

1                                 **STATE OF NEW HAMPSHIRE**2                                 **SITE EVALUATION COMMITTEE**

3  
4     **December 12, 2016** - 9:39 a.m.  
5     Public Utilities Commission  
6     21 South Fruit Street Suite 10  
7     Concord, New Hampshire

**DELIBERATIONS**  
  
   **DAY 3**  
   **MORNING SESSION**  
   **ONLY**

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

11     **PRESENT FOR**  
12     **SUBCOMMITTEE:**

**SITE EVALUATION COMMITTEE:**

13     Cmsr. Robert R. Scott     Public Utilities Commission  
   *(Presiding as Presiding Officer)*  
  
14     Cmsr. Jeffrey Rose        Dept. of Resources &  
   Economic Development  
15     Dr. Richard Boisvert     Dept. of Cultural Resources/  
   Div. of Historical Resources  
16     John S. Clifford         Public Utilities Commission/  
   Legal Division  
17     Dir. Eugene Forbes        Dept. of Environ. Services/  
   Water Division  
18     Patricia Weathersby       Public Member

19  
20     ***Also Present for the SEC:***

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

23     COURT REPORTER:   Steven E. Patnaude, LCR No. 052  
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## [DELIBERATIONS]

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

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

## [DELIBERATIONS]

1 reached a consensus on the land use. But,  
2 certainly, I would be willing to acquiesce to  
3 the will of the Committee.

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

7 *[No verbal response.]*

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

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

19 And, so, I feel as though we  
20 discussed that, and I felt reached some level  
21 of comfort with the outcome, in terms of the  
22 overall impact to the economy, as pertaining to  
23 direct impact and number of employment, as well  
24 as the payment in lieu of taxes that was going

## [DELIBERATIONS]

1 to be a direct benefit to the Town.

2 But, again, I would be happy to  
3 further discuss, if any of the Subcommittee  
4 members felt differently?

5 *[No verbal response.]*

6 PRESIDING OFCR. SCOTT: Seeing none.

7 CMSR. ROSE: Okay. So, we  
8 concluded -- we started talking a bit about  
9 some of the concerns that were referenced by  
10 some of the intervenors that had explicitly  
11 requested some level of value guarantees,  
12 property value guarantees, or buy-back  
13 provisions to such. And that seemed to be  
14 where we had concluded our conversation on  
15 Friday. And I don't know that we had reached  
16 any sort of resolution or conclusion, but there  
17 was the question asked about whether or not  
18 that such a provision had been included as a  
19 previous condition in any previous dockets, of  
20 which we were informed by our counsel,  
21 Mr. Iacopino, that there had been such a  
22 provision in a docket with the AES energy  
23 facility in Londonderry back in the later '90s.  
24 So, that was at least some level of precedent

## [DELIBERATIONS]

1 established within the SEC proceedings.

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

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

17 Attorney Weathersby.

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

23 PRESIDING OFCR. SCOTT: Anybody?  
24 Director Forbes.

## [DELIBERATIONS]

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

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

10 Commissioner Rose.

11 CMSR. ROSE: Okay. So, within our  
12 administrative rules, again, Site 301.15, we  
13 were in the process of addressing the  
14 components of Subcategory (a). I believe we  
15 have addressed the land use requirement. We  
16 have, I think, addressed the employment  
17 requirement. And we're, I think, in the  
18 process of coming to a close on the economy of  
19 the region. While we did explore the impact on  
20 private property valuation, and sounds like  
21 we're going to push that into the last  
22 criteria, in terms of the public benefit  
23 component, where we're required to address  
24 private property.



## [DELIBERATIONS]

1 I think the other element within the  
2 economy of the region is impacts that the  
3 Project may have on tourism, and that was  
4 something that was discussed. The Applicant  
5 did provide information within the study  
6 conducted by Mr. Magnusson, a document that  
7 suggested that the impacts were modest or no  
8 direct correlation between impacts of --  
9 adverse impacts to the tourism industry as a  
10 result of the Project in Lempster.

11 There was specific references made to  
12 the Rooms and Meals Tax revenues, traffic count  
13 within the area, as well as revenues to the  
14 State Park that was in close proximity of the  
15 Project. There was discussion that Mr.  
16 Magnusson wasn't fully aware of some of the  
17 other attractions in the region, such as the  
18 motocross track. And, you know, quite  
19 honestly, there was, I think, a pretty  
20 high-level review, without perhaps going into  
21 great details. And I think the study said what  
22 it did. And whether or not there was any other  
23 concerns from the Committee, you know, we could  
24 certainly discuss it.

## [DELIBERATIONS]

1 I don't believe there was a lot of  
2 evidence to suggest that there was an adverse  
3 impact to the regional orderly development,  
4 particularly to the tourism industry. But,  
5 again, you know, I think the study itself  
6 certainly left a few holes, and perhaps wasn't  
7 as complete or thorough as what one might  
8 expect.

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

11 PRESIDING OFCR. SCOTT: Attorney  
12 Clifford.

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

23 CMSR. ROSE: I think it was  
24 referenced that there was some, you know,

## [DELIBERATIONS]

1 particularly shortly after they were installed,  
2 that there was perhaps an initial push where  
3 people might bring busloads up to view the  
4 turbines. And, you know, it was the first of  
5 the wind projects in the state. So, I think  
6 there was perhaps a novelty component of it  
7 that did draw people to the area.

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

17 I think that, you know, I think that  
18 was an accurate statement from a one-year  
19 perspective. But, if you looked at it over a  
20 longer perspective, it was relatively a push.  
21 There was no real net growth at Pillsbury State  
22 Park in the subsequent years. But it did have  
23 about a 6 percent increase the year after its  
24 initial operations.

## [DELIBERATIONS]

1           So, I do agree. I think there might  
2           be some initial draw or attraction. But, I  
3           think, over the long term, I think it's  
4           relatively a push.

5           PRESIDING OFCR. SCOTT: Attorney  
6           Weathersby.

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

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

## [DELIBERATIONS]

1 pictures.

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

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

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

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

17 *[No verbal response.]*

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

21 And we did have some extensive  
22 conversation on Friday with regards to  
23 Provision (b), which was really addressing the  
24 financial assurances for the decommissioning

## [DELIBERATIONS]

1 plan. And, so, I feel like we're in good order  
2 on that. But I'll, again, if any member of the  
3 Subcommittee would like to further explore that  
4 conversation, we certainly could do so.

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

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

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

22 So, I took a look at all those  
23 different views, and some, of course, are much  
24 easier to sort out than others. The Antrim

## [DELIBERATIONS]

1 Board of Selectmen certainly support the  
2 construction and operation of the Project.  
3 They have been an active intervenor supporting  
4 the Project.

