a continuous period of 24 months for reasons other than the wind regime, maintenance or repair, facility upgrade, or repowering." So, that's the end, as I read it, the end of the term of this Agreement, and yet there are a number of decommissioning requirements. If you look in Section 14. -- Section 14, which concerns decommissioning, Section 14.1.2 requires that decommissioning be complete within 24 months of the -- after the end of the useful life.

So, we have a period of 24 months where there's no wind activity, the turbines aren't spinning, and then another 24 months to
But, again, I think that it's just a drafting matter, that I think that the Agreement ends before decommissioning. So, I just would want to extend, if we agree to these conditions, just make sure they extend through the end of decommissioning, completion of decommissioning.

PRESIDING OFCR. SCOTT: And, for the record, you've been reading from the March --


PRESIDING OFCR. SCOTT: Which is attached. It's Appendix 17a in the original Application.

MS. WEATHERSBY: I think so. I'll take your word for it.

PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: I was just going to say, rather than craft -- try to craft that,
wouldn't that be covered under Condition 1, and
"the Town and Antrim can amend the Agreement
consistent with the terms and conditions of the
certificate of energy facility issued by the
Committee."

So, it seems to me that, if there is
this drafting area [error?], it would behoove
the Town to -- rather, I think, and this is
just my opinion, and you can always disagree,
but, if there is some discrepancy about when it
ends, that it would behoove the Town, who's
present with counsel, to go back to Antrim and
change that provision to make sure it's
complied with. Since they're here, they can
probably do that.

That's my thought. Rather than try
to craft something --

MS. WEATHERSBY: Right. As long as
the SEC requires, as part of our certificate,
that these obligations continue till the end of
decommissioning.

MR. CLIFFORD: Correct.

MS. WEATHERSBY: Right.

MR. CLIFFORD: So, I would say, if we
agree with 1, we'd give our strong sense that
this is where we think they should go, I think
the parties would probably promptly get
together and figure out if there's a drafting
error.

    But it was great that you pointed it
out.

PRESIDING OFCR. SCOTT: So, anything
else regarding -- again, these are the
conditions that the Town of Antrim has
suggested in their closing memorandum. I think
we've addressed Condition 2, and now 3, which
are about decommissioning.

    So, if I understood the sense, we
would adopt those as conditions. Is that
people's sense?

    [Multiple members nodding in the
    affirmative.]

PRESIDING OFCR. SCOTT: I see head

    nods.

CMSR. ROSE: Yes.

PRESIDING OFCR. SCOTT: Okay. I had
read the -- into the record the language under
what they have conditioned as "Number 4",

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"Construction Meetings". And I'm going to take from the head nods I got earlier that people are okay with those being added as conditions. Is that -- have I misunderstood?

MR. CLIFFORD: No. I'm happy with that. I just want to clarify, at least in my mind, when they talk about "proposed construction plans", I wouldn't imagine that that would be anything that's proprietary to AWE. In other words, we're talking in the sort of 30,000-foot level sense kind of thing, not specific plans, or are we?

PRESIDING OFCR. SCOTT: Commissioner Rose.

CMSR. ROSE: I'm thinking it's probably more on the 30,000-foot level. I mean, I think they're probably going to want an updated schedule and timeline for the Project. And I think there was some -- you know, I think they want to be regularly updated. So, I don't think it's, you know, down into every last, tight detail.

MR. CLIFFORD: Right.

CMSR. ROSE: The only other one that
I might just mention, because it was on my mind earlier, but just to explicitly state it, is that, you know, that would also include the schedule, in terms of the hours of operation. And I just know that, on a Saturday, at 7 a.m., that wouldn't go over well in the Rose household, at least I would hear from it from my wife.

So, I figure I should probably just point that out, too. That, you know, we're talking 6 a.m. to 7 p.m. Monday through Friday, and 7 a.m. to 7 p.m. on Saturdays. Again, that's a decision really for, I think, the Town to figure out what makes best, you know, best interest of the community. But I know that wouldn't be a home run on my homefront.

PRESIDING OFCR. SCOTT: Attorney Weathersby.

MS. WEATHERSBY: And I guess the other thing, too, is whether we want the material that are provided to the Town to also be provided to the SEC? Construction plans, schedule, blasting, etcetera, or just for the more major reports?
PRESIDING OFCR. SCOTT: Well, I'll add, to the extent there's a complaint to Attorney Monroe, I would think it would be helpful for her to at least be apprised of what's going on. So, that would argue in my mind that she be copied on it, I think.

Any discussion?

MS. WEATHERSBY: I think it would be helpful in that they, again, could go on the SEC website for the Antrim Project, and it would be another resource that people could go to see the various notices.

PRESIDING OFCR. SCOTT: Okay. Any other discussion?

[No verbal response.]

PRESIDING OFCR. SCOTT: So, what did we want to do with the original 2012 Agreement with the Town?

So, I think there was a suggestion that, obviously, it needs updating. I'm not sure that's our job to update. Do we want to put -- there are different schools of thought in general for certificates. My expectation is all our rules shall and would be followed,
including the law, 162-H, obviously.

Any thoughts on how should we address those issues?

Attorney Weathersby.

MS. WEATHERSBY: Could you repeat that please?

PRESIDING OFCR. SCOTT: Obviously, the Town agreement's, you know, outdated, so to speak, right? So, as I mentioned earlier, on the law changes, the rule changes, and certainly the Certificate is also going to change what would be conditions.

So, are we comfortable that that first statement by the Town in their closings, their suggested Condition 1, which effectively said they'll modify the agreement to comport with the Certificate. Is that sufficient for us?

Dr. Forbes.

DIR. FORBES: I think that's sufficient.

PRESIDING OFCR. SCOTT: All right.

So, what's next, Commissioner Rose?

CMSR. ROSE: Well, going back to the
rule, again that's 301.15, we were just
addressing (c), and again that's the views of
the municipal and regional planning commissions
and municipal governing bodies regarding the
proposed facility.

   So, I feel as though we have walked
through that. And I don't know,
Ms. Weathersby, if there are other areas within
that section of the rule that you've had teed
up to speak to?

   MS. WEATHERSBY: No. That pretty
much covers it. If people want more detail
concerning any of what I've said, I can provide
that. But that, I think, that was my summary.

   CMSR. ROSE: So, with that, Mr.
Chair, I don't know what your discretion might
be or your purview might be, but I think we
have covered those three categories within
301.15 as a Subcommittee.

   PRESIDING OFCR. SCOTT: All right.
Thank you. So, a couple things that leaves on
my recollection. So, we have -- well, maybe we
can take this now. We've addressed the
requirement to look at cumulative impacts for
aesthetics. I think we've talked about that. We're going to still need to address cumulative impacts regarding other -- any concerns regarding other issues. Obviously, we'll need to, and I was going to table this till the end, but we need to do the general finding of public interest. I did want to discuss briefly the public comments we received. And, then, obviously, we need to go through the conditions also. And sounds like we still have an open item of potential condition regarding some kind of property value guarantee.

So, let me open the discussion now to cumulative impacts. Are there, again, I said, when we did aesthetics, we discussed the potential, I think, from -- I think it was Pitcher Mountain, I think, had a view both of Lempster and the potential Project here. I think we agreed that that was not an issue for that.

Are there other cumulative impacts that we want to discuss and that we have a concern with anybody?

MS. WEATHERSBY: There was the
comment from the Town of Deering that I mentioned, that they have a deep concern about the cumulative visual impact of the Project on three critical viewsheds in the western section of the Town of Deering. They have views of another -- another wind facility.

PRESIDING OFCR. SCOTT: And I think, generally, we talked about water resources. You didn't see any issues, certainly, cumulative with there, correct, Dr. Forbes?

DIR. FORBES: No. There are no cumulative impacts that I found in the testimony.