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

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

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

21 The Zoning Ordinance itself does not  
22 allow the construction of a large wind energy  
23 facility on the site. The project is located  
24 primarily in the town's Rural Conservation

## [DELIBERATIONS]

1 District, which doesn't allow large scale wind.  
2 There's been numerous attempts to amend the  
3 Ordinance so that it allows construction and  
4 operation of the Project, which were not  
5 successful. There's also been attempts to  
6 revise the Ordinance to prohibit --  
7 specifically prohibit projects like this that  
8 also failed to pass.

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

16 The Antrim Master Plan, like most  
17 master plans, contains competing goals; some of  
18 which support the Project, some of which don't.  
19 The Master Plan contains a section that  
20 addresses climate change, energy efficiency,  
21 and renewable energy, and calls for the  
22 Planning Board and the Planning Department to  
23 encourage renewable energy uses, specifically  
24 including wind.



## [DELIBERATIONS]

1           But it also speaks of preserving open  
2           space, rural character of the town, and cites  
3           overwhelming support for protecting Antrim's  
4           scenic views. It also specifically refers to  
5           the Quabbin to Cardigan cooperative, the  
6           Loveren Mill swamp preserve, and the  
7           DePierrefue-Willard Pond Wildlife Sanctuary,  
8           all of which will be affected by this Project.  
9           The Master Plan also discourages forest  
10          fragmentation and supports wildlife in the  
11          rural conservation zone.

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

19           Outside the Town of Antrim, the  
20          Southwest Regional Planning Commission  
21          identified the lack of local, renewable energy  
22          alternatives to conventional energy sources as  
23          a substantial risk to future growth in the  
24          region. However, we did receive a recent

## [DELIBERATIONS]

1 comment from them where they urge us, this  
2 Board, to carefully consider the impacts of the  
3 Project on wildlife habitat, noise levels,  
4 views, and conservation lands.

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

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

21 I thought we had a comment from the  
22 Town of Windsor, but I couldn't find it as I  
23 was going through things. So, I'll leave that  
24 alone.

## [DELIBERATIONS]

1           Getting back to Antrim, I guess the  
2           townspeople, best I can tell, they seem  
3           divided. There's certainly conflicting  
4           evidence about the support and the opposition  
5           of the residents of Antrim. There's the Zoning  
6           Ordinance change attempts that I mentioned.  
7           There was also a straw poll, the results of  
8           which suggest support. There was also the  
9           research survey done by American Research Group  
10          sponsored by Antrim Wind. And Antrim Wind  
11          indicates that the surveys were sent unfiltered  
12          to the residents of the Town of Antrim  
13          identified from voter and taxpayer lists.  
14          There was testimony from several intervenors  
15          that said they, and others that were opposed to  
16          the Project, never received the surveys. Of  
17          those who did receive the surveys and replied,  
18          approximately 77 percent indicated support of  
19          the Project.

20                 There's been other surveys of the  
21                 townspeople. There was an opinion survey in  
22                 2010, in which 84.4 percent of the Town's  
23                 residents voted in favor of commercial wind  
24                 energy, and 68.8 percent voted in favor of

## [DELIBERATIONS]

1 construction of wind turbines in the Rural  
2 Conservation District.

3 There was an unofficial ballot in  
4 2011 where 63.2 percent of the voters voted in  
5 favor of the Project.

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

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

21 However, the Selectboard of the Town  
22 of Antrim has supported the Project over about  
23 seven years of elections. So, we can discuss  
24 what we draw from that.

## [DELIBERATIONS]

1           My personal take is the Town is  
2           divided, but we're basically just to -- we need  
3           to consider all of these views when we are  
4           determining what to do with the Project.

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

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

22          So, to me, the fact that the Board of  
23          Selectmen has been doing that, that to me is  
24          the voice of the governing body of the Town.

## [DELIBERATIONS]

1 And I'm not suggesting for a moment there  
2 aren't dissenting voices.

3 Anybody else?

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

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

21 I do agree that there's certainly a  
22 mixed, you know, I think a diverse group of  
23 opinions within the community, and we've seen  
24 evidence on both sides of that. I do think

## [DELIBERATIONS]

1 that, while it's clear that this is not an  
2 activity that would be permissible under the  
3 ordinances of the Rural Conservation District,  
4 it is something that is outlined as a priority  
5 within the Master Plan, from the perspective of  
6 trying to encourage additional renewable  
7 energy, as an effort to try to address climate  
8 change issues and to reduce greenhouse gas  
9 emissions.

10 And I do feel as though the overall  
11 mitigation package, which includes the  
12 908 acres of conservation lands, which is --  
13 protects the ridge tops is contiguous of the  
14 different conservation lands, does provide a  
15 benefit within the orderly development in the  
16 community.

17 And, as it pertains to impacts on  
18 wildlife, while there was concerns raised that  
19 the 11.3 acres of impacts to -- the 11.3 acres  
20 of impact on the Project was in the Tier 1 of  
21 the Wildlife Action Plan, that there was going  
22 to be over 600 acres of that 900 acres that's  
23 going to be conserved, that will also be of  
24 that highest wildlife habitat that will be

## [DELIBERATIONS]

1 permanently conserved. So, I think that also  
2 was consistent with something that's outlined  
3 as a priority within the Town's Master Plan.

4 PRESIDING OFCR. SCOTT: Dr. Boisvert.

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

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

23 I think one thing does stand out to  
24 me, and that is the issue of the PILOT versus



## [DELIBERATIONS]

1        *ad valorem* taxation. The financial impact to  
2        the communities by way of taxation is always a  
3        very important topic to the entire community.  
4        And, if the community were really opposed to  
5        the wind farm, I would have expected more  
6        opposition comment and dispute in terms of the  
7        *ad valorem* versus PILOT, or whatever you want  
8        to call it. And that there is a reasonable  
9        argument that a good deal more money would have  
10       been collected under *ad valorem*, yet it doesn't  
11       seem to have been an issue. And that's the  
12       kind of thing that would come up with the  
13       selectman's election and so forth.

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

22                So, I think that the community has  
23       expressed itself. I think that, you know, in  
24       all likelihood, it will be acceptable to the

## [DELIBERATIONS]

1 majority of the community. And I don't see  
2 that the interests and the voice of the  
3 community has been ignored. I think that going  
4 forward with the Project would not violate  
5 that.

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

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

23 MS. WEATHERSBY: They added the piece  
24 concerning decommissioning that we've already

## [DELIBERATIONS]

1 discussed. Is that what you're referring to?

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

8 MS. WEATHERSBY: Please.

9 PRESIDING OFCR. SCOTT: So, "Antrim  
10 Wind Energy shall participate in meetings to be  
11 scheduled jointly by the Antrim Board of  
12 Selectmen and Antrim Wind Energy to review and  
13 promote" -- provide -- excuse me -- "review and  
14 provide information to the public concerning  
15 construction activities, construction schedule,  
16 use of public highways, blasting, and other  
17 construction activities. The meetings shall be  
18 attended by persons knowledgeable within Antrim  
19 Wind Energy construction plans and responsible  
20 for managing construction activities. The  
21 meetings shall be public meetings under RSA  
22 91-A moderated by the Board of Selectmen,  
23 except as provided by RSA 91-A:3.

24 There's two others. But, before I go

## [DELIBERATIONS]

1 on, my only concern with this suggested  
2 language is, as the Committee knows, we can't  
3 bind anybody -- my understandings is we can't  
4 bind anybody other than the Applicant. So that  
5 the -- I suppose that maybe we can tweak the  
6 language, but the fact that "the meetings held  
7 by the Town shall be under RSA 91-A", I guess  
8 that's -- my concern is that's not necessarily  
9 under the purview of the Applicant.

10 I'll go to the next condition as I  
11 recollect it. It was "Antrim Wind shall  
12 provide the Town with copies of its proposed  
13 condition plans" -- "construction plans,  
14 schedule, blasting, and other public  
15 information to be made available to the public.  
16 Construction plans, schedule, and other  
17 information provided to the Town shall be  
18 updated to reflect changes in the Project  
19 schedule and other changes during construction.  
20 The Project shall provide information  
21 concerning complaints during construction, if  
22 any, and their resolution, except that  
23 confidential, personal, and financial  
24 information regarding the complaint may be

## [DELIBERATIONS]

1 redacted."

2 And the final one was, "in the event  
3 of significant unanticipated changes or events  
4 during construction that may impact the public,  
5 the environment, compliance with the terms and  
6 conditions of a certificate, public  
7 transportation or public safety, the Project  
8 shall notify the Town Board of Selectmen or its  
9 designee in writing as soon as possible but no  
10 later than seven days after the occurrence. In  
11 the event of emergency conditions that may  
12 impact public safety, Antrim Wind Energy shall  
13 notify the Town and appropriate officials  
14 immediately. In addition, during construction,  
15 AWE shall copy the Town on any notices provided  
16 to the SEC, New Hampshire Department of  
17 Environmental Services or other applicable  
18 agency" -- "regulatory agency pursuant to the  
19 Certificate or any other permit for the  
20 Project."

21 So, I read these conditions.  
22 Certainly, generally, I'm fine with them  
23 myself, these proposed conditions. And,  
24 really, they're most to do with construction

## [DELIBERATIONS]

1 and notifying the Town and keeping good  
2 communication with the Town.

3 Does that help your memory?

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

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

11 Commissioner Rose.

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

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

21 *[Short pause.]*

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

24 Do we want to, if everybody is on the

## [DELIBERATIONS]

1 same page literally, do we want to go through  
2 these proposed conditions one by one? Is that  
3 a way to do this?

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

6 MS. WEATHERSBY: Sure.

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

11 I'm letting Attorney Clifford catch  
12 up.

13 *[Short pause.]*

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

23 "The Town and Antrim Wind may amend  
24 the Agreement consistent with the terms and

## [DELIBERATIONS]

1 conditions of the Certificate of Energy  
2 Facility issued by the Committee", if we issue  
3 one. "In the event of a conflict between the  
4 requirements of the Agreement, as amended, and  
5 the requirements of a certificate, the  
6 certificate shall control." So, that seems  
7 reasonable to me.

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

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

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

22 CMSR. ROSE: No. I'm good.

23 PRESIDING OFCR. SCOTT: Condition  
24 Number 2, the condition is Item Number 2, as



## [DELIBERATIONS]

1 proposed by the Town, are regarding  
2 decommissioning and funding assurance.

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

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

8 My only comment concerning Condition  
9 2, 3, and probably 1, is that, as I read  
10 this -- as I mentioned when we went through  
11 this, as I read this Agreement, it terminates  
12 at the -- when the turbines stop spinning, and  
13 it doesn't continue through the end of the  
14 decommissioning. So, I just would, rather than  
15 in accordance with 14.1.1 of the Agreement,  
16 just to be sure that it goes through the full  
17 implementation of the Decommissioning Plan.

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

22 PRESIDING OFCR. SCOTT: So, maybe you  
23 can draw my attention to the operable part of  
24 the termination then?

## [DELIBERATIONS]

1 MS. WEATHERSBY: Sure. So, the  
2 Agreement, in 1.1, the "Agreement" is defined,  
3 the term is actually in the definition of  
4 "agreement". So, it's "this Agreement, which  
5 applies from the effective date until the end  
6 of useful life of the wind farm". And, then,  
7 in Section 1.5 of the Agreement, "end of useful  
8 life" is defined, and that's "the point in time  
9 in which the wind farm or an individual wind  
10 turbine, as the case may be, has not generated  
11 electricity for a continuous period of 24  
12 months for reasons other than the wind regime,  
13 maintenance or repair, facility upgrade, or  
14 repowering." So, that's the end, as I read it,  
15 the end of the term of this Agreement, and yet  
16 there are a number of decommissioning  
17 requirements. If you look in Section 14. --  
18 Section 14, which concerns decommissioning,  
19 Section 14.1.2 requires that decommissioning be  
20 complete within 24 months of the -- after the  
21 end of the useful life.

22 So, we have a period of 24 months  
23 where there's no wind activity, the turbines  
24 aren't spinning, and then another 24 months to

## [DELIBERATIONS]

1 complete decommissioning.

2 But, again, I think that it's just a  
3 drafting matter, that I think that the  
4 Agreement ends before decommissioning. So, I  
5 just would want to extend, if we agree to these  
6 conditions, just make sure they extend through  
7 the end of decommissioning, completion of  
8 decommissioning.

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

11 MS. WEATHERSBY: The March 2012  
12 "Agreement between the Town of Antrim, New  
13 Hampshire and Antrim Wind Energy, LLC,  
14 Developer/Owner of the Antrim Wind Power  
15 Project".

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

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

21 PRESIDING OFCR. SCOTT: Attorney  
22 Clifford.

23 MR. CLIFFORD: I was just going to  
24 say, rather than craft -- try to craft that,

## [DELIBERATIONS]

1 wouldn't that be covered under Condition 1, and  
2 "the Town and Antrim can amend the Agreement  
3 consistent with the terms and conditions of the  
4 certificate of energy facility issued by the  
5 Committee."

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

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

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

22 MR. CLIFFORD: Correct.

23 MS. WEATHERSBY: Right.

24 MR. CLIFFORD: So, I would say, if we

## [DELIBERATIONS]

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

6 But it was great that you pointed it  
7 out.

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

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

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

19 PRESIDING OFCR. SCOTT: I see head  
20 nods.

21 CMSR. ROSE: Yes.

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

## [DELIBERATIONS]

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

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

13 PRESIDING OFCR. SCOTT: Commissioner  
14 Rose.

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

23 MR. CLIFFORD: Right.

24 CMSR. ROSE: The only other one that

## [DELIBERATIONS]

1 I might just mention, because it was on my mind  
2 earlier, but just to explicitly state it, is  
3 that, you know, that would also include the  
4 schedule, in terms of the hours of operation.  
5 And I just know that, on a Saturday, at 7 a.m.,  
6 that wouldn't go over well in the Rose  
7 household, at least I would hear from it from  
8 my wife.