PRESIDING OFCR. SCOTT: And we discussed generically the different concerns regarding the effects on wildlife, bird and bat, etcetera. So, at least in my mind, I think we've satisfied -- satisfied ourselves that, for instance, the bird and bat conservation strategy should theoretically address any cumulative impacts of the Project, as well as the direct impacts.

Any other thoughts on that?

CMSR. ROSE: I agree.
PRESIDING OFCR. SCOTT: Okay. Any -- before I leave this topic, anyone else?

[No verbal response.]

PRESIDING OFCR. SCOTT: So, maybe a brief discussion about public comments. I don't know if we have a running tally, but we've had a very active following, I think. So, as we discussed, probably I would agree with Attorney Weathersby's assessment, I think, if we tallied, I haven't, but I think the comments against are probably getting a larger vote. It's not a vote, but a larger number. But, again, much like the discussion we've had before us more directly, I think it represents both pro and con, for and against the Project.

Any discussion on the comments we received? I'll remind everybody, we did have a morning session where people, in addition to submitting by e-mail or in writing for this whole time, we allowed people to come in and provide verbal and/or written testimony, that was during one of our Donovan Street meetings.

So, any observations or comments?

CMSR. ROSE: I just -- and we have
gotten good feedback from the public during the course of the proceedings. We did have a public hearing that was held last February in the community, and had a good turnout that evening as well. In my recollection from that evening is there was certainly more support for the Project than opposition to the Project, at least during that public comment period -- excuse me, during that public hearing. But, then, when we did have the public comment period or the public session back last month, I think there was certainly more in opposition.

So, I think, you know, there has definitely been a lot of engagement and a lot of passion on both sides. And, you know, I always appreciate when we do get perspective from the public, and it generally helps make a better outcome when we listen to the comments from the public.

PRESIDING OFCR. SCOTT: Anybody else before we move on?

[No verbal response.]

PRESIDING OFCR. SCOTT: And, again, I bring that up, because it's important to
recognize the public input we've had. So, that's why I wanted to make sure we discussed it.

So, at least on my internal agenda was to kind of finalize conditions, and then go to the public -- finding of public interest at the end. What I think I was hearing is people wanted to park the condition for potential property value guarantee to that end. But I'm suspecting, and my view is, going through the conditions would help us in deciding the finding for public interest. So, I think we want to tie up the conditions before we finalize.

There, I'm getting head nods. So, at least I'm not on a different planet, so that's good. So, there's some logic to my statement, thank you, I think. Or were you just humoring me? Thank you.

So, we do have -- we talked about a parking lot, or what did Attorney Clifford call it? It wasn't a "parking lot". You wanted a different name for where we put our conditions. But, in any case --
CMSR. ROSE: A hopper.

MR. CLIFFORD: A hopper.

PRESIDING OFCR. SCOTT: A "hopper", thank you. The "hopper", so I'll use that.

So, we had a hopper where --

ADMINISTRATOR MONROE: I can hand out copies.

PRESIDING OFCR. SCOTT: Please do so.

ADMINISTRATOR MONROE: I've added one, just based on this past discussion about the construction activities and the conditions in Antrim's brief.

PRESIDING OFCR. SCOTT: Okay. So, the Administrator for the Site Evaluation Committee was asked to take everything that we put in the hopper for conditions, try to memorialize that. She's going to pass that out for anybody interested in the crowd also.

ADMINISTRATOR MONROE: I've got to make some more copies.

PRESIDING OFCR. SCOTT: Okay. So, what I suggest is we, for the most part, we did vet these, tried to vet these during our deliberations. But now is an opportunity to
refine the language.

ADMINISTRATOR MONROE: I'm going to make some copies.

PRESIDING OFCR. SCOTT: Okay. So, while she's getting copies, why don't we look at what she labels as our first proposed conditions. I'll read it out loud for the record and for the public.

"The plans for fire suppression" -- "for the fire suppression system in the nacelle shall be submitted, reviewed, and approved by the State Fire Marshal and the Town of Antrim Fire Department prior to construction of the Project. AWE shall submit one hard copy and an electronic version of the final approved plan to the Administrator."

That language seems clear to me. Any concerns with that language as a condition?

DR. BOISVERT: I would take it to mean "commencement of construction". I don't know that it's necessary to put that in there, if you feel it's well stated. But I assume it's "before construction begins" they would need to have that in place. I'm not familiar
enough with the official wording for these
kinds of legal conditions. Is that embedded in
that condition?

PRESIDING OFCR. SCOTT: That's what
it meant to me. But I'll defer -- well, before
I defer to Attorney Iacopino, did you have a --
did you want to weigh in or --

MR. CLIFFORD: Well, I just had a
question. Was it just the fire suppression
system or I thought there was testimony about
sort of the plan, in case there was a fire?
But I thought, I may be incorrect here, but I
thought that these Siemens turbines came with
fire suppression equipment in them. And I
thought we were talking about sort of the plan
if there was a problem. That the Fire Marshal
would understand, the state, and the Town would
have an understanding of what would happen if
there was some emergency at the site. In other
words, what's the proper -- that's what I'm
thinking. What's the proper equipment? What
hazardous, dangerous materials might they
encounter when they're there? That's what I
thought we were talking about, not just that
outline of the suppression system inside the nacelle. While that would be helpful, I'm sure, but I thought we were talking about more in terms of the comprehensive, sort of plan of action, in the event there was a big problem.

MS. WEATHERSBY: There was a whole Emergency Response Plan that they were to develop. I don't know if that's -- that's part of the Application, I think that's done. So, the condition is probably that that Emergency Response Plan be approved by the State Fire Marshal and the Town of Antrim Fire Department prior to commencement of construction.

MR. CLIFFORD: That's my recollection anyway. It's not just the -- so, maybe we would change that, that the -- I guess we call it an "emergency response plan", right?

MS. WEATHERSBY: I think that's what we called it in the -- is that what it's called in the Application, Attorney Iacopino?

MR. IACOPINO: "ERP", I believe.

Yes, Emergency Response Plan. I can check that for you in just a minute. What I was going to
do, though, just to answer Dr. Boisvert's question, is "commencement of construction" is a defined term in our statute, comes under RSA 162-H:2, III. "Commencement of construction" means any clearing of the land, excavation, or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values."

So that, if you use the term "commencement of construction", that's its definition in the statute.

DR. BOISVERT: It seems appropriate in the circumstances.

MS. WEATHERSBY: I'm just wondering if we want to give them -- that's kind of a break-ground analysis. I know there's been
some testimony concerning they need to get some things in the frozen -- while the ground is frozen, etcetera, and I don't know how long this takes. And where this concerns primarily the things that would go wrong with the turbines, do we want to -- I don't know if there's another date, that, you know, "prior to erection of the turbines", or maybe we just leave it as it is. I'm just trying to give them a little bit of time to start doing some land clearing in the frozen ground conditions. But just throwing that out there.

PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: Yes. I kind of agree with Ms. Weathersby. That there's some activity that we would probably think would be pretty benign that would occur in the wintertime, and would just be subject to normal, you know, reasonable due care concerns, as opposed to some kind of major emergency plan.

PRESIDING OFCR. SCOTT: Director Forbes.
DIR. FORBES: Yes, I would agree. I don't think we need to see that or it needs to be resolved before they start any work. Certainly, we can give them some time to pull this together.

PRESIDING OFCR. SCOTT: So, Attorney Weathersby, is your suggestion, instead of saying "prior to commencement of construction", the condition would say "prior to construction of the turbine tower itself" or something like that?

MS. WEATHERSBY: Something like that. Or perhaps it's "prior to commencement of construction, except that land-clearing activities" or "land clearing and road construction activities may commence", and sort of carving out of the definition. That's sort of a drafting question that Attorney Iacopino can help us out with that concept.