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

17 PRESIDING OFCR. SCOTT: Attorney  
18 Weathersby.

19 MS. WEATHERSBY: And I guess the  
20 other thing, too, is whether we want the  
21 material that are provided to the Town to also  
22 be provided to the SEC? Construction plans,  
23 schedule, blasting, etcetera, or just for the  
24 more major reports?

## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT: Well, I'll  
2 add, to the extent there's a complaint to  
3 Attorney Monroe, I would think it would be  
4 helpful for her to at least be apprised of  
5 what's going on. So, that would argue in my  
6 mind that she be copied on it, I think.

7                   Any discussion?

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

13                   PRESIDING OFCR. SCOTT: Okay. Any  
14 other discussion?

15                   *[No verbal response.]*

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

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



## [DELIBERATIONS]

1 including the law, 162-H, obviously.

2 Any thoughts on how should we address  
3 those issues?

4 Attorney Weathersby.

5 MS. WEATHERSBY: Could you repeat  
6 that please?

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

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

19 Dr. Forbes.

20 DIR. FORBES: I think that's  
21 sufficient.

22 PRESIDING OFCR. SCOTT: All right.  
23 So, what's next, Commissioner Rose?

24 CMSR. ROSE: Well, going back to the

## [DELIBERATIONS]

1 rule, again that's 301.15, we were just  
2 addressing (c), and again that's the views of  
3 the municipal and regional planning commissions  
4 and municipal governing bodies regarding the  
5 proposed facility.

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

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

15 CMSR. ROSE: So, with that, Mr.  
16 Chair, I don't know what your discretion might  
17 be or your purview might be, but I think we  
18 have covered those three categories within  
19 301.15 as a Subcommittee.

20 PRESIDING OFCR. SCOTT: All right.  
21 Thank you. So, a couple things that leaves on  
22 my recollection. So, we have -- well, maybe we  
23 can take this now. We've addressed the  
24 requirement to look at cumulative impacts for

## [DELIBERATIONS]

1           aesthetics. I think we've talked about that.  
2           We're going to still need to address cumulative  
3           impacts regarding other -- any concerns  
4           regarding other issues. Obviously, we'll need  
5           to, and I was going to table this till the end,  
6           but we need to do the general finding of public  
7           interest. I did want to discuss briefly the  
8           public comments we received. And, then,  
9           obviously, we need to go through the conditions  
10          also. And sounds like we still have an open  
11          item of potential condition regarding some kind  
12          of property value guarantee.

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

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

24                        MS. WEATHERSBY: There was the

## [DELIBERATIONS]

1 comment from the Town of Deering that I  
2 mentioned, that they have a deep concern about  
3 the cumulative visual impact of the Project on  
4 three critical viewsheds in the western section  
5 of the Town of Deering. They have views of  
6 another -- another wind facility.

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

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

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

23 Any other thoughts on that?

24 CMSR. ROSE: I agree.

## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT: Okay. Any --  
2                   before I leave this topic, anyone else?

3                                   *[No verbal response.]*

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

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

23                                   So, any observations or comments?

24                                   CMSR. ROSE: I just -- and we have

## [DELIBERATIONS]

1           gotten good feedback from the public during the  
2           course of the proceedings. We did have a  
3           public hearing that was held last February in  
4           the community, and had a good turnout that  
5           evening as well. In my recollection from that  
6           evening is there was certainly more support for  
7           the Project than opposition to the Project, at  
8           least during that public comment period --  
9           excuse me, during that public hearing. But,  
10          then, when we did have the public comment  
11          period or the public session back last month, I  
12          think there was certainly more in opposition.

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

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

22    [No verbal response.]

23                                PRESIDING OFCR. SCOTT: And, again, I  
24                        bring that up, because it's important to

## [DELIBERATIONS]

1 recognize the public input we've had. So,  
2 that's why I wanted to make sure we discussed  
3 it.

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

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

20 So, we do have -- we talked about a  
21 parking lot, or what did Attorney Clifford call  
22 it? It wasn't a "parking lot". You wanted a  
23 different name for where we put our conditions.  
24 But, in any case --

## [DELIBERATIONS]

1 CMSR. ROSE: A hopper.

2 MR. CLIFFORD: A hopper.

3 PRESIDING OFCR. SCOTT: A "hopper",  
4 thank you. The "hopper", so I'll use that.  
5 So, we had a hopper where --

6 ADMINISTRATOR MONROE: I can hand out  
7 copies.

8 PRESIDING OFCR. SCOTT: Please do so.

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

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

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

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



## [DELIBERATIONS]

1 refine the language.

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

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

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

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

19 DR. BOISVERT: I would take it to  
20 mean "commencement of construction". I don't  
21 know that it's necessary to put that in there,  
22 if you feel it's well stated. But I assume  
23 it's "before construction begins" they would  
24 need to have that in place. I'm not familiar

## [DELIBERATIONS]

1 enough with the official wording for these  
2 kinds of legal conditions. Is that embedded in  
3 that condition?

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

8 MR. CLIFFORD: Well, I just had a  
9 question. Was it just the fire suppression  
10 system or I thought there was testimony about  
11 sort of the plan, in case there was a fire?  
12 But I thought, I may be incorrect here, but I  
13 thought that these Siemens turbines came with  
14 fire suppression equipment in them. And I  
15 thought we were talking about sort of the plan  
16 if there was a problem. That the Fire Marshal  
17 would understand, the state, and the Town would  
18 have an understanding of what would happen if  
19 there was some emergency at the site. In other  
20 words, what's the proper -- that's what I'm  
21 thinking. What's the proper equipment? What  
22 hazardous, dangerous materials might they  
23 encounter when they're there? That's what I  
24 thought we were talking about, not just that

## [DELIBERATIONS]

1 outline of the suppression system inside the  
2 nacelle. While that would be helpful, I'm  
3 sure, but I thought we were talking about more  
4 in terms of the comprehensive, sort of plan of  
5 action, in the event there was a big problem.

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

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

18 MS. WEATHERSBY: I think that's what  
19 we called it in the -- is that what it's called  
20 in the Application, Attorney Iacopino?  
21 Emergency response?

22 MR. IACOPINO: "ERP", I believe.  
23 Yes, Emergency Response Plan. I can check that  
24 for you in just a minute. What I was going to

## [DELIBERATIONS]

1 do, though, just to answer Dr. Boisvert's  
2 question, is "commencement of construction" is  
3 a defined term in our statute, comes under RSA  
4 162-H:2, III. "Commencement of construction"  
5 means any clearing of the land, excavation, or  
6 other substantial action that would adversely  
7 affect the natural environment of the site of  
8 the proposed facility, but does not include  
9 land surveying, optioning or acquiring land or  
10 rights in land, changes desirable for temporary  
11 use of the land for public recreational uses,  
12 or necessary borings to determine foundation  
13 conditions, or other preconstruction monitoring  
14 to establish background information related to  
15 the suitability of the site or to the  
16 protection of environmental use and values."