MR. IACOPINO: Well, I could draft something. But the decision of whether it is "prior to commencement of construction", "erection of turbines", or "operation" or whatever, really is something that you all have
to decide in your role as the Committee
members.

So, if you tell me what it is that --
where the point is that you're drawing the
line, I'd be happy to try to draft that for
you. But you all have to decide and make that
decision, sorry.

PRESIDING OFCR. SCOTT: Attorney
Clifford.

MR. CLIFFORD: I'll maybe help out.
I was going to suggest maybe "prior to the
installation of the turbines". Because that's
the point at which, if the towers are put up
and everything is put in place, then you've got
a situation that you need to respond to. I
think, once they're lying on the ground and in
pieces, there's not much concern. But it's
once they're -- they have pieced the tower, I
guess the three stages of the tower together,
installed the nacelle with the blades, then
you've got issues about "okay, what do we do
now, if something happens?" Maybe that's the
time.

PRESIDING OFCR. SCOTT: What do
people feel about that?

CMSR. ROSE: I just had a quick question for Ms. Monroe. Because my recollection was this was something that the Fire Marshal's Office had requested, in terms of that they would have an opportunity to review the ERP, the Emergency Response Plan, prior to construction. Is that -- do I have that right? Or I'm just trying to find where that reference was in the Fire Marshal's request?

ADMINISTRATOR MONROE: It was a letter dated, I believe, November 10th.

DIR. FORBES: If it helps, I have it in front of me here. They write that "During the conversations they were advised that fire suppression would be required in the nacelles. I am pleased to see that they have included that protection in their safety plan. Plans for the suppression system must be submitted for review and approval to the Office of the State Fire Marshal and the Antrim Fire Department."

So, as I read this November 10th
letter, the plan is acceptable to the Fire Marshal. They're just simply asking for the plans for the suppression system itself. But the emergency operation plan or the safety plan is acceptable.

PRESIDING OFCR. SCOTT: So, where have we landed? The plan -- the fire suppression plan, that component, should be in place prior to erection of the towers, is that where we are?

DIR. FORBES: That's where I am, I think. It seems adequate to me. The safety plan is approvable, as I read this. And the actual plans for the detail of the suppression system is what they're asking for. And I don't see a need to have that in their hands prior to some of the site work and other things, other activities that would be part of construction.

I do think that the Applicant would be at risk if they do not get approval prior to fabrication of the equipment before they ship it to the site. That would be at their risk. But I think that the order that we create here would be, in my view, sufficient to ensure that
the satisfaction of the State Fire Marshal and
the Town is obtained.

PRESIDING OFCR. SCOTT: Any
dissenting views?

CMSR. ROSE: I'm okay with that as
well. And I think the fact that, you know,
they are having constructive dialogue already
with the Fire Marshal. And I think that puts
them in a good place, and it seems to make
sense to me.

PRESIDING OFCR. SCOTT: So, that
would be, instead of "prior to construction of
the Project", "prior to erection of the
turbines of the Project". Does that work for
people?

[No verbal response.]

PRESIDING OFCR. SCOTT: Okay. Going,
going, -- oh, we're not done.

MS. WEATHERSBY: Could you repeat
what the condition would be? Is it just the
fire suppression system or is it Emergency
Response Plan, including the fire suppression
system?

MR. IACOPINO: I would just direct
your attention to Page 117 of the Application, which is where the Emergency Response Plan is addressed. The way that it is structured in your Application is that -- is that it references the Town Agreement that addresses requirements for AWE to develop an emergency response plan upon request of the town, and then it says "AWE has met with the State Fire Marshal and the Antrim Fire Department and has agreed to develop the ERP in cooperation with both parties. The plan will be completed prior to commencement of construction, will be designed to comply with all applicable laws and regulations, including NFPA 1-2009, will conform to requirements of the Agreement with the Town of Antrim and shall include the following elements". And then there's a list of a number of elements that go over onto Page 118 of the Application.

I would recommend that you review that, because that's the aspect of the Application that deals with the Emergency Response Plan. And, then, it goes on to state that they have also provided a "copy of
Siemens' standard on-shore emergency response document, which will be adapted to the Project". And that's contained in Appendix 20 to the Application.

PRESIDING OFCR. SCOTT: So, Attorney Iacopino, since they have said they will do this in the Application themselves itself, do we need to do a separate condition?

MR. IACOPINO: If that is what you want them to do, no. You need only adopt -- you need only grant the Certificate for what's contained within the Application.

I'm sorry, I needed to point out one other detail, because Mr. Clifford raised it. The onboard suppression system, at least according to the Application, is not a Siemens system. It is called "Firetrace". And, if I understand it correctly, it's been installed in other wind facilities in New Hampshire as well. And I would direct your attention to Page 116 of the Application for that reference. So, it is an add-on, so to speak, just so that you're all -- if you're working from the Application that's what the Application says.
PRESIDING OFCR. SCOTT: So, what's the sense of the Committee? Do we feel a need to go beyond what was agreed to in the Application itself?

DIR. FORBES: I'm not sure I see where the Application says that they will obtain approval from the Fire Marshal and the Town for the suppression system itself. Could you point to that?

PRESIDING OFCR. SCOTT: Bates 118 -- not a Bates number.

MR. IACOPINO: No. Actually, I don't think that that's actually -- I don't think that's actually in the Application. That was the request of the Fire Marshal. So, there would be -- that would be a condition that you would impose, if that's your inclination.

DIR. FORBES: All right. I would be inclined to make sure that that was -- that approval is obtained as requested.

PRESIDING OFCR. SCOTT: So, does anybody have suggested language for that?

MR. CLIFFORD: I'm just curious what, and I don't know anything about the State Fire
Marshal's Office, but I am assuming that, if the fire suppression system has been certified by this third party provider, what is there for the Fire Marshal to do? Other than to receive the plan, but I'm just kind of leery about what does the "approved" process mean? Or is there a process? I just don't know. I'm not -- I have no cognizance of anything that the State Fire Marshal does, other than act as a State Fire Marshal. I mean, I have no idea what that office does.

MS. WEATHERSBY: When you say "third party", are you thinking of the Siemens?

MR. CLIFFORD: Well, I have been corrected, now it's -- there's another, Mr. Iacopino just mentioned it, there's a service provider that actually puts the fire suppression system into the Siemens turbines. I'm thinking, as long as the Fire Marshal gets that and is cognizant and aware of that suppression system, that should be sufficient. Or would he have to actually approve that system? I'm just --

MS. WEATHERSBY: Well, I think the
Emergency Response Plan is a whole lot broader than that.

MR. CLIFFORD: Right.

MS. WEATHERSBY: It's, you know, the duties of different people, the emergency evacuation, drills, testing, of course, fire suppression. And that Siemens piece and the third party contractor piece are just a piece of it.

MR. CLIFFORD: Right. No, agreed. And I agree there's the ERP, but then we're talking about the suppression system. I don't know what, does the State Fire Marshal approve those systems or just say "check off the box, you got them"?

You know, for example, in a home, you said "well, you've got smoke detector systems that are" -- or, in this building, "you've got a sprinkler system that's, you know, meets building -- all applicable codes, so I'll let you have a certificate of occupancy, based on the fact that, from what I see, you've got the proper system in place."

But they don't get into the
nitty-gritty of evaluating the system, I don't think. I just don't know. And I don't want to bog us down, if I'm the cause of it, but it's just a question that I don't know, I can't answer.

PRESIDING OFCR. SCOTT: Attorney Iacopino.

MR. IACOPINO: I would just point out, as indicated in the Application, the Fire Marshal approved this system in the Groton case. And I'm probably not prepared to actually give you a legal opinion on what the jurisdiction of the Fire Marshal is, but the Application suggests that the -- with respect to the ERP, that they have been consulting with the Fire Marshal as well.

But I agree they're two different things. You have the ERP, which is, at this point, part of the Application, and then you have the suggestion from the Fire Marshal for the additional condition to allow giving the Fire Marshal and the Town of Antrim Fire Department approval over the Firetrace system.

MR. CLIFFORD: I guess I'll stand
corrected. I'm comfortable with it, if it's something that was done in the Groton procedure, then it sounds like the State Fire Marshal is familiar with what's to come, and probably would be the best office to send this to, right?

PRESIDING OFCR. SCOTT: And I concur. You know, it gives me solace that the State Fire Marshal, who, obviously, we have the letter saying they would like to see this plan, and they have weighed in on other applications. You know, to the extent they do have expertise, to me, it helps ensure a good resolution for everyone.

So, I got lost myself. So, the ERP, I think we're in agreement that that's in the Application itself. It sounds like, with the change to -- I'm still on number 1, this is going to be a while, I guess. The change to number 1 is that we don't want -- we agree that we don't need the plan to be approved and in place until construction of the towers themselves or erection of the towers themselves starts. Correct?
[No verbal response.]

PRESIDING OFCR. SCOTT: Is there anything else we need on the Fire Marshal involvement?

[No verbal response.]

PRESIDING OFCR. SCOTT: Okay. So, with that, I'm going to move to number 2. Number 2, the Condition Number 2, and this is in no particular order, I think, maybe chronological, according to the way the Administrator heard them.

Condition Number 2 reads: AWE shall comply with the MOU entered into between AWE, New Hampshire Fish & Game, and New Hampshire Audubon Society, regarding changes that will be made to the Bird and Bat Conservation Plan to include monitoring and mitigation provisions for the state-endangered Common Nighthawk."

And I'll ask Attorney Monroe, you had put some shading on "regarding changes". Can you tell us the significance of that?

ADMINISTRATOR MONROE: I think it was just I felt like the wording was somewhat awkward, and my brain, I think, was -- couldn't
come up with anything better, so --

PRESIDING OFCR. SCOTT: Any concerns with this condition?

[No verbal response.]

PRESIDING OFCR. SCOTT: Hearing none, I'll move on to the third on our list. And I'll read it: "AWE shall provide a final Monitoring Plan approved by New Hampshire Fish & Game, to include methods for approving [providing?] protections for wood turtles during construction activities that occur after April 1st in the laydown/staging areas. The final approved plan shall be submitted."

I assume that would be that's submitted to the Committee?

ADMINISTRATOR MONROE: To the Administrator.

PRESIDING OFCR. SCOTT: Yes. Okay. So, my only concern I see here is we have a start date of April 1st. Do we want to put an end date? Do we want to put a collar around the timeframe or is that needed?

CMSR. ROSE: My recollection was this was per the recommendation of New Hampshire
Fish & Game to a letter that they submitted. And I'm just trying to find that letter now. I don't know if you have it directly in front of you, Ms. Monroe. But I think it outlined the window of time that they were looking to try to ensure that there were the monitoring protections in place for the turtle.

MR. CLIFFORD: Just so I'm clear, we're only talking about the laydown area off of Route 9. And, so, I assume we'd only be talking about the period of time within which disturbance would take -- initial disturbance would take place, right? I assume, once the laydown area is prepared and they're satisfied that that area is complete to their satisfaction for use as a staging facility, wouldn't the requirement end? Or are you looking at ongoing?

ADMINISTRATOR MONROE: The letter, just in response to your question, Commissioner Rose, is July 1st, 2016, submitted by Fish & Game.

And I believe it's ongoing during periods of construction that are when the
ground isn't frozen, I think is what's intended there, so you can't run over the turtles.

PRESIDING OFCR. SCOTT: And that was my point, too. You know, presuming the construction went over -- took longer than expected, you know, I would find it unlikely, in December, they need to be monitoring the turtles.

MR. CLIFFORD: That's kind of what I was alluding to. I just didn't know the period of time. So, hope we could put a --

CMSR. ROSE: Yes. In looking --

MR. CLIFFORD: -- a collar.

CMSR. ROSE: Sorry, I didn't mean to speak over you there. And I have pulled up the letter. And the recommendation states "the Department would like to recommend that the monitoring of the proposed Project laydown/staging areas identified on the Project location map as Parcels 222-003 (gravel pit) and number 212-027 be monitored for the Wood turtle movement while the Project is under construction during the summer. This should avoid the potential for construction equipment
encountering and potentially impacting Wood
turtles seeking upland habitats within close
proximity to the North Branch River".

So, that was the recommendation from
Executive Director Normandeau's letter dated
July 1, 2016. So, the outline of the times, I
read this, says "summer". I don't know if we
want to put bookends around "summer", but that
does seem to be a little different than occur
after April 1.

MR. CLIFFORD: Well, my thinking
is -- excuse me -- my thought would be, if
their concern -- I'm assuming, if their concern
was summer, that they're concerned with the
definitional time period, you know, the vernal
equinox to whatever we call the end of summer,
I forget now. I mean, I'm not a meteorologist
neither.

But the other point being is that
maybe we just incorporate the terms of that
letter into the condition, and then it covers
the two parcels in question, it's a specific
reference to the letter, and then we don't have
to deal with the language.
CMSR. ROSE: I would be comfortable with that outline. And, quite frankly, I would really look to New Hampshire Fish & Game as the expert as to putting a definition around the timeline, and what they would be looking for from a monitoring perspective. So, perhaps a condition that states, you know, "AWE shall provide" or "shall consult with New Hampshire Fish & Game to ensure that they have satisfactory conditions in place to address their concerns outlined in the July 1st, 2016 letter as it pertains to impacts to the Wood turtle within the staging and laydown areas."

PRESIDING OFCR. SCOTT: So, the only thing missing out of that, that sounds like a good suggestion to me, would be that they notice the SEC Administrator in some fashion.

MR. IACOPINO: I'm sorry. Mr. Chairman, I was just going to point out that, under RSA 162-H, Section 4, III-a, the Committee has the authority to "delegate to either the administrator or a state agency or official...the authority to specify the use of any technique, methodology, practice, or
procedure approved by the Committee within a certificate" and "the authority to specify minor changes in route alignment", etcetera. This is, you could, if you so chose, delegate the specifics of -- delegate to Fish & Game the specifics of -- to develop the specifics for the particular protection that you're seeking.

So, in other words, to the extent the Committee doesn't know what the appropriate end date is, that is something that would be within your authority to delegate to Fish & Game, or to Ms. Monroe.

PRESIDING OFCR. SCOTT: So, the language that Commissioner Rose read, is that -- I mean, it doesn't explicitly say "we're delegating to New Hampshire Fish & Game", if I remember correctly, I didn't write it down. Commissioner Rose, it would be we're telling the Project to get approval from New Hampshire Fish & Game, correct?

CMSR. ROSE: That was my attempt, when I was rattling off that proposal, yes.

MR. IACOPINO: My suggestion for your purposes here today, Mr. Chairman, is that any
time that you want to delegate something to a
state agency or the Administrator, and you're
working off of these rules, if you simply say
that "we delegate to the agency", and then
follow up with the thing, we can make the --
when we draft the order, we can insert any
missing words that make the -- make it work for
the purposes of the English language. Just so
long as the record here reflects that it's your
intention to delegate that to the agency and
the specifics of what you're delegating.

PRESIDING OFCR. SCOTT: Any concerns
with that?

MR. CLIFFORD: I might just make it
implicit. Just say that "AWE shall provide the
SEC with the final monitoring plan as approved
by the New Hampshire Fish & Game, to include
methods for providing protections for The Wood
turtles during Project construction, as
outlined in New Hampshire Fish & Game's letter
to the SEC dated" whatever the date of that
letter was, "July 1, 2016". So, it basically
says "take that letter, go back to the New
Hampshire Fish & Game, figure out whatever it
is you're going to do, and then give us that plan after they tell you what you're going to do." So, we just then get their plan.