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

20 DR. BOISVERT: It seems appropriate  
21 in the circumstances.

22 MS. WEATHERSBY: I'm just wondering  
23 if we want to give them -- that's kind of a  
24 break-ground analysis. I know there's been

## [DELIBERATIONS]

1           some testimony concerning they need to get some  
2           things in the frozen -- while the ground is  
3           frozen, *etcetera*, and I don't know how long  
4           this takes. And where this concerns primarily  
5           the things that would go wrong with the  
6           turbines, do we want to -- I don't know if  
7           there's another date, that, you know, "prior to  
8           erection of the turbines", or maybe we just  
9           leave it as it is. I'm just trying to give  
10          them a little bit of time to start doing some  
11          land clearing in the frozen ground conditions.  
12          But just throwing that out there.

13                       PRESIDING OFCR. SCOTT: Attorney  
14          Clifford.

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

23                       PRESIDING OFCR. SCOTT: Director  
24          Forbes.

## [DELIBERATIONS]

1 DIR. FORBES: Yes, I would agree. I  
2 don't think we need to see that or it needs to  
3 be resolved before they start any work.  
4 Certainly, we can give them some time to pull  
5 this together.

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

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

20 MR. IACOPINO: Well, I could draft  
21 something. But the decision of whether it is  
22 "prior to commencement of construction",  
23 "erection of turbines", or "operation" or  
24 whatever, really is something that you all have

## [DELIBERATIONS]

1 to decide in your role as the Committee  
2 members.

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

8 PRESIDING OFCR. SCOTT: Attorney  
9 Clifford.

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

24 PRESIDING OFCR. SCOTT: What do

## [DELIBERATIONS]

1 people feel about that?

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

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

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

24 So, as I read this November 10th



## [DELIBERATIONS]

1 letter, the plan is acceptable to the Fire  
2 Marshal. They're just simply asking for the  
3 plans for the suppression system itself. But  
4 the emergency operation plan or the safety plan  
5 is acceptable.

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

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

19 I do think that the Applicant would  
20 be at risk if they do not get approval prior to  
21 fabrication of the equipment before they ship  
22 it to the site. That would be at their risk.  
23 But I think that the order that we create here  
24 would be, in my view, sufficient to ensure that

## [DELIBERATIONS]

1 the satisfaction of the State Fire Marshal and  
2 the Town is obtained.

3 PRESIDING OFCR. SCOTT: Any  
4 dissenting views?

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

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

16 *[No verbal response.]*

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

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

24 MR. IACOPINO: I would just direct

## [DELIBERATIONS]

1 your attention to Page 117 of the Application,  
2 which is where the Emergency Response Plan is  
3 addressed. The way that it is structured in  
4 your Application is that -- is that it  
5 references the Town Agreement that addresses  
6 requirements for AWE to develop an emergency  
7 response plan upon request of the town, and  
8 then it says "AWE has met with the State Fire  
9 Marshal and the Antrim Fire Department and has  
10 agreed to develop the ERP in cooperation with  
11 both parties. The plan will be completed prior  
12 to commencement of construction, will be  
13 designed to comply with all applicable laws and  
14 regulations, including NFPA 1-2009, will  
15 conform to requirements of the Agreement with  
16 the Town of Antrim and shall include the  
17 following elements". And then there's a list  
18 of a number of elements that go over onto Page  
19 118 of the Application.

20 I would recommend that you review  
21 that, because that's the aspect of the  
22 Application that deals with the Emergency  
23 Response Plan. And, then, it goes on to state  
24 that they have also provided a "copy of

## [DELIBERATIONS]

1 Siemens' standard on-shore emergency response  
2 document, which will be adapted to the  
3 Project". And that's contained in Appendix 20  
4 to the Application.

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

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

13 I'm sorry, I needed to point out one  
14 other detail, because Mr. Clifford raised it.  
15 The onboard suppression system, at least  
16 according to the Application, is not a Siemens  
17 system. It is called "Firetrace". And, if I  
18 understand it correctly, it's been installed in  
19 other wind facilities in New Hampshire as well.  
20 And I would direct your attention to Page 116  
21 of the Application for that reference. So, it  
22 is an add-on, so to speak, just so that you're  
23 all -- if you're working from the Application  
24 that's what the Application says.

## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT:  So, what's  
2                   the sense of the Committee?  Do we feel a need  
3                   to go beyond what was agreed to in the  
4                   Application itself?

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

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

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

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

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

23                  MR. CLIFFORD:  I'm just curious what,  
24                  and I don't know anything about the State Fire

## [DELIBERATIONS]

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

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

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

24 MS. WEATHERSBY: Well, I think the

## [DELIBERATIONS]

1 Emergency Response Plan is a whole lot broader  
2 than that.

3 MR. CLIFFORD: Right.

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

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

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

24 But they don't get into the

## [DELIBERATIONS]

1 nitty-gritty of evaluating the system, I don't  
2 think. I just don't know. And I don't want to  
3 bog us down, if I'm the cause of it, but it's  
4 just a question that I don't know, I can't  
5 answer.

6 PRESIDING OFCR. SCOTT: Attorney  
7 Iacopino.

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

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

24 MR. CLIFFORD: I guess I'll stand



## [DELIBERATIONS]

1 corrected. I'm comfortable with it, if it's  
2 something that was done in the Groton  
3 procedure, then it sounds like the State Fire  
4 Marshal is familiar with what's to come, and  
5 probably would be the best office to send this  
6 to, right?

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

15 So, I got lost myself. So, the ERP,  
16 I think we're in agreement that that's in the  
17 Application itself. It sounds like, with the  
18 change to -- I'm still on number 1, this is  
19 going to be a while, I guess. The change to  
20 number 1 is that we don't want -- we agree that  
21 we don't need the plan to be approved and in  
22 place until construction of the towers  
23 themselves or erection of the towers themselves  
24 starts. Correct?

## [DELIBERATIONS]

1                   *[No verbal response.]*

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

5                   *[No verbal response.]*

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

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

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

22                   ADMINISTRATOR MONROE: I think it was  
23 just I felt like the wording was somewhat  
24 awkward, and my brain, I think, was -- couldn't

## [DELIBERATIONS]

1           come up with anything better, so --

2                       PRESIDING OFCR. SCOTT: Any concerns  
3 with this condition?

4                               *[No verbal response.]*

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

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

16                               ADMINISTRATOR MONROE: To the  
17 Administrator.

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

23                               CMSR. ROSE: My recollection was this  
24 was per the recommendation of New Hampshire

## [DELIBERATIONS]

1 Fish & Game to a letter that they submitted.  
2 And I'm just trying to find that letter now. I  
3 don't know if you have it directly in front of  
4 you, Ms. Monroe. But I think it outlined the  
5 window of time that they were looking to try to  
6 ensure that there were the monitoring  
7 protections in place for the turtle.

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

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

23 And I believe it's ongoing during  
24 periods of construction that are when the

## [DELIBERATIONS]

1 ground isn't frozen, I think is what's intended  
2 there, so you can't run over the turtles.