Does that cover it maybe?

MR. IACOPINO: Are you looking to have final approval of the plan here at the Site Evaluation Committee or to leave it to the Fish & Game?

MR. CLIFFORD: No. As we said, I think the Fish & Game is in the best position, I think, to know how to mitigate impacts on the Wood turtles. We're saying -- telling the Applicant "Take that letter, go to the Fish & Game, figure out the plan, and then, when you guys do figure out the plan, make sure we get a copy of it." Because implicit in that is it will be approved by the -- they will figure out what they're supposed to do. And then Ms. Monroe will know about it, and then it will be posted on the website, outsiders will know about it.

MR. IACOPINO: I would recommend that in the Final Order it be couched in terms of a delegation to Fish & Game.
MR. CLIFFORD: Okay.

PRESIDING OFCR. SCOTT: Okay. Sounds like we're agreed on that. And I would suggest, you know, the final language of that would be "the final approved plan shall be submitted to the SEC Administrator." And that will take care of any controversy over whether it needs to be provided to us or not.

Are we --

ADMINISTRATOR MONROE: Do you want me to read back what I have, to see if --

PRESIDING OFCR. SCOTT: Sure.

ADMINISTRATOR MONROE: "AWE shall consult with and receive approval from New Hampshire Fish & Game regarding methods for providing protections for Wood turtles during Project construction activities in the laydown/staging areas as outlined in the July 1st, 2016 letter from New Hampshire Fish & Game to AWE. The final plan as approved by New Hampshire Fish & Game shall be submitted to the Administrator, delegation to enforce the terms of the plan shall be -- delegation given to New Hampshire Fish & Game to enforce the plan."
MR. CLIFFORD: I would just -- I'd put that sentence first, and just say that "The SEC hereby delegates the following: ", and then run into your sentence, and I think we're done.

ADMINISTRATOR MONROE: Okay.

MR. CLIFFORD: If that works for folks?

[Multiple members nodding in the affirmative.]

PRESIDING OFCR. SCOTT: I'm seeing head nods. Okay.

So, with that, I'm going to move to the fourth item on the list for potential conditions. This says: "Require AWE to report annually on the status of any Operation and Maintenance Agreement."

And I guess the first question would be is "annually" work for people?

[Multiple members nodding in the affirmative.]

PRESIDING OFCR. SCOTT: I'm seeing head nods for that. Any concerns with the condition?

Director Forbes.
DIR. FORBES: Yes. I would just feel that we should be notified of any change, whether it's annually or in the middle of a year.

PRESIDING OFCR. SCOTT: I apologize. Can you say it one more time?

DIR. FORBES: I believe we should also require notification in the event of any substantive change in how the contract for operations and maintenance.

PRESIDING OFCR. SCOTT: So, instead of waiting for the annual report, you'd want it -- with any substantial change, you'd want that within some days?

DIR. FORBES: Yes. And I would say 60 days is fine.

PRESIDING OFCR. SCOTT: Okay. And the start of the annual reporting, what do we feel on that? That would be -- when would that start?

MS. WEATHERSBY: I'm not sure we need annual reporting, if we're going to have any time there's a change to the existing Operation and Maintenance Agreement or we're notified of
any new contract for operation and maintenance, I'm not sure we need an annual report, if we just get the changes within, say, 60 days.

PRESIDING OFCR. SCOTT: So, I think that would read then "Require AWE to report within 60 days on any change to the Operation and Maintenance Agreement." Is that --

MS. WEATHERSBY: "Any change to the Operation and Maintenance Agreements or any new operation and maintenance agreement."

PRESIDING OFCR. SCOTT: "Any change or addition to the Operation and Maintenance Agreement"?

MS. WEATHERSBY: Yes. But I think the whole point, I think, is if they're going with another company, we want to make sure that's captured. So, whatever the language is for that, rather than staying with Siemens and renewing it will be one thing, but we also want to know if there's a different contract, in order to capture that, too.

PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: I agree. This is
again what I was talking about the other day, the sort of whole drafting-on-the-fly. I mean, can we -- can we, as a Committee, give the broad outlines of this and say that Mr. Iacopino would, you know, have this thing comport, so it doesn't -- because right now it looks like a pretty sloppy agreement. I mean, it's not the way I'm used to seeing things. And not that I mean "sloppy" in the sense that we're being sloppy, it's just there aren't -- there's not a conformity to it that I can follow yet.

I mean, I was just going to suggest that "AWE shall submit to the SEC Administrator within 60 days of the date of any modification, change", and I'm continuing to look for language, "any change or modification in the Operation and Maintenance Agreement." I mean, maybe that's simple enough, because the "change or modification" is going to pick up a change of modification of that agreement or a new agreement.

I just want it to be clear that that's what we're looking for, right? And I'm
wondering if that could be cleaned up at the end?

PRESIDING OFCR. SCOTT: Well, and to your point, and, first of all, I think your suggestion makes sense to me. As Attorney Iacopino mentioned earlier, he can't make decisions for us, but he certainly can, if he can put it in English to memorialize it.

So, to your concern that it may not be, you know, the word may not be in the right place, that type of thing, --

MR. CLIFFORD: Right.

PRESIDING OFCR. SCOTT: -- I think we're okay there. Does that sound correct, Attorney Iacopino?

MR. IACOPINO: Yes.

PRESIDING OFCR. SCOTT: Director Boisvert.

DR. BOISVERT: I'd just like to observe that "change or modification", to me, is redundant, unless that's somehow a term of art in the legal world. I would say "modification or replacement of the Operation and Maintenance Agreement". So, it covers
changes, it covers a whole new one.

But that I'm looking at it from a

civilian's point of view.

PRESIDING OFCR. SCOTT: What's the

sense? That language works for me. Anybody

else?

[Multiple members nodding in the

affirmative.]

PRESIDING OFCR. SCOTT: I'm seeing

head nods. So, I think we're good there.

[Brief off-the-record discussion

ensued.]}

PRESIDING OFCR. SCOTT: Why don't we

just take a quick break right now. Thank you.

[Recess taken at 11:16 a.m. and

the deliberations resumed at

11:24 a.m.]

PRESIDING OFCR. SCOTT: Okay. Back

on the record. So, I think that leaves us, we

left off on the fifth on our list of potential

conditions. I'll read the fifth: "AWE shall

provide evidence to the SEC that the debt and

equity financing for the Project is in place

prior to construction."

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And I'll comment, that seems uncontroversial to me. I think that was suggested by the Applicant.

Anybody?

[Multiple members nodding in the affirmative.]

PRESIDING OFCR. SCOTT: Okay. Seeing head nods "yes", meaning this is a good condition.

We'll go to Number 6. Our Number 6 says: "Require the Department of Cultural Resources, Division of Historical Resources to consult with the White Birch Historic Association regarding implementation of the MOU."

Any discussion on that? Dr. Boisvert, I'm amazed you want to talk about it.

DR. BOISVERT: Yes. In keeping with the fact that we have to make the conditions applicable to the Applicant, I think it should read: "Require AWE to consult with White Birch Historic Association regarding the implementation of the MOU concluded with the Department of Cultural Resources, Division of
Historical Resources". Put the burden on the Applicant.

PRESIDING OFCR. SCOTT: So, one more time for the record.

DR. BOISVERT: "Require AWE to consult with the White Birch Historic Association regarding the implementation of the MOU concluded with the Department of Cultural Resources, Division of Historical Resources."

PRESIDING OFCR. SCOTT: Any concerns with that?

Attorney Weathersby.

MS. WEATHERSBY: I'm wondering if we want to go further than just "consult with the White Birch Group", whether they should try to seek agreement with them concerning an effective mitigation measure. Whether we feel as though "consult" is strong enough?

PRESIDING OFCR. SCOTT: At least in my mind, the concern is there's no -- we can't, nor should we, you know, we can't compel the Association to agree or do anything, if they decide not to participate. So, that would be my concern, is how to -- how to have the
phrasing understand that.