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

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

12 CMSR. ROSE: Yes. In looking --

13 MR. CLIFFORD: -- a collar.

14 CMSR. ROSE: Sorry, I didn't mean to  
15 speak over you there. And I have pulled up the  
16 letter. And the recommendation states "the  
17 Department would like to recommend that the  
18 monitoring of the proposed Project  
19 laydown/staging areas identified on the Project  
20 location map as Parcels 222-003 (gravel pit)  
21 and number 212-027 be monitored for the Wood  
22 turtle movement while the Project is under  
23 construction during the summer. This should  
24 avoid the potential for construction equipment

## [DELIBERATIONS]

1           encountering and potentially impacting Wood  
2           turtles seeking upland habitats within close  
3           proximity to the North Branch River".

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

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

19                        But the other point being is that  
20          maybe we just incorporate the terms of that  
21          letter into the condition, and then it covers  
22          the two parcels in question, it's a specific  
23          reference to the letter, and then we don't have  
24          to deal with the language.

## [DELIBERATIONS]

1 CMSR. ROSE: I would be comfortable  
2 with that outline. And, quite frankly, I would  
3 really look to New Hampshire Fish & Game as the  
4 expert as to putting a definition around the  
5 timeline, and what they would be looking for  
6 from a monitoring perspective. So, perhaps a  
7 condition that states, you know, "AWE shall  
8 provide" or "shall consult with New Hampshire  
9 Fish & Game to ensure that they have  
10 satisfactory conditions in place to address  
11 their concerns outlined in the July 1st, 2016  
12 letter as it pertains to impacts to the Wood  
13 turtle within the staging and laydown areas."

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

18 MR. IACOPINO: I'm sorry.  
19 Mr. Chairman, I was just going to point out  
20 that, under RSA 162-H, Section 4, III-a, the  
21 Committee has the authority to "delegate to  
22 either the administrator or a state agency or  
23 official...the authority to specify the use of  
24 any technique, methodology, practice, or

## [DELIBERATIONS]

1 procedure approved by the Committee within a  
2 certificate" and "the authority to specify  
3 minor changes in route alignment", etcetera.  
4 This is, you could, if you so chose, delegate  
5 the specifics of -- delegate to Fish & Game the  
6 specifics of -- to develop the specifics for  
7 the particular protection that you're seeking.

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

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

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

23 MR. IACOPINO: My suggestion for your  
24 purposes here today, Mr. Chairman, is that any



## [DELIBERATIONS]

1 time that you want to delegate something to a  
2 state agency or the Administrator, and you're  
3 working off of these rules, if you simply say  
4 that "we delegate to the agency", and then  
5 follow up with the thing, we can make the --  
6 when we draft the order, we can insert any  
7 missing words that make the -- make it work for  
8 the purposes of the English language. Just so  
9 long as the record here reflects that it's your  
10 intention to delegate that to the agency and  
11 the specifics of what you're delegating.

12 PRESIDING OFCR. SCOTT: Any concerns  
13 with that?

14 MR. CLIFFORD: I might just make it  
15 implicit. Just say that "AWE shall provide the  
16 SEC with the final monitoring plan as approved  
17 by the New Hampshire Fish & Game, to include  
18 methods for providing protections for The Wood  
19 turtles during Project construction, as  
20 outlined in New Hampshire Fish & Game's letter  
21 to the SEC dated" whatever the date of that  
22 letter was, "July 1, 2016". So, it basically  
23 says "take that letter, go back to the New  
24 Hampshire Fish & Game, figure out whatever it

## [DELIBERATIONS]

1 is you're going to do, and then give us that  
2 plan after they tell you what you're going to  
3 do." So, we just then get their plan.

4 Does that cover it maybe?

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

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

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

## [DELIBERATIONS]

1 MR. CLIFFORD: Okay.

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

9 Are we --

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

12 PRESIDING OFCR. SCOTT: Sure.

13 ADMINISTRATOR MONROE: "AWE shall  
14 consult with and receive approval from New  
15 Hampshire Fish & Game regarding methods for  
16 providing protections for Wood turtles during  
17 Project construction activities in the  
18 laydown/staging areas as outlined in the  
19 July 1st, 2016 letter from New Hampshire Fish &  
20 Game to AWE. The final plan as approved by New  
21 Hampshire Fish & Game shall be submitted to the  
22 Administrator, delegation to enforce the terms  
23 of the plan shall be -- delegation given to New  
24 Hampshire Fish & Game to enforce the plan."

## [DELIBERATIONS]

1 MR. CLIFFORD: I would just -- I'd  
2 put that sentence first, and just say that "The  
3 SEC hereby delegates the following:", and then  
4 run into your sentence, and I think we're done.

5 ADMINISTRATOR MONROE: Okay.

6 MR. CLIFFORD: If that works for  
7 folks?

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

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

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

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

19 *[Multiple members nodding in the*  
20 *affirmative.]*

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

24 Director Forbes.

## [DELIBERATIONS]

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

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

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

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

15 DIR. FORBES: Yes. And I would say  
16 60 days is fine.

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

21 MS. WEATHERSBY: I'm not sure we need  
22 annual reporting, if we're going to have any  
23 time there's a change to the existing Operation  
24 and Maintenance Agreement or we're notified of

## [DELIBERATIONS]

1 any new contract for operation and maintenance,  
2 I'm not sure we need an annual report, if we  
3 just get the changes within, say, 60 days.

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

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

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

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

22 PRESIDING OFCR. SCOTT: Attorney  
23 Clifford.

24 MR. CLIFFORD: I agree. This is

## [DELIBERATIONS]

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

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

23                        I just want it to be clear that  
24          that's what we're looking for, right? And I'm

## [DELIBERATIONS]

1 wondering if that could be cleaned up at the  
2 end?

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

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

12 MR. CLIFFORD: Right.

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

16 MR. IACOPINO: Yes.

17 PRESIDING OFCR. SCOTT: Director  
18 Boisvert.

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



## [DELIBERATIONS]

1 changes, it covers a whole new one.

2 But that I'm looking at it from a  
3 civilian's point of view.

4 PRESIDING OFCR. SCOTT: What's the  
5 sense? That language works for me. Anybody  
6 else?

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

9 PRESIDING OFCR. SCOTT: I'm seeing  
10 head nods. So, I think we're good there.

11 *[Brief off-the-record discussion*  
12 *ensued.]*

13 PRESIDING OFCR. SCOTT: Why don't we  
14 just take a quick break right now. Thank you.

15 *[Recess taken at 11:16 a.m. and*  
16 *the deliberations resumed at*  
17 *11:24 a.m.]*

18 PRESIDING OFCR. SCOTT: Okay. Back  
19 on the record. So, I think that leaves us, we  
20 left off on the fifth on our list of potential  
21 conditions. I'll read the fifth: "AWE shall  
22 provide evidence to the SEC that the debt and  
23 equity financing for the Project is in place  
24 prior to construction."

## [DELIBERATIONS]

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

4           Anybody?

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

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

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

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

18           DR. BOISVERT: Yes. In keeping with  
19 the fact that we have to make the conditions  
20 applicable to the Applicant, I think it should  
21 read: "Require AWE to consult with White Birch  
22 Historic Association regarding the  
23 implementation of the MOU concluded with the  
24 Department of Cultural Resources, Division of

## [DELIBERATIONS]

1 Historical Resources". Put the burden on the  
2 Applicant.

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

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

10 PRESIDING OFCR. SCOTT: Any concerns  
11 with that?

12 Attorney Weathersby.

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

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

## [DELIBERATIONS]

1 phrasing understand that.

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

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

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

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

15 MS. WEATHERSBY: We can go with  
16 "consult", the way it is. Or, we could, if we  
17 want to go stronger, that "AWE will seek to  
18 reach agreement with the White Birch Historic  
19 Association regarding mitigation for the  
20 Project." Then, if it can't be reached, to you  
21 know, to implement, there's backup in the  
22 agreement, I recall, that -- maybe we leave it  
23 the way it is, because the MOU required them to  
24 talk to the White Birch people and try to work

## [DELIBERATIONS]

1 something out. And, if they couldn't, then  
2 they went to the website. If they couldn't do  
3 the sign, you know, something else, then they  
4 went to the website.

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

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

10 Dr. Boisvert.

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

21 So, other than moving Antrim Wind  
22 into the position of responsibility, as opposed  
23 to requiring the Division to consult with them.  
24 And that's in line with our guidance, that we

## [DELIBERATIONS]

1 should be creating the conditions to apply to  
2 the Applicant. I think it's worded well  
3 enough, because it refers into the Memorandum  
4 of Understanding.

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

7 MS. WEATHERSBY: Yes.

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

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

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

19 *[Multiple members nodding in the*  
20 *affirmative.]*

21 CMSR. ROSE: Yes. I think that was a  
22 good idea. That there's a expectation that it  
23 will be maintained during the life of the  
24 Project.

## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT: So, perhaps  
2                   the next sentence to that condition shall be  
3                   that "AWE, to the extent practical", or  
4                   something like that, because I don't know yet  
5                   what this thing is going to come out of this  
6                   MOU, "shall ensure" -- Director?

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

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

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

20   *[Court reporter interjection.]*

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

23                  CMSR. ROSE: There you go.

24                  PRESIDING OFCR. SCOTT: That comes

## [DELIBERATIONS]

1 out of the MOU, is that --

2 DR. BOISVERT: Yes.

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

6 ADMINISTRATOR MONROE: Still writing.

7 PRESIDING OFCR. SCOTT: Okay.

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

13 *[Dr. Boisvert nodding in the*  
14 *affirmative.]*

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

19 Anything else, before we move onto  
20 the next condition?

21 *[No verbal response.]*

22 PRESIDING OFCR. SCOTT: Seeing none,  
23 the next item on our list is regarding the  
24 ADLS, or Aircraft Detection Light System. The



## [DELIBERATIONS]

1 proposed condition reads right now is: "AWE  
2 shall install a radar-activated lighting  
3 control system, as approved by the Federal  
4 Aviation Administration, prior to operating the  
5 Project."

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

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

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

## [DELIBERATIONS]

1 around that.

2 Director Forbes, looks like you  
3 wanted to say something.

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

14 PRESIDING OFCR. SCOTT: Attorney  
15 Clifford.

16 MR. CLIFFORD: Yes. I was going to  
17 suggest that all towers aren't going to go up  
18 at the same time. But I think the minute that  
19 there was one tower that goes up that affects  
20 aviation navigation, they're going to have to  
21 figure out what to do, whether it's operating  
22 or not. Because the minute you put the  
23 structure up, and no one knows it's there up to  
24 that point in time. So, I think that system

## [DELIBERATIONS]

1 has got to be in place prior, I would think, to  
2 the installation. Because they're not going to  
3 put -- at least I wouldn't put, if I were the  
4 Applicant, wouldn't put something up that I  
5 didn't know how to make sure it was identified  
6 by aircraft. So, maybe the requirement is  
7 "before installation", similar to what we did  
8 on the other condition.

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

12 Director Forbes.

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

21 PRESIDING OFCR. SCOTT: So, where  
22 does that leave this condition? What I was  
23 taking issue was with the last few words "prior  
24 to the operation of the Project".

## [DELIBERATIONS]

1 DIR. FORBES: I'm not sure their  
2 needed.

3 PRESIDING OFCR. SCOTT: Those last  
4 words?

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

9 MS. WEATHERSBY: May I make a  
10 suggestion?

11 PRESIDING OFCR. SCOTT: Please.

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

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

## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT:  Commissioner  
2                   Rose.

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

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

24                  PRESIDING OFCR. SCOTT:  So, I

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1 would -- two things on Attorney Weathersby's  
2 suggested language. I don't think I would  
3 support "as required by the FAA", I think you  
4 had said "as required" -- "approved and  
5 required". I don't think the FAA would require  
6 them to operate with it, meaning the FAA  
7 requires lighting, but they could say "You  
8 don't have to use the AD" -- they're not  
9 requiring the ADLS. I think we're requiring  
10 and the agreement with Audubon is requiring  
11 that. So, I don't want to give discretion  
12 there. I think -- I believe our intent is we  
13 want that used.

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

21 But I agree with you that we want to  
22 be sure that they use this system, and they  
23 don't put another system in until  
24 radar-activated lighting is required.

## [DELIBERATIONS]

1                   And I think that actually goes to  
2                   Commissioner Rose's point with the AMC. I  
3                   think that, if I remember right, the AMC  
4                   Agreement says "if you start off with another  
5                   system, if you don't have approval, but, as  
6                   soon as you get approval, switch over." And I  
7                   think we're requiring them from the get-go to  
8                   have radar-activated lights in place.

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

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

19                  PRESIDING OFCR. SCOTT: Thank you for  
20                  that. I was going there, because that has  
21                  gotten muddied in my mind. Because the  
22                  language that we're currently talking about  
23                  does not preclude operating in the meantime,  
24                  or, if FAA never gets around to approve it, so

## [DELIBERATIONS]

1 that would revert to standard lighting. And  
2 I'm hearing both sides of that, I think.

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

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

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



## [DELIBERATIONS]

1 crane, we would require this approval.

2 So, is that the will of the  
3 Committee?

4 I have one head nod. Two.  
5 Dr. Boisvert.

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

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

20 DR. BOISVERT: Okay.

21 PRESIDING OFCR. SCOTT: And what I'm  
22 suggesting is the language, in order to reflect  
23 that, we would need to put something in. Right  
24 now, the draft language has "prior to

## [DELIBERATIONS]

1 operating". Well, as we discussed, as soon as  
2 you put the tower up, you need some kind of  
3 lighting.