Commissioner Rose, were you going to say something or --

CMSR. ROSE: It was going to be somewhat along those lines. You know, there's they -- and we had discussed during this section of the deliberations the fact that they may choose not to want to participate. And, so, that's certainly within their prerogative.

So, I think the word "consult" or "a good faith effort", "consult with", or something to that effect is satisfactory to me.

PRESIDING OFCR. SCOTT: Any suggested language, Attorney Weathersby?

MS. WEATHERSBY: We can go with "consult", the way it is. Or, we could, if we want to go stronger, that "AWE will seek to reach agreement with the White Birch Historic Association regarding mitigation for the Project." Then, if it can't be reached, to you know, to implement, there's backup in the agreement, I recall, that -- maybe we leave it the way it is, because the MOU required them to talk to the White Birch people and try to work
something out. And, if they couldn't, then they went to the website. If they couldn't do the sign, you know, something else, then they went to the website.

So, maybe I'm okay with the way it is.

PRESIDING OFCR. SCOTT: That's the point I was going to raise. I think the MOU itself anticipates that type of interchange.

Dr. Boisvert.

DR. BOISVERT: Right. Most of the interaction referenced in the MOU had to do with placement or non-placement of the kiosk at their property. This gets more to the content in the kiosk or the website, and just requires that the White Birch Historic Association be in that consultation, for the Division of Historical Resources consultation is a fairly well-defined process, and I think this would cover it.

So, other than moving Antrim Wind into the position of responsibility, as opposed to requiring the Division to consult with them. And that's in line with our guidance, that we
should be creating the conditions to apply to the Applicant. I think it's worded well enough, because it refers into the Memorandum of Understanding.

PRESIDING OFCR. SCOTT: Is everyone okay with this language?

MS. WEATHERSBY: Yes.

[Multiple members nodding in the affirmative.]

PRESIDING OFCR. SCOTT: All right. Looks like we're getting head nods.

Now, unless Attorney Monroe tells me different, what I'm not seeing, though, is I was interested in a condition requiring the Project to maintain whatever came out of the Agreement, whether it was the signage or the website. Am I recollecting that as an interest for the Committee?

[Multiple members nodding in the affirmative.]

CMSR. ROSE: Yes. I think that was a good idea. That there's a expectation that it will be maintained during the life of the Project.
PRESIDING OFCR. SCOTT: So, perhaps the next sentence to that condition shall be that "AWE, to the extent practical", or something like that, because I don't know yet what this thing is going to come out of this MOU, "shall ensure" -- Director?

DR. BOISVERT: "Maintenance" -- "Maintenance of the kiosk, website, or other instrument", we can use that word, "agreed upon in the memorandum of understanding."

That would mean, if it's a website, they'd migrate it to new platforms when they become the standard and so forth.

PRESIDING OFCR. SCOTT: So, perhaps "AWE, to the extent practical, shall ensure the condition and operation of any agreed upon", what's the word you just used? Short-term memory loss. "Any agreed", begins with an "A"?

[Court reporter interjection.]

PRESIDING OFCR. SCOTT: "Instrument", thank you.

CMSR. ROSE: There you go.

PRESIDING OFCR. SCOTT: That comes
out of the MOU, is that --

DR. BOISVERT: Yes.

PRESIDING OFCR. SCOTT: What are people's thought on that? Does that language work? Did you capture that?

ADMINISTRATOR MONROE: Still writing.

PRESIDING OFCR. SCOTT: Okay.

ADMINISTRATOR MONROE: Yes. I think I have it. "AWE shall, to the extent practicable, maintain the kiosk, website, or other instrument that results from implementation of the MOU."

[Dr. Boisvert nodding in the affirmative.]

PRESIDING OFCR. SCOTT: And our intention is that the Applicant fund that, any expense associated, right? So, maybe "at its own expense".

Anything else, before we move onto the next condition?

[No verbal response.]

PRESIDING OFCR. SCOTT: Seeing none, the next item on our list is regarding the ADLS, or Aircraft Detection Light System. The
proposed condition reads right now is: "AWE shall install a radar-activated lighting control system, as approved by the Federal Aviation Administration, prior to operating the Project."

So, a couple things in my mind. I was -- I don't remember who reminded me, but, if you install it, and it's there, meaning the wind turbine, whether the Project is in operation or not really is not hugely germane to the risk to aviation. So, is there any concerns with that?

So, a way, and I'm not sure we want to do this, but a way to address this would be, if that's the will of the Committee, would be similar to what we did in Number 1, "prior to erection of the towers".

And, again, another issue we had discussed is do we, in the eventuality that the FAA does not approve, do we want to put this condition in, which means you can't build? And, so, I thought the sense, whatever day it was we were deliberating, was that was the intent. So, those are the issues as I remember
around that.

Director Forbes, looks like you wanted to say something.

DIR. FORBES: Well, I was just wondering about the timing in regards to, you know, your point of safety, when the towers are there, they're not safe. I would like to think, and maybe I just really don't know, but the FAA approval process I would think would stipulate how or when that lighting system needs to be activated. I believe there would need to be some component of that in their approval, but I just don't know for sure.

PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: Yes. I was going to suggest that all towers aren't going to go up at the same time. But I think the minute that there was one tower that goes up that affects aviation navigation, they're going to have to figure out what to do, whether it's operating or not. Because the minute you put the structure up, and no one knows it's there up to that point in time. So, I think that system
has got to be in place prior, I would think, to the installation. Because they're not going to put -- at least I wouldn't put, if I were the Applicant, wouldn't put something up that I didn't know how to make sure it was identified by aircraft. So, maybe the requirement is "before installation", similar to what we did on the other condition.

PRESIDING OFCR. SCOTT: Yes. I mean, I think we had language to the effect of "before erection of towers", to that effect.

DIR. FORBES: Yes. Again, I think the FAA will regulate lighting on cranes or any other tall structure. And I would expect that the safety of the towers would be in the same vein, getting approval for those, those structures. Whether it's the turbine itself or even cranes that might be utilized during construction.

PRESIDING OFCR. SCOTT: So, where does that leave this condition? What I was taking issue was with the last few words "prior to the operation of the Project".
DIR. FORBES: I'm not sure their needed.

PRESIDING OFCR. SCOTT: Those last words?

DIR. FORBES: Yes. I mean, I think approval of FAA is probably adequate. But I don't have any objection to those words, if you would like to include them.

MS. WEATHERSBY: May I make a suggestion?

PRESIDING OFCR. SCOTT: Please.

MS. WEATHERSBY: It reads like this: "AWE shall install and utilize a radar-activated lighting control system -- controlled aircraft lighting system, or ADLS, by the FAA, as approved and required by the FAA."

MR. CLIFFORD: Again, I think that's better, because it delegates it. And, so, then my question is, is there any agency in New Hampshire that has oversight on this or not? It's just purely FAA, right? It's my understanding. So, then, we'd leave it up to the FAA to dictate when/how this thing is done.
PRESIDING OFCR. SCOTT: Commissioner Rose.

CMSR. ROSE: And I agree with those statements. The only addition is that there was a condition as to when the Applicant would install the light activating system or the radar-activated lighting system within a certain window of time that was outlined within the MOU with the AMC. And, so, I think that was the reason why you saw, oh, maybe you didn't see it in this particular condition, but there was something that stated that, and I'd have to go back and pull it up, but that they would -- they would update the system as soon as it was approved by the FAA within a certain duration of time, I want to say it was like within 12 months or something to that effect.

So, I think, while the FAA is the authority on this, there was also a second component of it that was a key provision as to why they were able to reach the MOU with the AMC that we may want to just take into consideration.

PRESIDING OFCR. SCOTT: So, I
would -- two things on Attorney Weathersby's suggested language. I don't think I would support "as required by the FAA", I think you had said "as required" -- "approved and required". I don't think the FAA would require them to operate with it, meaning the FAA requires lighting, but they could say "You don't have to use the AD" -- they're not requiring the ADLS. I think we're requiring and the agreement with Audubon is requiring that. So, I don't want to give discretion there. I think -- I believe our intent is we want that used.

MS. WEATHERSBY: Right. My thought was the requirement being when they go up, not that they -- they had discretion to use the system, it was more the construction aspect. It would be the commencement of construction, maybe as -- and "according to a schedule required by FAA", or something like that.

But I agree with you that we want to be sure that they use this system, and they don't put another system in until radar-activated lighting is required.
And I think that actually goes to Commissioner Rose's point with the AMC. I think that, if I remember right, the AMC Agreement says "if you start off with another system, if you don't have approval, but, as soon as you get approval, switch over." And I think we're requiring them from the get-go to have radar-activated lights in place.

MR. IACOPINO: That's my question to you all. Because I'm not really clear on whether you're adopting what I think the Applicant has suggested, is that they can use the regular lighting until such time as the ADLS is available to them and installed. Or, if you're requiring from the get-go the radar-detected.

So, just for your staff's purposes, it might be good to clear that up.

PRESIDING OFCR. SCOTT: Thank you for that. I was going there, because that has gotten muddied in my mind. Because the language that we're currently talking about does not preclude operating in the meantime, or, if FAA never gets around to approve it, so
that would revert to standard lighting. And I'm hearing both sides of that, I think.

MS. WEATHERSBY: I thought we had discussions concerning this, and that we were going to require radar-activated lights. And, if, for some reason, they couldn't get approval, they would come back to us for a waiver and we would have a hearing, because we didn't have, other than that one page in the Application, we didn't have a lot of information on the effect of night lighting on aesthetics, etcetera.

So, I thought that's how we left it, but -- and that's how I would prefer to leave it.

PRESIDING OFCR. SCOTT: All right. So, that's my recollection also. I'm fine with altering that. But, if we're going to go that way, I would suggest, again, the language we had talked about in an earlier draft of this, which would be prior to erection of turbines. So, we're saying you can do the site work, but, before you put something up that requires this aircraft lighting, meaning the tower, not the
crane, we would require this approval.

So, is that the will of the Committee?

I have one head nod. Two.

Dr. Boisvert.

DR. BOISVERT: Please repeat it. I want to make sure I fully understand exactly what you meant. I wasn't quite -- I'm trying to cipher out between a scenario where they go forward with constant lighting, and when and if it becomes available from the FAA, approval from the FAA, then they're required to implement it as soon as practicable. Or are we saying they have to plan on using that from the beginning, and apply for a waiver, if it's not -- the approval is not forthcoming? Which scenario are we advocating?

PRESIDING OFCR. SCOTT: What Attorney Weathersby is suggesting is the latter.

DR. BOISVERT: Okay.

PRESIDING OFCR. SCOTT: And what I'm suggesting is the language, in order to reflect that, we would need to put something in. Right now, the draft language has "prior to
operating". Well, as we discussed, as soon as you put the tower up, you need some kind of lighting.

DR. BOISVERT: Right.

PRESIDING OFCR. SCOTT: So, I was suggesting, if that's our will, personally, I think I could go either way, but, if that's our will, then I would suggest something like "prior to erection of the turbines" or that type of language. So that that's where I was differentiating. Obviously, if they're doing site work without approval, that's not, for the most part, impacting navigation. So, I'm not sure I have any issue with that.

So, the two, in my mind, is where I think the Committee generally landed the other day was, as Attorney Weathersby outlined, effectively, they couldn't put the turbine up until they had this approval. If they never get it, they could come to us for a waiver.

The other part, the other possibility would be, which I think is what's suggested by the Applicant, and perhaps envisioned with AMC, is, as soon as they're within an X amount of
time period after approval, they would
certainly put it up, but, in the meantime, they
would put the constant lighting, the more
traditional lighting up, and would proceed.
And inherent in that is, if they never get
approval for some reason from FAA, obviously,
they wouldn't implement it.

Does that help clarify?

DR. BOISVERT: I think it clarifies
it. And, with all due respect, I would rather
go with the scenario where they proceed with
the constant lighting and implement the ADLS
when it becomes approved by the FAA. Simply
because it's very difficult for outside parties
to motivate the schedules of federal agencies.
And it would put them more at the risk -- more
at the mercy of decisions at the FAA and their
timeliness, and they could still apply for the
waiver, but, having them trying to predict the
approval schedule of a federal agency could be
very difficult.

PRESIDING OFCR. SCOTT: Attorney
Weathersby.

MS. WEATHERSBY: I think night
lighting is a big issue aesthetically. And they have been working with the FAA for quite a long time now, I can't remember what it is, but it's been a long time. And we can pull it up. And, now, I don't think the visual experts addressed this thoroughly. I'm really reluctant to have blinking red lights on top of these turbines, you know, for a year. I think that kind of is a little bit of a game-changer. Because I'd be much more in favor of AWE being required, prior to installation of the turbines, to get approval from the FAA to utilize the ADLS system.

So, to that end, I have suggested language, which is pretty much what I just said. "Prior to installation of the turbines, AWE shall have approval by the FAA to utilize ADLS and shall operate the Project in accordance with such approval."

PRESIDING OFCR. SCOTT: Director Forbes.

DIR. FORBES: I would support that language. I think, you know, if they can't get the FAA approval in a timely way that impacts
their schedule, they can come back and we can
talk about it.

PRESIDING OFCR. SCOTT: Well, that's
consistent with what we discussed the other
day.

Attorney Clifford.

MR. CLIFFORD: Yes. I'm more in
Dr. Boisvert's camp, as I don't see there's a
way to put any pressure on an agency. They
kind of, as we all know, many of us work in
agencies here, they just have a way of things
work the way they work, and we don't know when
and how the outcome is going to be.

I guess I would suggest that there be
some sort of incentive to pursue this, you
know, as quickly as possible. Now, I don't
know whether that's financial or, as
Ms. Weathersby talked about, having them coming
back and explain what's going on. I mean, I
think, if it were me, I'd like to see continual
updates on the status of this thing.

You know, in other words, I would
hope and I expect that the Applicant hasn't
just dumped this in the agency's lap and said
"well, you know, I guess you'll get to it when you get to it." I assume there's some kind of ongoing dialogue and there's some back-and-forth, I don't know. But I'd like to see us be apprised of some updates before we make a specific condition, or maybe that's the condition. Because I could see where there may be a period of time when you might need some lights, and then they'd come down.

I would hope it wouldn't be for the length -- for the duration of the Project. But I'm not sure we want to come back and deal with a condition. In other words, have this Subcommittee reconvene for purposes of evaluating another -- evaluating the term -- how the condition was or wasn't met, I'm just -- that's the difficult part I'm wrestling with here, is where do we leave it? Do we just leave it as is? Or actually require a hard stop and put the -- making the installation of those lights a requirement before any operation, commercial operation takes place?

PRESIDING OFCR. SCOTT: I guess I would ask Attorney Clifford, so, one of my
concerns I had raised under aesthetics is I didn't find a particularly robust analysis if the ADLS system never happens, right? So -- and that's a concern I have. Though, for the most part, we've articulated is running up to getting approval, but that would also -- but I think we ought to also be considering there's a possibility that FAA never approves.

Commissioner Rose.

CMSR. ROSE: Thank you. I tend to agree with Dr. Boisvert on this as well. While I think the Applicant has demonstrated that they have made a commitment to trying to get the lighting system, the radar-activated lighting system in place, it is hard to dictate exactly when a federal agency is going to issue that. And I guess, in looking back through the MOU that they reached with the AMC, there were provisions within that MOU that anticipated this issue, on Page 2 of that Agreement. In one of the outlines, number ii of that, is "If the FAA has not issued the Advisory Circular at least 60 days before the commencement of the construction, but issues an Advisory Circular
at any time during the commercial operation of
the Project, then AWE shall be required to
implement and operate the Radar System within
one year of the issuance of the Advisory
Circular."