4 DR. BOISVERT: Right.

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

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

21 The other part, the other possibility  
22 would be, which I think is what's suggested by  
23 the Applicant, and perhaps envisioned with AMC,  
24 is, as soon as they're within an X amount of

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1 time period after approval, they would  
2 certainly put it up, but, in the meantime, they  
3 would put the constant lighting, the more  
4 traditional lighting up, and would proceed.  
5 And inherent in that is, if they never get  
6 approval for some reason from FAA, obviously,  
7 they wouldn't implement it.

8 Does that help clarify?

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

22 PRESIDING OFCR. SCOTT: Attorney  
23 Weathersby.

24 MS. WEATHERSBY: I think night

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

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

20 PRESIDING OFCR. SCOTT: Director  
21 Forbes.

22 DIR. FORBES: I would support that  
23 language. I think, you know, if they can't get  
24 the FAA approval in a timely way that impacts

## [DELIBERATIONS]

1 their schedule, they can come back and we can  
2 talk about it.

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

6 Attorney Clifford.

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

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

22 You know, in other words, I would  
23 hope and I expect that the Applicant hasn't  
24 just dumped this in the agency's lap and said

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1 "well, you know, I guess you'll get to it when  
2 you get to it." I assume there's some kind of  
3 ongoing dialogue and there's some  
4 back-and-forth, I don't know. But I'd like to  
5 see us be apprised of some updates before we  
6 make a specific condition, or maybe that's the  
7 condition. Because I could see where there may  
8 be a period of time when you might need some  
9 lights, and then they'd come down.

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

23 PRESIDING OFCR. SCOTT: I guess I  
24 would ask Attorney Clifford, so, one of my

## [DELIBERATIONS]

1 concerns I had raised under aesthetics is I  
2 didn't find a particularly robust analysis if  
3 the ADLS system never happens, right? So --  
4 and that's a concern I have. Though, for the  
5 most part, we've articulated is running up to  
6 getting approval, but that would also -- but I  
7 think we ought to also be considering there's a  
8 possibility that FAA never approves.

9 Commissioner Rose.

10 CMSR. ROSE: Thank you. I tend to  
11 agree with Dr. Boisvert on this as well. While  
12 I think the Applicant has demonstrated that  
13 they have made a commitment to trying to get  
14 the lighting system, the radar-activated  
15 lighting system in place, it is hard to dictate  
16 exactly when a federal agency is going to issue  
17 that. And I guess, in looking back through the  
18 MOU that they reached with the AMC, there were  
19 provisions within that MOU that anticipated  
20 this issue, on Page 2 of that Agreement. In  
21 one of the outlines, number ii of that, is "If  
22 the FAA has not issued the Advisory Circular at  
23 least 60 days before the commencement of the  
24 construction, but issues an Advisory Circular

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1 at any time during the commercial operation of  
2 the Project, then AWE shall be required to  
3 implement and operate the Radar System within  
4 one year of the issuance of the Advisory  
5 Circular."

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

18 So, I think there's a level of  
19 confidence that they're going to be seeking  
20 this. It has been issued in previous wind  
21 projects. And, so, I think they've  
22 demonstrated a commitment to doing that. So, I  
23 guess it's a long-winded way of saying I concur  
24 with Dr. Boisvert's perspective.



## [DELIBERATIONS]

1                   PRESIDING OFCR. SCOTT: Attorney  
2 Clifford.

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

12                  PRESIDING OFCR. SCOTT: So, any  
13 suggestions?

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

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

23                  Director Forbes.

24                  DIR. FORBES: You know, rereading the

## [DELIBERATIONS]

1 Agreement with AMC, I'm comfortable with that.  
2 I think that there are some stipulations here,  
3 if they're struggling to get the approval from  
4 FAA.

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

14 Attorney Clifford.

15 MR. CLIFFORD: My idea would be that  
16 that -- that would be a strong component of  
17 that report is that status update on potential  
18 installation. And, then, my other question,  
19 and that's why I want to kind of ponder this,  
20 is sort of what's the carrot-and-the-stick  
21 approach to make sure that they stay on top of  
22 this as well, so that there's really -- I mean,  
23 there's more than just the incentive with the  
24 AMC, because the AMC Agreement doesn't, I'm

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1 going to read it again over the break, but, if  
2 they don't meet it, it's kind of "so what",  
3 right? That's the bottom line. But what if  
4 there's some bonus if they do meet it earlier?  
5 I don't know.

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

13 So, they have clearly outlined their  
14 intent.

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

## [DELIBERATIONS]

1 just speculating.

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

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

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

21 MR. CLIFFORD: I'm leaning towards  
22 put it in, because that's, you know, put it in  
23 or come back here and then get the waiver.  
24 Because I really think that that, you know, all

## [DELIBERATIONS]

1 things said, that was a key component and key  
2 driver of this Project, and why the nighttime  
3 visual effects were never analyzed and dealt  
4 with period. And that, it seems to me, just to  
5 gloss over that would really we'd kind of do a  
6 disservice, because that would be a huge gaping  
7 hole in what the process that we just did if it  
8 never came to fruition.

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

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

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

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1 was my concern.

2 So, Director Forbes.

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

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

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

22 DIR. FORBES: No.

23 PRESIDING OFCR. SCOTT: So, I think  
24 the FAA is saying "This can happen, we can put

## [DELIBERATIONS]

1       it on our charts, *etcetera*, navigation charts,  
2       *etcetera*." And I thought what the issue was is  
3       approval for the ADLS system, I think that's  
4       the touch point here we're kind of discussing,  
5       I think.

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

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

18              So, as I read that, there's certainly  
19      60 days prior to construction, and AWE is  
20      saying they will utilize it.

21              The second point here it says, it  
22      goes onto explain "if the FAA has not issued  
23      the Advisory Circular at least 60 days before  
24      the commencement of construction", and it goes

## [DELIBERATIONS]

1 on, but I think that's moot, because the  
2 Circular has been issued on October 6th. Or am  
3 I mistaken on that point?

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

6 DIR. FORBES: Or October 8th, yes.

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

13 MR. IACOPINO: Could I make a  
14 suggestion? Maybe over lunch, if you could all  
15 individually look at the 2e to the Application,  
16 which is their notices of -- from the FAA  
17 approving the standard lighting. And I think  
18 the answer -- I think that where some of the  
19 confusion is coming is even though the Circular  
20 has issued, they still need a "determination of  
21 no hazard" with the ADLS for the specific  
22 Project. The Circular applies to the industry.  
23 And, in order to get "determinations of no  
24 hazards", I'm sure there's an application



## [DELIBERATIONS]

1 process to the FAA specific to this particular  
2 Project that the Applicant will have to go  
3 through.

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

8 (Lunch recess taken at 12:02  
9 p.m. and concludes the  
10 **Deliberations Day 3 Morning**  
11 **Session.** The Deliberations  
12 continue under separate cover in  
13 the transcript noted as  
14 **Deliberations Day 3 Afternoon**  
15 **Session ONLY.**)

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