And, then, iii of that was "At its
sole option, as an alternative to (b), AWE may
install the Radar System simultaneously with
the remainder of the construction of the
facilities in the Project. In this scenario,
in the event that the Advisory Circular is
issued later than 60 days prior to the
commencement of construction, then AWE will
commence with the operation of the Radar System
as soon as commercially reasonable but no
longer than one year of the date of issuance of
the Advisory Circular."

So, I think there's a level of
confidence that they're going to be seeking
this. It has been issued in previous wind
projects. And, so, I think they've
demonstrated a commitment to doing that. So, I
guess it's a long-winded way of saying I concur
with Dr. Boisvert's perspective.
PRESIDING OFCR. SCOTT: Attorney Clifford.

MR. CLIFFORD: I'd just add, this really is being driven by, you know, the Laufer Wind folks, who have committed to try to get this utilized in projects all over the country. So, it's kind of -- the onus is really on them. They're the people that developed that technology, and I gather that's what's going to be used here. And I'm kind of in Dr. Boisvert's camp, I think, in this one.

PRESIDING OFCR. SCOTT: So, any suggestions?

MR. CLIFFORD: I'm feeling "rumbly in my tumbly".

PRESIDING OFCR. SCOTT: What are people's thoughts? Do we need to have lunch over this? Do we want to discuss it more? So, where I'm a little bit ambivalent, my preference would be to have it in place prior to erection of the towers, but, even with that, we're three to three.

Director Forbes.

DIR. FORBES: You know, rereading the
Agreement with AMC, I'm comfortable with that.

I think that there are some stipulations here, if they're struggling to get the approval from FAA.

PRESIDING OFCR. SCOTT: And I think on Attorney Clifford's point earlier in the discussion, I had, and still do, want a condition where we require this annual certification, annual reporting. So, that would be something that I would expect to be reported on also. So, I think that would be built into that. At least we'd be able to follow the issue of what's going on.

Attorney Clifford.

MR. CLIFFORD: My idea would be that that -- that would be a strong component of that report is that status update on potential installation. And, then, my other question, and that's why I want to kind of ponder this, is sort of what's the carrot-and-the-stick approach to make sure that they stay on top of this as well, so that there's really -- I mean, there's more than just the incentive with the AMC, because the AMC Agreement doesn't, I'm
going to read it again over the break, but, if
they don't meet it, it's kind of "so what",
right? That's the bottom line. But what if
there's some bonus if they do meet it earlier?
I don't know.

CMSR. ROSE: The Applicant does state
in their Application that "AWE plans to install
the radar-activated lighting system
simultaneously with the construction of the
Project facilities, provided the FAA has issued
its Revised Advisory Circular within 60 days
prior to the commencement of the construction."

So, they have clearly outlined their
intent.

DR. BOISVERT: In terms of
motivation, I don't know, but I suspect that
it's less expensive to install this before you
put the nacelle up than retrofit it. And I
think that that cost savings would be a
motivation to do whatever they could do to get
the approval from the FAA. I don't know. But
it just strikes me that putting it on before
you stand it up would be less expensive than
trying to put it on after you do that. But I'm
just speculating.

MS. WEATHERSBY: Just one final point. In their post -- in their final brief, the Applicant indicates that they "virtually eliminated any nighttime visual effect through its commitment to employ an aircraft detection lighting system. The Applicant will employ ADLS and is currently waiting for the FAA to approve its application in order to install this technology."

MR. CLIFFORD: So, then, my sense then would be more towards "well, let's hold them to what they put in the brief." If that's what you just quoted, then that's what they said they're going to do. You know, we're going to not hold them to their word? They put it in writing and they gave it to us. So, that's good enough for me.

PRESIDING OFCR. SCOTT: So, what did you just say? So, are you --

MR. CLIFFORD: I'm leaning towards put it in, because that's, you know, put it in or come back here and then get the waiver. Because I really think that that, you know, all
things said, that was a key component and key
driver of this Project, and why the nighttime
visual effects were never analyzed and dealt
with period. And that, it seems to me, just to
gloss over that would really we'd kind of do a
disservice, because that would be a huge gaping
hole in what the process that we just did if it
never came to fruition.

But, if it doesn't come to fruition,
at least we would know about it and there would
be, you know, some logical approach to
understanding what the effects are.

PRESIDING OFCR. SCOTT: And, again,
that kind of echoes my concern, is, when we
looked at aesthetics, the evaluations, and I'm
not doubting for a moment the Applicant's
commitment here, but it was all "don't worry",
I'm very much paraphrasing, "this system will
be in place."

So, my concern is, "okay, if it never
gets approved or it's not in place, what does
that mean?" It's almost as if it's really not
the Application at that point. The Application
assures that this will be in place. So, that
was my concern.

So, Director Forbes.

DIR. FORBES: Yes. I'll muddy it up even more. When I read this, I'm a little confused, because it seems that there's the FAA Circular that is being referenced as a condition requiring that to happen first, to be published, an updated Circular, and then there's the approval of their actual installation by the FAA. And I, just doing a quick search, it seems to me that the FAA did issue an Advisory Circular on October 8th of this year.

So, in that context, when I reread the AMC Agreement, I'm somewhat confused. Are they now basically committed to moving forward with that installation?

PRESIDING OFCR. SCOTT: So, my read of that point was I think the FAA Circular, again, I don't believe there's an FAA requirement to do the ADLS.

DIR. FORBES: No.

PRESIDING OFCR. SCOTT: So, I think the FAA is saying "This can happen, we can put
it on our charts, etcetera, navigation charts, etcetera." And I thought what the issue was is approval for the ADLS system, I think that's the touch point here we're kind of discussing, I think.

And I don't know if anybody has a different view of that.

DIR. FORBES: Well, again, when I read this, and I'll just quote, the first section refers to, you know, the FAA issuing a certificate: "If the FAA has issued the Advisory Circular 60 days or more before the commencement of construction of the Project that allows for radar systems to be operated, then AWE shall install and operate the radar system simultaneously with commissioning of the Project."

So, as I read that, there's certainly 60 days prior to construction, and AWE is saying they will utilize it.

The second point here it says, it goes onto explain "if the FAA has not issued the Advisory Circular at least 60 days before the commencement of construction", and it goes
on, but I think that's moot, because the Circular has been issued on October 6th. Or am I mistaken on that point?

MR. CLIFFORD: I'm flipping through it now. It looks like it was October 8th.

DIR. FORBES: Or October 8th, yes.

MR. CLIFFORD: And it looks like it's -- talks about it in Section 14-1, and I'm not there yet. I mean, the thing is 91 pages long. But it looks like it may almost be a moot point. Now that -- and, so, I would just suggest that we look at this --

MR. IACOPINO: Could I make a suggestion? Maybe over lunch, if you could all individually look at the 2e to the Application, which is their notices of -- from the FAA approving the standard lighting. And I think the answer -- I think that where some of the confusion is coming is even though the Circular has issued, they still need a "determination of no hazard" with the ADLS for the specific Project. The Circular applies to the industry. And, in order to get "determinations of no hazards", I'm sure there's an application
process to the FAA specific to this particular Project that the Applicant will have to go through.

PRESIDING OFCR. SCOTT: Sounds like a good time to take a lunch break. So, again, to our tradition, it will be approximately 45 minutes. Thank you all.

(Lunch recess taken at 12:02 p.m. and concludes the Deliberations Day 3 Morning Session. The Deliberations continue under separate cover in the transcript noted as Deliberations Day 3 Afternoon Session ONLY.)